



APPARATUS OF THE SUPREME COUNCIL OF UKRAINE Main Legal Department

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To the register No.
8371 (second reading)

REMARK

to the draft law of Ukraine on the protection of national and public security, human rights and freedoms in the sphere of activity of religious organizations

Within the given time, the Main Legal Department reviewed the final version of the draft law of Ukraine on the protection of national and public security, human rights and freedoms in the sphere of activities of religious organizations (hereinafter - the draft), prepared by the Committee of the Verkhovna Rada of Ukraine on Humanitarian and Information Policy (hereinafter - Committee) for consideration in the second reading. As

stated in the explanatory note, the project for the register. No. 8371 on amendments to some laws of Ukraine regarding the activity of religious organizations in Ukraine was developed by the Cabinet of Ministers of Ukraine "with the aim of preventing the activity in Ukraine of religious organizations whose management center (management) is located outside of Ukraine in a state that carries out armed aggression against Ukraine... on the implementation of the organization plan for the implementation of the decision of the National Security and Defense Council of Ukraine dated December 1, 2022 "On certain aspects of the activities of religious organizations in Ukraine and the application of personal special economic and other restrictive measures (sanctions)", put into effect by the Decree of the President of Ukraine dated December 1, 2022 of the year No. 820, approved at the meeting of the Cabinet of Ministers of Ukraine on December 9, 2022 (minutes No. 158). spiritual independence, prevention of division in society on religious grounds, promotion of consolidation of Ukrainian society and protection of national interests". The said draft law proposed to amend the laws of Ukraine "On Freedom of Conscience and Religious Organizations", "On State Registration of Legal Entities, Individuals - Entrepreneurs and Public Organizations", providing provisions on the impossibility of activities in

of religious organizations in Ukraine, the management center (management) of which is located outside of Ukraine in a state that carries out armed aggression against Ukraine.

During the preparation of the draft law for consideration by the Verkhovna Rada of Ukraine in the second reading, the Committee proposed to adopt a new law that would determine the specifics of the "termination of activities" of foreign religious organizations in Ukraine for the purpose of protecting national and public security, human rights and freedoms, as well as to introduce related amendments to seven legislative acts of Ukraine (the Code of Administrative Procedure of Ukraine and the laws of Ukraine "On Freedom of Conscience and Religious Organizations", "On the Prosecutor's Office", "On State Registration of Legal Entities, Individuals - Entrepreneurs and Public Organizations", "On Lease of State and Communal property", "On preventing and countering the legalization (laundering) of criminal proceeds, financing terrorism and financing the proliferation of weapons of mass destruction", "On the prohibition of propaganda of the Russian Nazi totalitarian regime, armed aggression of the Russian Federation as a terrorist state against Ukraine, symbols of military invasion of the Russian Nazi totalitarian regime into Ukraine").

In this regard, it should be noted that during the preparation of the draft law for the second reading, the requirements of the first part of Article 116 of the Rules of Procedure of the Verkhovna Rada of Ukraine were not complied with, according to which the main committee, as an exception, can make a decision to take into account the submitted proposals and amendments regarding corrections, clarifications, elimination of errors and/or contradictions in the text of the draft law, other structural parts of the draft law and/or other legislative acts that were not considered in the first reading, while such proposals and amendments must correspond to the subject of legal regulation of the draft law.

In addition, a systematic analysis of the draft law submitted for consideration shows that its provisions do not take into account certain requirements of the Constitution of Ukraine, inconsistency with some international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine, and inconsistency with other legislative acts

1. In accordance with the first part of Article 1, as well as taking into account the contents of the first part of Article 2 and the first part of Article 5 of the draft law, its title ("On the protection of national and public security, human rights and freedoms in the sphere of activity of religious organizations") and paragraphs two and the fourth part of its preamble, draft law No. 8371 submitted for consideration in the second reading aims to protect "**national** and public **security**, human rights and freedoms"¹.

¹ The draft law introduced by the Cabinet of Ministers of Ukraine did not contain the specified provisions.

At the same time, the second paragraph of the preamble of the draft law refers to Article 35 of the Constitution of Ukraine, Articles 9 and 11 of the European Convention on Human Rights, which, according to the draft law, allegedly "provide the rights to freedom of conscience, religion and association in religious organizations and the possibility of limiting the corresponding rights by law in the interests of **national** or public **security**, protection of the rights and freedoms of other persons".

At the same time, neither the Constitution of Ukraine and the European Convention on Human Rights, which the draft law refers to, nor the International Covenant on Civil and Political Rights (hereinafter - the ICCPR), which also protects the mentioned freedoms, which, however, is not mentioned in the text of the project, provide for the possibility restriction of the right to freedom of conscience, religion and association in religious organizations in the interests of national security.

Thus, according to the second part of Article 35 of the Constitution of Ukraine, 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 corresponding provision

is also contained in: 1) Article 9 of the

European Convention on Human Rights, ratified by the Law of Ukraine No. 475/97-BP of July 17, 1997 (hereinafter - the European Convention). according to the second part of which the freedom to practice one's religion or belief is subject only to such restrictions as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals or for the protection of the rights and freedoms of others; 2) Article 18 ("The right to freedom of thought, conscience and religion) of the ICCPR,

ratified by the Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR N 2148-VIII dated October 19, 1973, which states that the freedom to practice religion or belief is subject only to the restrictions established by law and which are necessary for the protection of public safety, order, health and morals, as well as the fundamental rights and freedoms of other persons.

It should be noted that point 31 of the Handbook on the application of Article 9 of the European Convention, issued by the Council of Europe together with the European Court of Human Rights, notes that "unlike Articles 8 § 2, 10 § 2 and 11 § 2 of the Convention and Article 2 § 3 Protocol No. 4, "national security" does not appear among the goals listed in Article 9 § 2. This omission is far from accidental, on the contrary, the refusal of the creators of the Convention to include this very motive in the list of legal grounds for intervention reflects the primary importance of religious pluralism as "one of foundations of a democratic society" and the fact that the state cannot tell a person what he should believe or take measures aimed at forcing him to change his beliefs (Nolan and K. v. Russia, § 73). Therefore

the state cannot refer to the mere need to protect national security in order to limit the exercise of the right of an individual or a group of individuals to practice their religion."

A similar position is taken by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), which in its Recommendations on the Analysis of Legislation in the Field of Religion or Belief, prepared with the assistance of the European Commission for Democracy through Law (Venice Commission), notes that "national security" is not a permissible restriction under Article 9.2 of the ECHR and Article 18.3 of the ICCPR."

We also draw attention to the fact that the fourth part of Article 3 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations", to which the draft law does not make any changes, corresponds to the Constitution of Ukraine and the above-mentioned international treaties of Ukraine and provides, in particular, that "the exercise of freedom to practice religion or belief is subject only to those restrictions that are necessary for the protection of public safety and order, life, health and morals, as well as the rights and freedoms of other citizens, established by law and in accordance with Ukraine's international obligations."

At the same time, Article 15 ("Derogation from obligations during an emergency") of the European Convention provides that "during war or other public danger that threatens the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention, only to the extent required by the urgency of the situation, provided that such measures do not conflict with its other obligations under international law... Any High Contracting Party, using this right to derogate from its obligations states, fully informs the Secretary General of the Council of Europe about the measures taken by it and the reasons for taking them. It must also inform the Secretary General of the Council of Europe of the time when such measures have ceased to be applied, and the provisions of the Convention are fully applied again."

