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UKRAINE: Latest draft Law targets Ukrainian Orthodox Church for Russian links

By Dmytro Vovk, @VovkDmytro (<https://x.com/VovkDmytro>)

On 5 March, the parliamentary Committee on Humanitarian and Information Policy stated that a draft Law targeting the Ukrainian Orthodox Church (UOC) for Russian links is ready for second reading, no date for which has been set. Without careful consideration and redrafting to remove the numerous human rights problems in the current draft, the Law would not implement Ukraine's legally-binding international obligations to respect and protect the freedoms of religion or belief, expression, and association.

On 5 March, the parliamentary Committee on Humanitarian and Information Policy stated that a draft Law that aimed to close religious organisations (associations) affiliated with "centres of influence of religious organisations or associations with ruling centres" in "states conducting armed aggression against Ukraine" has been prepared for second reading by Ukraine's parliament, the Verkhovna Rada.

Parliament has not yet set a date for the second reading of the law, whose prime target is the Ukrainian Orthodox Church (UOC), which is historically and ecclesiastically affiliated with the Russian Orthodox Church – Moscow Patriarchate (ROC) (see below).

If it passes through the second reading, the draft Law would require a third reading to be finally approved. The third reading might immediately follow the second one. Once the draft is finally approved, it would be sent to the President. The President could either sign it into law, or veto it and return it to the Verkhovna Rada with his objections and proposed amendments. The Verkhovna Rada could then either implement the President's amendments, or reject the veto by a constitutional majority. This is either two thirds of the 450 deputies, or 300 deputies (see below).

Proponents of the draft Law advocate for its adoption based on the UOC's connections with the ROC, the endorsement by some in the UOC of Vladimir Putin's war against Ukraine, and UOC involvement in the dissemination of the "Russian world" (Russky mir) ideology. This is a set of Russian chauvinist and imperialist ideas defining Ukraine as a territory of Russia's influence and calling for Russian control of Ukraine (see below).

The United Nations (UN) High Commissioner for Human Rights is among the human rights defenders who have expressed concern about the previous February 2023 draft of the Law. Among their criticisms is that there is no legally-admissible evidence that the ROC guides or compels the UOC as an institution to commit crimes (see below).

Even were such evidence to exist, a total ban of an entire religious community (with over 8,000 separate legal entities on territory under the Ukrainian government's control) simply for having historical or ecclesiastical links with the ROC would be a disproportionate punishment. Stripping a religious community of legal status can in international law happen only when less restrictive measures cannot adequately address security concerns (see below).

"Denial of legal personality or de-registration of a religious or belief community should not be based on alleged threats to security, but be clearly based on evidence of illegal acts by the religious or belief community in question," as the Organisation for Security and Co-operation in Europe (OSCE)'s Freedom of Religion or Belief and Security: Policy Guidance notes (see below).

Ukraine's existing criminal and other public law already allows for the prosecution of any individual and entity involved in illegal activities, such as collaboration with the Russian army and secret services. As the OSCE's Freedom of Religion or Belief and Security: Policy Guidance notes: "Any wrongdoings on the part of individuals should, therefore, be addressed through criminal, administrative or civil proceedings against that person, rather than directed at the religious or belief community as a whole" (see below).

The draft Law would also prohibit the operation of any Russian religious organisation that in any form supports the Russian aggression, and specifically bans the operation of the ROC (Article 3 of the draft) as well as two types of Ukrainian religious entities according to a list of criteria (see below).

This list of criteria for banning is highly problematic, and seems excessively burdensome for the UOC and its communities. First, as in the previous February 2023 draft, the affiliation criteria would not require the state to prove any illegal behaviour on the part of the UOC as a whole or its communities (see below).

Second, the affiliation criteria refer to facts which are beyond the UOC and its communities' control as a ground for the dissolution of the UOC. These include the ROC charter and other documents, its decisions and actions. The UOC declared its independence from the ROC in May 2022, but it is highly unlikely that the ROC will accept this decision. The Ukrainian state seems to prefer to rely on ROC documents instead of UOC documents in defining the current status of the UOC. Under this logic, if the draft Law is adopted, it would only be necessary for Moscow Patriarch Kirill to give his "blessing" to any UOC cleric for the Ukrainian state to initiate the procedure for the UOC's dissolution (see below).

