

Religion and the Secular State in Ukraine

I. SOCIAL CONTEXT

Historically, Ukraine is a religiously diverse country with a fairly high level of religious freedom and a rather religious population. Within a regional scope, Ukraine might be described as one of the most religious countries in Europe.¹ According to recent studies, between 74.7 percent² and 89.5 percent³ of Ukrainians declare themselves as believers and almost three-fourths of the Ukrainian population deems that every religion should be respected.⁴

Sociological surveys show that religious organizations enjoy great trust within Ukrainian society: since 2000, when regular surveys were launched, between 60 and 70 percent of respondents have expressed that they trust or almost trust the Church⁵ (in this context, term “the Church” is used as a collective name for religious institutions and not for a specific religious denomination). However, Ukrainians could hardly be described as devout, since only 22.4 percent of believers attend church at least once a month, more than 57 percent attend religious services once or several times a year, and 20.3 percent never or very rarely take part in public worship.⁶ More than one-third of people who declare themselves believers never pray or pray only several times a year, whereas an additional 16.1 percent prays several times a month.⁷ Moreover, 44 percent of respondents stated that they believe in their own way to communicate with God beyond any church or religious service.⁸ Thus, it is not surprising that more than 56 percent of Ukrainian believers consider themselves as moderately religious.⁹

Perhaps such internal, non-institutionalized faith, coupled with religious tolerance, is one of the principal peculiarities of Ukrainian religiosity. Religious diversity is another Ukrainian feature. Today more than 32,600 registered and more than 1,800 unregistered religious organizations operate in Ukraine.¹⁰ It is quite difficult to count the exact number

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1. According to the European Social Survey carried out in 2006 [hereinafter ESS-2006], Ukraine occupies seventh place in Europe in terms of the share of people who declare that they belong to some religion, and fifth/sixth place in terms of a self-estimation as to the extent that they are religious. The data is accessible at: <http://www.europeansocialsurvey.org>.

2. According to the ESS-2006, supra n. 1.

3. According to the survey carried out by Kyiv International Institute for Sociology within the framework of the International Social Survey Program (ISSP) in October 2008. The outcome of this research was published under the title “Religion and Religiousness in Ukraine” (Kyiv, 2009) 18 [hereinafter ISSP Survey], accessible at: <http://www.kiis.com.ua/txt/doc/02042009/brosh.pdf> (in Ukrainian). Hereafter all references to this survey quotes data given by the aforementioned book.

4. ISSP Survey, supra n. 3 at 58.

5. The cumulative results of the research carried out by the Razumkov Center since 2000. It is accessible at the Center’s web-site: http://razumkov.org.ua/ukr/poll.php?poll_id=83 (in Ukrainian). According to the ISSP Survey, almost 66 percent of respondents entirely or to a great extent “rather trust” the Church.

6. ISSP Survey, supra n. 3 at 44.

7. ISSP Survey, supra n. 3 at 41–42.

8. ISSP Survey, supra n. 3 at 37.

9. ISSP Survey, supra n. 3 at 26.

10. If not indicated otherwise, statistical data concerning the number of religious organizations in Ukraine are presented according to the official reports of the State Committee of Ukraine on Nationalities, Migrations and Religion Affairs [hereinafter SCU NMRA], accessible at: <http://risu.org.ua/ukr/resourses/statistics/>. The number after the word “Report” indicates the relevant year.

of the religious denominations that act in Ukraine, as they are obliged neither to register nor to notify authorities about the very fact of their existence and functioning in the country.¹¹ The State Committee for National and Religious Affairs affirms that fifty-five denominations operate in Ukraine.¹²

Christians of different denominations undoubtedly dominate in Ukraine.¹³ The vast majority of all Christians declare their affiliation to the Orthodox Church.¹⁴ However, no one institutionalized Orthodox Church enjoys a majority either among Christians or among Orthodox believers. A little less than one-fourth of all Orthodox Christians belongs to each the Ukrainian Orthodox Church affiliated with the Moscow Patriarchate and the Ukrainian Orthodox Church of Kyiv Patriarchate; about 53 percent of all Orthodox Christians admit that they are “generally Orthodox,” but do not belong to a specific church or denomination.¹⁵ Sociological surveys show that Catholics of the Eastern Rite constitute 7.7 percent of all believers, and Protestants a little more than 1 percent.¹⁶ At the same time, Orthodox religious organizations amount to only about half of all religious communities in Ukraine; Catholic communities (both of the Latin and Eastern Rite) amount up to 15 percent of religious organizations acting in the country; Protestant institutions constitute about 27 percent.¹⁷ The last figure shows that the Protestant minority is far better organized and structured than the Orthodox majority in Ukraine. Jewish and Muslim religious networks are also well represented in Ukraine, embracing more than three hundred Jewish communities and more than a thousand Muslim communities.¹⁸ There are also some non-traditional religions in Ukraine, such as the Church of Jesus Christ of Latter-day Saints (Mormonism), Buddhism, and Krishnaism.

Therefore, the Ukrainian religious landscape might be properly described as diverse and without a predominant institutionalized Church, but with the overwhelming majority identifying themselves as “Orthodox.” Yet the share of “unaffiliated Orthodox Christians” suggests that a considerable part of believers perceives Orthodoxy as a national tradition and/or some type of spirituality hardly related to what the Orthodox Church could expect from its adherents. Such religious flexibility and tolerance flows from the painful historical experience of the nation. Ukrainian national identity was only once grounded in religion. The national liberation war in the seventeenth century was run under the Orthodox banner and led to decades of slaughter between Catholics and Orthodox Christians on Ukrainian lands; it finally resulted in the annexation of most Ukrainian territories by Muscovy and then the Russian Empire. Later, while the Ukrainian Orthodox Church had been subdued by the Moscow Patriarchate, and consequently almost lost its national character, the Catholic Church of the Eastern Rite remained the heart of Ukrainian national life under Austrian and later under Polish rule on the western Ukrainian lands. Therefore, modern Ukrainian national identity, while not atheistic, does not intertwine with any religion and from this standpoint is similar to the American experience.

11. Article 14 of the Law of Ukraine on the Freedom of Conscience and Religious Organizations, № 987-XII (April 23, 1991) [hereinafter Law on Freedom of Conscience] does not provide for the very possibility to register confessions (“religious unions” or “associations of religious organizations”). All Ukrainian legislative and administrative acts as well as the Constitutional Court of Ukraine’s decisions mentioned hereafter can be found (in Ukrainian) through the official legislation database of the Parliament of Ukraine, accessible at: <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi>. See n. 53, *infra*, for an English translation of the Law on Freedom of Conscience available online.

12. See Committee of Ukraine for Nationalities and Religious Affairs, Information Report of 2009 on the State and Trends of the Religious Situation and the State-confessions Relationship in Ukraine, accessible in Ukrainian at: <http://risu.org.ua/ukr/resourses/otherresourses/informzvit/>.

13. According to the ISSP Survey, Christians constitute 91 percent of all believers. *Supra* n. 3 at 21.

14. Orthodox Christians (or rather people who consider themselves as Orthodox Christians) constitute 82.6 percent of all believers.

15. ISSP survey, *supra* n. 3 at 22.

16. *Id.*

17. SCU NMRA Report 2009, *supra* n. 10.

18. *Id.*

Finally, a geographical remark is worth making. The population of western Ukraine is more religious than their fellow countrymen from other parts of the country. The density of religious communities, percentage of believers, intensity of religious practices, observance of religious instructions, etc., is greater in the west than the east or south of Ukraine.¹⁹ There are two denominations in Ukraine with clear-cut regional locations: the Catholics of the Eastern Rite (one of the biggest Catholic Churches of the Eastern Rite in the world) constitute a majority within the western region, where 94 percent of their organizations were set up and function, and the Muslims concentrated in the Crimea, the historic motherland of the Crimean Tatar people and the location of more than four-fifths of their establishments.²⁰ Other religious denominations are more or less spread throughout Ukraine.