In order to fulfill the specified international obligation of Ukraine, Article 64 of the Constitution of Ukraine also provides that in the conditions of war or state of emergency, separate restrictions on rights and freedoms may be established, specifying the period of validity of these restrictions. The rights and freedoms stipulated by Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63 of this Constitution cannot be limited. Therefore, Article 35 of the Constitution of Ukraine is not included in the list of rights and freedoms that cannot be limited.

The Law of Ukraine "On the Legal Regime of Martial Law" in accordance with Clause 19 of Part One of Article 92 of the Constitution of Ukraine defines the content of the legal regime of martial law, the procedure for its introduction and cancellation, the legal basis of the activities of state authorities, military command,

military administrations, local self-government bodies, enterprises, institutions and organizations in conditions of martial law, guaranteeing the rights and freedoms of a person and a citizen and the rights and legitimate interests of

legal entities. Article 24 of the said Law stipulates that Ukraine, in accordance with the International Covenant on Civil and Political Rights, in the event of the introduction of martial law, immediately informs through the Secretary General of the UN to the states that participate in this pact, about restrictions on the rights and freedoms of a person and a citizen, which is a deviation from obligations under the International Covenant, and about the limit of these deviations and the reasons for making such a decision, as well as about changes in the limit of deviations from obligations under the International Covenant on Civil and Political Rights or the validity period of restrictions on rights and freedoms

and the reasons for making such a decision. Please note that the Decree of the President of Ukraine "On the introduction of martial law in Ukraine" dated February 24, 2022 No. 64/2022, adopted on the basis of the Constitution of Ukraine and the Law of Ukraine "On the Legal Regime of Martial Law", which was approved by the Law of Ukraine dated February 24, 2022 No. 2102-IX, as well as all subsequent decrees of the President of Ukraine, which continued the effect of the specified martial law in Ukraine (approved by the relevant laws of Ukraine), never limited the rights provided for in Article 35 of the Constitution

Thus, in particular, according to paragraph 3 **of the Decree of the President of Ukraine On the introduction of martial law in Ukraine** of February 24, 2022 No. 64/2022 "in connection with the introduction of martial law in Ukraine, constitutional rights may be temporarily limited for the period of the legal regime of martial law and freedom of a person and a citizen, provided for in Articles 30 - 34, 38, 39, 41 - 44, 53 of the Constitution of Ukraine, as well as introduce temporary restrictions on the rights and legitimate interests of legal entities within the limits and to the extent necessary to ensure the possibility of introducing and implementing measures of legal of the martial law regime, which are provided for in the first part of Article 8 of the Law of Ukraine "On the legal regime of martial law".

Taking into account the above, it should be noted that in accordance with the Constitution of Ukraine and Ukraine's international obligations, defined by the European Convention and the ICCPR, restriction of freedom of worldview and religion for the protection of national security **is possible only during the period of martial law**. At the same time, it should be borne in mind that in view of the requirement of the third part of Article 106 of the Constitution of Ukraine, according to which the President of Ukraine issues decrees and orders on the basis of and for the implementation of the Constitution and laws of Ukraine, which are mandatory for implementation on the territory of Ukraine, recruiting the entry into force of such a draft law as a law (if adopted) will require bringing the Decree of the President of Ukraine "On the introduction of martial law in Ukraine" dated February 24, 2022 No. 64/2022 into compliance with its provisions.

2. According to Article 3 of the draft law, the activities of the Russian Orthodox Church on the territory of Ukraine are prohibited. At the same time,

according to Clause 1 of the second part of Article 4 of the draft law, from the date of the ban on the activity of a foreign religious organization in Ukraine (the entry into force of this Law or the law on making relevant changes to this Law), the activity of such a religious organization in Ukraine is terminated with the consequences established by law.

At the same time, the law, as a normative legal act of higher legal force, must contain a general mechanism for implementing one or another of its prescriptions (in this case, a mechanism for terminating the activity of such a foreign religious organization), and not be an act of terminating the activity of such an organization (that is, implementing management activities). However, the Civil Code of Ukraine, which is the main act of the civil legislation of Ukraine, does not contain a mechanism for the termination of the activity of a legal entity by the decision of a state authority, which would be separate from the termination of such a legal entity.

Therefore, the termination of the activity of a legal entity (the Russian Orthodox Church) proposed by Articles 3 and 4, which, moreover, is not registered in Ukraine, indicates the absence of a legal settlement of the issue of the termination of the activity of a foreign religious organization on the territory of Ukraine. Therefore, the lack of regulation of the relevant issue in the draft law indicates legal uncertainty.

3. According to the first part of Article 8 of the Constitution of Ukraine, the principle of the rule of law is recognized and valid in Ukraine. The components of the principle of the rule of law are, in particular, legal predictability and legal certainty, which are necessary for the participants of the relevant legal relationship to have the opportunity to foresee the consequences of their actions and to be sure of their legitimate expectations that the right acquired by them on the basis of current legislation, its content and scope will be implemented by them (the third paragraph of clause 4 of the motivational part of the Decision of the Constitutional Court of Ukraine dated October 11, 2005 No. 8-yy/2005). As noted by the Constitutional Court of Ukraine, in the context of Article 8 of the Constitution of Ukraine, legal certainty ensures

the adaptation of the subject of law enforcement to the normative conditions of legal reality and his confidence in his legal position, as well as protection against arbitrary intervention by the state. Legal certainty must be understood through its following components: clarity, comprehensibility, unambiguity of legal norms; the right of a person in his actions to count on the reasonable and predictable stability of the existing legislation and the ability to foresee the consequences of the application of legal norms

(legitimate expectations). Thus, legal certainty implies that the legislator should strive for clarity and comprehensibility in the presentation of legal norms. Each person, in accordance with the specific circumstances, must orientate himself on which rule of law applies in a particular case, and have a clear understanding of the occurrence of specific legal consequences in the relevant legal relationship, taking into account the reasonable and predictable stability of the rules of law (paragraphs four to six of sub-clause 4.1 of clause 4 of the motivational part of the Decision of the Constitutional Court of Ukraine (Grand Chamber) dated June 20, 2019 No. 6-ÿ/2019). Therefore, part one of Article 8 of the Constitution of Ukraine is not taken into account in a number of provisions of the draft, in particular: 1) Article

5 of the draft law proposes to determine "the specifics of the termination of a religious organization on the grounds of propagating the ideology of the Russian peace". the

propaganda of the Russian Nazi totalitarian regime, the armed aggression of the Russian Federation as a terrorist state against Ukraine, the symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine" dated May 22, 2022 No. 2265-IX to be supplemented with paragraph 11 of the following content: "11) ideology of the "Russian peace" - the Russian neo-colonial doctrine, which is based on chauvinist, Nazi, racist, xenophobic,

religious ideas, images and goals, the destruction of Ukraine, the genocide of the Ukrainian people, the non-recognition of the sovereignty of Ukraine and other states, which aims at the violent expansion of the Russian supranational imperial space as a way implementation of the special civilizational right of Russians to mass murders, state terrorism, military invasion of other states, occupation of territories, expansion of the canonical territory of the Russian Orthodox Church beyond the territory of the Russian Federation". In addition, the draft also proposes to supplement paragraph 3 of the same article of the mentioned Law, which defines the term "propaganda of the Russian Nazi totalitarian regime, armed

aggression of the Russian Federation as a terrorist state against Ukraine", to add the words "popularization of the ideology of "Russian peace" in any form and by any means".

