

On the bill regarding the change of jurisdictional affiliation of religious communities and its criticism

HRWF (18.05.2017) - In March 2016, the Ukrainian Parliament registered draft law No.4128, which regulates the procedure of changing the affiliation with particular religious centers by religious communities. A heated debate sparked around the bill, just as around a negative opinion on this matter by Chief Scientific Expert Department of the Parliament (HNEU).

The father of the law, MP Viktor Yelensky, was stuck in Brussels by two terrorist attacks at that time and HRWF talked with him about his draft law. His comments were adequately summarized by RISU (Religious Information Service of Ukraine) as follows:

MP Viktor Yelensky's comments



"The right to change religious beliefs and religious affiliation is a fundamental human right. As follows from Article 9 of the European Convention on Human Rights and Fundamental Freedoms, they can be changed either alone or collectively with others. Meanwhile, the problems that Ukrainians had faced for a long time in the implementation of this law, became more severe and obvious with the beginning of Russian aggression against Ukraine. Orthodox believers, being indignant of the Moscow Patriarchate's support of aggression, blatant anti-Ukrainian actions of its hierarchy, showed their desire to leave the Russian Church and join the Ukrainian Orthodox Church – Kyiv Patriarchate.

This is not just a problem of jurisdiction, this is an issue that pertains to the depth of the human conscience.

A priest of UOC (MP), Fr Oleh Shlikhta wrote to his Primate that chanting "many years" to Patriarch Kirill in the parishes where hundreds mourn those killed in the war with Russian mercenaries is a non-canonical action. But it appears difficult for the community to get rid of the Moscow Patriarchate control.

Here is a typical situation. The majority of Orthodox community strives, as Metropolitan Basil Lypkivsky once wrote, to get out from under Moscow." But the priest with his wing men blocked the decision of the community. Hierarchy denounces its former faithful as "splitters devoid of grace" and sets to win churches by court action. The alternate use of a church with brothers and sisters in faith is strictly prohibited. On this occasion there is an instructive letter of the Primate of the Ukrainian Orthodox Church (Moscow Patriarchate) Metropolitan Onufriy that directly encourages clergy to disregard the law on freedom of conscience. Then the specially trained guys in sports pants come to the village, which were euphemistically called "pilgrims" by church propagandists. Accordingly, the "soul-saving mission" consisting in knocking out of the church the believers whose grandparents and

great-grandparents had built it and these people renovated, cared for and maintained, was shamelessly named a "pilgrimage." A very specific group of journalists is always present where fighting takes place. It depends on their agility depends whether Patriarch Kirill will make statements today or tomorrow on the "excesses of militant nationalists against the canonical Church."

What does the 4128 draft suggest? First, a religious center's change of affiliation, the right which religious community has under international law and under Ukrainian law, is carried out "by registration of a new version of the statute (regulations) or amendments thereto adopted by consent of a simple majority of those present at the meeting of the religious community members."

And, secondly, the people belonging to the community are in the position to decide on its ecclesial affiliation. The belonging of a person to a religious community, according to the proposed bill, is determined through his identification with this religious community, as evidenced by the participation in the religious life of a particular community. It is clear that a member of a particular religious community cannot be a person who 1) does not identify him/herself as this community member and 2) is not involved in its life.

(...) the state has no right to and is not able to a) determine whether a person is a believer; b) how deep and true is his/her faith; c) determine the person's participation in religious life - one community has compulsory tithing, another weekly attendance at prayer meetings, some other regular confession and more. There are religions where the membership in a religious community provides the person's initiation. There are cases where proximity to the human community and its participation in the authorized activities of the community does not imply full membership. The state does not intervene in all that but leaves to the discretion of the community.

That is, the bill excludes imposing by the state not only a way of expressing individual religious beliefs, but also the organization of its internal structure. Let me remind you that "self-identification" is an entirely legitimate category here. The UN Committee on the Elimination of All Forms of Racial Discrimination determined (1990) that appurtenance of a person to a racial or ethnic group should be based on self-identification.