II. THEORETICAL AND SCHOLARLY CONTEXT

Most Ukrainian experts and scholars who work in the field of religious freedom and state-church relations acknowledge that separation of Church and State is an indisputable foundation of interaction between religious organizations and the government at all possible levels.²¹ It is remarkable that leaders of the so-called “traditional,” and thus most influential, denominations in Ukraine explicitly declare their commitment to the principle of a secular state.²² However, there is an enduring discussion concerning the best possible wording of said principle, which will be addressed below.²³

Another dispute bears on to what extent, in which areas, and in which forms cooperation between public authorities and religious organizations is appropriate in the secular state.²⁴ Scholars and experts generally concur with the opinion that education, charities (particularly social rehabilitation), and the conservation and maintenance of religious-cultural heritage sites are proper spheres for effective state-church cooperation.²⁵ The possibility of financing religious organizations from public sources to carry out socially useful projects is another point at issue.²⁶

19. ISSP Survey, *supra* n. 3.

20. SCU NMRA Report 2009, *supra* n. 10.

21. E.g., Dr. Petro Rabinovych, “The Human Right to the Freedom of Religion and Problems of its Ensuring by State,” *Human Rights in Ukraine*, 15 (1996) (in Ukrainian) accessible at: http://library.khpg.org/files/docs/Prava_Lud15.pdf. Professor Rabinovich claims that “Ukraine must be secular.” *Id.* at 23. Another Ukrainian expert, Vsevolod Rechickiy, who published his article “*Freedom, Faith and State*” in the same collection, backs Professor Rabinovich’s imperative statement in the following words: “Certainly, the stance of the state on inter-confessional policy should be tolerant, balanced, but adhering to principles at the same time, actually secular.” *Id.* at 24.

22. See, e.g., Speech of Metropolitan Volodymyr (Sabodan), Head of Ukrainian Orthodox Church, on the occasion of the ceremony of the *bestowal* of an honorary *doctoral degree* upon him at the Warsaw Christian Theology Academia on February 18, 2008. The Metropolitan Volodymyr clearly stated: “We can regard the notion of a secular state in different ways, discuss its advantages and drawbacks, however we should recognize that nowadays this concept virtually completely dominates in all European countries (including those where the Church is not formally separated from State), and in the majority of non-European countries. In the multi-confessional Ukraine there is no alternative to such an approach.” Accessible at: http://orthodox.org.ua/uk/dopovid_predstoyatelya/2008/02/22/2719.html (in Ukrainian).

23. See, e.g., Religious and Society Institute at the Ukrainian Catholic University, Notes and Proposals to the Draft of the Conception of State-Confessional Interrelations, point 5, accessible at: http://risu.org.ua/ukr/study/research_conference/churchstateconception/remark_01/; Dr. Viktor Yelensky, “Constitution Has Been Approved. What next?,” *Man and World (Людина і світ)*. — 1996. — № 9.

24. See, e.g., Gennadiy Druzenko, *Freedom of Conscience Institution: International Standards and Ukrainian Legislation, 105–06*, accessible at: http://www.risu.org.ua/library/doc/Druzenko_book.rtf (in Ukrainian).

25. See, e.g., Dr. Olexandr Sagan, then-Head of State Committee of Ukraine for Nationalities and Religious Affairs, Web-conference of March 25, 2008, accessible at: <http://www.risu.org.ua/ukr/religion.and.society/web-conference/article;21434/>. The cumulative views of experts on this issue can be found at: <http://www.risu.org.ua/freedom/analytcs/expertopinions/03/>, answer to question # 10 (in Ukrainian).

26. See, e.g., Yuriy Reshetnikov, *Legislation on Freedom of Conscience: New Hopes and New Fears*, accessible at: <http://www.risu.org.ua/ukr/religion.and.society/analysis/article;11032/> (in Ukrainian); Gennadiy Druzenko, *Legal-Religious Reflections on Religious-Political Visit*, accessible at: <http://risu.org.ua/ukr/religion.and.society/analysis/article;30919/> (in Ukrainian).

As could be seen from the foregoing, all key topics of the current public and scholarly discussion in Ukraine do not question the very concept of secularism. Moreover, the majority of politicians, experts, and religious leaders agree that a non-antagonistic separation between the State and Church envisaging the possibility of mutually beneficial co-operation between the two is the best possible solution for Ukraine. The grave challenge for this general consensus concerning the desirability of separation between the State and Church is the attempt of some Ukrainian politicians to promote the unification of all Orthodox believers in Ukraine into a consolidated Ukrainian Orthodox Church which – in the politicians' eyes – should serve as a spiritual foundation for the nation.²⁷ However, there has been no sound ideological or academic basis for such efforts. Moreover, all such endeavors have been taken along with a decelerated commitment to religious freedom and the principle of a secular state.²⁸

III. CONSTITUTIONAL CONTEXT

Before examining the constitutional framework of the state-church relationship in Ukraine, an important reservation should be made. Unlike traditional Western democracies, Ukraine is not a traditional rule-of-law state and thus a significant gap between the written formal Constitution and the real foundations of Ukrainian society (sometimes referred to as a “real Constitution”) exists. Due to widespread legal nihilism, the written Constitution and the factual rules of the game in Ukraine are quite far from one another. Therefore, before examining formal law, it is worth giving a brief history of the state-church relationship in Ukraine, which has determined the framework of the “real Constitution.”

First and foremost one should bear in mind that modern Ukraine is the successor to both the Russian Empire/Soviet Union heritage and a separate Ukrainian original tradition. The foundations of Ukrainian tradition were laid down in the time of Kyivan Rus, particularly since Rus became Christian in the late tenth century. The model of the state-church relationship developed in Kyivan Rus in the eleventh and twelfth centuries can be described as *mutatis mutandis* cooperative model where neither secular authorities nor clergy dominated, but both collaborated in mutual interrelation.²⁹ Another particularity of Kyivan Christianity was its openness to and interaction with the Western Church, especially after the Great Schism of 1054.³⁰

Since the loss of statehood in thirteenth century, the Orthodox Church became the

27. This trend of strengthening national identity through furthering Orthodox Churches' unification in Ukrainian policies is analyzed in Gennadiy Druzenko, *Messiahship Test*, accessible at: <http://risu.org.ua/ukr/religion.and.society/analysis/article:8812/> (in Ukrainian).

28. A good instance of such an ambivalent stance is offered by Ukrainian President Yushchenko in his Address on the Occasion of Anniversary of Rus-Ukraine Baptism of 25 July 2009. He stated *inter alia*: “I believe that consolidation of the United Local Orthodox Church will be a great historical truth and justice for Ukraine. That is not merely an abstract issue, but a matter of unification of our spiritual life and of the whole society. . . . The state does not interfere into ecclesial matters. However a state which values unity of its nation may not stay apart.” Accessible at: <http://www.president.gov.ua/news/14474.html#> (in Ukrainian).

29. See the masterpiece of contemporary literature and the ideological manifest *The Sermon on Law and Grace* by Metropolitan Hilarion (English translation accessible at: <http://www.dur.ac.uk/a.k.harrington/ilarion.html>) and classical study of Kievan Christianity by George Fedotov, *The Russian Religious Mind: Kievan Christianity, the Tenth to the Thirteenth Centuries* (Cambridge: Harvard University Press, 1946). Modern scholar Wallace L. Daniel describes church-state relation in Kyivan Rus in the following words: “In Kievan Rus' the prince did not exercise unlimited authority, but shared this responsibility with the head of the church, in *symphonia*, in harmony. *Symphonia* expressed a harmonious interaction between the political leader and the priesthood, a harmony toward which each should strive. In such a harmonious relationship, princes and priests each bore responsibilities toward the other – to support and respect each other and to interact in such a way that would work to the total welfare of all the people of the realm.” *The Orthodox Church and Civil Society in Russia* (College Station: Texas A&M University Press, 2006), 12.

30. The openness and even “universalism” of Kievan Christianity is well-founded and illustrated in Mykola Chubatyi (Микола Чубатий), *History of Christianity on Rus-Ukraine. Volume I: From Beginning till 1353* (Історія християнства на Русі-Україні. Том I: від початку до 1353 року) (Rome and New York: Ukrainian Catholic University Press, 1965).

core of national cultural life and one of the features of national identity. Therefore, when Rzeczpospolita (the Polish-Lithuanian Commonwealth) urged Ukrainians (then usually called Ruthenians) to convert to Catholicism, the reaction was two-fold: religious brotherhoods (associations of active laymen) provided the protection and financial support to establish the Ukrainian Catholic Church of the Eastern Rite in 1596 and the Ukrainian Orthodoxy; and the Cossacks experienced the Renaissance in the first half of seventeenth century. At that time, Protestantism was also coming onto the scene, making it one of the most religiously diverse and pluralistic epochs in Ukrainian history, which was broken off by the Ukrainian liberation war.