At the same time, Article 5 of the draft law does not define the procedure for termination of a religious organization in view of the proposed definitions and does not contain a reference to the law that defines the procedure for such termination;

2) the first part of Article 3 of the project refers to "activities of the Russian Orthodox Church in Ukraine". To avoid legal uncertainty, we suggest replacing these words with the words "activities in Ukraine of the Russian Orthodox Church";

3) clauses 1 and 2 of the second part of article 4 of the draft refer to "prohibited foreign religious organization". At the same time, articles 2 - 4 of the draft do not refer to the prohibition of a religious organization, but to the prohibition of its activities. In order to ensure legal certainty and meaningful coordination of the specified points with other provisions of the project, we propose to define such an organization in point 1 of article 4 of the project as "foreign religious organization provided for in the first part of article 3 of this Law", and in point 2 - as "foreign religious organization, activity which is prohibited in Ukraine";

4) the third part of Article 4 stipulates that "a foreign religious organization, the activity of which is prohibited in Ukraine, cannot be an owner, participant, or shareholder of legal entities registered in Ukraine. Such legal entities must bring their composition of participants, shareholders into compliance with this Law during three months from the date of the ban on the activity of the relevant foreign religious organization in Ukraine. If the legal entity does not bring the composition of the participants and shareholders into compliance with this Law within the prescribed period, such a legal entity shall be terminated based on the court's decision as a result of the consideration of the lawsuit by the central executive authority, which implements state policy in the field of religion". However, the project does not specify the period of time for the termination of a legal entity whose owner is a foreign religious organization whose activities are prohibited in Ukraine. In addition, the specified norm does not correspond to the subject of the legal regulation of the project, which, in accordance with the first part of Article 1, defines the specifics of the

activities of foreign religious organizations in Ukraine; 5) part four of Article 4 of the project stipulates that "relationships and/or connections, and/or communications of religious organizations, including religious communities, other legal entities under private law with foreign religious organizations, the activities of which are prohibited in Ukraine, are not allowed, except when they are carried out with the approval of the central executive body that implements state policy in the field of religion.

In order to obtain approval, a person planning relations and/or connections and/or communications with a foreign religious organization whose activities are prohibited in Ukraine shall apply to the central executive body implementing state policy in the field of religion with a corresponding application. The application is accompanied by information explaining the need for relations and/or connections and/or communications with a foreign religious organization whose activities are prohibited

in Ukraine. The procedure for granting individual consent for international communications and/or contacts with a foreign religious organization, the activity of which is prohibited in Ukraine, the form of the application for granting consent, the list of information and additional documents attached to it, the grounds for granting and r

granting consent, the procedure for monitoring connections and contacts with a foreign religious organization, the activities of which are prohibited in Ukraine, are approved by the Cabinet of Ministers of Ukraine. to carry out any

relations and/or connections, and/or communications with foreign religious organizations, the activities of which are prohibited in Ukraine, both religious organizations and other legal entities under private law.

The specified provision of the project also requires coordination with the Law of Ukraine "On Administrative Procedure". In this regard, we propose to note in the project that the relations regarding obtaining the approval provided for in this part, the entry into force of the relevant decision of the central executive body implementing the state policy in the field of religion, its appeal in the administrative procedure, implementation, termination are regulated by the Law of Ukraine "On Administrative Procedure", taking into account the features established by this Law. In addition, in order to ensure legal certainty in the fourth part of Article 4 of the project, it is necessary to mutually agree on the terminology. Thus, the first and second

paragraphs refer to "relationships and/or connections and/or communications", "consent", and the third paragraph refers to "international relations and/or contacts", "individual consent" .

4. Regarding changes to the Code of Administrative Procedure of Ukraine 1)

the draft law proposes to bring administrative cases on the termination of a religious organization under the jurisdiction of the Appellate Administrative Court in the appellate district, which includes the city of Kyiv, as a court of first instance (amendments to the second part of Article 22 of the Code of Administrative Procedure of Ukraine (hereinafter - CAS of Ukraine) in the draft edition), as well as to determine the specifics of proceedings in such cases by supplementing CAS of Ukraine with Article 2899 .

First of all, the proposed changes do not take into account the peculiarities of the tasks of administrative proceedings in the context of Article 3 of the Constitution of Ukraine and the principles of such proceedings. Thus, in

accordance with Article 2 of the Civil Code of Ukraine, the task of administrative proceedings is the fair, impartial and timely resolution of disputes by the court in the field of public legal relations with the aim of effectively protecting the rights, freedoms and interests of natural persons, the rights and interests of legal entities from violations by entities authoritative powers.

This task is due to the need to implement the right of a person and a citizen guaranteed by Article 55 of the Constitution of Ukraine to judicial protection against unlawful decisions, actions or inaction of state authorities, local self-government bodies, their officials or officials.

As you know, the introduction of administrative proceedings is due to the legal nature of public-law disputes, where the citizen is opposed by a powerful administrative apparatus. That is, the CAS of Ukraine is primarily an instrument for the protection of human and citizen rights.

Administrative proceedings, as a specialized type of judicial activity, should become a mechanism for increasing human guarantees for the exercise of the right to judicial protection against illegal decisions, actions or inaction of subjects of power. According to the administrative procedure, in contrast to the civil procedure, preferences should be given to the person².

Therefore, the list of cases in which a natural or legal person can be a defendant in a lawsuit by a subject of power should be gradually reduced, because in other cases, instead of performing the function of justice provided for by Article 124 of the Constitution of Ukraine, administrative courts are forced to perform functions that are not inherent to

them. In addition, granting administrative courts additional powers to consider cases of the specified category, in our opinion, is questionable also in view of the provisions of Article 35 of the Constitution of Ukraine, according to which everyone has the right to freedom of outlook and religion. This right, first of all, includes the freedom to practice any religion or not to practice any religion, to conduct individual or collective religious services and ritual rites without hindrance, to conduct religious activities. Secondly, the church and religious organizations in Ukraine are separated

from the state. The provisions of this article also correspond with Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change one's religion or belief, as well as freedom to profess one's religion or belief in worship, teaching, performance and observance of religious practices and rituals, either alone or in association with others, whether in public or in private.

The freedom to practice one's religion or belief shall be subject only to such restrictions as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

² Separate opinion of the judge of the Constitutional Court of Ukraine Markush M.A. regarding the Decision of the Constitutional Court of Ukraine dated August 29, 2012 No. 16-yy/2012.