Third, the requirement for UOC clergy to publicly in writing decline any ROC appointments or membership, and "make all necessary acts, prepare all necessary notifications and other documents for termination of their appointment and breaking ties" with the ROC is excessive. It should also be noted that some UOC clergy in Russian-occupied territories have come under pressure - including being disappeared and tortured - from occupation forces not to make such statements and have a reasonable fear of occupation force reprisals. Instances of UOC clerics' collaboration with the Russian occupying authorities have also been reported (see below).

Among the other problems with the draft Law, it would also allow the banning of religious organisations affiliated with Russia for any other "violations regarding the establishment and operation" of these organisations. The draft Law does not clarify whether these violations should be significant or harmful to other persons or society. This potentially allows almost unlimited room for arbitrary state actions against UOC communities that decide not to leave the UOC.

The current draft Law – including the procedural aspects of dissolution and requirement for religious "expert" analysis - does not conform to Ukraine's international human rights obligations to respect and protect the freedoms of religion or belief, expression, and association (see below).

The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) has not received a request from the Ukrainian authorities to review the draft Law (<https://legislationline.org/legal-reviews>), ODIHR spokesperson Katya Andrusz told Forum 18 from Warsaw on 6 March. However, "we would be very willing to do so if asked".

Similarly, the Council of Europe's Venice Commission told Forum 18 that it has not received a request to review the draft Law (https://www.venice.coe.int/WebForms/pages/?p=01_activities&lang=EN).

Draft Law approved for second reading

In October 2023, Ukraine's Parliament, the Verkhovna Rada, adopted in the first reading a draft Law (https://www.forum18.org/archive.php?article_id=2807) that aimed to close religious organisations (associations) affiliated with "centres of influence of religious organisations or associations with ruling centres" in "states conducting armed aggression against Ukraine". That draft imposed an obligation on the state to prove any such affiliation in court. The prime target of the law is the Ukrainian Orthodox Church (UOC), which is historically and ecclesiastically affiliated with the Russian Orthodox Church – Moscow Patriarchate (ROC).

On 5 March 2024, the parliamentary Committee on Humanitarian and Information Policy, which is responsible for the draft Law, stated that an amended draft of the Law has been prepared for its second reading.

Parliament has not yet scheduled the second reading. If passed in its second reading, the draft Law would require a third reading to be finally approved. The third reading might immediately follow the second one. Once the draft is finally approved, it would be sent to the President. The President could either sign it into law, or veto it and return it to the Verkhovna Rada with his objections and proposed amendments. The Verkhovna Rada could then either implement the President's amendments, or reject the veto by a constitutional majority. This is either two thirds of the 450 deputies, or 300 deputies.

Proponents of the draft Law advocate for its adoption based on the UOC's connections with the ROC (https://www.forum18.org/archive.php?article_id=2807), the endorsement by some in the UOC of Vladimir Putin's war against Ukraine, and UOC involvement in the dissemination of the "Russian world" (Russky mir) ideology. This is a set of Russian chauvinist and imperialist ideas defining Ukraine as a territory of Russia's influence and calling for Russian control of Ukraine.

The ROC and its leadership has actively supported Putin's aggression against Ukraine (https://www.forum18.org/archive.php?article_id=2738), and the Russian government has pressured other Russian religious leaders to support Putin's aggression against Ukraine (https://www.forum18.org/archive.php?article_id=2763).

Russian occupation officials have often threatened religious leaders if they refuse to renounce their allegiance to religious bodies

occupation forces do not like. These include religious communities of any faith which remain part of communities with their headquarters in Ukrainian government-held territory (https://www.forum18.org/archive.php?article_id=2886).

This has led to the killing of Ukrainian religious leaders who resist such pressure, most recently between 13 and 15 February 2024 59-year-old Fr Stepan Podolchak (https://www.forum18.org/archive.php?article_id=2893) of the Orthodox Church of Ukraine (OCU) in Kalanchak in Russian-occupied Kherson Region.

In all, at least 30 Ukrainian clerics of different religious communities have been murdered (https://risu.ua/en/in-the-past-two-years-russian-forces-killed-thirty-and-imprisoned-twenty-six-ukrainian-clergymen_n146413) since the beginning of the Russian full-scale aggression.

