

# SECURITY, RELIGION, AND THE RULE OF LAW

International Perspectives

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## Chapter 5

### NEW RELIGIOUS LEGISLATION IN UKRAINE AS A RESPONSE TO RUSSIAN AGGRESSION

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# 5

## NEW RELIGIOUS LEGISLATION IN UKRAINE AS A RESPONSE TO RUSSIAN AGGRESSION

*Maksym Vasin*

### 1 Introduction

Unlike in other post-Soviet countries, Ukrainian law guarantees a high level of religious freedom; however, because of national security, the amendments of 2018–2019 and the new governmental draft law of January 2023 raise concerns in terms of both their content and the way they are implemented. While in previous years national security was not a decisive motive for amending religious legislation, now, because of Russian aggression beginning in 2014 and followed by the full-scale invasion in 2022, the Ukrainian government tried to reduce the effects of Russia weaponizing religion in Ukraine. One of the changes in the passage of new laws requires parishes of the Ukrainian Orthodox Church of the Moscow Patriarchate (UOC-MP) to change their names and simplify canonical severance with the Russian Orthodox Church (ROC) for all local Orthodox parishes. Government officials explained the change by pointing to the necessity of protecting national security, particularly in the field of religious affairs. Given the Kremlin's use of religious propaganda to justify its colossal destruction of civilian infrastructure in Ukraine due to massive missile attacks, the occupation of new Ukrainian territories, and atrocities of the Russian military against civilians, Ukrainian society is now debating draft laws that would permanently sever ties with Russian religious centers.

While not underestimating the importance of religious independence for Ukraine as a sovereign state, it is appropriate to analyze whether such measures by the Ukrainian authorities are in line with international obligations for freedom of religion or belief and whether these legislative measures may have the opposite effect by leading to a reduction of religious freedom, increasing

tensions on religious grounds. This chapter will delineate the limits of permissible state intervention in the internal affairs of religious organizations in situations that have developed in Ukraine due to external geopolitical factors.

## 2 Historical Background

Ukraine has been in de facto martial law over Russian aggression since February 2014, when Russian troops, wearing unmarked green uniforms, invaded the Ukrainian peninsula of Crimea and conducted a military operation to secure further annexation of the Crimea. For years, the international community has not recognized the pseudo-referendum of 16 March 2014, joining Russia with Crimea, which took place on the peninsula under the barrels of Russian machine guns and ignoring Ukraine's Constitution. Russia's aggression spread to the Donetsk and Luhansk regions in the eastern part of Ukraine, where Russian heavy military equipment, disguised soldiers, and volunteer Russian militants arrived to support a small group of local separatists. Russia's presence in Crimea and the eastern regions of Ukraine has made for a long-lasting military conflict and a permanent threat to the security of the entire European continent.

Since March 2021, a significant part of Russian military equipment and its regular army are now in the borders of Ukraine: from the east – closer to the non-controlled territories of the Donetsk and Luhansk regions, from the south – in the occupied Crimea and Transnistria, from the north – closer to Belarus, which is in a supranational union with Russia (Schwartz and Reinhard, 2022). Finally, on 24 February 2022, Russia started a full-scale war against Ukraine by land offensives from different directions under cover of mass air and missile attacks. The Russian invasion was intended to eliminate Ukrainian leadership, take over Kyiv as a capital city, demolish Ukraine as a sovereign democratic state, and destroy Ukrainian historical and cultural heritage and religious pluralism to implement its imperialistic policy, based on the geopolitical ideology of the “Russkiy Mir” (Vasin et al., 2022).<sup>1</sup>

However, Russia's aggression against Ukraine is not limited to the use of military force. Since 2014, in the occupied territories of Crimea, Donetsk, and Luhansk regions, the Russian-backed authorities are systematically repressing religious minorities to consolidate their power, asserting baseless accusations of extremism and arbitrary imprisonment. Freedoms of speech, expression, and peaceful assembly are subject to the most severe restrictions (Novitchkova et al., 2015). While the Orthodox parishes of the Moscow Patriarchate enjoy a privileged status and loyalty from the occupying authorities, many believers fear for their safety. This is especially true in the Donetsk and Luhansk regions, where there are no legitimate judiciaries and legal mechanisms to avoid the arbitrariness and repressions committed by people with power and weapons (Vasin et al., 2018). Also, human rights

organizations and international monitors can't document and verify human rights violations because this activity would be unsafe for them. The Russian full-scale invasion in 2022 only worsened the situation with religious freedom, especially in the newly occupied Ukrainian regions of Zaporizhzhia and Kherson. The ideological basis for the occupying authorities is the "Russian World" ideology, promoted by Patriarch Kirill of Moscow, the Primate of the ROC (Vasin et al., 2022).

As the President of Russia, Vladimir Putin (2018), explained:

The Russian world has never been built exclusively and only along ethnic, national, or religious lines. It has gathered and united everyone who is spiritually connected with Russia, who feels this spiritual connection with our homeland, who considers themselves to be bearers of the Russian language, culture, and Russian history.

Based on the ideology of the Russian World, Putin explains his geopolitical claims to Ukraine; denies the historical emergence and development of the Ukrainian people and its independent state; imposes the idea of the brotherhood of Russia, Ukraine, and Belarus; and uses the Russian language and the Russian Orthodox Church (Moscow Patriarchate) as an excuse to intervene in the internal affairs of other independent states (*BBC News*, 2014).<sup>2</sup> As a consequence of the Russian policy of expansion, on 1 March 2014, at the request of President Putin, the Federation Council of the Federal Assembly of the Russian Federation (2014) approved the intervention of the Russian Armed Forces on the territory of Ukraine, citing the need to protect "Russian citizens, our compatriots," primarily in the Ukrainian peninsula of Crimea (Putin, 2021). These narratives are continuously promoted and are based on fake historical facts to expand Russian influence upon Ukraine as an independent state:

Russians, Ukrainians, and Belarusians are all descendants of Ancient Rus. ... Modern Ukraine is entirely the product of the Soviet era. ... True sovereignty of Ukraine is possible only in partnership with Russia. Our spiritual, human, and civilizational ties formed for centuries. ... We are one people.