As can be seen from the proposed draft, the regulation of the termination of a religious organization is carried out by analogy with the legislative regulation of relations related to the prohibition of activities, in particular, of political parties (Article 2893 of the Civil Code of Ukraine). However, in contrast to the chosen method of terminating the activity of a religious organization, the prohibition of political parties as associations of citizens in court is directly provided for by Article 37 of the Constitution of Ukraine. In addition,

the registration of a religious organization as a legal entity is carried out in accordance with the Civil Code of Ukraine and the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations". However, the draft stipulates that in certain cases, the termination of the activity of a religious organization is carried out according to the rules of the Civil Code of Ukraine. This also calls into question the expediency of introducing consideration of the specified category in the order of administrative jurisdiction. In our opinion, in the case of committing

offenses (criminal or administrative) by representatives of a religious organization, they should be held accountable, provided by law, in the manner established by the Criminal Code of Ukraine or the Code of Ukraine on Administrative Offenses;

2) regarding the content of the new Article 2899 of the Civil Code of Ukraine (in the draft version) it is worth noting that:

a) the proposed wording of the first part of the article stipulates that the right to file an administrative lawsuit for the termination of a religious organization is vested in the central executive body that implements state policy in the field of religion, or the body authorized to register the charter (regulations) of the relevant religious organization. At the same time, the

wording of the fifth part of Article 16 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" (in the draft wording) provides that in case of discovery of grounds for the termination of a religious organization established by this Law, the central an executive power body that implements state policy in the field of religion, or a body authorized to register the charter (regulations) of the relevant religious organization. Thus, from the above provisions of the project, their internal inconsistency can be seen, because in one case

it is about the right of the relevant bodies, and in the other - about their duty;

b) in accordance with part five of the article, the announcement of the opening of proceedings in an administrative case or appeal proceedings in such a case and the appointment of a court session, the rendering by the court of first instance of a decision that is subject to appeal, or the completion of the case by passing a court decision together with a copy of the relevant court decision or subpoena is published on the web portal of the judiciary of Ukraine, as well as on the official website of the central executive body that implements state policy in the field of religion or the body authorized to register the charter (regulations) of the relevant religious organization. After three days from the date of publication of such an announcement, it is considered that the participants in the case and all interested persons have been duly notified of the trial of such a case, the appointment, date, time and place of the court session, the adoption and content of the published court decision therein. The non-arrival at the court session of the court of the first or appellate instance of the persons notified of the date, time and place of the case hearing in accordance with the procedure provided for in this part does not prevent the case from being heard.

As you know, the main purpose of providing a person with access to information about the judicial proceedings against him is to ensure the realization of his right to access to justice. Although the Civil Procedure Code of Ukraine contains provisions on summoning to court or notification of the consideration of a case by publishing a decision on the opening of proceedings through the official web portal of the judiciary of Ukraine in certain cases, it is worth noting that this is a copying of norms for regulating relations regarding the consideration of a new category of cases. provided by the project, is not justified from the point of view of compliance with Article 129 of the Constitution of Ukraine, which defines the basic principles of judicial proceedings, among which are the adversarial nature of the parties and their freedom to present their evidence to the court and to prove their persuasiveness before the court. In order to unconditionally comply with this constitutional principle, in the third part of Article 2 and Article 9 of the Civil Code of Ukraine, it was also established that the consideration and resolution of cases in administrative courts are carried out on the basis of the competition of the parties and the freedom for them to present their evidence to the court and to prove their persuasiveness before the court. The court takes measures defined by law, necessary to find out all the circumstances in the case.

It should also be noted that the principle of competition is considered as a fundamental element of a fair trial in the sense of paragraph 1 of Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms.

According to the general rule of the CAS of Ukraine, the court must make sure that the participants are properly informed about the proceedings. Instead, the given version of the project indicates that the very fact of publishing a court summons, a court decision, the legislator replaces the actual delivery of a summons to a person and the announcement of a court decision according to the rules defined by the Supreme Court of Ukraine.

Taking into account the above, we believe that the proposed wording of part five of the article does not correspond to the general principles of justice in courts and may violate the rights of the defendant who did not know about the case and did not participate in such a case;

3) the draft proposes to supplement the second part of Article 245 of the Civil Code of Ukraine (powers of the court when deciding the case) with a new clause 82, according to which, in the event of a lawsuit being satisfied, the court can make a decision on "termination of the religious organization provided for in Article 2899 of this Code, and the transfer of property, funds and other assets in its ownership, with the exception of religious assets, are owned by the state". At the same time, the specified

point is terminologically inconsistent with the fifth part of Article 20 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations", according to the provisions of which, taking into account the changes made to it by the draft, in the event of termination of a religious organization in connection with the violation of this Law and other legislative acts of Ukraine, **the property** in its ownership, with the exception of religious property, can be transferred to the state property free of charge. Cult property is transferred to other religious organizations. In this regard, we propose to add the sixth paragraph of

subparagraph "y" of subparagraph 2 of paragraph 2 of Section II of the draft law (amendments to the fifth part of Article 20 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations") with the following changes: replace the word "property" with "property, funds and other assets";

4) the project proposes to supplement Chapter VII "Transitional Provisions" of the Civil Code of Ukraine with a new clause 43 of the following

"43. content: In the conditions of martial law introduced by the Decree of the President of Ukraine "On the introduction of martial law in Ukraine" dated February 24, 2022 No. 64/2022, approved by the Law of Ukraine "On the approval of the Decree of the President of Ukraine "On the introduction of martial law in Ukraine" dated February 24, 2022 No. 2102-IX, administrative cases in a lawsuit against the central body of executive power implementing state policy in the field of religion, defendants and decided by the district administrative court, territorial jurisdiction which extends to the city of Kyiv (exclusive jurisdiction)".

In accordance with Article 25 of the Civil Code of Ukraine, administrative cases regarding the appeal of individual acts, as well as actions or inactions of subjects of authority, which were accepted (committed, allowed) in relation to a specific natural or legal person (their associations), are decided at the choice of the plaintiff by the administrative by the court at the place of residence (residence, stay) of this person-plaintiff registered in accordance with the procedure established by law, or

by the administrative court at the location of the defendant, except for the cases specified by this Code. If such a person does not have a place of residence (residence) in Ukraine, then the case is decided by the administrative court at the location of the defendant. In the event that this Code does not specify the territorial jurisdiction of an administrative case, such a case shall be considered by an administrative court of the plaintiff's choice.

At the same time, Article 27 of the Civil Code of Ukraine provides for the exclusive jurisdiction of certain categories of administrative cases to the district administrative court, whose territorial jurisdiction extends to the city of Kyiv. In particular, the said court resolves administrative cases regarding appeals against normative legal acts of the Cabinet of Ministers of Ukraine, a ministry or other central body of the executive power or another subject of power, the powers of which extend to the entire territory of Ukraine, except for the cases specified by this Code.

That is, Article 25 of the Civil Code of Ukraine defines the rules of territorial jurisdiction in order to ensure the consideration of the case by an administrative court that is territorially close to the place of residence or location of the plaintiff, who is not a subject of governmental powers, in order to improve access to justice. However, the draft proposes to temporarily, during the period of martial law, consider cases in which the

defendant will be the central executive body implementing the state policy in the field of religion, to be assigned to the exclusive jurisdiction of the district administrative court, whose territorial jurisdiction extends to the city of Kyiv. In our opinion, such a legislative method of regulating the specified issue narrows the right of plaintiffs to choose an administrative court, creates obstacles to the effective implementation of the right to judicial protection and

violates the prohibition established by the Constitution of Ukraine to narrow the content and scope of existing rights and freedoms when adopting new laws or making changes to current laws (part three of Article 22 of the Constitution of Ukraine).

5. Regarding changes to the Law of Ukraine "On Freedom of Conscience and Religious Organizations"

1) the draft proposes to supplement the Law of Ukraine "On Freedom of Conscience and Religious Organizations" (hereinafter - the Law) with a new article 51 "Restrictions on the activity of a religious organization in Ukraine affiliated with a foreign religious an organization located in a state that is recognized as having carried out or is carrying out armed aggression against Ukraine and/or temporarily occupying a part of the territory of Ukraine".