As mentioned above, the liberation war in the middle of seventeenth century was run under the Orthodox banner and entailed fratricidal slaughter, which led to the desolation of Ukraine and was known as the Great Ruin. It eventually led to the conquest of most ethnic Ukrainian lands by Muscovy. It was only after the Kyivan Orthodox Metropolis was taken over by the Moscow Patriarchate from Constantinople in 1685 that the scope of religious freedom in Ukrainian lands within the Russian Empire began to continually contract, since the latter perceived Orthodoxy as an official ideology and state religion.³¹ Therefore, from the beginning of the eighteenth until the early twentieth century, the Orthodox Church in Ukraine gradually became a more and more inherent part of the alien empire's machinery, known as the "Department of Orthodox matters."³² From the 1820s, such a state-church merger was mirrored in the Russian Empire's official motto of "Orthodoxy-Autocracy-Nationality," perceived as the three principal foundations of the Russian Empire. Thus, to be a Russian (Ukrainians were not recognized as a separate nation by the Tsar's government) also meant to be Orthodox.³³

A short period of comparative religious freedom in the Russian Empire lasted a little more than ten years, from 1905³⁴ to 1918. *The rivals of communism, the Ukrainian pro-independence governments of 1918–1919, in every way possible backed the establishment of an independent Ukrainian Church and finally passed the special Law on Supreme Government of Ukrainian Orthodox Autocephalous Synodical Church, which provided for full independence for the Orthodox Church in Ukraine and laid down the principles of the Church's structure and governance.*³⁵ *After the Ukrainian People's Republic was defeated in 1920, comparative religious freedom endured in Soviet Ukraine through the end of the 1920s, after which Stalin's anti-religious terror developed in full force.*³⁶ *This marked one of the severest persecutions against religion ever in Ukraine. Despite a declaration concerning its secularity,³⁷ the Ukrainian Socialist Soviet Republic (part of*

31. Prominent Russian philosopher and theologian Sergiy Bulgakov summarized the regrettable outcome of the enslavement of the Orthodox Church by the Russian Empire as follows: "Age-long offences against freedom of conscience weigh heavy on historical conscience of [the] Russian Church". Bulgakov S.N. (Булгаков С.Н.) *Christian Socialism (Христианский социализм)*. — М., 1991. —, 28.

32. Establishment of the Holy Governing Synod by Peter the Great in 1721 meant the end of the Orthodox Church's autonomy within the Russian Empire. The members of the Synod included a temporal Chief Procurator, the "Emperor's eye within [the] Synod", and were appointed by the Emperor; the whole institution was subordinated to him. The Holy Governing Synod was thoroughly embedded in the state machinery of the Russian Empire.

33. The Criminal and Correctional Punishment Code (Уложение о наказаниях уголовных и исправительных) of the Russian Empire of 1845, for instance, provided for criminal punishment for defection from the faith (articles 190-205); altogether, more than eighty articles of the Code (as in force in 1885) were devoted to offensives against faith.

34. The Manifesto on the Improvement of the State Order (**Высочайший Манифест Об усовершенствовании государственного порядка**) of 17 October 1905 declared freedom of conscience in the Russian Empire (English translation of the Manifesto accessible at: <http://euphrates.wpunj.edu/courses/hist330-60/Supplementary%20Material/HTML/October%20Manifesto.html>.) In 1906, the criminal punishment for defection from the faith was repealed, but the State Duma (then the lower house of the Russian Empire parliament) never passed the bill on Freedom of Conscience.

35. The text of the Law is accessible in Ukrainian at: http://www.cerkva.info/2009/01/04/zakon_avtokefalia.html.

36. Particularly, the Ukrainian Autocephalous Orthodox Church was suppressed and declared unlawful in 1930.

37. See Constitution of the Ukrainian Socialist Soviet Republic of 1919, art. XXIII (accessible in Russian,

the Soviet Union from 1923³⁸) espoused assaultive, anti-religious ideology. The Soviet regime was by no means religiously neutral nor even tolerant toward religion; rather, it thrust upon the Ukrainian people its communist ideology with religious eagerness.³⁹

The Western Ukrainian lands which constituted part of the Austrian and later Austro-Hungarian Empire from 1772 to 1918 enjoyed a more favorable position compared to that under the Russian Empire, particularly with regards to freedom of religion.⁴⁰ The Austro-Hungarian Empire did not aim at assimilation of the Galician Ukrainians (Ruthenians), and therefore allowed the Ukrainian Catholic Church of the Eastern Rite to develop into the leading Ukrainian religion within Galicia. The Catholic Church of the Eastern Rite went through the oppression of Polish rule in the 1920s and 30s and was suppressed by the Soviet government in 1946 and declared illegal in the USSR.

Latter, in the course of and after World War II, the Soviet regime shifted its policy from outright persecution to subordination and marginalization of the Church. In 1943 and 1944, Stalin ordered the creation of two government bodies: the Council on Russian Orthodox Church Affairs and the Council on Religious Faiths. Since then, the Communist authorities endeavored to keep a tight rein on recognized religions like the Russian Orthodox Church and to manipulate them, while severely repressing forbidden confessions such as the Ukrainian Catholic Church of the Eastern Rite, almost until the collapse of the Soviet Union.⁴¹

The foregoing digression into Ukrainian history is necessary to understand the current perception of the Constitution in modern Ukraine. The Soviet and, to a lesser extent, Russian imperial heritage accustomed people to perceive the law first and foremost as a means of punishment,⁴² but also as a dissimulation, particularly in the human rights field,⁴³ which has nothing in common with real life. There has never been rule of law on Ukrainian lands, except, perhaps, the “golden age” of Joseph II of Austria’s reign over Galicia. However, Ukraine and Ukrainians several times in their history have experienced the blossoming of religious freedom; their religious tolerance is determined by the very religious diversity of the nation.

It is useful to highlight that most Ukrainian achievements in the development of religious freedom resulted from the “real Constitution,” i.e., Ukrainian mentality and custom – from a painful national historical experience and not from respect for the law or voluntary obedience to the formal Constitution. Having made such caveats, now is the time to resume examination of the constitutional provisions concerning religion and state.

The Constitution of Ukraine sets forth the founding principles of state-church interrelation in Article 35, which states as follows:

Everyone has the right to freedom of personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and without constraint religious rites and ceremonial rituals, and to conduct religious activity.

The exercise of this right may be restricted by law only in the interests of protecting public order, the health and morality of the population, or

original language of the act, at: <http://vi-leghas.ua/content/view/1841/193/>); Constitution of the USSR of 1936, art. CXXIV (accessible in Russian at: <http://www.nbu.gov.ua/articles/history/1936cnst.htm#10>); Constitution of the USSR of 1977, art. LII (accessible in Russian at: <http://www.hist.msu.ru/ER/Etext/cnst1977.htm>).

38. The Ukrainian Socialist Soviet Republic was one of four original constituents of the Soviet Union, 1922.

39. See disclosure of the religious nature of Russian Communism in Nicolas Berdyaev, *The Origin of Russian Communism* (London, 1948).

40. In 1781, Joseph II of Austria issued the *Patent of Toleration*, which extended religious freedom to non-Catholic Christians living in Habsburg lands, including Lutherans, Calvinists, and the Greek Orthodox. It also granted Jews freedom of worship.

41. The USSR’s Law on the Freedom of Conscience which substituted Lenin’s Decree of 1918 was adopted only on 1 October 1990.

42. Criminal law was the principal constituent and core of Soviet law.

43. Soviet constitutions of 1936 and 1977 included much more comprehensive bills of rights than U.S. or other liberal basic laws.

protecting the rights and freedoms of other persons.

The Church and religious organizations in Ukraine are separated from the State, and the school – from the Church. No religion shall be recognized by the State as mandatory.

No one shall be relieved of his or her duties before the State or refuse to perform the laws for reasons of religious beliefs. In the event that the performance of military duty is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service.⁴⁴

This constitutional wording mirrors the controversial Ukrainian constitutional tradition of the last century. On the one hand, it utilizes the dated expression “separation of the Church *from* the State, and the school – *from* the Church” (emphasis added) referencing the French *Loi concernant la séparation des Eglises et de l'Etat* of December 9, 1905,⁴⁵ and the early Soviet Russian *Decree on separation of the Church from the State and school – from the Church* of January 20, 1918,⁴⁶ both atheistic in their essence. The Constitution thus includes inherent anti-religious connotations.

On the other hand, the first, second and fourth paragraphs of the Article primarily reproduce wording of contemporary international and European human rights instruments like the European Convention on Human Rights, the Universal Declaration of Human Right or International Covenant on Civil and Political Rights. However, the wording of the Ukrainian Constitution omits some common wording for international human rights instruments on the elaboration of religious freedom, including the rights “to have or to adopt a religion or belief of his choice”⁴⁷ and “to change his religion or belief.”⁴⁸ These elaborations are made in the *Law on Freedom of Conscience and Religious Organizations*, discussed below.