(*Putin, 2021*)

In essence, the Russian World concept presupposes the loss of the Ukrainian people's identity, sovereignty, and statehood in favor of the imperial interests of Russia, which seeks to restore Soviet-era influence. And one of the key leaders of this geopolitical ideology is the ROC, which has recently become particularly close to the Russian state apparatus and relays the Kremlin's interests among Orthodox believers. For example, Moscow Patriarch Kirill

called Russia's aggression against Ukraine a "civil conflict,"<sup>3</sup> and, in an interview with the Russian propaganda media, said: "For me, Ukraine is the same as Russia" (*Radio Free Europe/Radio Liberty*, 2018b; *RBC-Ukraine*, 2016).<sup>4</sup> As Casanova (2019, p. 329) noted: "Russia is ... a union of the secular imperial and authoritarian state with the ROC, which – in the person of the Moscow Patriarchate – puts forward canonical-territorial claims to many post-Soviet states."

Because the UOC-MP is a part of the ROC with certain rights of autonomy, several Ukrainian politicians and experts have warned about Russian influence on Ukrainian society through the UOC-MP (*National Institute for Strategic Studies*, 2017). As an example, on 8 May 2015, the Primate of the UOC-MP, Metropolitan Onuphry, and other UOC-MP bishops refused to stand up during the ceremony at the Ukrainian Parliament in honor of fallen Ukrainian soldiers, who were posthumously awarded the title of "Hero of Ukraine for courageous protection of the homeland from Russian aggression" (*Radio Free Europe/Radio Liberty*, 2015).<sup>5</sup> They later explained their gesture as a call to end the war, as if the Ukrainian Army was not defending its people but fighting against them. This position of the UOC-MP leadership echoes the propaganda of the Kremlin and Vladimir Putin, about the alleged "civil war" in Ukraine, hiding the real presence of Russian troops and Russian heavy artillery in eastern Ukraine (*TASS*, 2015). The Kremlin using the church structure as a tool for spreading propaganda looks especially threatening, considering that the UOC-MP is the largest religious association in Ukraine, which has more than 12,000 parishes and other legal entities, a third of all religious organizations in the state (*State Service of Ukraine for Ethnopolitics and Freedom of Conscience*, 2021).

Furthermore, the actions of certain UOC-MP priests who aided the armed separatists in the occupied Crimea and eastern regions of Ukraine, and who subsequently continued to engage in activities such as directing fire against the Ukrainian Army and collaborating with Russian occupation authorities, represent the most significant national security breach for the state. For example, in 2014, according to the testimony of residents of the Sviatohirsk Lavra, the UOC-MP in the Donetsk region provided its housing for use by groups of Russian-backed militants at the beginning of the warfare (Novitchkova et al., 2015). Also, human rights activists have documented the participation of two Russian Cossack battalions among illegal armed groups in eastern Ukraine, which associate themselves with Russian Orthodoxy, fight against the Ukrainian Army under religious flags, call themselves defenders of the Russian World, terrorize the religious communities, torture and kill the believers of other denominations, and confiscate their cathedrals (Vasin et al., 2018). Among them was an illegal military battalion called the Russian Orthodox Army, which seized the city of Slovyansk in the Donetsk region and kept it under control until June 2014, carrying out systematic repressions

against religious figures of other denominations and pro-Ukrainian public activists. Open sources and eyewitnesses have confirmed that these armed groups received support from the local UOC-MP parishes and some ROC clergymen, although the church leadership does not approve of the activities of Orthodox paramilitary groups (Novitchkova et al., 2015).

According to Slovyansk residents and confirmed by photo evidence, the rector of the Holy Resurrection parish of the UOC-MP, priest Oleg Khyzhnyakov, not only consecrated the battle flags of the illegal military battalion led by Russian officer Igor Girkin (Strelkov) but also provided the Russian-backed militants with food (*Censor.net*, 2014). Another illustrative case was when the archpriest of the UOC-MP, Volodymyr Maretskyi, was sentenced to six years in prison for organizing riots to block the movement of the Ukrainian Army in the Luhansk region and assisting the Russian-backed separatists in April–May of 2014 (*Ukrainian News*, 2018).

Igor Girkin confirmed publicly in the interview for media the engagement of the UOC-MP representatives in his military operations (*Religious Information Service of Ukraine*, 2018):

My personal guard consisted of spiritual sons, monks, hieromonks of the Sviatohirsk Lavra. ... [t]o the last man. It was not very large, but they were there ... We had one of the units in the Slovyansk brigade commanded by the novice of the Sviatohirsk Lavra. And the novice held a rather serious position in the Lavra ... a provisor.

Later he was sentenced by the Hague District Court to life in prison for the downing of the MH17 flight over Ukraine in 2014, and the killing of all 298 people on board (van den Berg and Sterling, 2022). Other facts documented by human rights activists indicate that the activities of individual priests of the UOC-MP working in the interests of Russia were not uncommon.<sup>6</sup>

At the same time, it cannot be said that every bishop, every priest, and every believer of each UOC-MP parish supports Russian aggression against Ukraine and poses a threat to national security. However, the leadership of the Ukrainian state has had to respond to the following:

- Russia uses religion as an instrument for increasing its influence worldwide, especially in Ukraine.
- Russia uses the Ukrainian Orthodox Church (affiliated with the Moscow Patriarchate) to hold Ukraine in its conception of the Russian World and to justify its interference in the internal affairs of Ukraine, followed by the full-scale military invasion since 24 February 2022.
- UOC-MP doesn't publicly respect the Ukrainian Army, using phrases to describe the conflict like "civil war," "fratricidal conflict," etc., according to the Kremlin's narratives. There are facts about rejecting funeral rituals

for the killed Ukrainian soldiers by certain UOC-MP clergy (*Ukrinform*, 2018).

