

Konstantin Lozinsky

ORTHODOX CHURCH IN THE LEGAL FIELD OF MODERN UKRAINE

There are many interesting pages in the history of Church-state relations: from rivalry and open confrontation, the desire of the state to subordinate Church authority to cooperation based on the principles of symphony, which envisaged interaction in all spheres of power – executive, judicial, legislative. As a model of the ideal relationship between the Church and the state, such a symphony is characterized by the fact that, even if it is not always fully achievable, its principle recognition is one of the important incentives and benchmarks for recognizing the legitimacy of the state and the *bona fide* priesthood¹. Such a correlation of secular and ecclesiastical power with a red thread passes through the history of many states and in Ukraine in particular [Власовський 1955, 47-48].

1. RELATIONS BETWEEN CHURCH AND STATE

Recently, the influence of the Church, religiosity, religious norms and values on the life of Ukrainian society has increased significantly. This is explained to a certain extent by the substantial change in living conditions and the approach to religion as the most important integrative force and factor of the spiritual and moral revival of society.

The existence of a relationship between religion and politics is obvious. Religion has never been limited only to belief in God and in afterlife, to the implementation

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¹ *Corpus Juris Civilis. Novelle*, ed. R. Schoell, W. Kroll, vol. III, Weidmans, Berlin 1928, praefatio.

of elementary religious rites. It is the social aspects of religious teaching that allowed monotheistic beliefs to master the masses and thus influence the alignment of forces in society. Indeed, religion in its own way explains the real world and governs not imaginary, but real relations between people.

We see that today many issues have to be solved jointly by the Church and the state, first and foremost, it concerns the social sphere of the existence of Ukrainian society, as well as its spiritual security. Modern challenges facing the Church in the whole world and in Ukraine, in particular, are neo-satiety and terrorism, one of the main destructive phenomena of our time. The relationship between the Church and the state is largely determined by the level of socio-economic development of the country and the historical traditions that have developed in society. We can distinguish several models of such relationships.

Under conditions of a democratic state, the equality of all religions and churches, freedom of conscience and religion are commonly recognized at the constitutional level and in everyday practice. Under such conditions, the Church is separated from the state, and the school is from the Church. At the same time, society has a ban on discrimination on religious grounds, members of religious organizations do not have privileges associated with the confession of a particular doctrine, but the Church is recognized as the guardian of the cultural, historical and moral traditions of the people.

By the polls conducted since the 1990's, the proportion of Orthodox in Ukraine ranges from 60 to 80%, however, even in the temples, even half of those who consider themselves Orthodox, prayed in the temples, which in fact applies to followers and other denominations. What is the position of the Church in the legal field of the state today? The legislator in the Constitution of Ukraine² states that "the Church and religious organizations in Ukraine are separated from the state (...). Everyone has the right to freedom of thought and religion. This right includes the freedom to profess any religion or not to profess any, to freely send individually or collectively religious cults and ritual ceremonies, to conduct religious activities. The exercise of this right may be limited by law only in the interests of protecting public order, health and morals of the population, or protecting the rights and freedoms of other people. The church and religious organizations in Ukraine are separated from the state, and the school is from the church. No religion can be recognized by the state as obligatory" (Art. 35).

² Конституція України (28.06.1996), <http://www.president.gov.ua/documents/constitution#> [accessed: 24.10.2017].

Immediately, we note that although the Church is separated from the state, the Church can not be separated from society, because the people constitute the Church. This is how the Holy Scriptures teach us (1Pt. 2:9). We also say that despite the importance of the Constitution, the Constitution cancels the historical role of the Orthodox Church in the formation of national statehood, culture and the spiritual and moral face of Ukrainian society, since the majority of the population of historical and modern Ukraine are baptized in the Orthodox faith. Speaking figuratively, the Church is separate from the state, but the law nowhere says about the separation of the state itself from the Church.

2. POSITION OF THE CHURCH IN A SOCIETY

First, let's say a little about the role of the Church in building society. Considering the position of the Church in an organized society, which is the state, it should be noted that already in early-class states there were three centers of governance, administrative and ideological leadership – city community, palace and temple. The general history shows that at all times, religion (the Church) played an important role in society. She was an energetic guide and a pillar of order, affirmation of property, ideological justification of the rule of law in the state. The Church had a great influence on economic and political life, on the life of the population, on interstate relations. The authoritative Teacher of the Church is blessed. Augustine believed that there is no legal field beyond the Church. The state that rejects the Church is essentially a robbery, because without the Church there is no justice³. The Scriptures by the mouth of the Church call on those in power to use the power of the state to restrict evil and maintain goodness, in what it sees the moral meaning of the existence of the state. From this it follows that anarchy, that is, the lack of a proper arrangement of the state and society, as well as appeals to her and the attempt to establish it, are contrary to the Christian outlook.