Other constitutional provisions which refer to religion are as follows:

The State promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.⁴⁹

Such a tie between a particular nationality and religion is mirrored in the Ukrainian government framework: despite continuing development, a government body responsible for nationalities’ matters has often also been responsible for religious affairs.⁵⁰

Article 24 of the Constitution prohibits any discrimination (either positive or negative) based on, *inter alia*, religious beliefs, and Article 37 forbids the establishment and activity of political parties and associations aimed at, in particular, stirring up religious hatred.

It is worth mentioning that the Ukrainian Constitutional Court once dealt with an MP’s request to interpret the term “the Church” in the context of Article 35(3) of the

44. An English translation of the Constitution of Ukraine is accessible at the Religion and Law Consortium website at: <http://beta.religlaw.org/document.php?DocumentID=51>.

45. The French text is accessible at: <http://beta.religlaw.org/document.php?DocumentID=2573>.

46. Decree of the Council of People’s Commissars of the RSFSR *on Separation the Church from the State and School – from the Church* (Декрет Совета народных комиссаров РСФСР *Об отделении церкви от государства и школы от церкви*) (20 January 1918), accessible at: <http://law.edu.ru/norm/norm.asp?normID=1119186> (in Russian).

47. See International Covenant on Civil and Political Rights, art. 18(1).

48. See Universal Declaration of Human Rights, art. 18; Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9(1).

49. Constitution of Ukraine of 28 June 1996, art. XI, supra n. 44.

50. From 1994 to 1996 there was the Ministry of Ukraine for Nationalities, Migration and Religious Affairs; in 2006–2009 there was the State Committee of Ukraine for Nationalities, Migration and Religious Affairs; and since 2009 there is the State Committee of Ukraine for Nationalities and Religious Affairs.

Constitution.⁵¹ The Court reached the conclusion that the terms “the Church” and “religious organizations” referred to in Article 35(3) of the Constitution and in the *Law on Freedom of Conscience and Religious Organizations* are not identical and that there are some contradictions in the terms’ employment throughout legislation, but the bench declined to deliver the requested interpretation, arguing that clarification of the term “Church” falls within the legislature’s responsibility.⁵² However, the term has not been officially explained so far.

IV. LEGAL CONTEXT

Ukraine belongs to the group of civil law countries, so written legislation is assumed to be the principal legal framework of social relations. There is a special law which governs freedom of conscience issues and state-church relations, namely the *Law of Ukraine on Freedom of Conscience and Religious Organizations*⁵³ (hereafter *Law on Freedom of Conscience*). It was passed in April 23, 1991, about half a year before Ukraine became independent. So, it is not surprising that this legal act closely reproduced the law of the USSR of October 1, 1990 with the same name. Without a doubt, at that time both acts were a revolutionary step forward toward religious freedom; it is enough to mention that for the first time since 1918, religious organizations were granted legal personality and accordingly the right to acquire property, the right to stand before court, and the right to preach in public.

The *Law on Freedom of Conscience* consists of five articles: 1) General Provisions, 2) Religious Organizations in Ukraine, 3) Property Status of Religious Organizations, 4) Religious Organizations’ and Citizens’ Rights Related to the Freedom of Faith, 5) Labor Activity in Religious Organizations and at Their Enterprises, 6) Governmental Authorities and Religious Organizations. The first sets forth objectives of the Law and basic principles in the field of religious freedom, one of which is the secular character of the educational system in Ukraine.⁵⁴ The entire Article 5 elaborates on the principle of secularity of the Ukrainian State. It reproduces constitutional provisions on separation of the church from the state⁵⁵ and goes on: “[t]he state shall consider and respect the traditions and internal rules of religious organizations provided that they do not contravene the current legislation.”⁵⁶ Furthermore:

The State shall not intrude into the activity of the religious organizations executed within the limits of the law and shall not provide any financial support to the organizations established on the basis of the religious distinction.

All religions denominations and religious organizations shall be equal to the law. Any privileges or restrictions for any religion, denomination or religious organization may not be established or imposed.

The religious organizations shall not perform any state functions.⁵⁷

The cited provisions are explicit and strong enough to insist that from the formal legal standpoint, Ukraine is an entirely secular state. Some fears can arise not from the blending of state and church, but from some unnecessary restrictions on religious freedom. In particular, the Law restrains believers from setting up religious organizations in whichever form founders find desirable, arbitrarily limiting their choice to seven

51. See Decision of the Constitutional Court of Ukraine, № 32-y/2002 (5 June 2002).

52. Id., para. 4 of the grounds.

53. An English translation of the Law on Freedom of Conscience is accessible at: http://www.iupdp.org/index.php?option=com_content&view=article&id=68:30e-11-law-of-ukraine-on-the-freedom-of-conscience-and-religious-organizations-april-23-1991&catid=40:effective-laws-and-subordinate-legislation&Itemid=75.

54. Id., art. 6(1). It is interesting that the Ukrainian legislature has applied the term “secular” exclusively to educational matters.

55. Id., art. 5(2).

56. Id., art. 5(3).

57. Id., art. 5(4), 5(5), 5(6).

specific types of organizations, which are selected on an unclear basis.⁵⁸

The Parliamentary Assembly of the Council of Europe pointed out other shortcomings of the Law:

1) it requires ten adults to have the status of a registered religious organization, “whereas the same requirement for other civic associations is [three] persons”; 2) it “prohibits the creation of local or regional divisions,” such as branches and subsidiaries, “without legal entity status”; 3) it lacks any mechanism to award legal entity status to religious associations, i.e., unions, such as the Catholic or Orthodox Churches; 4) it “discriminates against foreigners and stateless persons”; 5) it “[lacks] clarity with regard to which organizations [are required to register with] regional state administrations and which [with] the State Committee on Religious Affairs”; 6) finally, “[t]he law also contains a number of other ambiguous provisions, which leave a wide discretion to the implementing authorities.”⁵⁹

Another controversial provision of the Law is Article 30, which provides for a special state authority for religious affairs designed to assure implementation of state policy in respect of religion and church.⁶⁰ The doubt concerns whether a secular state needs a particular official body to deal with religious organizations and to implement policy which should arguably consist first and foremost in religious neutrality. Why is the state able to manage its relationship with other types of private non-profit associations without establishing a special body, while it must set up such a body to handle religious matters? There was an attempt to eliminate the State Committee of Ukraine for Religious Affairs in 2005, and it was indeed downgraded to a department of the Ministry of Justice of Ukraine,⁶¹ but eventually a separate state authority for religious affairs was resumed.⁶²

The most questionable power conferred upon the current State Committee of Ukraine for Nationalities and Religious Affairs is to carry out so-called “religious scrutiny,” without any goals or procedural and methodological frameworks set forth by law for such examination.⁶³ Based on Article 7(2) and (3) of the *Law on Freedom of Conscience*,⁶⁴ it could be reasonably assumed that the primary aim of “religious scrutiny” is to determine whether an organization is in its essence a religious one and, therefore to determine which state body has authority to register an organization’s charter and grant it the status of legal entity. However, such examination is doomed to be arbitrary since there is no conventional definition of the very notion of religion.⁶⁵

Outlined above, the Law’s drawbacks could be interpreted partly as a consequence of the Law’s obsolescence. Since its adoption, Ukraine has joined the Council of Europe (1995), adopted a new Constitution (1996), and enacted the Civil Code (2004), but during its eighteen-year history, the Law concerned has not been adjusted to the new legal

58. Id., art. 7(2)(3).

59. Eur. Parl. Ass., *Honouring of Obligations and Commitments by Ukraine*, Doc. No. 10676, § 269 (2005), accessible at: <http://assembly.coe.int/Documents/WorkingDocs/doc05/EDOC10676.htm>.

60. Law on Freedom of Conscience, supra n. 53, art. 30(1).

61. See Cabinet of Ministers of Ukraine Decree № 390 (26 May 2005).

62. See Cabinet of Ministers of Ukraine Decree № 1575 (8 November 2006).

63. Based on intent 8 of article 30(2) of the Law on Freedom of Conscience, *Regulations for the State Committee of Ukraine for Nationalities and Religious Affairs* (approved by the Cabinet of Ministers of Ukraine Decree of February 14, 2007 № 201 as subsequently amended) determine that the Committee “shall assure religious scrutiny of religious organizations’ charters,” para. 4, subpara. 15, and provide for establishment for this purpose of the Council of experts which composition and rule of procedure shall be determined by the Head of the Committee, para. 11. However, there is neither rule of procedures nor any information of the very existence of such Council in open sources at the time of this report (November 2009).