- The facts uncovered of certain priests and bishops of the UOC-MP collaborating with representatives of the Russian authorities, including the occupation administration, which is a criminal offense of treason.<sup>7</sup>

### 3 New Religious Legislation in 2018–2019 as a Response to Threats in the Field of Religion

The Ukrainian state authorities acted on these blatant threats to national security. This chapter will analyze the measures taken and assess their legitimate aim, proportionality, and necessity in a democratic society, considering the context of Russia’s ongoing aggression against Ukraine, which became much more brutal after 24 February 2022.

In the interests of national security, the Parliament of Ukraine during December 2018–January 2019 passed two laws that would:

- Ban all UOC-MP priests from serving in the Ukrainian Army and other military forces of Ukraine as chaplains.
- Force all UOC-MP parishes to change their names adding their affiliation with the ROC. The law doesn’t mention the UOC-MP directly but states that any religious organization affiliated with the religious center in Russia as an aggressor state<sup>8</sup> to mark such affiliation in their names.<sup>9</sup>
- Introduce a simpler procedure of changing local parish affiliation with a religious center (denomination), primarily in favor of transitions from the Moscow Patriarchate to the newly established autocephalous Orthodox Church of Ukraine (OCU).<sup>10</sup>

The initiators of Law #2662-VIII of 20 December 2018 argued the proposed changes by affirming that “there is a direct threat of spreading destructive propaganda using a religious factor by the aggressor state, which will have real consequences for national interests, territorial integrity, and national security of Ukraine” (*Parliament of Ukraine*, 2016).

In balancing these state interference measures with the basic right of freedom of religion, it is appropriate to apply the test questions used by the European Court of Human Rights when examining complaints of violations of religious freedoms. According to Article 9(2) of the European Convention on Human Rights, religious freedoms shall be subject only to “limitations prescribed by law and necessary in a democratic society” and according to the ruling of the European Court of Human Rights established in 1983 that restrictions on human rights must be motivated by a “pressing social need,” and be “proportionate to the legitimate aim pursued” (*Svyato-Mykhaylivska Parafiya v Ukraine* [2007]).

First, neither Article 9 of the European Convention on Human Rights nor Article 35 of the Constitution of Ukraine provides such a ground for restricting religious freedom as national security. The exception could only apply to a declaration of martial law or public emergency, which should be preceded by the adoption of a relevant bill indicating the specific duration of such restrictions. Article 4(2) of the ICCPR provides that countries may not in any way restrict the right to freedom of religion or belief, including in cases of public emergency (*United Nations*, 1966). In this regard, “the right to freedom of religion or belief is accorded even higher priority than freedom of expression or freedom of association” (*OSCE/ODIHR*, 2004, p. 19).

### **3.1 Denial of Access for Chaplains of the UOC-MP to the Ukrainian Army**

Denial of access for chaplains of the UOC-MP to the Ukrainian Army can be considered as certain discrimination against clergy and limiting the ability of the UOC-MP soldiers to meet their religious needs during military service. Orthodox soldiers belonging to the Moscow Patriarchate have found themselves in a more awkward position than believers of other denominations, who may invite a priest of their denomination to visit them at the military unit’s location. Nevertheless, for the UOC-MP believers in the Ukrainian Army remains the option to make an independent trip during a day off to their denomination’s parish or to ask the commander of the military unit to invite a priest to provide pastoral care on a volunteer basis. In some cases, they may agree to use the services of a regular or guest chaplain of another denomination. However, it is unlikely that military leadership will agree to invite the Orthodox priest affiliated with the Moscow Patriarchate as a church that has a religious center in the aggressor state, especially after the outbreak of a full-scale invasion of Ukraine. In the case of *Kalaç v Turkey* [1997], the European Court of Human Rights noted that

In choosing to pursue a military career [applicant] was accepting of his own accord a system of military discipline that by its very nature implied the possibility of placing on certain of the rights and freedoms of members of the armed forces limitations incapable of being imposed on civilians.

Recalling the above examples of UOC-MP priests working in the interests of Russian propaganda or even in active support of Russian-backed, armed separatists and occupational authorities, it is evident that the Ukrainian authorities had sound reasons for restricting their access to the army and other military formations in the capacity of staff chaplains while active warfare in Ukraine continued. Moreover, after Russia initiated a full-scale unprovoked war against Ukraine, it became clear that the Russian Orthodox Church is heavily dependent on the Kremlin, as demonstrated by Moscow



Patriarch Kirill's support for Russian aggression and encouragement of the Russian military's continued invasion of Ukraine (Smith, 2022). Kirill has even likened the conflict to a holy war, claiming that the sacrifice of Russian servicemen washes them of all their sins and brings them to Paradise (Shumylo, 2022).

In light of the evidence of high treason and collaboration among members of the UOC-MP and their ties to the Russian occupation authorities (Roshchyna, 2023), the measures taken by the Ukrainian authorities to restrict the presence of chaplains affiliated with the Moscow Patriarchate in the Ukrainian Army seem both reasonable and proportionate to the legitimate aim. Furthermore, the UOC-MP leadership has failed to condemn or take any disciplinary action against collaborators within the church, which has deepened distrust among Ukrainian society, including the Armed Forces of Ukraine.

### **3.2 Forcing All UOC-MP Parishes to Change their Names Adding the Affiliation with the Russian Orthodox Church**

Forcing all UOC-MP parishes to change their names adding the affiliation with the Russian Orthodox Church is a more sensitive issue for Orthodox believers of the Moscow Patriarchate because it affects all local parishes and structural units of the UOC-MP. According to authors of Law #2662-VIII, it was “designed to ensure the state security and sovereignty of Ukraine, as well as to provide society with complete and accurate information” about the Orthodox denominations in Ukraine (*Parliament of Ukraine*, 2016). Also, the law was aimed to avert the “direct threat of the spread of destructive propaganda using the religious factor by the aggressor state” and the “potential risk” that arises because “the religious factor has a significant impact on the formation of public opinion” (*Parliament of Ukraine*, 2016).