Proponents of the Ukrainian draft Law also refer to the Security Service of Ukraine (SBU) having reported about 70 cases of UOC clerics (including bishops) justifying Russian aggression against Ukraine (https://www.forum18.org/archive.php?article_id=2807), the incitement of religious hatred, and collaboration with Russian occupation forces. Several UOC clerics have already been given jail sentences and then exchanged with Russia (<https://www.pravda.com.ua/eng/news/2023/02/17/7389754/>) in prisoner exchanges. While some cases related to national-security-related crimes, such as collaboration with the Russian military, others related to incitement of religious hatred or the public dissemination of Soviet symbolic prohibited in Ukraine.

According to the Registry of Court Decisions, as of 5 March 2024 courts had handed down verdicts in 36 criminal cases against UOC clerics. These included two cases against a former cleric, and 12 cases for incitement to religious hatred (usually against the rival Orthodox Church of Ukraine). Other cases involved crimes against the constitutional order and territorial integrity of Ukraine, treason, collaboration with the Russian occupation authorities, unauthorised sharing of information about Ukrainian military forces, and public and non-public justification of Russian aggression.

However, since February 2022 courts have handed down over 2,000 verdicts in such cases. For example, courts of the first instance had handed down verdicts on over 620 treason cases (only 1 against a UOC cleric) and 150 on unauthorised sharing of information about Ukrainian military forces (only 1 against a UOC cleric).

Evidence?

The United Nations (UN) High Commissioner for Human Rights (<https://www.ohchr.org/en/statements-and-speeches/2023/12/russia-should-immediately-cease-its-use-force-against-ukraine-turk>) Volker Türk is among the human rights defenders who have expressed concern about the February 2023 draft of the Law. Among their criticisms is that there is no legally-admissible evidence that the ROC guides or compels the UOC as an institution to commit crimes (https://www.forum18.org/archive.php?article_id=2807).

Even were such evidence to exist, a total ban of an entire religious community (with over 8,000 separate legal entities (<https://opendatabot.ua/analytics/sbu-vs-russian-church>) on territory under the Ukrainian government's control) simply for having historical or ecclesiastical links with the ROC would be a disproportionate punishment. Stripping a religious community of legal status can in international law happen only when less restrictive measures cannot adequately address security concerns.

This could mean that deprivation of legal status of a religious community can legally happen only when the entire leadership or the majority of members – not just individual leaders or members – are directly involved in illegal activities. "The fact that some individuals engage in such [illegal] acts is not an indication that an entire religious or belief community shares these views or condones these activities," as the Organisation for Security and Co-operation in Europe (OSCE)'s Freedom of Religion or Belief and Security: Policy Guidance (<https://www.osce.org/files/f/documents/e/2/429389.pdf>) notes.

"Denial of legal personality or de-registration of a religious or belief community should not be based on alleged threats to security, but be clearly based on evidence of illegal acts by the religious or belief community in question," as the OSCE Freedom of Religion or Belief and Security: Policy Guidance (<https://www.osce.org/files/f/documents/e/2/429389.pdf>) notes. It adds that this "can only be contemplated in cases of grave and repeated violations of endangering public order and if lighter sanctions, such as a warning, a fine or withdrawal of tax benefits, cannot be applied effectively".

Ukraine's existing criminal and other public law already allows for the prosecution of any individual and entity involved in illegal activities, such as collaboration with the Russian army and secret services. As the OSCE Freedom of Religion or Belief and Security: Policy Guidance (<https://www.osce.org/files/f/documents/e/2/429389.pdf>) notes: "Any wrongdoings on the part of individuals should, therefore, be addressed through criminal, administrative or civil proceedings against that person, rather than directed at the religious or belief community as a whole."

March 2024 amended draft Law

On 5 March 2024, the parliamentary Committee on Humanitarian and Information Policy, which is responsible for the draft Law, stated that the amended draft Law has been prepared for the second reading. In the amended version, the draft starts with a preamble

emphasising the Russian Orthodox Church (ROC)'s support for the Russian aggression and "numerous facts of illegal acts of the ROC and religious organisations subordinated to it in Ukraine".