“The Church not only orders its children to obey the authorities. Let every soul submit to the supreme authority, because there is no power from God” (Rom. 13:3), regardless of the convictions and beliefs of its carriers, but also to pray for it, “so that lead us in a calm and carefree life, in every piety and purity, for it is good and acceptable to our Savior, our God” (1Tim. 2:3).

³ See: Блаженный 2016, book 4, sec. 6.

By its nature, the Church and the state are mutually opposite, because they face drastically different goals. A state that tries to adapt itself to the strength and dignity of the Church, creates violence in the spirit, and the Church, which tries to appropriate secular power, loses its dignity and betrays its purpose. In this sense, the Church is clearly “apolitical”.

3. TYPES OF CHURCH STATUS IN THE STATE

The immediate result of the delineation of the state and the Church in the sphere of social relations, became the status of the Church separated from the state – the most important principle, which was recognized in many countries and enshrined in their constitutions.

An analysis of legislation and practice makes it possible to distinguish three main types of Church status in the state: 1) officially legalized and actually dominant “State Church”. Such state regimes are sometimes called theocratic; 2) constitutional recognition of a traditional religion (confession) in a society that has a priority position among other religions; 3) the constitutionally legitimized separation of the Church (religious organizations) from the state and school from the Church.

The following features are characteristic of the status of the “State Church”:

- 1) in the field of economic relations – the recognition of the ownership of the land by the Church, buildings, as well as the possibility of exemption of the Church from taxation; 2) receipt of various subsidies by the Church; 3) providing the Church with a number of legal powers: the right to register marriage, birth, death;
- 4) in the field of political relations, the Church has the right to participate in the political life of the country through representation in state bodies. Only those who practice the state religion are entitled to take all leading government positions;
- 5) the Church has the right to educate the younger generation.

For a state with a predefined traditional religion or denomination typical constitutional recognition in a society is traditionally existing religion (confession) among others. At the same time recognizes, in particular separation of the Church (religious organizations) from the state and school from Churches. The relevant legal acts regulate both the dominant position of the official denomination and the role of other denominations. Often, this type of legal status of the Church in society is due to the fact that the officially recognized traditional religion has a great influence on a large part of the population, historically associated

with the formation of a national state, directly intertwined with ethnic culture and a lot of [Рудинский 1992].

The third variant of the relationship between the Church and the state exists in many countries – in France, Germany, Russia, and others. This mode is conditioned by the desire to deprive the Church of a monopoly in the fulfilment of ideological and integration functions, as the Church has a powerful potential for influence on the consciousness of people.

The state of separation of the Church from the state is characterized by the following features: 1) the state and its bodies have no right to control the attitude of their citizens to religion and do not keep records of citizens on this basis; 2) the state does not interfere with inter-Church activities (if the current laws are not violated); 3) the state does not provide material support to the Church; 4) the Church does not perform any government functions and does not interfere in the affairs of the state, but only deals with issues related to the satisfaction of the religious needs of citizens; 5) the state, for its part, protects the legal activities of the Church and religious organizations.

Thus, the mode of separation of the Church from the state means reorientation of social life into secular values and norms. The Bolshevik idea that “the state should not be a religion, and religious communities should not be bound to state power” was the basis of the Lenin Decree “On the separation of church and state and school from the church” of January 23, 1918 [Кириченко 1987, 2]. Essentially, today, with the exception of the Soviet Union’s idea of fighting the religion, this provision is reflected in the current Constitution of Ukraine (Art. 35).

However, the mode of separation of the Church from the state does not mean the lack of control by the state for the activities of religious organizations. The state does not shy away from the legal regulation of their status and activities. The regime of separation of the Church from the state involves the legal regulation of the activities of religious organizations, which provides a certain balance of Church-state relations and allows the Church and the state to find common points of contact in solving social issues.

When regulating the legal status of religious organizations, the legislation of most states proceeds from the recognition of freedom of conscience and religion, that is, the right to profess any religion, freely choose and disseminate religious beliefs. Freedom of conscience is attributed to universal values. Thus, according to the International Covenant on Civil and Political Rights (Art. 18), every person has the right to: freedom of thought, conscience and religion, which includes the free choice of religion and beliefs, freedom, alone or jointly with others, public or

private, in the administration of worship, the performance of religious and ritual ceremonies and teachings⁴. Freedom of conscience is subject only to the restrictions necessary for the protection of public safety, order, health, morals, as well as the rights and freedoms of others.