The Ukrainian government has justified its intervention in church affairs as a means to protect Orthodox believers from misinformation and manipulation surrounding the names of Orthodox churches of different canonical jurisdictions in Ukraine (*Religious Information Service of Ukraine*, 2019). Indeed, it was in the state's interest as it sought to facilitate the formation of the autocephalous Orthodox Church of Ukraine (OCU), which is independent of Moscow, recognized by the Ecumenical Patriarch, and on equal footing with other Orthodox churches in the world.

In December 2018, on the eve of the adoption of the law, two Orthodox churches in Ukraine that were not previously recognized by world Orthodoxy came together at the unifying council in Kyiv to form a single OCU, with the participation of some UOC-MP bishops (*Radio Free Europe/Radio Liberty*, 2018a). On 5 January 2019, the newly established OCU received a *tomos* decree from His Holiness Bartholomew, the Ecumenical Patriarch, recognizing its independence and self-government (*Radio Free Europe/Radio Liberty*, 2019). A few months before, the Holy Synod of the Ecumenical Patriarchate abolished

the patriarchal decree of 1686, which had granted the Moscow Patriarchate supremacy over the Kyiv Metropolis (*Ecumenical Patriarchate*, 2018). With this action, the newly created autocephalous OCU became the religious institution tasked with uniting Orthodox believers in support of Ukraine's state independence and sovereignty. Former Ukrainian President Petro Poroshenko emphasized the importance of the Church as the spiritual foundation of Ukraine's statehood, stating that "without our Church, there can be no state" (*Interfax-Ukraine*, 2019). Therefore, the autocephalous OCU is more favorable to the Ukrainian authorities due to its recognition by world Orthodoxy and the absence of canonical subordination to the Moscow Patriarchate.

The challenge is that since 1990 the UOC-MP has been officially known as the Ukrainian Orthodox Church and does not indicate affiliation with the Moscow Patriarchate. Also, it does not have the status of autocephaly and remains a structural unit of the Russian Orthodox Church with some autonomy rights. Conversely, the newly established autocephalous OCU has a double name as the "Orthodox Church of Ukraine (Ukrainian Orthodox Church)," emphasizing its canonical jurisdiction over the territory of Ukraine according to the decree of the Ecumenical Patriarchate. Thus, there is an obvious conflict of names, when two different Orthodox churches with different worldviews and different attitudes to the Russian aggression operate under almost the same name. This confusion may explain the state's desire to clarify the difference between both denominations so that Orthodox believers can make an informed choice about their denominational affiliation: whether to attend the autocephalous Orthodox Church of Ukraine or the Ukrainian Orthodox Church under the Moscow Patriarchate.

Comparing sociological and statistical data we can conclude that there is no correlation between the percentage of the actual number of believers in Ukraine who identify with a particular Orthodox church and the nominal number of parishes, as seen on the following data table:

<i>Church's official name</i>	<i>What denomination do you belong to?</i> Sociological survey of the Razumkov Centre (2020)	<i>Number of registered parishes and other legal entities</i> Statistical data of the State Service of Ukraine for Ethnopolitics and Freedom of Conscience (2021)
Ukrainian Orthodox Church (under the Moscow Patriarchate)	13.8%	33.5% (12,406)
Orthodox Church of Ukraine (autocephalous)	34.0%	19.4% (7,188)

The number of OCU believers is 2.5 times greater than the number of UOC-MP believers but the number of parishes and other structural units of the OCU is significantly less than in the UOC-MP. The prevailing opinion among Ukrainian researchers is that this discrepancy is because many members of UOC-MP parishes are unaware of the affiliation of their parish with the Moscow Patriarchate. After all, the official name states that it is the *Ukrainian* Orthodox Church. Instead, in sociological polls, respondents make a more informed choice when it comes to belonging to the “Ukrainian church” or the “Moscow church,” because many Orthodox parishioners do not see the difference between patriarchates and do not even understand which church – Ukrainian autocephalous or affiliated with the Moscow patriarchate – they go to (Solodko, 2013).

Regardless of the increased sensitivity in Ukrainian society to the issue of affiliation with the Moscow Patriarchate following Russia’s unleashing of a full-scale war, there was no significant wave of parishes transitioning from the UOC-MP to the canonical subordination of the OCU.<sup>11</sup> Considering this, the Ukrainian government argues that it is vital to publicly indicate the affiliation of the UOC-MP with the religious center in the aggressor state to avoid misinformation among the Orthodox faithful in Ukraine and give them options to make a conscious choice. The aim of Law #2662-VIII is to minimize the misinformation of Orthodox believers about their denomination’s affiliation, eliminate manipulations due to the similarity of the names of two different Orthodox churches, and provide favorable conditions for the development of the newly established autocephalous Orthodox Church of Ukraine (OCU). However, such state intervention requires further examination to assess whether it has proven effective and to what extent it was proportionate to the pursued aim.

Law #2662-VIII gave nine months for local parishes and four months for other UOC-MP structural units to change their official name, forcing them to add affiliation with the ROC (*Про внесення зміни до статті 12 Закону України*. Ukraine. Parliament of Ukraine, 2018). In case of non-compliance with this requirement, the law stipulates that the statute of such religious organizations shall cease to be valid in the part which determines its full official name (*Про внесення зміни до статті 12 Закону України*. Ukraine. Parliament of Ukraine, 2018). However, the practical implementation of Law #2662-VIII on forced renaming proved to be excessively burdensome for both public authorities and the UOC-MP parishes.

It is obvious that the UOC-MP leadership did not agree with the requirement of forced renaming and took measures to block its implementation. On 19 January 2019, 49 parliamentarians initiated an appeal to the Constitutional Court of Ukraine demanding that Law #2662-VIII be declared unconstitutional. Next, the Kyiv Metropolis of the UOC-MP filed a suit in the District Administrative Court of Kyiv addressed to the Ministry of Culture

of Ukraine, requesting recognition of the actions of the Ministry aimed at illegally implementing the law canceling the relevant decisions. While pending for more than three years, the court banned the Ministry of Culture from taking forced registration action against 266 UOC-MP religious organizations (*Kyiv Metropolis of the Ukrainian Orthodox Church v the Ministry of Culture of Ukraine* [2019]).