The second part of this article proposes to define the concept of a religious organization affiliated with a foreign religious organization, the activity of which is prohibited in Ukraine in accordance with Article 3 of the Law of Ukraine "On the Protection of National and Public Security, Human Rights and Freedoms in the Field of Activities of Religious Organizations".

At the same time, according to paragraph 1 of the specified part, such an organization is a religious organization that, in particular, is "affiliated with a religious organization operating in Ukraine, which is affiliated" with the specified foreign religious organization.

Therefore, the definition provided for in the project does not apply to foreign religious organizations that are affiliated with a foreign religious organization whose activities are prohibited in Ukraine in accordance with Article 3 of the Law of Ukraine "On the Protection of National and Public Security, Human Rights and Freedoms in the Field of Activities of Religious Organizations", however operate not in Ukraine, but in another state.

It seems that such an approach indicates the non-systematic nature of the project, therefore we propose to exclude the words "effective in Ukraine" in paragraph 1 of the second part of Article 51 of the Law (as drafted). This remark also applies to paragraph 2 of the second part of Article 51 (as drafted);

2) the draft proposes to amend Article 8 of the Law, which defines the legal status of a religious community. In particular, the fourth part is proposed to be presented in a new edition and to provide that "the decision to change the subordination and make appropriate changes to the charter (regulations) of the religious community shall be adopted by at least two-thirds of the members present at the general meeting of the religious community."

Considering that the concept of membership in a religious community is defined by the Law, and the concept of "member of the general meeting" is not defined either by the Law or the project, we propose to replace the words "present members of the general meeting of the religious community" in the specified part with the words "present at the general meeting of the

members of the religious community" ; This remark also applies to the draft amendments to the second part of Article 18 of the Law;

3) the project proposes to amend Article 9 of the Law, which defines the legal status of religious administrations and centers. At the same time, the new part five of the Law (in the draft version) proposes to provide that "the decision on the change of subordination and making relevant changes to the charter shall be adopted by the general meeting of the governing body of the religious center (management)".

At the same time, it is not taken into account that according to the second part of Article 12 of the Law "the statute (regulations) of a religious organization is adopted at a general meeting of religious citizens or at religious congresses,

conferences." In addition, Article 14 of the Law (in the draft version) provides that when registering the charter (regulations) of a religious center (management), in particular, "the original of the decision on the formation of a religious association and approval (acceptance) of the charter (regulations) of the religious center or management (minutes of general meetings of founders, constituent congress (conference) of founders, etc.)" (part eight of Article 14). And when registering the charter (regulations) of

a religious organization (religious center (management), monastery, religious brotherhood, missionary society (mission), spiritual educational institution) in the new edition to the central executive body that implements state policy in the field of religion, it is submitted, in particular, "the original of the decision of the authorized body of the religious organization on making changes to the charter (regulations), which was adopted in accordance with the procedure specified in the charter (regulations) of the religious organization, the constituent documents of which are being amended" (part thirteen of Article 14).

Therefore, to ensure legal certainty, these provisions require mutual agreement. This remark also applies to the draft

amendments to Article 10 of the Law (as drafted), which determines the legal status of monasteries, religious brotherhoods and missions.

4) the draft proposes a new version of Article 14 of the Law, which regulates issues related to the registration of statutes (regulations) of religious organizations. Thus, in particular, the tenth and

eleventh parts of Article 14 of the Law (as amended by the draft) define the procedure for registering the charter (regulations) of a monastery, religious brotherhood, missionary society (mission), spiritual educational institution. Clause 1 of part ten of Article 14 stipulates that "an application signed by the head (another authorized person) of the religious center (management) that establishes the relevant religious organization" is submitted for the registration of such a charter. At the same time, however, it is not taken into account that monasteries

and religious brotherhoods can be formed not only through their establishment by religious administrations or centers, but also in the manner provided by this Law for the formation of religious communities (part two of Article 10 of the Law).

Therefore, Clause 1 of Part Ten of Article 14 of the Law (in the draft version) may refer to the registration of the charters of only those monasteries and religious brotherhoods that

are formed in accordance with the first part of Article 10 of the Law through their establishment by religious administrations or centers. Whereas with regard to monasteries and religious brotherhoods formed in accordance with the second part of Article 10 of the Law, the project contains a legal gap that does not take into account the requirement to ensure legal certainty of the law. The first part of this article, which does not take into account the constitutional model

of the organization of public power in the Autonomous Republic of Crimea (parts four and five of Article 136 of the Constitution of Ukraine), also needs editorial revision. So, in particular, it should be provided that for the registration of the charter (regulations) of a religious community, the application is submitted to the regional, Kyiv and Sevastopol city state administrations, and in the Autonomous Republic of Crimea - to the Council of Ministers of the Autonomous Republic of Crimea, and not to one of the specified authorities, as determined by the project;

5) part one of Article 15 of the Law stipulates that "registration of the charter (regulations) of a religious organization may be refused if its charter (regulations) or activity contradicts the current legislation."

Amendments to Article 15 of the Law (in the draft version) propose to establish that the decision to refuse registration of the charter (regulations) of a religious organization, in the registration of the charter (regulations) of a religious organization in the new version, may be appealed to a higher-level administrative body. In the absence of a higher-level administrative body, the complaint is submitted to the same administrative body that adopted the administrative act, took procedural actions and/or made the procedural decision or inaction that is being contested, if a complaint review commission has been formed under it. In the event that such an administrative body has not established a commission for handling complaints, a claim for an administrative act, procedural decision, action or inaction of an administrative body shall be submitted to the court in accordance with the law.

Therefore, the specified part should be reconciled with the title and the first part of Article 15 of the Law, since it singles out the decision on refusal to register the charter (regulations) of a religious organization in the new version.

At the same time, taking into account the need to harmonize the Law with the Law of Ukraine "On Administrative Procedure", the provisions of the project amending the Law should provide that:

relations regarding the adoption, entry into force, administrative appeal, implementation, termination of administrative acts related to freedom of conscience and the activities of religious organizations are regulated by the Law of Ukraine "On Administrative Procedure", taking into account the features established by this Law;

the decision on refusal to register the charter (regulations) of a religious organization, in the registration of the charter (regulations) of a religious organization in the new version is taken on the condition of ensuring, in necessary cases, the right of a person to participate in administrative proceedings in accordance with the Law of Ukraine "On Administrative Procedure";

6) in accordance with paragraph 2 of the first part of Article 16 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" (as amended by the draft law), a religious organization may be terminated by a court decision in case of violation

of this Law. The second part of this article of the Law (as amended by the draft law) defines a comprehensive list of cases of termination of a religious organization by judicial procedure. In particular, according to Clause 5 of this part of Article 16 (in the wording of the draft law), a religious organization is terminated in a court of law in case of conviction of its authorized persons for committing a crime against the foundations of national security of Ukraine or for committing a criminal offense provided for in Articles 1111, 161, 190, 209, 258 – 2586, 436 – 438, 442, 447 of the Criminal Code of Ukraine. In accordance with the fifth part of

Article 16 of the specified Law (as amended by the draft law), in case of discovery of grounds for the termination of a religious organization established by this Law, the central executive body implementing state policy in the field of religion, or another body authorized to register the charter (provisions) of the relevant religious organization, immediately applies to the court with a claim for the termination of the religious organization.