Despite the proclamation of separation of the Church from the state, their actual isolation did not take place. The Church's separation from the state does not mean that the Church may be indifferent to the state's activities. She has the right to publicly condemn harmful, in her opinion, actions by the state authorities, and thus it forms a public opinion and influences legislation.

4. ORTHODOX CHURCH IN UKRAINE

So, how does the state interact with the Church in modern Ukraine? First of all, we will say that Ukraine has the third model of Church-state relations, the main provisions of which are reflected mainly in the modern Ukrainian legislation, which is the Constitution. The interaction between the Church and the state begins with the procedure for registering Church units (parishes, dioceses, etc.), of which the visible structure of the Church organism actually forms⁵.

In Ukraine registration of religious organizations primarily involves the registration of the statutes of religious organizations, solely for the purpose of obtaining the legal capacity of a legal entity, and not for the legalization of its activities in the territory of Ukraine. The impetus for the failure to provide religious organizations that carried on their activity in the territory of the former USSR was the status of a legal entity in January 1919, the above-mentioned Decree "On the separation of the Church from the state and the school from the Church".

In the period from 1991 to 2004, there was no normative legal act that would regulate the status of the Church as a legal entity. According to the experts, it was unclear what rules were used by the authorities to introduce the form and documents necessary for the registration of the statute of a religious organization, since the norms of the previous law "On Freedom of Conscience and Religious Organizations" did not provide for such a list.

⁴ *Международный пакт о гражданских и политических правах* (16.12.1966), http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml [accessed: 24.10.2017].

⁵ *Статут Української Православної Церкви Київського Патріархату* (5.06.1990), <https://www.cerkva.info/pages/statut> [accessed: 7.04.2018].

After the entry into force of the Law of Ukraine “On the State Registration of Legal Entities and Individual Entrepreneurs” from January 1, 2004, the procedure for registering the statutes of religious organizations was actually complicated by the so-called the “double” registration procedure, the increase in the registration period, the paid registration procedure and the complication of the procedure for amending the statutes of the parishes.

Thus, since 2004, religious organizations themselves register their statutes in two stages. The first stage is the registration of the statutes of the religious organization according to the scheme that operated until July 2004, that is, according to Art. 14 of the Law of Ukraine “On Freedom of Conscience and Religious Organizations”, as a result of which a religious organization receives a certificate of registration of the statute of a religious organization. In the second stage, the final acquisition of the status of a legal entity through the state registrar at the place of location⁶.

However, in practice, despite the fact that the Church acquires the status of a legal entity, it still remains, in fact, “beyond the borders” of the state without being included in its institutions that define (form) the fundamental aspects of state-building. This causes a certain legal conflict that, despite the fact that the majority of Ukrainian citizens are carriers of certain religious ideas, the sources of this religiousness are actually beyond the clearly defined legal status. According to the famous aphorism, this situation shows that “the Church is separated from the state by a very low fence that is easy to jump over”.

The state *de iure* does not interfere with the activities of religious organizations, if the latter do not violate the current legislation, do not encroach on life, health, dignity of a person, the rights of other citizens and organizations, etc. But *de facto*, it must take into account the information that is provided by religious organizations to its followers, while tracking it at its original position. Also, the process of cooperation between the Church and the state is unclear in the same social sphere, for the clarification of which the relevant state authorities must issue special guidance documents. An example is the Church’s activity in the field of volunteer movement and the service of military chaplains, or the issue of recognition of spiritual education. To make appropriate changes to the law, the state was forced to adopt a number of laws and guidelines (Order No. 40 on the

⁶ Закон України Про свободу совісті та релігійні організації. Відомості Верховної Ради УРСР (БВР), 1991, № 25, ст. 283 (23.04.1991), <http://zakon2.rada.gov.ua/laws/show/987-12> [accessed: 24.10.2017].

Chaplaincy in the Armed Forces, Decree No. 652 on the recognition of documents on higher education)⁷.

According to Art. 35 of the Constitution of Ukraine, the state authorities do not interfere: 1) in the religious or canonical activities of the Church, in particular in the content of the doctrine, ceremonies, ceremonies and other forms of meeting the religious needs of citizens. Church documents defining religious activities and resolving other internal issues of a religious organization are not even subject to registration in state bodies; 2) the canonical structure of Church management, its hierarchy; 3) the internal self-governance of the Church; 4) subordination in canonical and organizational matters to religious centers (administration), relationships between higher and lower religious organs, their relations with believers; 5) at the expense of income and donations from religious activities and meeting the religious needs of believers; 6) educational and educational work of the spiritual educational institutions.