On 27 December 2022, the Constitutional Court of Ukraine recognized Law #2662-VIII on the forced renaming of the UOC-MP parishes and other structural units as complying with and not violating the Constitution of Ukraine.<sup>12</sup> Nevertheless, the law remains unfulfilled but creates difficulties for routine activities. Most UOC-MP parishes continue to operate with their current names and statutes. However, the legal restrictions remain for those who need to change their statutes or enter data in the state register regarding the new priest as the head of a legal entity, for example, in case of death (*Ukrainian Orthodox Church*, 2021). If any UOC-MP parish on its initiative applies to the religious affairs department for state registration of the new wording of its statute or for entering the updated information about the parish to the State Register of Legal Entities, it will be impossible without adding the provision of subordination to the ROC to its official name according to Law #2662-VIII. Despite the legal aim, registration procedures should not be used as a means of limiting the right to freedom of religion or belief of members of certain religious or belief communities to avoid discriminatory treatment in this regard (Bielefeldt, 2011).

Although the Constitutional Court of Ukraine and the District Administrative Court of Kyiv provided favorable decisions,<sup>13</sup> the religious affairs departments do not initiate lawsuits against the local UOC-MP parishes to force their renaming. Initiating lawsuits against more than 12,000 parishes and other UOC-MP legal entities is also a very costly and time-consuming affair for the state. As a result, the Ukrainian Parliament's interference in the UOC-MP's activities was carried out in a way that did not bring the expected result despite the legitimate aim.

### **3.3 *An Introduction of the Easier Procedure of Changing the Affiliation of Local Parishes with a Religious Center (Denomination)***

The next intervention to religious freedom by the Parliament of Ukraine was an introduction of the easier procedure of changing the affiliation of local parishes with a religious center (denomination). Law #2673-VIII of 17 January 2019 was adopted less than two weeks after the OCU received the *tomos* decree on autocephaly from the Ecumenical Patriarch and was allowed to become an alternative to the UOC-MP for millions of Ukrainian Orthodox

believers who wanted to have an independent church without subordination to the Moscow Patriarchate (*Про внесення змін до деяких законів України*. Ukraine. Parliament of Ukraine, 2019). This significant historical fact and the desire of the state to promote the development of the autocephalous OCU led to the hasty adoption of this law, which did not consider the peculiarities of the activities of religious organizations of non-Orthodox denominations.

The Ukrainian authorities decided to facilitate the transition of local Orthodox parishes from the Moscow Patriarchate to the newly established OCU. In combination with the above-mentioned law on the forced renaming of all UOC-MP parishes, Law #2673-VIII aimed to simplify the procedure of changing the canonical subordination in the statutes of Orthodox parishes (*Про внесення змін до деяких законів України*. Ukraine. Parliament of Ukraine, 2019). The idea was that instead of fulfilling the obligation to reflect belonging to the Russian Orthodox Church in its name, the UOC-MP parishes would have to transit to the autocephalous OCU according to the new procedure.

The Ukrainian parliament wanted to respond to the legal issues arising because in many cases the parish statute's rules make the transition to another canonical subordination impossible. The statutory documents of most Orthodox parishes limit the right of its members to freely change their allegiance to another religious center other than the Moscow Patriarchate, despite the guarantee by Article 8 of the *Law of Ukraine on Freedom of Conscience and Religious Organizations* (*Про свободу совісті та релігійні організації*. Ukraine. Parliament of Ukraine, 1991). For example, without the signature of the parish priest or the written consent of a bishop of the eparchy, it was impossible. These legal obstacles are described in detail in the decision of the European Court of Human Rights in the case of *Svyato-Mykhaylivska Parafiya v Ukraine* [2007]. Given that the provisions of most statutes of the UOC-MP parishes prevent the transition from the Moscow Patriarchate to any other Orthodox Church, the Ukrainian Parliament decided to intervene in this area and legislate the procedure of changing canonical subordination for all religious organizations. Now the procedure for how the parish decides to change its canonical subordination (denomination) is determined not by its statute, but by the *Law of Ukraine on Freedom of Conscience and Religious Organizations* (*Про свободу совісті та релігійні організації*. Ukraine. Parliament of Ukraine, 1991).

Law #2673-VIII implemented these new rules (*Про внесення змін до деяких законів України*. Ukraine. Parliament of Ukraine, 2019):

- The decision of changing the canonical subordination (affiliations with a denomination) is made by the general meeting of parish members.
- Parish members can initiate a general meeting to consider this issue.

- Two-thirds of the votes of the parish members from the quorum required for the legitimacy of the general meeting is sufficient to decide on the change of canonical subordination (affiliation with a denomination).
- This decision has to be signed by those members of the parish who voted for it.
- For the state registration of changes in the parish statute, a list of all participants of the general meeting, which approved these changes, is submitted to the religious affairs department.

On the one hand, the adoption of Law #2673-VIII simplified the process for Orthodox religious communities to change their affiliation to a religious center and ensured their rights to change canonical subordination freely. As a result, hundreds of UOC-MP parishes were able to legally formalize their transition to the OCU. However, the haste with which the Parliament adopted these legislative changes complicated the state registration procedure for all religious communities, which can be considered as exceeding the appropriate limits of state intervention. In order to comply with the principle of proportionality of state intervention, Ukrainian lawmakers are currently working on developing new legislative amendments to address these shortcomings.<sup>14</sup>

#### **4 Draft Law 2023 on Severing Ties with Russian Religious Centers**

On 1 December 2022, President Volodymyr Zelenskyy announced a draft law that would oblige religious organizations to sever ties with religious centers in Russia due to its aggression against Ukraine. Signing the decision of the National Security and Defense Council of Ukraine aimed at ensuring the “spiritual independence” of the state, President Zelenskyy (2022) said in his video address:

Unfortunately, even Russian terror and a full-scale war have not convinced some figures that overcoming the temptation of evil is worth the effort. In this case, we must create conditions where any figures dependent on the aggressor state will not have any opportunity to manipulate Ukrainians and weaken Ukraine from within.