However, it should be noted that today, according to the domestic criminal law doctrine, the institution of liability of legal entities for criminal offenses committed by their authorized persons on behalf and in the interests of such legal entities functions. It is legally regulated by the norms of Chapter XIV¹ "Measures of a criminal legal nature against legal entities" of the Criminal Code of Ukraine. This section of the Criminal Code of Ukraine defines, in particular, the

grounds for applying criminal legal measures to legal entities (Article 963), the legal entities to which criminal legal measures are applied (Article 964), the grounds for exempting a legal entity from the application of criminal legal measures - of a legal nature (Article 965), types of criminal-legal measures applied to legal entities (Article 966), general rules for applying criminal-legal measures to legal entities (Article 9610).

According to Article 969 of the Criminal Code of Ukraine, the liquidation of a legal entity is applied by the court in the event that its authorized person commits any

which of the criminal offenses provided for by articles 109, 110, 111, 113, 146, 147, 152 - 156, 160, 209, 255, 258 - 259, 436, 437, 438, 442, 444, 447 of , 3011 – 303, 260, 262, 306, 436, this Code. Thus, the termination of a legal entity by

liquidation in the event that its authorized person commits a corresponding criminal offense is a measure of a criminal law nature, which is applied by the court on the grounds provided for by the Criminal Code of Ukraine and in the manner determined by the Criminal Procedure Code of Ukraine. In this regard, clause 5 of the second part of Article 16 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" (in the wording of the draft law) should be excluded, as it does

not belong to the subject of legal regulation of this Law and is regulated by relevant legislative acts;

7) Clauses 6 and 8 of the second part of Article 16 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" provide that "a religious organization shall be terminated by court order only in cases of: 6) non-fulfillment of

the order to eliminate violations provided for in Article 30 of this Law, within the period established by this Law;

...

8) detection of other violations of the requirements for the creation and operation of a religious organization, the management center (management) of which is located outside of Ukraine in a state that has carried out and is carrying out armed aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine, established by the Constitution of Ukraine, this Law and other laws of Ukraine".

At the same time, according to the new paragraph of the tenth part of the first part of Article 30 of the same Law (as amended by the draft law) "The central body of executive power, which implements the state policy in the field of religion, ensures the implementation of the state policy regarding religions and the church by: ... issuing mandatory prescriptions on elimination of violations of the legislation on freedom of conscience and religious organizations". A systematic analysis of the specified provisions of the

draft does not make it possible to unambiguously establish whether the term "order to eliminate violations of the legislation on freedom of conscience and religious organizations" used in Article 30 of the Law (as amended by the draft) covers the actions covered by clause 8 of the first part of Article 16 of this Law (in the project edition). Ambiguity of the content of the draft text in the case of its adoption as a law will contain signs of legal uncertainty of the law, which will not correspond to the principle of the rule of law, the validity of which is guaranteed in Ukraine by Article 8 of the Constitution of Ukraine.

To eliminate such uncertainty, the text of the project should specify exactly which "other violations" of the law can result in the termination of a religious organization in court. In the same case, if we are talking about a violation that, according to the draft law, is the basis for the issuance by the relevant central body of the executive power of an order on the elimination of violations, provided for in Article 30 of this Law (in the draft version), paragraph 8 of the first part of Article 16 of the Law (in the draft version) should be excluded;

8) the provisions of Article 16 of the Law (as amended by the draft) also provide that in case of discovery of the grounds for the termination of a religious organization established by this Law, the central executive body implementing the state policy in the field of religion, or the body authorized to register the charter (provision) of the relevant religious organization, immediately applies to the court with a claim for the termination of the religious organization. At the same time, a commission for the termination of a religious organization (liquidation commission) is appointed by a court decision on the termination of a religious organization. In our opinion, the specified provisions do not take into account the prescriptions of paragraph 14 of the first part of Article 92 of the Constitution of Ukraine, according to which the judiciary is determined exclusively by law, and such a law is the corresponding procedural code, which by its legal nature is a set of rules and court procedures, i.e. establishes the procedure for carrying out proceedings in courts and determines the jurisdiction of cases.

Since the specified provisions of the project are related to the administration of justice by the court, they should be subject to the regulation of the procedural code, and not the Law of Ukraine "On Freedom of Conscience and Religious Organizations".

It is also worth noting that the provisions that stipulate that a commission for the termination of a religious organization (liquidation commission) is appointed by a court decision on the termination of a religious organization do not take into account the requirements of the principle of legal certainty as a component of the constitutional principle of the rule of law, since the draft left out the question: what powers this commission will have, what decisions or reports it should adopt, from among which persons the court should create such a commission, what number of commission members, the term of its authority, its authority (quorum), etc.

In addition, the current wording of the fifth part of Article 16 of the Law provides that the court considers the case of termination of the activity of a religious organization according to the procedure of legal proceedings provided for by the Civil Procedure Code of Ukraine, at the request of the body authorized to register the charter of the religious organization, or the prosecutor.

Obviously, with the aim of completing the mechanisms of legal regulation of the order of termination of consideration by the courts of existing cases on termination of activity

of a religious organization, the provisions proposed by the Committee (part four of the specified article), which provide that cases on the termination of a religious organization, submitted and not considered before the date of entry into force of this Law, are considered in the order established by the procedural law, which was in effect on the day of the opening of the court proceedings of the first instance.

We believe, however, that these provisions need to be adjusted. Firstly, in view of the provisions of Article 92 of the Constitution of Ukraine, according to which the judiciary should be determined by the procedural law, as well as taking into account the temporary nature of the proposed, the specified provisions should be placed in the transitional provisions of the Civil Code of Ukraine, and not in the body of the Law of Ukraine "On freedom of conscience and religious organizations".

The addition of temporary regulations to the permanent provisions of the laws, which are amended, is legally incorrect and does not comply with the rules of legislative technique. In addition, such a legal construction does not comply with the principles of the rule of law, since after the expiration of the temporary norm, the text of such a norm will require a legislative definition in order to prevent a different understanding of this norm in law enforcement practice. Secondly, the current version of the fifth part of Article 16 of the Law

stipulates that the court considers the case of termination of the activities of a religious organization, while the new version of Article 16 of the Law refers to the termination of a religious organization. According to such legislative changes, the transitional provisions of the Civil Code of Ukraine should regulate the issue of the termination of proceedings specifically on the termination of the activity of a religious organization. Thirdly, in the _____ transitional provisions of the Civil

Code of Ukraine, it is also necessary to simultaneously resolve the issue of consideration (completion) of appeals or cassation appeals in such cases. After all, this issue is not settled in the draft, which indicates the incompleteness of the mechanism of legal regulation of social relations.

Taking into account the above, we propose to supplement Chapter XIII "Transitional Provisions" of the Civil Code of Ukraine with paragraph 2 of the

following content: "2. Civil cases on the termination of the activity of a religious organization, in which lawsuits were filed before the Law of Ukraine "On Protection of National and Public Security, Rights and Freedoms" came into force of a person in the sphere of activities of religious organizations" and the consideration of which in the court of first instance has not been completed by the adoption of the relevant court decision, continue to be considered (completed) according to the rules that were in force before the Law of Ukraine "On the Protection of National and Public Security, Human Rights and Freedoms in in the field of activity of religious organizations".