The draft Law also prohibits the operation of any Russian religious organisation that in any form supports the Russian aggression, and specifically bans the operation of the ROC (Article 3 of the draft) as well as two types of Ukrainian religious entities:

1. organisations (associations) affiliated, directly or via other entities, with the ROC;
2. organisations involved in disseminating "Russian world" ideology. The draft also provides more detailed regulations of legal procedures applied to these organisations.

A religious organisation (association) is considered as affiliated with the ROC if it fits one of the following seven criteria:

1. It is incorporated, directly or indirectly, in the ROC;

(Indirect incorporation means incorporation in any entity, religion, non-profit or for-profit established, owned or run by the ROC and organisations affiliated with the ROC.)

2. Its charter or official documents or decisions of ruling bodies contain provisions regarding its incorporation in the ROC;
3. The ROC's charter or official documents or decisions of its ruling bodies contains a provision recognising the Ukrainian organisation (association) as a part of its structure, and the right of ROC charter ruling bodies to adopt binding decisions on organisational or ecclesiastical issues regarding the Ukrainian organisation (association);
4. ROC charter or official documents or decisions of its ruling bodies contains a provision regarding the mandatory appointment of a Ukrainian organisation's (association's) leaders or representatives to ROC charter ruling bodies.

(This criterion does not apply if all these leaders or representatives publicly and in writing decline their appointment and "make all necessary acts, prepare all necessary notifications and other documents for termination of their appointment and breaking ties" with the ROC.)

5. The ROC can influence administrative decisions or activities of a Ukrainian organisation (association) due to its ecclesiastical or organisational subordination to the ROC;
6. The ROC appoints, elects, confirms, approves, or blesses the head of a Ukrainian religious organisation (association);
7. The ROC adopts, confirms, approves, blesses, or permits the charter of a Ukrainian organisation (association).

In addition, the draft Law allows the banning of religious organisations whose officials have convicted of crimes against the national security of Ukraine, or for committing crimes related to public and non-public justification of the Russian aggression, incitement of religious hatred, fraud, money or property laundering, terrorism, propaganda of war, propaganda of Communist and Nazi regimes, genocide and mercenaries. The draft Law requires, however, that there must be proof that these crimes were committed on behalf of the religious organisation.

Problematic and burdensome requirements

This list is highly problematic, and seems excessively burdensome for the UOC and its communities.

First, as in the previous February 2023 draft (https://www.forum18.org/archive.php?article_id=2807), the affiliation criteria do not require the state to prove any illegal behaviour on the part of the UOC as a whole or its communities. The fact of any form of ecclesiastical or documentary connection with the ROC would be enough for the UOC and its affiliated entities to be prohibited, even if they have as entities committed no crimes.

This contradicts the international human rights law noted above, which requires a state to punish provable illegal behaviour on the part of individuals, but not religious communities which cannot be proved to have committed crimes. Also as noted above, deprivation of legal status can be used only as a measure of last resort when other measures are not available or ineffective.

Second, the affiliation criteria refer to facts which are beyond the UOC and its communities' control as a ground for the dissolution of the UOC. These include the ROC charter and other documents, its decisions and actions. The UOC declared its independence from the ROC (<https://talkabout.iclrs.org/2023/02/24/no-end-to-the-dead-end>) in May 2022, but it is highly unlikely that the ROC will accept this decision. The Ukrainian state seems to prefer to rely on ROC documents instead of UOC documents in defining the current status of the UOC. Under this logic, if the draft Law is adopted, it would only be necessary for Moscow Patriarch Kirill to give his "blessing" to any UOC cleric for the Ukrainian state to initiate the procedure for the UOC's dissolution.

Third, the requirement for UOC clergy to publicly in writing decline any ROC appointments or membership, and "make all necessary acts, prepare all necessary notifications and other documents for termination of their appointment and breaking ties" with the ROC is excessive. If the Ukrainian state has reliable evidence that certain UOC clerics are involved in the operation of ROC bodies and support Russian aggression, the state can apply Ukrainian criminal law to punish these clerics. But if the state has no evidence of UOC clergy's actual participation in ROC bodies and support for Russian aggression, the demand for UOC clergy to publicly and in writing condemn the ROC is legally unenforceable – even if it is politically desirable or morally justified.