Leading experts on religious freedom show that the same principle should be applied to determine membership in religious groups. (Anat Scolnicov (2011). *The Right to Religious Freedom in International Law. Between group rights and individual rights*, p.26)

Meanwhile, the Central Scientific Experts Office of the Parliament opposed the capability of religious communities to exercise their fundamental right to submit themselves to the jurisdiction of their own choice, categorically, for the reasons that are not currently understood, but clearly are not of a legal nature. In its opinion, the Central Scientific Experts Office cites the Constitution of Ukraine and concludes that "a person may at any time change their affiliation with a particular religious community." The conclusion is disappointingly banal. But here is the trick! - The bill refers not to a person but a community, which, as we have seen, cannot so easily change its affiliation. After such "innocent" spoofing, the experts of the Central Scientific Experts Office summarize with a sense of accomplishment, "... Thus, there is reason to believe that the matter is out of the scope of legal regulation" If there was a Nobel Prize in law - the experts of the Central Scientific Experts Office would be first in line. They promptly resolved the problem of balance between the individual and group rights, on which legal luminaries of the world are scratching their spears; they relieved the law schools of the need to develop principles

to govern conflicts that arise in the public manifestation of religious beliefs; they declared void an issue, which proved to be above the bend of a number of Ukrainian courts: what is the religious community - a private law corporation or an unalienable part of the Church.

To give the legal opinion of the Central Scientific Experts Office a likeness of legitimacy, its experts refer to two cases of the European Court of Human Rights. These things are really important to understand our issue – **“Bessarabia Metropolis vs. Moldova”** (2002) and **“St. Michael parish vs. Ukraine”** (2007). One can hardly imagine how the rulings of the European Court in these cases can not only justify, but even support the arguments of the Central Scientific Experts Office. At least that in the first case, the European Court defended the right of the religious association, which wanted to change the jurisdiction and leave the Moscow Patriarchate for the Romanian Patriarchate and which the Moscow Patriarchate (and subsequently the state of Moldova) accused of schismatic activities, violation of the canon law of the Church, unwillingness to consult with the Moscow Patriarchate (p.B.27), the European Court defended the right of believers (p.67) “to practice their religion together in the bosom of the church, other than Moldovan metropolis [Moscow Patriarchate].”

The case of “St. Michael parish v Ukraine” does not leave the opinion of the Central Scientific Experts Office a chance to exist. First, the decision in this case obliges Ukraine to resolve the problem that the Central Scientific Experts Office declares non-existent and not being subject to legal regulation. Secondly, in this case the European Court stood up in defense of the applicant community, which “indicated that their right to change religious orientation, as guaranteed by Article 9 of the Convention, is violated (p.120). Even more, the Court found that state intervention in the community right to freedom of religion is precisely the refusal to unimpeded change of their jurisdiction (p.123). This interference prevented them from joining the Kyiv Patriarchate as an independent religious group (ibid).

The irresistible desire of the Central Scientific Experts Office to “close question” is surprising, to put it mildly. Despite the fact that Ukraine really has problems with exercising the right of a community to leave the jurisdiction of a religious center, where Ukrainian policy and imperial chauvinism are elevated to the rank of church policy, despite the fact that the Strasbourg Court urges the Ukrainian legislator to resolve the issue, despite the fact that the legal arguments against the bill are not convincing, to put it mildly, the Central Scientific Experts Office recommends to reject it - not even alter, improve or modify, but reject. And, as supposedly “the issue is beyond the scope of legal regulation,” we thank you for your attention, good bye.

Meanwhile, the Moscow Patriarchate continues to spread its agitation materials in Ukraine regarding the “holy war against schismatics and Uniates.” And I received another letter from the Orthodox - this time from the village of Ryasnyky, Goshchansky district of Rivne region. They ask for help in maintaining their civil position and exercising their constitutional rights.”

Source: RISU

(https://risu.org.ua/en/index/expert_thought/authors_columns/vyelenskyi_column/62961/)