Numerous media outlets and experts hastily characterized this legislative initiative as a ban on the UOC-MP. Nevertheless, the changes suggested later by the Ukrainian government represent a moderately gradual yet not entirely perfect and clear approach to curbing Russia’s influence on religious communities in Ukraine regardless of their denomination. Furthermore, the Ukrainian Parliament has not rushed to adopt draft law #8371 submitted by the government on 19 January 2023 (*Parliament of Ukraine*, 2023b). Instead, the Parliament is engaging in consultations with experts and the Ukrainian

Council of Churches and Religious Organizations (UCCRO), and preparing to refine the proposed amendments during the consideration process in several readings. After the meeting with the Parliament Chairman, UCCRO (2023) unanimously declared (a) the inadmissibility of the activities of any organizations in Ukraine, including religious ones, whose centers and leadership are located in the Russian Federation; (b) the inevitability of punishment for all persons involved in aiding the enemy and treason, regardless of which denomination and church they belong to and whether they have any rank; (c) equality before the law of representatives of all religions.

The general approach of governmental draft law #8371 can be summarized as follows:

- The State Service of Ukraine for Ethnic Policies and Freedom of Conscience is granted the right to conduct religious studies expertise on the activities of religious organizations to determine their affiliation with religious centers located in Russia, which is considered an aggressor state by the law.
- In case of affiliation with any Russian religious center, the State Service will issue an order for such religious organization to eliminate the violations identified during the religious studies expertise.
- If the religious organization fails to eliminate the violations within a one-month period from the date of the order, the State Service has the right to appeal to the court with an administrative claim to terminate the activities of the religious organization (*Parliament of Ukraine*, 2023b).

Several other legislative initiatives aimed at directly banning the UOC-MP are submitted to the Ukrainian parliament, but they have no prospects to pass because of the evident contradiction of international standards on religious freedom. In contrast, the advantage of the governmental draft law in the phased approach is to take measures against Ukraine's religious organizations affiliated with Russian religious centers. This approach is primarily aimed at encouraging the severing of ties to the aggressor state, rather than explicitly prohibiting a particular church or denomination. Of course, such state intervention in the internal affairs of religious organizations can also be considered as a separate violation of religious freedom. However, the Ukrainian government argues that this measure is appropriate and proportionate under martial law and given the Kremlin's complete control over all Russian religious centers in that Putin's authoritarian regime doesn't allow freedom of religion or belief at all.<sup>15</sup> The State Service expressed this position in response to a petition from UOC-MP faithful (Kominko, 2023):

The Moscow Patriarchate is fully controlled by the Russian leadership and directed by it towards the destruction of Ukrainian statehood and the Ukrainian people, including the faithful of the UOC-MP. In this sense, the

draft law pursues a legitimate goal and, at the same time, does not burden the conscience of the Orthodox faithful, since subordination to the Moscow Patriarchate is not part of Orthodox belief. In contrast, subordination to the inspirers of killers and rapists is difficult to justify with Christian conscience.

From law-making standards, draft law #8371 appears imperfect and requires further refinement to avoid broad discretion in the powers of officials who will conduct religious studies expertise, issue orders to religious organizations affiliated with the Russian religious centers, and prepare submissions to the court in cases of non-compliance with these orders. Specifically, the draft law needs to clearly define (a) the procedure and required conduct for conducting religious studies expertise, (b) the criteria for identifying connections with Russian religious centers that pose a threat to the state, its citizens' lives, and health, (c) the requirements for the form, content, and legal force of orders issued based on the results of religious studies expertise, (d) the possibility of extending the period for executing an order by more than one month, taking into account the probable need to undergo a lengthy state registration procedure to make changes to statutory documents, and (e) the consequences of a court decision to terminate the activities of a religious organization for non-compliance with the order, including its property, funds, and sacred objects.

Moreover, it is essential to consider how the legislative changes proposed in draft law #8371 will be implemented in practice if passed. It is in the interests of the Ukrainian government to ensure that these legislative amendments do not become a legal tool for the deliberate persecution of the UOC-MP and the redistribution of its property in favor of other Orthodox denominations. Remembering the experience of the legislative changes of 2018, which the UOC-MP ignored, the Ukrainian government should evaluate the prospect of missing the orders of the State Service by the leadership and local units of the UOC-MP. Furthermore, it is crucial to predict the potential implications for interfaith peace and social cohesion in Ukraine if an extreme measure like a court decision to terminate the activities of the UOC-MP metropolis or other leading structures or parishes as legal entities is implemented. And it is important to remember, akin to the matter of renaming the UOC-MP, the court cannot issue a verdict concerning the entire UOC-MP as a religious association, but must examine the issue of terminating the activity of each of the approximately 12,000 UOC-MP parishes and other individual structural units.

## **5 National Security or Religious Freedom?**

The full-scale Russian invasion provided the Ukrainian government with strong arguments to take more decisive action to defend against Russian aggression, including in the religious sphere. Investigations actively initiated



by the Security Service of Ukraine since November 2022 revealed dozens of priests and a few bishops of the UOC-MP who spread Russian propaganda and ideology of the Russian World from the church pulpit, collaborated with the Russian authorities and its occupation administrations, and among other crimes committed state treason.<sup>16</sup> As *Reuters* reported (Hunder et al., 2023), 61 UOC-MP clergy have had criminal cases opened against them since the start of 2022 with 7 found guilty by court verdicts. Created by the *Ministry of Culture and Information Policy of Ukraine* (2023), the commission documented misapplication facts in Kyiv-Pechersk Lavra, a sacred heritage site leased by the UOC-MP from the state. Moreover, the Security Service of Ukraine found millions of cash and identified suspicious citizens of the Russian Federation during searches of the Kyiv-Pechersk Lavra (Zubkova, 2022).