64. Article 7(2) and 7(3) provide as follows: The religious organizations in Ukraine are religious communities, administrations and centers, monasteries, religious brotherhoods, missionary societies (missions), spiritual educational establishments as well as associations which consist of aforementioned religious organizations. Religious associations are represented by their centers (administrations). The scope of application of this Law does not cover other organization established on religious basis. Law on Freedom of Conscience, supra n. 53.

65. Prominent present-day Orthodox theologian Christos Yannaras reiterates in his works that Christianity is not a religion, but a live Church. See, e.g., *Elements of Faith*, (Edinburgh: T&T Clark, 1991).

landscape and new challenges other than a few negligible amendments.⁶⁶ Therefore, Mrs. Severinsen and Mrs. Wohlwend, the former Monitoring Committee co-reporters of the Parliamentary Assembly of the Council of Europe PACE reached an unsurprising conclusion: “the quite progressive law for the time of its adoption now requires significant rewording.”⁶⁷

In 1996, the All-Ukraine Council of Churches and Religious Organizations was established under the auspice of the then State Committee for Religious Affairs to debate urgent inter-faith and church-state issues and work out the common position of religious organizations. In 2005, the Council liberated itself from the paternalism of the State Committee and became an effective independent body which represents the interests of the overwhelming majority of religious organizations in Ukraine.⁶⁸ The Council often sets out its opinion as to current legislation and legislative proposals.⁶⁹

It is worth mentioning that the Council prefers to lobby for the common economic interests of its participants, like reduced tariffs for religious organizations,⁷⁰ rather than to discuss the subject matter of legislative proposals.⁷¹ Nevertheless, the Council should be recognized as an effective umbrella organization and the main transparent communication channel between the government and the religious communities of Ukraine beyond the informal and separate relations enjoyed by every large Ukrainian denomination with the government.

Even though the Ukrainian legislation in force provides legal grounds for contractual relationships between state bodies and religious centers which act on behalf of religious denominations,⁷² there have been no general agreements concluded between the state and particular churches of a concordat nature. However, agreements have been made between particular denominations and state bodies, especially between paramilitary authorities and major orthodox churches.⁷³ Notwithstanding, such agreements could hardly be deemed as legally binding instruments; they are rather agreements of understanding. Therefore, such practice of state-church formal co-operation could be attacked from the secular state standpoint concerning the lack of transparent criteria on which state bodies have based their choice of religious partners.

V. THE STATE AND RELIGIOUS AUTONOMY

As outlined above, Ukraine declares itself as a secular state which does not intervene in religious life unless religious communities ask the State to settle a dispute between them, request protection of their rights, initiate co-operation, or break the law. In actuality, however, the state interferes in religious matters. The most glaring example of such intervention is the backing by various Ukrainian presidents for consolidation of the

66. See detailed critique of the Law in Gennadiy Druzenko, “Svato-Mykhaylivska Parafiya v. Ukraine: A Thing Done by Halves?,” 2009 *B.Y.U. L. Rev.* 555.

67. Eur. Parl. Ass., *Honouring of Obligations and Commitments by Ukraine*, supra n. 59.

68. Today, the Council unites nineteen major religious denominations of Ukraine which embody more than 90 percent of religious organizations.

69. For example, on October 16, 2009, the Council addressed their view to the President and Prime Minister of Ukraine regarding the priority of consideration and approval of some bills in the religious field.

70. A recent instance of such successful lobbying is the reduction of gas prices for religious organizations (in Ukraine gas prices are regulated by the government) in consequence of a meeting with the Prime Minister of Ukraine on July 13, 2009 where the Council raised the issue in question.

71. The Council twice (in 2006 and 2009) without any objection on merits opposed amendments to the Law on Freedom of Conscience aimed at rectifying the Law’s shortcomings and welcomed by the Venice Commission (see Venice Commission, Opinion No 391/2006 of 18 October 2006 accessible at: http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&OID=391).

72. See Law on Freedom of Conscience, supra n. 53, art. 9(3).

73. See, e.g., Common Agreement on Co-operation between the Ukrainian Orthodox Church and Ministry of Ukraine of Emergencies and Population Protection from the Consequences of the Chernobyl Catastrophe (14 February 2007), accessible at: http://orthodox.org.ua/ru/tserkov_i_gosudarstvo/sovместnye_tserkovno_gosudarstvennye_dokumenty/2 (in Ukrainian); See also Common Agreement on Interrelations between Ukrainian Orthodox Church of Kyiv Patriarchate and Internal Military Forces of the Ministry of Internal Affairs of Ukraine (undated), accessible at: <http://kievpatarmy.org.ua/partner/mvd/> (in Ukrainian).

Orthodox Churches in Ukraine. Since 1686, the Kyivan Metropolis, which had been the biggest autonomous diocese within the Constantinople Church for almost 700 years, was subjugated to the Moscow Patriarchy. Gradually, its autonomy within the Moscow Church has been eroded. However, three times in the last century – in the 20s, 40s, and late 80s – the independent (so-called autocephalous) Ukrainian Orthodox Church (UAOC) was restored simultaneously with the intensification of the national movement in Ukraine. All three times the UAOC has carried out its business in parallel competition with the Moscow Orthodox Church in Ukraine.

As had been the case in 1919, when the government had passed the law on the Ukrainian Orthodox Church's independence from Moscow, all three Ukrainian presidents since independence in 1991 have furthered the consolidation of all major branches of Ukrainian Orthodoxy into one independent united denomination.

In 1992, then-Ukrainian President Leonid Kravchuk ordered the dismissal of then-head of the Council for Religious Affairs Mr. Mykola Kolesnyk,⁷⁴ as the latter opposed legitimization of the legally dubious⁷⁵ merger between the Ukrainian Orthodox Church affiliated with the Moscow Patriarchate (UOC) and the Ukrainian Autocephalous Orthodox Church and likewise the establishment of the Ukrainian Orthodox Church of Kyiv Patriarchate (UOC-KP), which was rejected by the overwhelming majority of believers and bishops of the UOC and partly by UAOC adherents.⁷⁶ So, in 1992–94, high-level Ukrainian officials, including the Ukrainian President, explicitly urged establishment of the consolidated Ukrainian Orthodox Church through the merger of the UOC and UAOC.⁷⁷

The Kuchma⁷⁸ era in Ukraine was more religiously neutral despite the fact that his administration favored and sometimes openly backed the UOC.⁷⁹ It would be wrong to affirm that President Kuchma gave up the very idea of establishing a consolidated Ukrainian Orthodox Church independent of Moscow. Particularly in 2000, the second Ukrainian President took some steps toward this goal.⁸⁰

The third Ukrainian President, Viktor Yushchenko, returned to a more active policy of Orthodox Church consolidation. He has reiterated that a consolidated and independent Orthodox Church was and is the foundation of national identity and national spirituality.⁸¹

74. See Decree of the Cabinet of Ministers of Ukraine, № 463 (12 August 1992).

75. For a legal probe of this denominations' merger, see Holovaty Serhiy, "When Pharisees Become Legislators," *Ukrainian Voice* (5 May 1993), accessible at: http://www.pravoslavye.org.ua/index.php?r_type=article&action=fullinfo&id=5726 (in Ukrainian).

76. Mr. Kolesnyk's successor, Mr. Arsen Zinchenko, enthusiastic proponent of the Ukrainian Orthodoxy independence from Moscow, was appointed to the position of First Deputy Chairman of the Council for Religious Affairs on July 14, 1993; on July 20, 1993, Mr. Zinchenko, instead of then-chief Mr. Kolesnyk, signed the Council's Decree on the UOC-UAOC merger registration and on August 12 took over the position of Head of the Council. The General Prosecutor's Office of Ukraine twice (in 1993 and 2002) filed protests against the Council's July 20 Decree but both times to no effect.

77. Both the OUC and the UAOC have eventually survived as denominations separate from UOC-KP. Moreover, the UOC remains the biggest Ukrainian Church so far. However, both Churches experienced severe persecution from 1992–1994. The UAOC was legitimized as a religious association separate from the UOC-KP only in 1995.

78. Mr. Leonid Kuchma was the second Ukrainian President and headed the country from 1994 to 2005.

79. A bright instance of the infringement of the religious neutrality principle by Kuchma's administration is given in the *Svato-Mykhaylivska Parafiya* case which was brought before the European Court of Human Rights and in which Ukraine finally lost. For an explanation and critique of the case see Druzenko Gennadiy, "Svato-Mykhaylivska Parafiya v. Ukraine: A Thing Done by Halves?," supra n. 66.