It should also be noted that some UOC clergy in Russian-occupied territories have come under pressure from occupation forces not to make such statements (https://www.forum18.org/archive.php?article_id=2784) and have a reasonable fear of occupation force reprisals. For example, Fr Kostiantyn Maksimov, a UOC priest, has been serving in the Church of the Assumption of the Blessed Virgin Mary in the city of Tokmak in Ukraine's Zaporizhzhia Region. Tokmak has been under Russian occupation with the beginning of the renewed invasion in February 2022. In May 2023 Russian occupation forces disappeared Fr Kostiantyn (https://www.forum18.org/archive.php?article_id=2867), and occupation forces have refused to give any information since on whether he is alive or dead. Similarly, UOC priest Fr Ihor Novosilsky was detained by Russian occupation forces from August 2022 until May 2023, during which time he was tortured (https://www.forum18.org/archive.php?article_id=2867).

Artyom Sharlay, the head of the Russian occupiers' Religious Organisations Department at Zaporizhzhia Regional Administration's Social and Political Communications and Information Policy Department, claimed to Forum 18 (https://www.forum18.org/archive.php?article_id=2867) that Fr Kostiantyn had not wanted the Berdyansk Diocese of the UOC to move to be an integral part of the Russian Orthodox Church (ROC). The Russian Orthodox Church took over the UOC Diocese in May 2023, just days before Fr Kostiantyn was seized. Sharlay did not explain why his claims about Fr Kostiantyn's views on the affiliation of his Diocese could justify the occupation forces' enforced disappearance of him.

Occupation officials pressured another local UOC Church priest, Fr Vladimir Saviisky of St Nicholas Church in Primorsk, in 2023 to accept the transfer of the Berdyansk Diocese from the UOC to the ROC. He refused (https://www.forum18.org/archive.php?article_id=2869).

It is not legally supportable for the Ukrainian state to require the dissolution of the UOC if a UOC cleric – for example a priest living under Russian occupation – does not publicly and in writing condemn the ROC and support for Russian aggression.

Fourth, the draft Law uses terms - such as "influence", "blessing", "all necessary acts", "ecclesiastical issues" - which are too vague and broad for legal certainty – especially in the context of the heavy punishments imposed by the draft Law. For example, the criteria refer to ROC's ability to influence or control UOC communities due to their ecclesiastical relationship with the ROC and the ROC charter. This grants the state almost unlimited discretion in deciding which UOC community should be banned and when, and is – again – based on the ROC's view of the UOC rather than the UOC's view of itself.

Fifth, even if we agree with the Ukrainian state that the UOC is institutionally subordinated to the ROC, the concept of loss of legal status as a punishment for ecclesiastical or historical links is internally contradictory. The state argues that these links with the ROC makes UOC communities dangerous for national security.

If UOC communities which are not involved in any kind of illegal behaviour are dangerous enough to be liquidated, formal separation from the ROC (which the UOC already decided on in May 2022 (https://www.forum18.org/archive.php?article_id=2807)) will not make them any less dangerous. And if a formal declaration condemning the ROC (even were it to be insincere or intentionally false) or departure from the ROC makes UOC communities safe, they cannot have been dangerous in the first place.

Finally, the draft Law also allows the banning of religious organisations affiliated with Russia for any other "violations regarding the establishment and operation" of these organisations. The draft Law does not clarify whether these violations should be significant or harmful to other persons or society. This potentially allows almost unlimited room for arbitrary state actions against UOC communities that decide not to leave the UOC.

The "Russian world" ideology

The draft Law defines the "Russia world" ideology as a Russian neo-colonial doctrine grounded in chauvinist, Nazi, racist, xenophobic, religious ideas, images and goals, the destruction of Ukraine, the genocide of the Ukrainian people, and non-recognition of the sovereignty of Ukraine and other countries. "Russian world" ideology is also defined as aiming at the violent expansion of the Russian supranational imperial space as a tool of the special civilisational right of Russians to mass murder, state terrorism, military interventions in other countries, the occupation of territories, the expansion of the canonical territory of the Russian Orthodox Church beyond the territory of the Russian Federation.