The criminal charges brought against the UOC-MP clergy should not be perceived as political persecution since Ukrainian society is dissatisfied for years with the impunity of the Church representatives for their crimes and abuses of religious freedom, due to the protection from pro-Russian parliamentarians and governmental officials. For example, the court decision on the house arrest of Metropolitan Pavlo (Lebed), the UOC-MP abbot of the Kyiv-Pechersk Lavra monastery, contains substantiated accusations and evidence of his state treason and other violations of the law (*Deutsche Welle*, 2023). Moreover, journalists have published investigations about the Russian citizenship of Metropolitan Onufriy (Berezovsky) and other UOC-MP leadership (Tkach, 2023). At the same time, the UOC-MP leadership doesn't take any measures to condemn the actions of some bishops and priests who openly collaborate with the Russian authorities and have been accused of state treason. There was neither public condemnation nor disciplinary action in the form of deprivation of the right to perform priestly duties. This position of the UOC-MP Primate and other bishops contradicts their own words about the formal separation from the ROC after the decisions of the UOC-MP Council in Kyiv on 27 May 2022 (*Radio Free Europe/Radio Liberty*, 2022b).

In times of martial law, the Ukrainian government faces the challenge of responding to new circumstances that reveal the compromised leadership of the UOC-MP and leave open the question of the Kremlin's use of this church structure to spread Russian World narratives, justify Russian aggression, weaken resistance from the Ukrainian people from within, and even adjust the fire of Russian troops and locate positions of Ukrainian defenders. In this case, certain bishops and priests of the UOC-MP pose not imaginary risks to national security but a genuine threat to the life and health of residents of Ukraine. Such concerns of the Ukrainian authorities and the whole society are heightened in connection with documented numerous war crimes committed by Russian military personnel that have signs of a genocidal intent, which is a separate crime under international humanitarian law (Vasin et al., 2022).

However, the question remains open whether the termination of activity of the UOC-MP as a religious association and its structural units will be able to solve the legitimate goals of the Ukrainian government to protect its people from Russian subversions through the use of religious communities that have remained a canonical connection with the Moscow Patriarchate. Will such state intervention be proportional in case draft law #8371 is adopted and implemented till the final stage? And will it not have the opposite effect by creating a halo of martyrdom for the UOC-MP and causing several thousand of its parishes to operate underground?

The restriction of religious freedom based on national security threats often has the opposite effect. For instance, the forced renaming of UOC-MP parishes led to Orthodox believers' anger, and to their joining active protests for the zealous protection of the interests of their denomination and a sense of being a victim of persecution for their faith (*Religiyna Pravda*, 2021). Nevertheless, the problems of Russian propaganda and misinformation remain unresolved, as such activities are mostly carried out by individual priests or bishops, rather than by a certain group of believers registered as a legal entity. As Vovk (2019, p. 48) noted, "It is still a challenge for the Ukrainian authorities to prove that the UOC-MP poses a threat to national security or territorial integrity in order to justify the restrictions imposed on that church." Although there have been more and more cases of state treason and collaborationism with Russia as an aggressor state investigated against the UOC-MP clergy in recent months, the Ukrainian parliament must carefully consider international obligations regarding religious freedom before resorting to extreme measures such as a termination of the activities of the entire Church, which has almost two million faithful (*Deutsche Welle*, 2022).

Legislative and administrative limitations in the name of national security, especially if they are very broad or applied arbitrarily, "can worsen rather than improve security" (OSCE/ODIHR, 2019, p. 6). The opposite effect of such measures taken by the state can be explained by the fact that contrasting national security and religious freedom is a disastrous approach. Instead of choosing between the two and pondering which aspect of freedom should be sacrificed for strengthening security, the concept of the interrelationship between security and religious freedom should be considered. In this context, the OSCE's comprehensive approach to security is relevant, because it "does not frame freedom of religion or belief and security as competing rights, but recognizes them as complementary, interdependent and mutually reinforcing objectives that can and must be advanced together" (OSCE/ODIHR, 2019, p. 6).

## 6 Conclusion: National Security and Religious Freedom

Given the interrelationship between security and religious freedom, several alternative proposals can be formulated for Ukrainian leaders to minimize

the use of religion in Russian military aggression against Ukraine while respecting international obligations in the field of religious freedom. These proposals will be useful for other states facing similar challenges.

- A Regarding the presence of UOC-MP chaplains in the Ukrainian Army, it would be expedient to provide alternative opportunities for the pastoral care of servicemen belonging to the UOC-MP. For example, to allow servicemen to have a short vacation for visiting a relevant Orthodox parish or to invite an Orthodox priest with an impeccable reputation to conduct services or sacraments on a volunteer basis (as a non-staff chaplain) and without his permanent presence at the military unit.
- B In order to safeguard the Ukrainian people against Russian propaganda and the subversive activities of certain UOC-MP bishops and priests, it is advisable to maintain the current approach of individual criminal prosecutions of those who are suspected of offense, rather than impose a termination of the activities of all parishes and structural units of the UOC-MP. This approach would allow the Ukrainian government to address legitimate concerns about national security without excessively infringing on the religious freedoms of Ukrainian citizens. Individuals within the clergy, like any other citizens, must face personal criminal prosecution in the event of crimes against national security, as outlined in Articles 109–114 of the Criminal Code of Ukraine (*Кримінальний кодекс України*. Ukraine. Parliament of Ukraine, 2001). According to the OSCE/ODIHR's (2019, p. 34) recommendations,

The fact that some individuals engage in such acts is not an indication that an entire religious or belief community shares these views or condones these activities. In such cases, personal and group actions and responsibilities should always be regarded as separate.

- C If the illegal actions of the entire parish or certain religious administration like a metropolis or eparchy are proven, its activities may be terminated only by a court decision according to Article 16 of the *Law of Ukraine on Freedom of Conscience and Religious Organizations (Про свободу совісті та релігійні організації*. Ukraine. Parliament of Ukraine, 1991). Nevertheless, governmental draft law #8371 should ensure that the UOC-MP can continue to operate if the Church leadership takes all possible measures on its part to sever its subordination and canonical ties with the ROC and lose any affiliation with the Moscow Patriarchate.