80. In his speech on the occasion of the 2000th anniversary of Christianity, President Kuchma clearly called for consolidation of all Ukrainian Orthodox Churches into a United Local Church. See L. Kuchma, "Imperishable and Everlasting Christian Values," *Governmental Courier*, January 25, 2000, at 3. Also, on 24 January 2000, he met with Ecumenical Patriarch Bartholomew I of Constantinople in Istanbul to discuss possibilities and ways to set up a United Local Orthodox Church in Ukraine. In August 2000, President Kuchma sent a telegram to the Patriarch of Moscow and all Rus Alexiy II requesting a grant of autonomous status to the Ukrainian Orthodox Church. However, soon Mr. Kuchma was thrown into the so-called "Kuchmagate" and lost interest in the project of Church unification.

81. In his speech at the IV World Ukrainian Forum on August 18, 2006, President Yushchenko emphasized: "I want to stress when we talk about political understanding the point is local church. I hardly perceive how it is

President Yushchenko even insisted (although in vain) on insertion into the Declaration [Universal] of National Unity⁸² a provision on “support of the aspiration to establish a united local Ukrainian Orthodox Church.”⁸³ However, President Yushchenko’s strategy toward Orthodox consolidation in Ukraine was cleverer than his predecessors’. He has strived to make use of Ecumenical Patriarch Bartholomew I of Constantinople to influence the Orthodox world. The President’s efforts arrived at their climax in July 2008, when the Ecumenical Patriarch visited Ukraine on the occasion of 1020th anniversary of the Rus-Ukraine Conversion. Bartholomew I came to Ukraine at the personal invitation of President Yushchenko and was in every possible way honored by the President. The impressive celebration of this in fact insignificant anniversary resembled an embodiment of the Byzantine concept of “Symphony” in church-state relations rather than the stance of a modern secular state toward the Church.

Certainly, unification of Ukrainian Orthodoxy is not the only challenge (or rather temptation) for the secularity of the Ukrainian state. However, it is indeed the core test for commitment to religious freedom and neutrality as set forth in the Ukrainian Constitution and legislation. Another major challenge is restitution of the former church’s property that was nationalized by the Soviet government.⁸⁴ The *Law on Religious Freedom* (both the Soviet law of 1990 and the Ukrainian law of 1991) granted the status of legal personality to religious organizations⁸⁵ and provided for the possibility of transferring property from state and municipal ownership to religious organizations.⁸⁶ However, neither law set forth any legally binding criteria for such restitution. Moreover there are two ways of property conveyance provided by the Ukrainian law, without any guideline on how to choose between them: transfer of ownership to a religious organization, or property free-of-charge use by the organization.⁸⁷ Therefore, state and municipal authorities have full discretion in restitution matters⁸⁸ and naturally have used it to back favored denominations and handicap others, as well as to manipulate both of them.⁸⁹ Despite the commitment made in 1995 to introduce “a legal solution for the restitution of church property,”⁹⁰ the several attempts to enact or even draft a law on restitution have failed.⁹¹

possible to discuss spiritual independence of a nation lacking the local church.” The speech is available at: <http://www.president.gov.ua/news/3881.html> (in Ukrainian). See also supra n. 28.

82. The Declaration is a political agreement finally concluded between the President and the rival Parliamentary coalition on 3 August 2006 and anticipated to be a road map for leading Ukrainian politicians in office.

83. The Universal draft proposed by Yushchenko is accessible at: <http://www.khpg.org/index.php?id=1154065883> (in Ukrainian). See id. para. 12.

84. Decree of the Council of People’s Commissars of the RSFSR on *Separation the Church from the State and School* embodied the following provisions: 12. No one ecclesial or religious society is entitled to the enjoyment of any possession. They also do not enjoy the right of legal personality. 13. All possession in Russia owned by ecclesial or religious societies are declared property of the people. Supra n. 46.

85. Article 13 of both Laws.

86. Article 17 of both Laws.

87. See Law of Religious Freedom (Ukraine), art. 17(2). The Act of the Parliament on Enacting the Law of Freedom of Conscience and Religious Organizations, № 988-XII (23 April 1991), para. 6, provides for some criteria, yet the legal status of that Act became at least ambivalent and it has never been strictly observed by authorities.

88. It should be born in mind that most Ukrainian temples and other ecclesial property, particularly in Western Ukraine, have changed their owners many times. For instance the National Shrine, the St. Sophia Cathedral in Kyiv, has been owned or used in turn by the Kyivan Orthodox Metropolis affiliated with Constantinople Patriarchate, the Ukrainian Catholic Church of the Eastern Rite, the Ukrainian, Kyivan Orthodox Metropolis under the auspice of the Moscow Patriarchate and the Ukrainian Autocephalous Orthodox Church.

89. For a detailed critique of such an issue, see Gennadiy Druzenko, “Ukrainian-style Restitution: Restoration of Historical Justice or Trap for the Church,” *Legal Journal*, 21, № 3 (2004) (in Ukrainian).

90. See Opinion of the Parliamentary Assembly of the Council of Europe № 190 (1995), para. 11(xi) (on the application by Ukraine for membership in the Council of Europe), accessible at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta95/EOP190.htm>.

91. On January 20, 2006, President Yushchenko commissioned the Ministry of Justice of Ukraine with improvement of the regulations governing the restitution of the church property to religious organizations. Presidential Edict № 39/2006 (20 January 2006). The Ministry prepared a respective draft of the law (justly castigated by experts), but there has been no legislative outcome of this work hitherto.

The state and local authorities continue to utilize “optional restitution” as a means of gaining religious organizations’ allegiance or direct support and to in fact discriminate against “wrong” religious denominations. Although religious organizations have already restored their property rights to a good number of their temples⁹² by hook or by crook, enactment of transparent and fair rules of restitution of former ecclesial property remains an urgent task for the Ukrainian government.

VI. RELIGION AND AUTONOMY OF THE STATE

Do religious organizations intervene in the policy-making of Ukraine? Are they integrated into state machinery? From a formal point of view, the answer to both questions is negative. Ukrainian legislation sets forth explicit principles designed to govern the matters in question, namely:

Religious organizations shall not perform any state functions. . . .

Religious organizations shall not take part in the activity of any political parties and may not provide any financial support to the political parties as well as shall not nominate any candidates to the state organs, propagate or finance the election campaign of the candidates to these organs. The clergy equally with the other citizens shall be entitled with the right to participate in the political life of the country.⁹³

In the course of the eighteen years of Ukrainian Parliamentary history, some professional clergymen have been elected to the Legislature.⁹⁴ Others have become members of local councils.⁹⁵ However, they have constituted a negligible quantity within the respective representative bodies and thus their influence on policy-making is hardly remarkable. Moreover, at least two major denominations in Ukraine, namely the Ukrainian Catholic Church of the Eastern Rite and the Ukrainian Autocephalous Orthodox Church have officially forbidden their clergies from placing their names in nomination for parliament.⁹⁶ It is worth mentioning that in the course of the 2004 presidential election campaign, the Ukrainian Orthodox Church was entangled in the strong backing of a specific candidate and even utilized traditional ecclesial means like church sermons to persuade believers to vote for him. However, the outcome of such Church support was rather negligible: the “church’s candidate” failed in regions where the UOC had most of their parishes. In turn, the Church has never been punished for its manifest disobedience of the law.

On the other hand, some leading Ukrainian politicians explicitly declare their strong commitment to particular religious denominations and actively participate in worship.⁹⁷

92. According to the official statistical figures of the State Committee of Ukraine for Nationalities and Religious Affairs 10,411 religious buildings have been transferred into ecclesial ownership and 4,540 transferred for free-of-charge use by central and local governments through 1 January 2009. All relative data is accessible at: http://www.scnm.gov.ua/control/uk/publish/article?art_id=131562&cat_id=131554 (in Ukrainian).

93. Law on Freedom of Conscience, supra n. 53, arts. 5(6), 5(8).

94. To the best of the author’s knowledge, only the Metropolitan of the UOC Agafangel (Oleksiy Savvin) in 1990–1994, and the priest of the UAOC Yuriy Boyko in 2002–2006, were members of the National Parliament.

95. Now, for example, the aforementioned Metropolitan of the UOC Agafangel (Oleksiy Savvin) is a member of the Odessa Region Council; his fellow Archbishop Pavlo (Petro Lebid) is currently a member of a Kyiv City Council.