Consideration of appeals and cassation complaints, as well as other statements provided for by this Code, in such civil cases, which were submitted before the entry into force of the Law of Ukraine "On the protection of national and public security, human rights and freedoms in the sphere of activity of religious organizations", continues and is completed according to the rules that were in effect before the Law of Ukraine "On the Protection of National and Public Security, Human Rights and Freedoms in the Field of Activities of Religious Organizations" came into force.

It is also worth noting that the term "urgently" used in the fifth part of Article 16 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" (in the draft version) has an evaluative nature, which does not take into account the principle of legal certainty (Article 8 of the Constitution of Ukraine). It is expedient to specify the specified period and determine the period during which the relevant body must file a lawsuit with the court;

9) in accordance with the new part three of Article 17 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" (as amended by the draft law) *"religious buildings and property, which are state or communal property, cannot be used or transferred for use by **religious organizations whose activities contradict of the Law**".* However, the given provision is legally incorrect, as it does not make it possible to unequivocally establish which contradictory activity is in question, the moment of occurrence of the contradiction, as well as what scope and boundaries of the contradiction of the Law should be necessary and sufficient to fulfill the requirements of this norm. In addition, the Law of Ukraine "On

Freedom of Conscience and Religious Organizations" uses different words, for example, "contradicts, "is not allowed", is prohibited", which significantly complicates the subject's enforcement of this provision in practice. This indicates a lack of legal certainty as element of the rule of law.

Separately, we note that the new part four of Article 17 of the Law on Freedom (as amended by the draft law) stipulates that *"agreements concluded in violation of part three of this article are null and void by virtue of the law and do not need to be recognized as invalid by a court. Acts related to the use of property (rent, hiring, leasing, other forms of use of someone else's property), the validity period of which has not expired, concluded³ with the relevant religious organization, as well as with legal entities, the owner, participant, shareholder of which such religious organization is, are terminated prematurely".* This part has a direct dependence on the mentioned part of the third, which will complicate its application in practice as well.

³ The provision should be corrected, because according to the Civil Code of Ukraine, transactions **are made** (Chapter 16), and contracts **are concluded** (Chapter 52).

Thus, according to the general rule, the legally established invalidity of the deed (void deed) must specifically determine the legal facts that lead to such invalidity. However, the systematic interpretation of the mentioned provisions of Article 17 of the Law does not allow to determine clear legislative criteria for the nullity of the contract in such cases, and therefore, the legitimate goal of limiting certain rights of a religious organization, provided for by the draft law, can be a means of abuse of law by law enforcement subjects. The Constitutional Court of Ukraine in Decision No. 5-yy/2005 dated September 22, 2005 stated that the requirement of certainty, clarity and unambiguity of the legal norm follows from the constitutional principles of equality and justice, since nothing else can ensure its equal application, does not exclude unlimited interpretation in the law enforcement practice and inevitably leads to arbitrariness (paragraph two of sub-clause 5.4 of clause 5 of the motivational part). Essentially,

similar remarks concern Clause 3 of Section II "Final and Transitional Provisions" of the draft law, according to which *"after completion of 60 days from the date of entry into force of this Law, lease agreements for state or communal property concluded with religious organizations (associations), legal persons whose activities are contrary to this Law shall be prematurely terminated"*.

In addition, part ten of Article 17 of the Law on Freedom (as amended by the draft law) provides that *"religious organizations, the activities of which are not allowed in accordance with Article 51 of this Law, do not have the right to use state and/or communal property, immovable property of other physical or legal entities. The right to use state and/or communal property granted to such religious organizations, including lease agreements, is terminated early 60 days from the date of adoption of the decision to recognize the relevant religious organization as affiliated with a foreign religious organization, the activity of which is prohibited in Ukraine in accordance with Article 3 of the Law of Ukraine "On the protection of national and public security, human rights and freedoms in the sphere of activity of religious organizations"*.

First of all, we note that the use of the phrase *"immovable property of other natural or legal persons"* together with the phrase *"state and/or communal property"* is incorrect, because according to the Civil Code of Ukraine, participants in civil relations are, in particular, natural and legal persons, as well as the state of Ukraine, territorial community, Autonomous Republic of Crimea, who are not individuals. At the same time, the restriction on the use by religious organizations of the property of "natural and legal entities" does not have a complete mechanism of legal regulation, since it does not provide for how the property or obligation relations between the religious organization will operate, in the event that the fact of the inadmissibility of such activities is established

organizations in accordance with the law. At the same time, the early termination of the relevant property or obligation rights is not correlated with the procedural time limits for appealing the decisions of state authorities.

Thus, it should be stated that this provision of the draft law does not take into account the legal position of the Constitutional Court of Ukraine, set forth in Decision No. 7-yy/2001 dated May 30, 2001, according to which the principle of the rule of law requires the presence in the legislative act of sufficient and complete legal mechanisms for the implementation of its provisions ;

10) definition of the terms "religious building, structure" (a building or structure that is an object of immovable property, specially intended for meeting religious needs by conducting religious services, religious rites, ceremonies, processions, rituals, prayers, services, religious gatherings and providing other types of religious practice) and "cult property" (property intended for worship services, religious rites, ceremonies, processions, rituals, prayers, services, religious gatherings and provision of other types of religious practice), which is specified in the amendments to Article 17 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations", need to be revised, since the draft law, taking into account the purpose of this property, as defined in it, does not clearly distinguish between these concepts. This indicates a violation of the constitutional principle of the rule of law, as it does not ensure legal certainty of the rule of law. We also draw attention to the fact that in accordance with the fifth part of Article 21 of the Civil Code of Ukraine, claims for

compensation for damage caused by illegal decisions, actions or inaction of a subject of authority or other violation of the rights, freedoms and interests of subjects of public legal relations, or claims to reclaim property seized on the basis of a decision of a subject of authority are considered by an administrative court, if they are filed in one proceeding with a claim to resolve a public legal dispute.

It would be expedient to take this into account in the amendments to Article 17 of the Law, the tenth part of which currently provides that the decisions of state bodies on the ownership and use of religious buildings and property can be appealed to the court in the manner provided for by the Civil Procedure Code of Ukraine.

6. Regarding changes to the Law of Ukraine "On the

Prosecutor's Office" The current wording of the third part of Article 23 of the Law of Ukraine "On the Prosecutor's Office" provides that the prosecutor represents the legal interests of the state in court in case of violation or threat of violation of interests

of the state, if the protection of these interests is not carried out or improperly carried out by a body of state power, a local self-government body or another subject of power, to whose competence the relevant powers are assigned, as well as in the absence of such a body.

The presence of such circumstances is substantiated by the prosecutor in accordance with the procedure provided for in part four of this article, except for the case specified in paragraph four of this part. It is not allowed for the

prosecutor to represent the interests of the state in court in the form of state-owned companies, as well as in legal relations related to the election process, holding referendums, the activities of the Verkhovna Rada of Ukraine, the President of Ukraine, the creation and activities of the media, as well as political parties, religious organizations, organizations performing professional self-governance and other public associations. Representation of state interests in court by the Cabinet of Ministers of Ukraine and the National Bank of Ukraine may be carried out by the prosecutor of the Prosecutor General's Office or the regional prosecutor's office only upon a written instruction or order of the Prosecutor General or his first deputy or deputy in accordance with competence.