Thus, the canonical and religious activity of the Church does not belong to the direct sphere of the application of the norms of law, and at the same time, religious organizations are not excluded from the rule of law established by the Ukrainian state.

With the separation of the Church from the state, the latter gives its organs such authority over religious organizations: 1) the right to determine the conditions and procedure for the formation and existence of religious organizations, to register and keep records; 2) the right to establish a procedure for the interrelations between religious organizations, their departments and centers with state bodies, and also to regulate the formation and functioning of religious departments and centers regarding their responsibility to the state; 3) the right to regulate the boundary between organizational and economic and other extracurricular activities, as well as to establish rules for the implementation of religious rites and ceremonies, charity and cultural and educational activities, international relations and contacts of religious organizations and believers; 4) the right to establish appropriate control by the state authorities in accordance with constitutional law and laws on issues of freedom of conscience.

For its part, following the established legal regime of separation of the Church from the state, the Church does not interfere in the political sphere of activity of the state and its organs and does not fulfil the functions of state bodies.

⁷ Міністерство Оборони України, *Указ № 40 Про затвердження Положення про службу військового духовенства (капеланську службу) у Збройних Силах України* (27.01.2015), <http://zakon3.rada.gov.ua/laws/show/z0161-15> [accessed: 24.10.2017].

However, it is erroneous that the activities of religious organizations should be directed exclusively to the satisfaction of the religious needs of believers. Equality of denominations before the law is valid only in the state-legal relations. An entirely different issue is the question of equality of religions in the socio-political sphere. This is due to the fact that the formation of a particular society is historically connected with a certain denomination, which influenced social processes, state-building, etc. An example of this may be Ukraine, whose historical fate is closely linked to the Orthodox Church. The latter actively influenced the formation of the Ukrainian ethnos and statehood, the consolidation of the population in the national liberation struggle. Therefore, her activity in society attracts more attention of the general population, politicians and public figures than the existence of other denominations or non-traditional cults.

The regime of separation of the Church from the state does not prohibit the socio-cultural and ideological activities of religious organizations in society, the latter's cooperation with state and civil organizations on issues of cultural-educational, charitable work, etc. A characteristic feature of the attitude of Orthodoxy to the state is the desire to cooperate for the common good of society, without prejudice to the dogma of the Church and the internal freedom of man [Рудинский 1992, 36].

It is here that the collision of what was said above lies. On the one hand, the legal status of the separation of the Church from the state does not exclude the participation of the latter in the socio-cultural sphere, and the clergy are not forbidden to participate in state-political relations, and on the other hand, the state can not clearly prescribe this mechanism of interaction, leaving the role and place of the Church unclear as an important institution in the state-political process. The recent events of 2014 serve as an example. The anti-people position of the authorities prompted the Church to go beyond the statutory rules, forcing it to be sacred to the next steps: 1) engage in a direct dialogue with the authorities on the problem that has arisen; 2) turn to world public opinion; 3) appeal to their believers calling for a peaceful civil protest; 4) stop prayer for power.

At the same time, overcoming the problems that arose after the events of the "revolution of dignity", the Church actually assumed the following obligations: 1) peacekeeping at the international, interethnic and civic levels, promotion of mutual understanding and cooperation between people; 2) concern for the preservation of morality in society; 3) spiritual, cultural, moral and patriotic education and upbringing; 4) cases of charity, development of joint social programs; 5) dialogue with state authorities of any branches and levels on matters of

significance for the Church and society, including in connection with the development of relevant laws, regulations, orders and decisions; 6) care of warriors and their spiritual and moral upbringing; 7) work of church and secular mass media; 8) economic activity in favour of the state and society; 9) support for the Institute of Family and Maternity; 10) counteracting the activities of any structures that pose a danger to the individual and society.

Cooperation between the Church and state structures has long been a well-known fact. Today, their interaction is in demand in solving many problems, in particular, in matters of moral and patriotic education, charity, etc. It seems impossible without the Church's help to break the moral crisis that has embraced the society. Drunkenness, drug addiction, and crime make you listen to the values preached by the Church, and these are the ideas of spirituality, charity and love for one's neighbour.