96. See *The Pastoral of the Hierarchy of the Ukrainian Greek-Catholic Church on the Occasion of Early Election to the Verkhovna Rada (Parliament) of Ukraine 1994*; Enactments of Holy Synod of UGCC (January 16, 2006); Enactments of the Bishop’s Council of the UAOC (26 February 1998). There was information in the mass-media that the UOC also forbade their clergyman to nominate themselves or to accept the nomination for Member of Parliament. See <http://www.pravoslavie.ru/news/16458.htm>.

97. The most outstanding examples are the current First Vice Prime Minister and former Head of Security Service of Ukraine, Dr. Olexander Turchynov, the “preacher” of the Kyiv Baptist Church, “The Word of Life”; incumbent Kyiv Mayor, Mr. Leonid Chernovetsky, the adherent of the charismatic protestant church “Embassy of God”; and the present Head of the State Committee of Ukraine for Nationalities and Religious Affairs, Yuriy Reshetnikov, alumnus of the Odessa Theological Seminary of the Evangelical Christian Baptist Union.

Yet again, there are no signs of direct or implicit intervention into policy-making or policy implementation by the churches that have high-level officials affiliated with them.

Perhaps there are two spheres which might raise doubts concerning the religious neutrality of the Ukrainian state. First is the embedding of major Orthodox festivals – namely Christmas, Easter, and the Pentecost – into the list of state holidays.⁹⁸ Such “nationalization” of Christian religious traditions does not by itself infringe on the religious neutrality of the state, since this tradition is inherent in the national culture, but the difficulty is that the Orthodox Churches in Ukraine and the Ukrainian Catholic Church of the Eastern Rite celebrate all mentioned festivals in accordance with the so-called Old Style (Julian) calendar while other Christian denominations observe the New Style (Gregorian) calendar and therefore meet some inconveniences caused by the legitimization of the Old Style festival’s schedule. However, Ukrainian legislation provides for some compensation for non-Orthodox believers:

By application of religious communities of non-Orthodox denominations registered in Ukraine management of companies, establishments and organizations shall grant to persons who belong to relevant religions leave up to three days a year for celebrating their major festivals subject to further work-off.⁹⁹

VII. LEGAL REGULATION OF RELIGION AS A SOCIAL PHENOMENON

As was stated above, Ukrainian legislation contains special law which regulates state-church issues, particularly arrangements for state registration of religious organizations’ charters. Some Ukrainian experts question the very idea of such separate pieces of legislation for religious entities.¹⁰⁰ It is even more dubious in the light of the European Court of Human Rights’ case-law, which manifestly insists that religious organizations are the kind of associations in the meaning of Article 11 of the European Convention on Human Rights and thus Article 9 (freedom of religion) of the Convention should be read in the light of Article 11 (freedom of assembly).¹⁰¹

At least one discriminative outcome results directly from the two laws outlined above: to establish religious organizations, ten adult persons are required while to set up other private non-profit civic organization or private profit making companies, three people (or sometimes even one person) are enough.¹⁰² Apart from that, religious organizations in Ukraine enjoy legal status similar to that of other non-profit associations. In particular, they are entitled to all property rights, the right to *locus standi*, contract rights, the right to set up enterprises, and so forth. Moreover, Ukrainian legislation sets forth special provision for the particular protection of religious property: “Property of solely religious purposes belonging to religious organizations may not be withdrawn upon the claims of the creditors.”¹⁰³

In February 2009, registered religious organizations gained the right of permanent use of land necessary for the construction and maintenance of religious premises,¹⁰⁴ still, they have not yet been allowed to own the land unless for agricultural purposes.¹⁰⁵

Ukrainian legislation explicitly forbids any indication of a person’s religious

98. Labor Code of Ukraine № 322-VIII (10 December 1971), art. 73(1).

99. Id. art. 73(2).

100. For example, Dr. Lesya Kovalenko, Director of the Institute of Religion and Society, Ukrainian Catholic University. The author shares this doubt.

101. See, e.g., *Svato-Mykhaylivska Parafiya v. Ukraine*: Since religious communities traditionally exist in the form of organized structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference.

Svato-Mykhaylivska Parafiya v. Ukraine (ECtHR), para. 112.

102. Law on Freedom of Conscience, supra n. 53, art. 14(1). This drawback of Ukrainian legislation was pointed out by the PACE report on Ukraine. See supra n. 61).

103. Law on Freedom of Conscience, supra n. 53, art. 20(3).

104. See Land Code of Ukraine № 2768-III (October 25, 2001), art. 92(1) b).

105. Id. art. 22(2) r).

affiliation in official documents.¹⁰⁶ Believers in Ukraine enjoy the right to gain income without obtaining an individual tax number (numerical identification for tax purposes),¹⁰⁷ which some Christians deem as the Antichrist's mark mentioned in the Book of Revelation.¹⁰⁸ The faithful, although not all, are also entitled to exemption from military service on the basis of conscientious objection.¹⁰⁹ Still, this exemption does not cover those who reject the armed service by virtue of his/her philosophical convictions¹¹⁰ and is limited to only those who formally belong to denominations listed by the government.¹¹¹

VIII. STATE FINANCIAL SUPPORT FOR RELIGION

Ukrainian legislation provides for an unequivocal ban on state financial support for religious communities: "The State . . . shall not provide any financial support to the organizations established on the basis of religious distinction."¹¹² However, central and local governments do restore and even erect temples at public expense. This is a two-fold issue: on the one hand, the Communist government demolished or damaged thousands of religious buildings in Ukraine. Atheism failed as an official state ideology almost simultaneously with the declaration of Ukrainian independence in the early 90s. For the next 20 years, several iconic churches like the Dormition Cathedral of Kyiv Caves Monastery or the temple complex of St. Michael Monastery in Kyiv were restored at public expense. Since both of them, like tens of others, were and are the sites of a national cultural heritage destroyed by the legal predecessor of Ukraine,¹¹³ it was justified to renovate them by public budgetary means. It also seems lawful to maintain heritage-listed religious premises owned by the state (or local communities) and used by religious organizations partly through public expenditure. But it is far more questionable when state-owned companies or establishments have built and maintained new temples without any legal grounds for such spending.¹¹⁴ Despite the prohibition on direct financial support for religious organizations, the law set forth some tax waivers for religious organizations. They particularly enjoy exemption from corporate tax (subject to their registration as a non-profit organization by the Tax Administration),¹¹⁵ exemption from the VAT¹¹⁶ for the selling of some religious articles and services listed by the government,¹¹⁷ and all donations to the Church are not taxable.¹¹⁸ However, a donor is allowed to transfer to religious organizations only 2 percent of its profit without paying the corporate tax on the sum of such a donation.¹¹⁹ Ukrainian legislation allows and even provides for financial support for civic non-profit organization activities.¹²⁰ Yet, as it was pointed out above,

106. See Law on Freedom of Conscience, *supra* n. 53, art. 4(1)

107. See Law of Ukraine on State Register of Natural Persons –Taxpayers, № 320/94-BP (22 December 1994), art. 5(2).

108. Cf. Revelation of St. John 13:16–18.

109. See Law of Ukraine on Alternative (Non-Military) Service, № 1975-XII (12 December 1991).

110. *Id.*, art. 2.

111. List approved by Cabinet of Ministers of Ukraine Decree № 2066 (10/1999), includes 10 denominations.

112. Law on Freedom of Conscience, *supra* n. 53, art. 5(4).

113. From a legal standpoint, Ukraine is the legal successor to the former Ukrainian Soviet Socialist Republic, one of the founders of the USSR. See Law of Ukraine on Legal Succession of Ukraine, № 1543-XII (12 September 1991).

114. For example, the Orthodox temple of St. George the Victory-Bearer near Kyiv Central Railroad Station was built at the cost of state monopoly "Ukrainian Railways"; the Orthodox church of St. Nicolas was built within the National University of the State Tax Administration of Ukraine at state budget expense; the Orthodox Church of St. George the Victory-Bearer at the Central Hospital of the Ministry of Internal Affairs of Ukraine was constructed by Ministry means, etc.

115. See Law of Ukraine on Corporate Tax, № 334/94-BP (28 December 1994), art. 7.11.

116. See Law of Ukraine on Value Added Tax, № 168/97-BP (3 April 1997), art. 5.1.14.

117. The list of such articles and services was approved by the Cabinet of Ministers of Ukraine Decree № 1010 (12 September 1997).

