

UKRAINIAN ORTHODOX CHURCH (UOC)

UOC is the largest Christian Church in Ukraine by number of parishes (12 700) and priests (11 976). The Church has 53 dioceses, where 84 bishops are ministering and 8 are at rest. In 247 monasteries of UOC live 4 847 monks and nuns. Dioceses, communities and monasteries of UOC are located on all territory of Ukraine, including East of Ukraine and Crimea.

Primate of UOC: Metropolitan of Kyiv and All Ukraine Onufriy (Berezovsky).

In this report Ukrainian Orthodox Church expresses its deep concern regarding some recent legislative initiatives of the Government of Ukraine in particular by the Draft Bills 4128, 4511, 5309 and 1244 registered at Verhovna Rada of Ukraine. UOC finds them discriminating, violating rights of believers and potentially threatening inter-religious peace in Ukraine. Common recommendations to chapters 1, 2, 3 and 4 of this report, as related to Draft Bills, are given in the end of chapter 4. In chapter 5, UOC sets forth a few additional concerns that it would like to bring to the attention of the UN Human Right Council.

1. The Draft Bill 4128 (reg. №4128 of 23/02/2016) amending the Law of Ukraine “*On the freedom of conscience and religious organizations*” (regarding the transfer of jurisdiction of religious communities).

The Bill proposes to bring amendment to article 8 of the Law of Ukraine “*On the freedom of conscience and religious organizations*” completing it the following sentence “*One’s membership to a specific religious community is determined by his/her self-identification with that religious community confirmed by participation in religious life of a specific community”*. The Bill also proposes to set a way in which a community changes its jurisdiction: “*by registering a new edition of Statute or amendments and additions to it, approved by the consent to this change by a simple majority of people present at a meeting of citizens who belong to this religious community*”.

UOC is concerned by the amendment proposed for the following reasons:

- 1.1 The amendment brings to the Law of Ukraine two new terms: “*self-identification*” and “*participation in religious life*”, though not providing an explanation what should be understood under these words. The current legislation of Ukraine also lacks an unambiguous definition of these concepts. Consequently, both the terms may be interpreted in either way, and the Draft Bill, if adopted, will lead to speculations, misapplications, offences and violation of rights of believers of every religious organization in Ukraine.
- 1.2 With the unclear concepts of “*self-identification*” and “*participation in religious life*” the Draft Bill sets conditions, where the religious community should determine an individual person’s membership in a given religious community. However, it brings potential threat to the principle of autonomy of a religious community, respected by European standards, according to which a religious organizations possess the right, at their discretion, to choose the manner in which they accept new and exclude existing members¹. The internal structure

¹ The legal position of the European Court on Human Rights in the case of “St. Michael Parish versus Ukraine” (№77703/01 from 14/06/2007)

of a given religious organization and the regulations governing membership should be considered as a way in which such organizations express their views and follow their religious traditions. This item is also reflected in a number of other solutions of the European Court². Autonomy of religious communities is part of pluralism in a democratic society and, thus, directly comes under the protection of *article 9 of the Convention on the Protection of Human Rights and Fundamental Freedoms*³.

1.3 While the concepts of *self-identification* and *participation in religious life* remain unclear, the Draft Law brings in another vague expression – a “*specific community*”. In current legislation of Ukraine the word “community”, if used without adjective, can be attributed to any community including territorial (*inhabited locality*) and religious. Thus, such a general expression gives ground to free interpretations of the word and consequently – misapplication of the Law leading to violation of rights of believers and legislative chaos. For recent few years Ukraine has experienced a great number of such misapplications of Ukrainian Law based on substitution and confusing of concepts of “religious community” and “territorial community” when precise definition was not given.

1.4 The Bill proposes process of changing a religious community’s jurisdiction. It should be done “*by registering a new edition of Statute or amendments and additions to it, approved by the consent to this change by a simple majority of people present at a meeting of citizens that belong to this religious community*”. However, according to the current legislation of Ukraine, Statute of a religious community as well as any amendments to it may be adopted only *at a general meeting of believing citizens* (article 12 of the Law of Ukraine “*On the freedom of conscience and religious organizations*”), not “*at a meeting of citizens*” as it is proposed by the Bill. Secondly, the words “*a simple majority of people present at a meeting*” may give the right to others, who do not belong to this religious community to be present, to vote at the meeting and to give consent, using the simple majority rule, to change Statute of the religious community.