Many of the concepts are expressed in such confusing and vague language (eg. "neo-colonial doctrine", "civilisational right to mass murders") that they lack legal precision and so are difficult to legally apply.

According to the draft Law, a religious organisation involved in multiple dissemination of the "Russian world" ideology or its parts shall be deprived of legal status. The draft states that the dissemination can be committed by the organisation itself as well as its ruling bodies, or any other person that acts on behalf of this religious organisation and expresses approval for "Russian world" ideology in any form.

The Ukrainian state has a strong legitimate interest in preventing the spreading of Russian propaganda, including the justification of Russia's unprovoked attack on Ukraine. However, it is unclear why the state needs to specifically prohibit the "Russian world" ideology when the Ukrainian Criminal Code already prohibits:

- public denial of the Russian aggression (Article 111-1);
- propaganda for the war (Article 436);
- non-public justification, legitimisation, and denial of Russia's military aggression against Ukraine and glorification of its participants (Article 436-2);
- and spreading ethnic and religious hatred (Article 161).

As criminal cases initiated by the Security Service of Ukraine (SBU) against UOC clerics, and even more against other persons, indicate, the state is already able to effectively use the existing Criminal Code to deal with these issues.

Many legal systems contain provisions prohibiting public dissemination of certain ideologies, such as Nazism, Communism, or Holocaust denial. However, such legal prohibitions are usually implemented against ideologies or facts which can be relatively clearly and precisely described and explained. The "Russian world" ideology is not among them. While it is clear that Putin's regime utilises the ROC and Moscow Patriarch Kirill's statements as weapons in its renewed invasion of Ukraine, the content and scope of the "Russian world" ideology remains a matter of much debate. Philosophical, theological, and political opinions on it vary from seeing it as a comprehensive doctrine to seeing it as a superficial construction to provide an excuse for invasion.

As this "Russian world" ideology is vague and imprecise, there is a reasonable chance that the legal application of its prohibition might be too broad and arbitrary. Would an ROC icon of Tsar Nicholas II and his family (canonised by the ROC) on the wall of a church constitute propaganda of the "Russian world"? Would the dedication of a church to a medieval Russian saint be seen as praising the "Russian world"? Would a statement that Ukrainian and Russian Orthodoxy have a shared tradition constitute "Russian world" propaganda?

Even though some speeches and actions might be morally inappropriate in times of war, these examples all constitute legitimate forms of expression and yet might be punished under the draft Law.

Procedural aspects of dissolution

The draft Law provides the Ukrainian State Service for Ethnic Policy and Freedom of Conscience (SEPF?) with the power to investigate whether a religious organisation is affiliated with the ROC. Once any affiliation is found, the SEPF issues an order requiring the breaking of ties with the ROC within 30 days. The term can be extended up to 90 days in total.

In addition, religious organisations recognised by the SEPF as affiliated with the ROC are prohibited to rent state- or locally-owned properties; their rental contracts are automatically terminated. These organisations are also not allowed to sell, exchange, pledge, and place under management their property, unless they break their ties with the ROC and join a different religious association.

If the SEPF order is not executed, the SEPF bring a deprivation of legal status case to court. Similarly, the SEPF can also initiate court cases against religious organisations involved in "Russian world" propaganda.

According to the draft Law, all cases regarding the deprivation of legal status of religious organisations shall be considered by the appellate administrative court in Kyiv (now the Sixth Appellate Administrative Court). This means that, in order to be represented in the court, every religious organisation in every Ukrainian region will have to send its representatives to Kyiv, otherwise the case will be considered in absentia.

The draft Law also allows public prosecutors to be involved in deprivation of legal status cases on behalf of the Ukrainian state. Practically, it means that the SEPF (which has limited resources) will be supported by public prosecutors to speed up the process of deprivation of legal status of religious organisations affiliated with the ROC.

If a religious organisation is liquidated, all its property (except religious property) becomes the property of the state.

Religious "expert" examination

The draft Law stipulates that State Service for Ethnic Policy and Freedom of Conscience conclusions on the affiliation with the ROC, or the dissemination of "Russian world" propaganda, can be based on "religious expert examinations".