It is essential to strike a balance between protecting national security and religious freedom. The Ukrainian government should avoid overly restrictive measures that could limit religious freedom on the local level and create a perception of martyrdom for the UOC-MP if it is forced to act underground. Therefore, draft law #8371 should provide clear and reasonable criteria for determining whether a particular church has ties with the

- Russian religious center that threaten national security, and any legal action taken should be proportional and based on evidence of wrongdoing.
- D Instead of demonizing the UOC-MP faithful as members of the church with a religious center in the aggressor state and inciting religious hatred against them, it would be more effective to encourage priests, bishops, and local parishes (as well as representatives of any other denomination) to strictly comply with the legislation of Ukraine. This can be achieved by punishing individual offenders, regardless of their position in the church. The response of law enforcement agencies to every crime against national security at the individual level would be a more effective preventive measure for other faithful and religious leaders of any denomination.
- E Also, reducing intolerance toward the UOC-MP faithful could create a basis for a calmer and more natural process of formation of the autocephalous OCU, when believers could choose one or another denomination depending on the fruits of its pastoral and social activities, without being implacable enemies. After all, the enmity between the two Orthodox denominations in Ukraine does not promote the idea of uniting the Orthodox community into a single autocephalous church, but only destroys interreligious peace in the state and harms security interests. Ultimately, the goal should be to promote unity and peace within the Ukrainian society while protecting national security interests.

In conclusion, it can be summarized that abuses of religious freedom, which go unpunished, encourage the violators to commit even greater crimes. As an alternative, bringing guilty religious representatives to justice on an equal footing with other individuals is an indication of the state's ability to guarantee the security of the whole society based on equality before the law. In this case, the affiliation or non-affiliation of an individual to a particular parish or denomination, from one side, should not obstruct the application of statutory punishment for a guilty person and, from another side, should not lead to the persecution of innocent persons. In this way, the state can guarantee the security and freedom of religion or belief for all its citizens, regardless of their attitude to religion.

## Notes

- 1 The Russian World is a concept based on the distorted representation of Russian history, culture, and religious roots, and used to relativize the borders between nation-states and to justify the Kremlin's interference in the internal affairs of foreign states, up to the full-scale military invasion like Moscow does against Ukraine (since 2014 until now). The conception favors the Russian Orthodox Church as a pillar and promoter of the Russian identity despite borders, which becomes the basis of the targeted persecution of religious minorities in Russia and the territories under its influence.
- 2 Quotations from Vladimir Putin's statement are provided by BBC News (2014).
- 3 Moscow Patriarch Kirill said this in Bulgaria on the air of Bulgarian National Television (*Radio Free Europe/Radio Liberty*, 2018b).

- 4 Moscow Patriarch Kirill repeated the narratives of the Kremlin propaganda in an interview with the author and host of the Vesti Nedeli program, Kremlin propagandist Dmitry Kiselev (*RBC-Ukraine*, 2016).
- 5 Radio Free Europe/Radio Liberty (2015) reported this incident on 9 May 2015.
- 6 In Russian-occupied Crimea, the C-400 missile system was consecrated by the priests of the Orthodox Church of the Moscow Patriarchate (*Crimea Realities*, 2018).
- 7 The Security Service of Ukraine has charged about a dozen UOC-MP priests with the crimes of treason and collaboration with Russia as an aggressor state. Charges against some of them have already resulted in court verdicts (see, for example, *Radio Free Europe/Radio Liberty*, 2023a).
- 8 The Russian Federation was recognized as an aggressor state by the Law of Ukraine #1207-VII of 15 April 2014 (*Про забезпечення прав і свобод*. Ukraine. Parliament of Ukraine, 2014).
- 9 These requirements are prescribed by Law of Ukraine #2662-VIII of 20 December 2018 (*Про внесення зміни до статті 12 Закону України*. Ukraine. Parliament of Ukraine, 2018).
- 10 This requirement is prescribed by Law of Ukraine #2673-VIII of 17 January 2019 (*Про внесення змін до деяких законів України*. Ukraine. Parliament of Ukraine, 2019).
- 11 As an example, on 28 April 2023 the Vechirniy Kyiv newspaper informed that since the beginning of the full-scale Russian invasion, not a single parish in Kyiv has left the UOC-MP (Novosvitnya, 2023).
- 12 Decision of the Constitutional Court of Ukraine (2022) #4-p/2022 of 27 December 2022.
- 13 On 15 May 2023, the Kyiv District Administrative Court confirmed the affiliation of UOC-MP with ROC. The court emphasized that the adoption of a new version of the UOC-MP's Statute of Governance at the Council on 27 May 2022 did not lead to the severance of the UOC-MP's ecclesiastical and canonical ties with ROC (Taranenko, 2023).
- 14 One of the legislative initiatives in this area is the draft Law on Amendments to Certain Legislative Acts of Ukraine on Improving the Legal Regulation of the Activity of Religious Organizations (Register No. 8262 dated 05.12.2022) (*Parliament of Ukraine*, 2023a).
- 15 Since 2017, USCIRF has recommended that the U.S. Department of State designate Russia as a "Country of Particular Concern," or CPC, for engaging in systematic, ongoing, and egregious violations of religious freedom, as defined by the International Religious Freedom Act (IRFA). In 2021, the State Department implemented this recommendation, recognizing the Russian government as one of the world's worst violators of religious freedom (*United States Commission on International Religious Freedom*, 2022).
- 16 On 2 December 2022, the Security Service of Ukraine (SSU) announced the completion of counterintelligence (security) measures at the facilities of the UOC-MP located in Zakarpattia, Rivne, and Zhytomyr regions (*Radio Free Europe/Radio Liberty*, 2022a). In January 2023, the SSU reported that similar counterintelligence inspections were conducted in the UOC-MP structures in the Kherson, Kirovohrad, Dnipropetrovsk, and Rivne regions (*Radio Free Europe/Radio Liberty*, 2023b).

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