118. Law on Freedom of Conscience, *supra* n. 53, art. 18(6).

119. Law of Ukraine on Corporate Tax, *supra* n. 115, art. 5.2.2.

120. The Budgetary Code of Ukraine, № 2542-III (June 21, 2001) provides for state financial support for certain kinds of civic organizations or for financing certain categories of state programs realized by them. *Id.*

providing funding for religious organizations is explicitly banned by Ukrainian law, although legislators are able to and often do carry out socially useful projects *pari passu* with civic organizations. And that raises concerns about discriminatory treatment against religious entities in comparison to other non-profit private organizations.¹²¹

IX. CIVIL LEGAL EFFECTS OF RELIGIOUS ACTS

Since the legal force of the Decree on Separation of the Church from the State¹²² was expanded into Ukraine in 1919, religious acts lost any legal effect.¹²³

X. RELIGIOUS EDUCATION

The system of religious education in Ukraine is separated from the secular educational network. The *Law on Education*¹²⁴ contains several strict “separating” provisions. The Law firstly emphasizes the secular nature of education and educational establishments in Ukraine¹²⁵ and continues: “Educational process in the educational establishments shall be free from political parties’, religious or civic organizations’ interference.”¹²⁶ This approach, embedded in the national legislation, has prevented religious organizations from establishing educational units empowered to provide compulsory or higher education recognized by the state. It has also banned universities from setting up theological departments or providing divinity training. Multiple attempts to equalize religious organizations with other private legal persons in the educational field have failed.¹²⁷

On the other hand, religious organizations in Ukraine are entitled to establish so-called “spiritual educational establishments”¹²⁸ for training their future clergymen or other professionals for the church’s needs. There have been almost 200 religious educational institutions registered hitherto.¹²⁹ Their students “enjoy the same rights and benefits concerning postponement of military service, taxation, inclusion period spent for study into work record under the same terms and conditions with students of state educational establishments.”¹³⁰ Therefore, the problem consists of the absence of a legal effect of education obtained from a religious educational unit¹³¹ and not in obstacles to obtaining such an education. Sometimes churches circumvent legal barriers and create two-in-one institutions registered both as a “spiritual educational establishment” and as a private

arts. 87(9), 87(10). Arrangements for financing concrete programs fall within the competence of the government.

121. The substantially amended edition of the Law on Freedom of Conscience, *supra* n. 71, drafted originally by the Ministry of Justice of Ukraine in 2006 and later amended by the State Committee of Ukraine for Nationalities and Religious Affairs in 2009, addresses the outlined issue intending to equalize religious organizations with other non-profit private organizations, but it has not been considered by the Parliament yet.

122. *Supra* n. 48.

123. See Law of Ukraine on Civil Registration Bodies, № 3807-XII (24 December 1993), particularly art. 1.

124. Law of Ukraine on Education, № 1060-XII (13 May 1991), accessible at <http://www.cepes.ro/hed/policy/legislation/pdf/Ukraine.pdf> (in English).

125. Article 6 stresses “secular nature” as one of the basic principles of education in Ukraine, and Article 9 states that “Educational establishments in Ukraine whatever [their] pattern of ownership are of [a] secular nature unless they are established by religious organizations.” *Id.*

126. *Id.* art. 8(1).

127. In the course of activity of the Ukrainian Parliament of convocations V and VI, MPs have initiated at least three bills aimed at solving the outlined issue: № 2020 (August 30, 2006), № 3160 (February 12, 2007), and № 2729 (September 2, 2008). All three of them have not even received approval of the relevant Parliamentary Committees and thus have not been referred for Parliamentary consideration.

128. Law on Freedom of Conscience, *supra* n. 53, art. 11.

129. See, SCU NMRA, *supra* n. 10.

130. Law on Freedom of Conscience, *supra* n. 53, art. 11(2).

131. Since secondary education is compulsory in Ukraine, religious education at this level may be only of a supplementary nature. Likewise, Ukrainian law requires a university degree for obtaining certain offices—for example, to become a member of the National Broadcasting Council of Ukraine—and thus prevents individuals who have graduated from religious institutions from holding certain positions.

university,¹³² however, such tricks do not solve the very substance of the problem.

Besides professional religious education, ecclesial institutions are free to provide religious classes for adults and minors – subject to respect for religious tolerance and parental rights to bring up and educate children in accordance with the parent’s faith and beliefs.¹³³ For example, Ukrainian schools recently have introduced the Basics of Christian Ethics and similar optional courses¹³⁴ aimed to address the moral heritage of Christianity and other religions. Study of those courses might be substituted for the learning of secular ethics at a parent’s request.¹³⁵

All teachers in Ukrainian public schools are appointed and paid by local authorities regardless of what courses they teach. To gain a license to operate, private schools are required to employ teachers which meet the standards laid down in the law. Yet “spiritual educational establishments” are completely free in their pedagogical hiring decisions, since as was pointed out above, the Ukrainian state does not recognize religious education and thus does not establish any requirement for it. Both private and religious schools pay teachers from their own resources.

XI. RELIGIOUS SYMBOLS IN PUBLIC PLACES

Generally, there are no restrictions in Ukrainian legislation on the placement of religious symbols in public areas. It could be concluded from the declared secular character of the Ukrainian state that religious symbols are not allowed in or on governmental premises. The opening of an Orthodox chapel in the parliamentary building at the beginning of 2008 raised severe criticism from various political forces. The Parliamentary Committee for Rules of Procedure and Parliamentary Ethics found no legal grounds for the transformation of a parliamentary office into a temple; the Committee issued a decision requiring Parliament staff to take measures returning the reconstructed premises to its original condition and prohibiting the establishment of religious areas in the Ukrainian Parliament hereafter.¹³⁶ However, the scandal was hushed up and the “parliamentary chapel” continues in operation at the time of the writing of this report.¹³⁷ It is a sound illustration of the gap that exists between the written and factual Constitutions outlined above. Ukrainian legislation also contains several provisions which directly ban non-religious organizations to utilize religious symbols.¹³⁸ There are no legislative or factual constraints on individuals carrying or wearing religious symbols or traditional religious garments in Ukraine.

XII. FREEDOM OF EXPRESSION AND OFFENSES AGAINST RELIGION

Freedom of expression is ensured by Article 34 of the Ukrainian Constitution. However, there are no provisions in Ukrainian legislation or caselaw which may serve as a guideline on how to balance respect for religious feelings and beliefs with freedom of expression. A review of religious tolerance in the Ukrainian mass-media, carried out by the project “Monitoring of Religious Freedom in Ukraine: 2005-2007,” does not raise any serious concerns, although some offensive publications were identified and there is a lot of room for legislative improvements in this delicate sphere.¹³⁹

Ukrainian legislation criminalizes some offences against religion. Article 161 of the

132. That is the case with the Ukrainian Catholic University in Lviv.

133. Law on Freedom of Conscience, supra n. 53, arts. 3(3), 6(4), 6(5).

134. See Order of the Ministry of Education and Science of Ukraine, № 437 (26 July 2005).

135. Id., para. 4.

136. The decision can be found at: <http://www.pravda.com.ua/news/2008/3/7/72815.htm> (in Ukrainian).

137. I.e., November, 2009.

138. See Law of Ukraine on Trade Unions, their Rights and Warranties of their Activities, № 1045-XIV (15 September 1999), art. 17(3); Law of Ukraine on Associations of Citizens, № 2460-XII (16 June 1992), art. 18(3).

139. See Taras Antoshevskiy and Lesya Kovalenko, *Monitoring of Religious Freedom in Ukraine: 2005–2007* (Lviv, 2008): 163–67.

Criminal Code of Ukraine provides for criminal punishment for infringement of a citizen's equality on the basis of his or her religious beliefs; Article 178 and 179 – for crimes against religious property; Article 180 – for impeding worship. In turn, Article 181 penalizes for infringement of one's health under the pretext of performing a sermon or worship. Some other articles of the Criminal Code regard the presence of religious motives for the commitment of a crime or infringement of religious freedom or equality as an aggravating circumstance.¹⁴⁰

XIII. CONCLUSION

Ukraine is religiously diverse and tolerant of that diversity. The Ukrainian state declares itself (and predominantly is) secular. Various religious denominations are treated equally *by law*. In practice, however, Orthodoxy (and the Catholic Church of the Eastern Rite in Western Ukraine) enjoys some preferences and governmental support. Even though current legislation in the field of religious freedom and state-church relations is generally not of a discriminatory nature, it requires review and elaboration.

Still, the judicial system in Ukraine is young and highly corrupted; there is no comprehensive caselaw in religion-linked fields. Customs and shady political deals are often substituted for legal regulation and thus influence the church-state relationship more than written provisions. However, due to great religious diversity and the absence of a dominant institutionalized church, Ukraine remains one of the most successful states on the post-communist era from the standpoint of religious freedom.

140. See Criminal Code of Ukraine, № 2341-III (05 April 2001), arts. 67(3), 110.