1.5 UOC fears that, in case of adoption of Draft Bill 4128, its norms can be applied equally to any religious organization in order to capture its property or force changes in regard to jurisdiction in favour of other religious organization, which in turn can lead to the escalation of interconfessional violence, which is extremely dangerous in view of the current situation in our country. For a few recent years UOC has suffered from a great number of raider

² Hasan and Chaush, paragraph 78; and Manoussakis and others v. Greece, judgement of 26 September 1996, Reports 1996-IV, paragraph 47

³ Decision of the European Court on human rights in the case of “the Bessarabian Metropolia and others versus Moldova” (№45701/99 from 13/12/2001)

seizures of its churches and property especially in the Western Ukraine, which was also admitted and documented in *13th Report on the human rights situation in Ukraine* (16 November 2015 to 15 February 2016) of the Office of the High Commissioner for Human Rights of the UN⁴ and in the *Ukraine 2015 International Religious Freedom Report* published by Bureau of Democracy, Human Rights and Labor of the U.S. Department of State⁵.

2. The Draft Bill 4511 (Reg. №4511 of 22/04/2016) on the special status of religious organizations whose administrative centres are located within a country that is recognized by the Verkhovna Rada of Ukraine as aggressor State.

The Draft Bill suggests the following:

a). Under **article 1** Special Status is required to be granted to a list of religious organizations officially acknowledged by the Verkhovna Rada of Ukraine (hereinafter referred to as the “Parliament”);

b). **Article 3** obliges religious organizations to enter into contracts with the Ukrainian government (hereinafter referred to as the “Government”);

c). Introduces special registration of Statues;

d). Under **Article 5** candidates for the posts of the Heads of religious organizations at the central and the regional levels (Bishops, Vicars, Abbots) are required to go through the approval procedure by a Central Executive Body responsible for the implementation of the Government policy in the sphere of religion;

e). The invitation of foreign citizens arriving in Ukraine for preaching purposes is required to be approved by the Government body entitled to register the Statutes of religious organisations.

UOC is concerned by the Draft Bill 4511 for the following reasons:

2.1 Granting Special Status to some religious organizations as opposed to other religious organizations (Article 1) does not comply either with the Constitution of Ukraine nor the Freedom of Conscience Law thus violating the principle of equality set forth in Article 5 of the Law of Ukraine “*On Freedom of Conscience and Religious Organizations*”, stipulating that all religions, religious confessions and religious organizations are equal before the Law.

⁴ Ukraine 13th HRMMU Report on the human rights situation in Ukraine (16 November 2015 to 15 February 2016) of March 3, 2016. “Violations of the right to freedom of religion or belief”, paragraphs 119-120. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf

⁵ Ukraine 2015 International Religious Freedom Report published by Bureau of Democracy, Human Rights and Labor of the U.S. Department of State https://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dynamic_load_id=256253&year=2015#wrapper

Granting any sort of preferences or imposing restrictions unto a religion, religious confession or religious organization is prohibited.

2.2 The same principle is violated by Article 3 of the Draft Bill, requiring both newly established organisations and those operating at the time of the Bill's enactment to conduct agreements with the Government, requiring "religious organization to respect the sovereignty, territorial integrity and the laws of Ukraine, as well as to respect other religious organizations performing in Ukraine; the obligation of the Government is to guarantee the rights and unhindered operation of religious organizations to the extent established by effective laws of Ukraine". However, the criminal liability for the infringement on the territorial integrity and inviolability of Ukraine is already clearly and unequivocally sets forth in the Criminal Code of Ukraine. Furthermore, the principles of cooperation among religious organizations within Ukrainian's jurisdiction are already provided for in the Law of Ukraine "*On Freedom of Conscience and Religious Organizations*". Therefore, it is not clear what is the legal necessity to oblige religious organisations to enter into contracts with the Government.

2.3 Being in doubt that such contracts would contain an exhaustive list of obligations for religious organisations, UOC is rather concerned that some additional clauses might be incorporated, which would require from religious organisations not only "to respect other religious organizations", but also to acknowledge their status as canonical. In case the contract is refused to be signed, religious organisation runs the risk to be terminated, as stipulated in Article 7: "*Government body, which is entrusted to execute the registration of Statutes (Organisation Charters) of the religious organizations, initiates the termination procedure of a religious organization*" that fails to follow the legal norms set forth in the Bill.

2.4 The list of the religious organizations that fall under the scope of the Draft Bill is set out in Article 7 of the Law of Ukraine "*On Freedom of Conscience and Religious Organizations*" and include the following: religious communities, departments and centers, monasteries, religious brotherhoods, missionary societies (missions) religious schools as well as other unions consisting of the aforementioned religious organizations. All these religious organizations currently operate as separate legal entities, and therefore each religious community, monastery, dioceses, religious center, etc., which fall under the scope of the Draft Bill, are obliged thus to be granted Special Status and are required to conduct contracts with the Government represented by the Ministry of Culture. Therefore, introducing Special Status for religious organizations and forcing them to conduct contracts with the Government involves the grounds of discrimination, creating thus such an environment in

which a religious organization is forced whether to fulfil certain directives of the Government or cease its operation.

2.5 With regard to Article 5 of the Draft Bill we are constrained to affirm that it violates both the constitutional principle of separation of the Church from the State and the right to freedom of faith and religion as enshrined in Article 35 of the Constitution of Ukraine. We also affirm that that government interference in the work of the Church (religious organization) cannot be justified by Article 35 of the Constitution of Ukraine or by Article 9 of the European Convention, obliging government “to ensure public order, health, morals or the rights and freedom of men”.