Thus, we see that, as an integral factor in the state, especially for the development of national statehood, the Church, through its faithful, nevertheless actively participates in state policy, influencing the internal political stabilization of society. Accordingly, Ukraine as a rule-of-laws should have a clear concept of policy towards the Church and provide moral, organizational and political support to national churches. This is extremely important, especially in the light of recent events.

Now let's say something about the possibility of interaction between the Church and the state from the point of view of the Church itself, namely those of its normative documents, which have been registered in state institutions. In accordance with the current statute the Orthodox Church: 1) carries out its activities in accordance with its own statute and current legislation; 2) contacts and interaction of the Church with the supreme bodies of state power are carried out by the Patriarch and the Holy Synod either directly or through representatives. With the regional authorities, the Church contacts directly through the diocesan archivists or through their representatives. Contact with local authorities and self-government contact on behalf of the Church perform deaneries and parishes with the blessing of the diocesan archivists; 3) revenues of the Church as a non-profit organization are used for charitable activities provided for by law, including for the provision of humanitarian assistance; 4) the Church establishes its own or joint institutions, including with foreign partners, for conducting charitable, educational and other economic activities; 5) the diocese (parish) exercises the right to freedom of confession and the spread of the Orthodox Christian faith through the service of divine services, ceremonies, religious processions and dissemination of religious beliefs directly or through the media, missionary,

charity, religious education, education, upbringing and other activities that correspond to the traditions of the Church.

In essence, these are the possible spheres of interaction that are prescribed in the Statute of the Ukrainian Orthodox Church from the general Church to the parish level. These provisions are precisely the same legal status that is enshrined in the Constitution of the Orthodox Church in Ukraine today. Any possible changes in the statutory documents may be entered into after appropriate consultations of the All-Ukrainian Council of Churches with representatives of state administration bodies. However, some state uncertainty in the elaboration of clear legal standards regarding the interaction of the Church and the state that existed until recently, as well as the violation of the rules of the existing legislation by the confession itself and the individual confessions, led to a violation of the principle of coexistence of these two organisms. Namely, the intervention of representatives of individual denominations in the following areas: political struggle, election campaigning, campaigns in support of certain political parties, public and political leaders and support of an aggressive war.

This state of affairs could have been avoided if state leaders would use the concept of church-state relations, if not theological, at least in a philosophical direction. An adequate look at the principles that determine the interaction between the Church and the state is the view of the well-known philosopher Hegel on the harmony of religion and law. In his view, religion and the foundations of the state apparatus are virtually identical in themselves. The state is called to ensure the freedom of action of the individual in the world, in reality. The question of its realization lies in the very concept of freedom in the consciousness of the people, which obviously corresponds to religion. Hence the nature of the religion of the people, such is his morality, such a state system. The people who are distorted because of the primitive notion of God, have a bad state, a bad government, nasty laws [Гегель 1976, 400].

CONCLUSION

Finally, as of January 1, 2010, over 26,000 religious organizations, denominations, currents and trends operated in Ukraine. Half of all domestic religious communities (more than 14 thousand) belong to Orthodoxy. The Constitution of Ukraine did not define any of the religions represented in Ukraine as state-owned, but Orthodoxy, which has long roots in our country, has, in essence, acquired the status of a national, state religion.

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Orthodox Church in the Legal Field of Modern Ukraine

Summary

The legislator in the Constitution of Ukraine states that the Church and religious organizations in Ukraine are separated from the state. In Ukraine the relations between the Church and the state begins with the procedure for registering Church units – e.g. parishes

and dioceses – of which the visible structure of the Church organism actually forms. The state does not interfere with the activities of religious organizations, if they do not violate the current legislation, do not encroach on life, health, dignity of a person, as well as the rights of other citizens and organizations.

Key words: Church; state; Ukrainian Constitution; right to freedom of thought and religion

Kościół prawosławny w porządku prawnym współczesnej Ukrainy

Streszczenie

Ustrojodawca w Konstytucji Ukrainy stanowi, że Kościół i związki wyznaniowe na Ukrainie są oddzielone od państwa. Na Ukrainie relacje między Kościołem a państwem rozpoczynają się od procedury rejestracji jednostek kościelnych – np. parafii i diecezji – z których powstaje widzialna struktura organizmu kościelnego. Państwo nie ingeruje w działalność organizacji religijnych, jeżeli nie naruszają obowiązującego ustawodawstwa, życia, zdrowia, godności osoby, a także praw innych obywateli i organizacji.

Słowa kluczowe: Kościół; państwo; Konstytucja Ukrainy; prawo do wolności myśli i religii

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