In many post-Soviet states, including in Belarus (https://www.forum18.org/archive.php?article_id=2806), Russian-occupied Crimea (https://www.forum18.org/archive.php?article_id=2774), and Central Asian states such as Kazakhstan (https://www.forum18.org/archive.php?article_id=2753), "expert analyses" are often used to justify freedom of religion or belief and other human rights violations, including jailing prisoners of conscience.

The concept of state religious examinations of ecclesiastical and theological issues is problematic in international human rights law. As the OSCE / Council of Europe Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (<https://www.osce.org/files/f/documents/9/9/139046.pdf>) note: "the state should refrain from a substantive as opposed to a formal review of the statute and character of a religious organisation."

In international law "the state must respect the autonomy of religious or belief communities when

fulfilling its obligation to provide them with access to legal personality," as the Guidelines on the Legal Personality of Religious or Belief Communities note. "In the regime that governs access to legal personality, states should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership .. the structure of the community .. Considering the wide range of different organizational forms that religious or belief communities may adopt in practice, a high degree of flexibility in national law is required in this area."

The SEPFC's group of experts, in their opinion published on 1 February 2023 (<https://dessa.gov.ua/vysnovok-rehiiieznachoi-ekspertyzy-statutu-pro-upravlinnia-ukrainskoi-pravoslavnoi-tserkvy>), state that the Moscow Patriarchate does not recognise the UOC as fully independent, and that there is no evidence that UOC leader Metropolitan Onufry has left the ROC's Synod. In addition, the group emphasises that no other Orthodox church recognises the UOC as an independent (autocephalous) church, and the UOC has not sought this status. The group concludes that the UOC remains a part of the ROC.

If the Ukrainian Government acts on this conclusion, all UOC communities are already recognised as entities affiliated with the ROC. This means that they can be deprived of legal status in line with the procedure laid out in the draft Law.

The UOC has challenged the impartiality (<https://news.church.ua/2023/01/10/yuridichnij-viddil-upc-oprilyudniv-zayavu-pro-viluchennya-zi-skladu-komisiji-z-ekspertizi-statutu-upc-uperedzhenix-ekspertiv-ta-zaluchennya-jiji-roboti-mizhnarodnix-religijeznavciv/#2024-02-27>) of some of the members of the SEPFC's group, claiming that they have a previous record of hostility to the UOC. The UOC also stated that these members belong to the rival major Orthodox church in Ukraine, the Orthodox Church of Ukraine (OCU).

Current draft Law does not conform to Ukraine's international human rights obligations

If the draft Law is adopted in its current version, it would prove that the Ukrainian state has decided to take a hard line in dealing with the UOC. In addition to prosecuting clergy, believers, and communities involved in security-related crimes, the state would target all UOC communities for ecclesiastical and historical links with the ROC.

The draft Law would legitimise the large-scale and relatively fast deprivation of legal status of UOC communities. Even before the deprivation of legal status, these communities would face the deprivation of the right to rent state- and locally-owned properties. This would both legitimise past decisions by local councils in some regions to deprive UOC communities of the right to rent land or property, and would force UOC organisations to leave several state-owned historically significant religious premises (https://www.forum18.org/archive.php?article_id=2823), such as the Pochaiv Lavra in Ternopil Region.

Under the threat of deprivation of legal status and loss of their properties, UOC communities would have few options—either to switch to a different Orthodox church (in the great majority of cases to the Orthodox Church of Ukraine (https://www.forum18.org/archive.php?article_id=2807)), or operate as an informal, non-registered community labelled as "suspicious".

The draft Law would also significantly increase the role of the state in inter-religious relations, and expand the SEPFC's powers in monitoring and controlling religious communities and the expression of religious ideas. However, this expansion would come with insufficient legal protections against arbitrary use of the SEPFC's newly acquired power.

Without careful addressing these concerns, the draft Law cannot implement Ukraine's legally-binding international obligations to respect and protect the freedoms of religion or belief, expression, and association.

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More reports on freedom of thought, conscience and belief in Russian-occupied Ukraine (<https://www.forum18.org/archive.php?country=17>)

More reports on freedom of thought, conscience and belief in all Ukraine (<https://www.forum18.org/archive.php?country=88>)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments (https://www.forum18.org/archive.php?article_id=1351)

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