Therefore, the law currently establishes appropriate restrictions in the field of implementation representative activities of the prosecutor.

Instead, the draft proposes to exclude the words "religious organizations" from the third part of Article 23 of the Law of Ukraine "On the Prosecutor's Office", as a result of which the prosecutor will be empowered to represent the interests of the state in court in legal relations related to religious organizations.

However, in our opinion, this does not fully take into account the provisions of paragraph 3 of the first part of Article 131 of the Constitution of Ukraine in Ukraine, according to which the prosecutor's office represents the interests of the state in court only in exceptional cases and in the manner specified by law. In this context, it is worth mentioning the

Decision of the Constitutional Court of Ukraine dated April 8, 1999 No. 3-yy/99, in which the Constitutional Court of Ukraine, clarifying the concept of "state interests", expressed the opinion that the interests of the state differ from the interests of other participants in social relations. The basis of the first is always the need to implement state-wide (political, economic, social and other) actions, programs aimed at protecting the sovereignty, territorial integrity, state border of Ukraine, guaranteeing its state, economic, informational, ecological security, protecting the land as national wealth, protection of the rights of all subjects of ownership and management, etc.

In view of the above, we believe that the question of whether the representation of the interests of the state by prosecutors should be classified as exceptional cases

in court in legal relations related to religious organizations is controversial and ambiguous and requires additional study taking into account international standards and practices of the role of the prosecutor's office in similar categories of cases.

It is also worth noting the fact that Article 23 of the Law of Ukraine "On the Prosecutor's Office", which regulates the representation of the interests of both the state and the citizen in court, is outdated and does not correspond to the content of the first part of Article 1311 of the Constitution of Ukraine, since among the constitutional functions of the prosecutor's office currently there is no representation of the citizen's interests in court.

7. Regarding amendments to the Law of Ukraine "On Leasing of State and Communal Property"

Amendments to the second part of Article 9 of the Law of Ukraine "On Leasing of State and Communal Property" (in the draft version) regarding the establishment of a permit for transfer to religious organizations for free use or loan of state or of communal property, with the general prohibition on such transfer for other subjects established by this Law, does not take into account the constitutional requirements for the state to ensure the protection of the rights of all subjects of the right of ownership and management, as well as the equality of all subjects of the right of ownership before the law (part four of Article 13 of the Constitution of Ukraine and the second part of Article 5 of the Economic Code of Ukraine).

At the same time, we note that according to the Methodology for calculating the rent for state property, approved by the Resolution of the Cabinet of Ministers of Ukraine dated April 28, 2021 No. 630 "Some issues of calculating the rent for state property", the amount of the annual rent for religious organizations for religious rites and ceremonies is 3 percent of the value of the property for placement on an area of no more than 50 square meters. meters, and 7 percent of the property value for a part of the area that exceeds 50 square meters. meters

At the same time, for lease contracts of state property by religious organizations to ensure the conduct of religious rites and ceremonies, which at the time of the entry into force of the Law of Ukraine "On the Lease of State and Communal Property" used the leased object free of charge on the basis of a loan agreement or other contract to ensure holding religious rites and ceremonies, as well as for the extension of such contracts for the first time, the rent is 0.01 percent of the value of the property.

That is, in fact, religious organizations have already been granted preferential conditions regarding the calculation of rent for state property that is leased from such organizations.

8. It should also be noted that the Committee of the Verkhovna Rada of Ukraine on humanitarian and information policy did not ensure the fulfillment of the requirements of Article 90 of the Regulations of the Verkhovna Rada of Ukraine, as it did not define the list of subordinate legal acts that must be adopted by the Cabinet of Ministers of Ukraine to ensure the implementation of this Law (if it enters into force), with an approximate statement of their main provisions.

9. The draft also needs technical and legal revision, in particular: 1) the draft consists of two sections: section I "Peculiarities of the activity of foreign religious organizations in Ukraine" and section II "Final and transitional provisions". That is, the substantive part of the project is fully included in section I, while the name of this section does not agree with the name of the project "On the protection of national and public security, human rights and freedoms in the sphere of activity of religious organizations", as well as with the content of individual provisions included in the section

I. In this regard, we propose to change the structure of the project and to exclude the names of sections from its text, and to set out the final and transitional provisions as Article 6; 2) parts seven to twenty of Article 16 of the Law (as amended by the draft) determine the procedure for recognizing a religious organization as affiliated with a foreign religious organization, the activity of which is prohibited in Ukraine in accordance with Article 3 of the Law of Ukraine "On Protection of National and Public Security, Human Rights

and Freedoms in the Sphere activities of religious organizations". At the same time, it is provided that a religious organization, in relation to which the central executive body implementing state policy in the field of religion, conducts a study of the issue of the presence of signs established by Article 51 of the Law of its affiliation with a foreign religious organization, the activity of which is prohibited in Ukraine in accordance with Article 3 of the Law of Ukraine "On the protection of national and public security, human rights and freedoms in the sphere of activity of religious organizations", can eliminate relevant violations, file an objection against the fact that it is part of the structure (is a part) or is connected with the structure or otherwise affiliated with a religious organization, in respect of which a decision was made to recognize it as affiliated with a foreign religious organization, the activities of which are prohibited in Ukraine.

Part twenty of Article 16 also stipulates that a religious organization at any time after being recognized as affiliated with a foreign religious organization, the activities of which are prohibited in Ukraine, may submit an application for revocation of the decision to the central executive body that implements state policy in the field of religion on recognizing her as an affiliate in connection with her independent elimination of signs of affiliation.

Therefore, the specified provisions do not belong to the subject of regulation of Article 16 of the Law, which regulates issues related to the termination of a religious organization, and should be allocated to a separate article;

3) the last sentence of the new edition of the third part of Article 8 of the Law (v version of the project) must be transferred to the one set out by the project in the new version the fourth part of Article 8, with which it is meaningfully combined;

4) to ensure legal certainty and mutual agreement of the provisions of the draft in part nine of Article 16 of the Law (as amended by the draft) words "a sign of the presence or absence of affiliation" shall be replaced by the words "availability or absence of signs of affiliation";

5) amendments to the Law of Ukraine "On State registration of legal entities, natural persons — entrepreneurs and public formations" it is proposed to set out in a new version the third paragraph of paragraph 6 of the first part of Article 15. At

the same time, on September 3, 2024, the Law of Ukraine dated July 14, 2023 No. 3257-IX will be put into effect, which supplements paragraph 6 of the first part of Article 15 with a new third paragraph. That is paragraph three, which is a project proposed to be included in the new edition, will become the fourth paragraph.

Therefore, if the project enters into force as a law after September 3, 2024, the change proposed by it will be introduced into the third paragraph of the first part Article 15 of the Law of Ukraine "On State Registration of Legal Entities, Individuals persons — entrepreneurs and public formations" in the edition of the Law of Ukraine dated July 14, 2023 No. 3257-IX.

Therefore, in case of adoption of the project as a law and its entry into force after 3 in September 2024, the text of the adopted law must be corrected.

Given the limited time for drafting the draft law, the list is provided comments on it are not exhaustive.

General conclusion: the draft law can be adopted in the second readings taking into account the comments of the Main Legal Department.

Deputy Head
Head Office

S. MISHURA

