

# AMSTERDAM & PARTNERS LLP

LONDON | WASHINGTON DC

Amsterdam & Partners LLP  
1101 30<sup>th</sup> Street NW  
Suite 500  
Washington DC 2007  
<https://amsterdampartners.com>

March 5, 2024

## Open Letter in Response to the Law and Liberty Trust

Lauren Homer's statement of February 28, 2024 on behalf of Law and Liberty Trust, entitled "Ukraine's pending law on religious organizations with Russian Headquarters," does not merit a response. However, the freedom of religion in Ukraine today is literally a matter of life and death for many Ukrainians, and I am therefore compelled to take up the pen briefly to show the grave errors in her purported legal analysis.

My law firm has been instructed to act for the Holy Synod of the UOC as it fights for its survival. I have just returned from a fact-finding mission in Kyiv. What I discovered there astounded me and demonstrates the glaring inaccuracies of Homer's statement. The Government of Ukraine has weaponized religion against its own people. The Ukrainian Orthodox Church (UOC) is facing an unmitigated campaign of intimidation for its historical ties to Russia that seeks to erase it from the religious landscape.

At its core, Homer's analysis reduces to ends justify the means argumentation against the protection of human rights and the freedom of religious worship. She contends that there is 'no religious freedom' in Russian occupied Ukraine and that, "if Russia succeeds, all of Ukraine's achievements in religious freedom and democratic institutions will be lost." Homer misses the point. Human rights and religious freedom cannot simply be tossed aside in the name of military victory. If Ukraine wins this war by undermining its own commitment to human rights and religious freedom, it will be a hollow victory. The hope for an independent, democratic, rights respecting Ukraine will be corrupted from within.

I and the UOC leadership my firm represents desire a Ukrainian victory in this conflict as much as anyone. We also seek to ensure that while Ukraine fights this war – and when it emerges victorious – it remains committed to the most basic rights of its own people.

Having just returned from Kyiv, I can attest that the facts on the ground today are not as Homer describes. She asserts without evidence that Ukraine has an exceptional degree of religious freedom. I can tell you what I witnessed first-hand and as documented by the UN Office of the High Commissioner of Human Rights.<sup>1</sup> UOC bishops and clergy have been physically attacked

---

<sup>1</sup> Report on the Human Rights Situation in Ukraine, OHCHR (October 2023), <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2023>.

# AMSTERDAM & PARTNERS LLP

## LONDON | WASHINGTON DC

and threatened with violence. Some have been arrested on false or spurious charges by the authorities. These are men of sincere faith, many of whom are of advanced age. One bishop is under house arrest for the lectures on theology he gave ten years ago. All the priests and bishops I met in Kyiv were interrogated following my visit. One of them was so shaken by the experience that he suffered a heart attack. In the cases I have reviewed, due process and rule of law have been woefully absent. Accompanying this campaign of terror, the Ukrainian authorities have appropriated thousands of UOC churches. These illegal expropriations have forced parish communities to worship in their homes. In some parts of Ukraine, even these private gatherings have been disrupted by the security services. As one bishop told me, it is as if the Stalinist era has returned. This concern is shared by deputies in the Ukrainian Parliament, several of whom I met during my visit to Ukraine. Some of these deputies are even members of President Zelensky's own political party, and they too fear the damage being done to religious freedom in Ukraine.

Rather than respond to each of the points in Homer's analysis, I will point out three fundamental misstatements of fact and one of law that undermine her credibility.

First, Homer contends that the legislation (Draft Law 8371) pending before Ukraine's parliament "is narrowly drawn and limited in its effect." Draft Law 8371 is a clear example of how even textually small legislative changes can have enormous effect. This law as implemented by the Ukrainian Government would close the parishes of the UOC across the country, preventing the millions of ordinary UOC believers from worshipping in their church, with their religious leaders, and in community with one another. The proposed law is draconian and disproportionate. After its passage, the UOC will not be able to operate on Ukrainian soil and its members will not be able to practice within their religious tradition. The law amounts to a form of targeted discrimination, which will collectively punish innocent Ukrainian citizens by depriving them of the church they call home.

Second, Homer suggests that the Orthodox Church of Ukraine (OCU) is the "only canonical Orthodox Church in Ukraine" and that it is an adequate alternative to the UOC for Orthodox Ukrainians. Again, both claims are false. It is beyond the scope of this short response to detail the history of the UOC, which reaches back nearly a millennium or the process through which the Ukrainian government created the OCU in 2018. But, the canonical legitimacy of our church, the UOC, is uncontested. Moreover, it is deeply inconsistent with the basic notions of freedom of religion for a government to tell millions of UOC worshipers that they must convert to a new church with a different history and different leaders if they wish to practice their faith.

Third, she contends that the UOC is part of the Russian Orthodox Church -- Moscow Patriarchate. This is simply untrue. Although the UOC does have a historical and canonical connection to the Russian Orthodox Church, the UOC was granted rights to broad autonomy and self-governance in 1990. The UOC confirmed its self-governing status in 2022 and has stood firmly in support of Ukraine's self-defence and independence since the war began. Within hours of the full-scale invasion of Ukraine in 2022, Metropolitan Onufry -- the head of the UOC -- made clear his loyalty to Ukraine. He prayed -- and continues to pray -- for Ukraine's victory in the war. Indeed, many of his parishioners are fighting in the armed forces of Ukraine. The UOC has donated millions in military and humanitarian aid. It has supported displaced Ukrainians at home and abroad. Yet all these efforts have failed to dissuade the Government from its attacks on the Church.

# AMSTERDAM & PARTNERS LLP

LONDON | WASHINGTON DC

Finally, Homer's so-called analysis blatantly misunderstands international human rights law. She cites the 1948 Universal Declaration of Human Rights to suggest that "Ukraine has the right under international law to enact laws closing" the UOC. While the Universal Declaration is an important set of first principles in human rights law, Homer completely ignores Ukraine's binding legal obligations under the 1977 International Covenant on Civil and Political Rights (ICCPR). The ICCPR is a binding international legal obligation—not just a statement of principles—that requires respect for the freedom of religion even in times of war. While the ICCPR has a mechanism to allow states to derogate from some rights "in time of public emergency," the treaty specifies that "no derogation from article ... 18 (the guarantee of freedom of religion)... may be made." Homer's gross misreading of international law turns human rights on its head by using human rights law to justify Ukraine's flagrant violations of the freedom of religion.

As my recent visit to Kyiv sadly made clear, Ukraine is now one of the least tolerant places in the world for religious freedom. Millions of Ukrainians are at risk of losing their religious home through the actions of their own government. This behaviour must stop and it must stop now. While we should continue to support Ukraine in its self-defence, we must call upon Ukraine to respect the freedom of religion of its own people. To do otherwise undermines the basic institutions of democracy, both in Ukraine and here at home.

Sincerely yours,



Robert Amsterdam  
Amsterdam & Partners LLP

Enclosure: White Paper prepared by Amsterdam & Partners LLP