2.6 Last but not least, the Draft Bill contains various technical legal flaws and does not always correspond to the Law of Ukraine “*On Freedom of Conscience and Religious Organizations*”.

3. The Draft Bill 5309 (Reg. №5309 of 26/10/2016) amending the Law of Ukraine “*On Freedom of Conscience and Religious Organizations*” in terms of naming of religious organizations (unions) integrated into the structure (are a part) of a religious organisation (union), administrative center (Directorate) of which is located outside Ukraine in the country, which is legally recognized as that, which committed military aggression against Ukraine and/or temporarily occupied a part of the territory of Ukraine

and

4. The Draft Bill 1244 (Reg. №1244 of 12/04/2014) amending the Law of Ukraine “*On Freedom of Conscience and Religious Organizations*” with regard to naming of organizations, administrative centers of which are located outside Ukraine

Draft Bills №5309 and №1244 obligate any religious organization whose administrative center is located in the country recognized by the Parliament of Ukraine as an aggressor, “*is required to specify in its full name (as laid down in Statute), its identification as belonging to a religious organization (union) outside Ukraine, of which it is a part (to which it is integrated), by means of compulsory expression of the full statutory name of this religious organization (union) with the option to add the words “in Ukraine” and/or to specify their place in the structure of the foreign religious organization*”.

UOC considers these legislative initiatives as intending to discriminate against a part of the Ukrainian people and has concerns that they will legislate the interference into the Church’s affairs, for every religious organization, being a legal entity, is entitled to possess its own name.

Moreover, the center of the Ukrainian Orthodox Church is located Kyiv, its Founder being the Council of Bishops of the Ukrainian Orthodox Church. In accordance with the Chart (Tomos) of Alexy II the Patriarch of Moscow as of 1990, the Ukrainian Orthodox Church is separate and independent in terms of its administration and performance.

The Draft Bills in question essentially require that certain religious organizations should add to their original names the name of a religious organization operating abroad”.

Recommendations

- Before registration and adoption of any legislative initiatives affecting freedom of conscience and activity of religious organizations the Government must present them for the consideration and approval of all religious organizations using the platform of All-Ukrainian Council of Churches and Religious Organizations⁶.
- Legislative initiatives that may lead to escalation of interconfessional violence, confusion, violation of rights of believers and discrimination must be banned.
- The rights of religious communities to their autonomy for it is part of pluralism in a democratic society and is protected by international law must be respected.
- Effective measures must be taken to ensure that no one religious organization shall be a subject to discrimination by neither State, or other institution or group of persons or person on grounds of religion or belief.

5. Other concerns of UOC

5.1 As it was mentioned in paragraph 1.5 of this report, for recent three years UOC has suffered from unlawful seizure of their churches and property, and that was documented in reports of UN HRMMU and BDHRL of the U.S. Department of State. UOC lost more than 40 churches and that happened as a result of ineffectiveness and ignorance of governal executive bodies of the Ukrainian State, with was also admitted⁷ in the end paragraph 120 of the *Report on the human rights situation in Ukraine* mentioned.

⁶ All-Ukrainian Council of Churches and Religious Organizations (AUCCRO) is a representative and consultative interconfessional body in Ukraine established in 1996 consisting high representatives of 18 Churches and Religious Organizations in Ukraine that together represent all main confessions in Ukraine and 95% of believers of Ukraine.

⁷ *“It is of concern that in several villages, residents and external actors have precluded communities of both denominations from accessing their preferred place of worship and from holding religious services, including baptisms and weddings, for several weeks. In general, investigations into such incidents are either not*

5.2 For recent one and a half year, Ministry of Culture of Ukraine has committed interference into the performance of dioceses, parishes of UOC and under false pretexts has being refusing to register new Statutes, dioceses and monasteries of UOC, whilst according to the Law of Ukraine registration is to be executed within 3 months after the documents have been submitted. We thus encourage the UN Council to draw attention of the Ukrainian government to the illegal actions of the Ministry in terms of their refusing to execute registration procedures under false pretenses. UOC finds such actions of the Ministry discriminational and those that provide the politic of doubled standarts, whilst the Law is one for all.

Recommendation

- Forse seizures of churches and property are unacceptable, investigations of the cases must be initiated, the property must be returned to its owners.
- State executive bodies must provide the enforcement of the Law.
- Above-mentioned actions of the Ministry of Culture of Ukraine must be brought to the attention of the Government of Ukraine.
- Any discrimination towards any religious organization must be banned.

initiated or not effective” (Ukraine 13th HRMMU Report on the human rights situation in Ukraine (16 November 2015 to 15 February 2016) of March 3, 2016. “Violations of the right to freedom of religion or belief”, paragraph 120)

http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf