

STATE REGISTRATION OF RELIGIOUS ORGANIZATIONS IN UKRAINE

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Summary

The article considers the issue of the creation and registration of religious organizations and the acquisition of the status of a legal entity. The main problems faced by religious organizations in the process of state recognition are considered. The methods of state registration of religious organizations depending on their type are described, the powers of regional and central executive bodies regarding the legal recognition of religious organizations are outlined. Proposals have been made to amend the current legislation to create a transparent process for registering religious organizations. The article defines religious organizations in Ukraine such as religious communities, centers, administrations, monasteries, church unions, missions, theological educational institutions, organizations, and associations. As the registration procedure of religious organizations has two stages of registration in Ukraine, the article describes in detail each of the stages of state registration of religious organizations. The article describes the state benefits that religious organizations in Ukraine can receive after obtaining the status of a legal entity.

Keywords: religious freedom, registration, religious organizations, regional policy, state–religion relationships.

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1. Introduction

One of the components of the mechanism for implementing a state policy in the field of socio-religious relations is the state registration of religious organizations. Registration of religious organizations is aimed at ensuring the right of a person to freedoms of Thought and religion, which is reflected in the norms of international law and enshrined in the Constitution of Ukraine. Religious organizations in the form of religious communities, centers, administrations, monasteries, church unions, missions, theological educational institutions, organizations and associations (hereinafter – religious organizations). These entities are subjects of the right to freedom of religion and may apply to relevant state authorities for the acquisition of legal rights through registration.

Religious organizations apply to the state for their legal recognition as collective entities, which are equal before the law and need a unified approach to their recognition. However, the lack of a clear structure of public administration in the field of socio-religious relations,

common approaches and standards to statutory documents, different approaches to the provision of administrative services at the regional level, gaps in laws negatively affect the trust of religious communities in public bodies. conflict-generating society. The registration protocol, forms of documents, and deadlines for submission of documents for state registration are not clearly defined, which enable relevant state authorities to make certain decisions at their own discretion.

Therefore, the main purpose of the article is to analyze the process of acquisition by religious organizations of the status of a legal entity in Ukraine both at the central and regional level as well as to develop proposals for legislation amendments on the registration of religious organizations depending on their types.

Research methodology relies on using a set of methods that assist in achieving the scientific purpose. Such a set primarily consists of dialectical and system-structural methods, formal logic (analysis, synthesis, generalization), and comparative-legal one, which make it possible to handle the texts of statutory acts and doctrinal sources and help forward formulating the author's standpoint meeting the research purpose.

2. Freedom of registration

According to a systematic approach, by the provisions of Article 9 of the European Convention on Human Rights, everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief in worship, teaching, practice and observance, and practice, both individually and in association with others, both in public and in private. Freedom to practice one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public security, public order, health or morals, or the protection of the rights and freedoms of others.

A similar rule is contained in Article 18 of the International Covenant on Civil and Political Rights, according to which everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to hold or receive religion or belief of his choice, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, practice, worship, and observance. Freedom to practice one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, as well as the fundamental rights and freedoms of others. (*International Covenant on Civil and Political Rights, 1966*).

Thus, international and European standards protect the right to have, accept and leave a religion, as well as the right to practice one's religion, both individually and with others. Based on the content of the cited articles, two dimensions of religious freedom are distinguished – *forum internum*, ie the right to have, accept and leave religion, and *forum externum* – the right to freely practice religion. *Forum internum* – the internal aspect of freedom of religion – is an absolute right that cannot be restricted under any circumstances. At the same time, the state has the right to restrict *forum externum* – the freedom to express one's beliefs externally. Such forms of external expression of beliefs include the freedom to practice one's religion or beliefs in worshipping, teaching, performing, and observing religious practices and rituals, both individually and in association with others, both publicly and privately.

The *forum externum* can be fully used after receiving state recognition of a religious organization, which is manifested in its state registration. Issues of registration of religious organizations are covered both in national legislation and in international treaties. Thus, at its

59th plenary session in Venice on June 18-19, 2004, the Venice Commission adopted directives stating that laws on religious organizations governing the acquisition of legal personality through registration, incorporation, etc., are the most important for religious organizations. The Venice Commission also determined that individuals and groups of persons could freely practice their religion without registration. (*Organization for Security and Co-operation in Europe, 2004*). Such a right of a religious community is stated in part 9 of Article 8 of the Law of Ukraine “On Freedom of Conscience and Religious Organizations” (*The Verkhovna Rada of Ukraine, 1991*).

Despite the importance of legal personality for the exercise of the right to freedom of thought and religion, religious communities cannot be required to obtain legal personality if they do not wish to do so. Acquisition of legal personality is one of the possibilities provided by law and not a duty of religious organizations, so the development of state registration systems must be guided by the principle that registration should help the activities of religious organizations, not hinder or be a means of their control. Thus, the state must ensure the right of religious organizations to obtain legal personality of a type and level that would allow them to carry out the full range of their religious activities following the current legislation of Ukraine.

Access to the status of a legal entity is part of the right to freely practice religion and its external reflection (*Forum externum*). If the organizational life of the community is not protected by freedom of religion and belief, many aspects of individual freedom in this area become vulnerable. This affects the ability to practice one’s religion or beliefs with others and this could jeopardize the viability of the community. (*The OSCE Office for Democratic Institutions and Human Rights, 2019*).

In the 1989 Vienna Document (paragraph 16.3), the OSCE participating states undertook, at the request of associations of believers who profess are willing to profess their faith within the constitutional framework of their states, to recognize the status accorded to them in their respective countries (*Organization for Security and Co-operation in Europe, 1989*).

The procedure for acquiring the status of a legal entity for religious organizations in Ukraine is regulated by the Law of Ukraine “On Freedom of Conscience and Religious Organizations” 987-XII (hereinafter – Law 987) and the Law of Ukraine “On Administrative Services” 5203-VI (hereinafter – Law 5203) and the Law of Ukraine “On State Registration of Legal Entities, Individuals – Entrepreneurs and Public Associations” 755-IV (hereinafter – the Law 755). According to these laws, a religious organization is recognized as a legal entity from the date of its state registration. The charter (regulation) of a religious organization, which by civil law determines its legal capacity, is subject to registration in the manner prescribed by the law (*The Verkhovna Rada of Ukraine, 1991*) (*The Verkhovna Rada of Ukraine, 2012*) (*The Verkhovna Rada of Ukraine, 2003*).

The religious community in Ukraine can function without any bureaucratic procedures, but obtaining the status of a legal entity gives the organization more new opportunities *forum externum*, which has a significant impact on religious life and is associated with obtaining from the state the right to use land or other state permits, invitation of foreign religious leaders, workers, volunteers to the country, organization of visits and missions to prisons and military institutions (chaplaincy), the right to establish an educational institution, both for teaching children and for training the clergy, the right to establish separate religious institutions (missions, monasteries etc.) and other rights. A wide range of state financial benefits is also available for registered religious institutions including tax exemptions (п.п 197.1.9 п. 197.1 ст. 197, п.п 283.1.8 п. 283.1 ст. 283 п.п “н” п. 266.1 ст. 266 Of the Tax Code of Ukraine) to direct subsidies (*The Verkhovna Rada of Ukraine, 2010*).

A religious organization without the status of a legal entity may not enjoy the rights associated with the status of a legal entity. These include the right to own or use property, to have a bank account, to employ workers and to participate or to have judicial protection, and other extremely important rights for the exercise of the right to practice one's religion. (*The European Court of Human Rights, 2009*).

Thus, acquiring the status of a legal entity significantly increases the rights and opportunities for religious organizations to profess and disseminate their religious beliefs. However, it is important to adhere to the principles of voluntariness and freedom of choice.

3. Subjects of registration

There are various ways to enable religious organizations to obtain legal personality (registration) if they so wish to do so. In the legal systems of some states, this possibility is provided through court proceedings, in others through an application to a state body. Different states may provide religious communities with different forms of legal personality. In particular, it could be achieved through setting up a trust, a corporation, an association, a foundation, as well as various special (*sui generis*) forms of a legal entity, provided specifically for religious communities or communities that adhere to certain beliefs. (*The OSCE Office for Democratic Institutions and Human Rights and Venice European Commission for Democracy Through Law, 2015*).

One of the scientific problems of Ukrainian legislation is the lack of a clear distinction between different types of religious organizations and method of their registration. Thus, the European Court of Human Rights in the case of St. Michael's Parish v. Ukraine (Application № 77703/01) noted that Article 7 of Law 987 did not contain a clear definition of the term "religious organization". The court also noted that there was a contradiction in Ukrainian law in the definition of a "religious organization" and a "religious community", as the only difference between them was the local status of a "religious community" and the absence of any registration requirements under the law. (*The European Court of Human Rights, 2007*).

Let us try to systematically distinguish the types of religious organizations that exist in Ukraine, based on the provisions of the current legislation:

A) A religious community is a local religious organization of believers of the same cult, religion, direction, current, or sense who have voluntarily united to meet religious needs together (*The Verkhovna Rada of Ukraine, 1991*).

In this definition, we should pay attention to the word "local", which, given the provisions of the current legislation, defines a religious community as an organization that was formed and operates locally in a particular area. This also means that to register, a religious community should apply to the local executive authority (relevant oblast, Kyiv and Sevastopol city state administrations), and not to the State Service for Ethnopolitics and Freedom of Conscience (SSUEFC). For the same reasons, a religious community cannot be formed from individuals living in different parts of Ukraine or abroad.

B) A religious center (administration) is a religious organization formed for the specific purpose of representing interests of an association of religious organizations (*The Verkhovna Rada of Ukraine, 1991*). Religious organizations, the governing centers of which are located outside Ukraine, may be guided in their activities by the guidelines of these centers, provided that the legislation of Ukraine is not violated.

Based on the definition provided by law, a religious center (administration) can be established only by a few religious organizations with the status of a legal entity. In fact, the concepts of "religious center" and "religious administration" are considered being the same.

C) A monastery, a church union, a missionary society (mission) are established by a religious administration/center following its registered statute (regulations). Established monasteries, church unions, missionary societies (missions) carry out their activities based on their statutes (regulations), which are registered in the manner prescribed by law.

Monasteries and church unions may also be established following the procedure provided for by this Law for the formation of religious communities, with the registration of their statutes (regulations).

Here are some aspects to focus on and do in-depth research:

the procedure for the establishment of monasteries, church unions, missionary societies (missions) must be provided by the statute (regulations) of the religious administration/center that establishes them;

monasteries and church unions (excluding missionary societies) may be formed by at least ten adult citizens with subsequent registration of the statute in the SSUEFC;

unlike religious communities, monasteries and church unions are not subject to the “locality” criterion.

D) A theological school is established by a religious administration/center following its registered statute (regulations) for training clergy and other ministers in the required religious specialties.

The procedure for the establishment of spiritual educational institutions should be provided by the statute (regulations) of the religious administration/center that establishes them.

It should also be noted that a theological school cannot provide general education services, as the state education system in Ukraine is separated from the church (religious organizations) and has a secular character. Access to different types and levels of education is provided to citizens regardless of their attitude to religion (part three of Article 35 of the Constitution of Ukraine, part one of Article 6 of Law 987) (*The Verkhovna Rada of Ukraine, 1996*) (*The Verkhovna Rada of Ukraine, 1991*).

E) Religious association is an association of one or more types of religious organizations (religious community, administration, and center, monastery, church union, missionary society (mission), spiritual educational institution), etc. (*The Verkhovna Rada of Ukraine, 1991*). As mentioned above, religious associations are represented by their centers (departments).

A religious association may consist exclusively of religious organizations. Individuals may not form or be members of religious associations.

Thus, religious organizations in Ukraine are created in the form of religious communities, centers, administrations, monasteries, church unions, missions, spiritual educational institutions, organizations, associations. The type of the procedure for state registration and the government authority that will carry out this procedure will depend on the type of religious organization.

4. Registration procedure

In Ukraine, the registration of statutes (regulations) of religious organizations is a complex process in which religious organizations enter into administrative and legal relations with the authorities. It should be noted that today the procedure for granting religious organizations the status of a legal entity is not fully regulated, causes in some cases some arbitrariness of some local authorities, as well as attempts by religious communities to interpret the current legislation in their way (Bukov O.,2011).

The process of creating a religious community can be divided into two separate but interrelated stages. At the first stage, the charter of a religious organization is registered. At the

second stage, the state registrar, based on the registered charter and the decision of the highest governing body of the religious organization, enters information about such organization in the Unified State Register of Legal Entities of Individual Entrepreneurs and Public Associations (USR). A similar algorithm is used when performing registration actions related to changes to the statutes/regulations of religious organizations.

The first stage – registration of the statute of a religious community – is based on the application of at least ten citizens who formed it and reached the age of 18, who submit an application and a statute for registration to the relevant regional state administration. Religious centers, administrations, monasteries, church unions, missions, and theological educational institutions apply for registration to the central executive body that implements the state policy in the field.

The bodies authorized to register the statutes of religious communities are: 1) regional state administrations; 2) Kyiv and Sevastopol city state administrations; 3) The Government of the Autonomous Republic of Crimea. The following are submitted to these executive bodies: an application, the form of which is indefinite; regulations; protocol; a copy of the document on the right of ownership or use of the premises or the written consent of the owner of the premises to provide an address at the location of the religious community. As a result of the review of the charter, the executive body issues an administrative document on the registration of the charter of the religious community.

It should be noted that regional state administrations do not have a unified structure, in addition, following the resolution of the Cabinet of Ministers of Ukraine “On recognizing as invalid some resolutions of the Cabinet of Ministers of Ukraine” from 06.02.2013. №99, the Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Standard Regulations on the Department for Nationalities and Religions of the Kyiv City State Administration, the Department (Department) for Nationalities and Religions of the Sevastopol City State Administration” of 12.03.2008 №171 was repealed. led to the assignment of relevant functions in the field of state and religious relations to various departments of regional state administrations, which in turn negatively affects their activities (*Cabinet of Ministers of Ukraine, 2013*). At the same time, the resolution of the Cabinet of Ministers of Ukraine of December 28, 2020, № 1336 recommended the creation of structural units of culture, nationalities, and religions in the region, Kyiv, and Sevastopol city state administrations (*Cabinet of Ministers of Ukraine, 2020*).

On August 18, 2021, the Cabinet of Ministers slightly changed the procedure for submitting documents for registration of religious communities and found that documents related to the registration, amendment, liquidation and reorganization of religious communities are submitted through the Centers for Administrative Services (CAS). Thus, religious communities can submit documents for their registration through CAS or directly to regional state administrations.

However, the legislation provides for a slightly different procedure for registering the statutes (regulations) of such religious organizations as religious centers, administrations, monasteries, church unions, missions and religious educational institutions, which submit the registration (statutes) to the central executive body implementing the state policy in the field of religion – the State Service of Ukraine for Ethnopolitics and Freedom of Conscience (SSUEFC).

The second stage – the state registration of the establishment of a religious organization as a legal entity – takes place at the request of religious organizations to the state registrar for inclusion in the USR. At the same time, an application for state registration of a legal entity (of a certain form №2) is submitted; charter, protocol, administrative document on registration of the charter by the relevant public authority, certifying the positive completion of the first stage of registration of a religious organization. The submitted documents must comply with the

completeness, content and form that meet the requirements of Articles 15 and 17 of the Law of Ukraine “On State Registration of Legal Entities, Individuals – Entrepreneurs and Public Associations”. The result of state registration is the issuance of an Extract from the USR (*The Verkhovna Rada of Ukraine, 2003*).

In its recommendations, the OSCE noted that registration can help build stable and trust-based relations between the state and religious organizations. (*The OSCE Office for Democratic Institutions and Human Rights, 2019*). However, the European Court of Human Rights has noted that there is a lack of transparency in Ukraine regarding such registration (*The European Court of Human Rights, 2007*), which increases distrust of state institutions.

Thus, the registration of religious organizations consists of two stages. At each stage, religious organizations must submit the same documents as well as confirmation of successful completion of the previous stage. Also, religious organizations, depending on their type, should apply to the correct executive body.

5. Conclusions

Religious organizations can carry out religious activities without state registration, but registration provides more opportunities for external expression of religious beliefs (*forum externum*). Following its commitments, Ukraine must provide all legal mechanisms for the smooth exercise of the right of religious organizations to register.

The procedure for registering religious organizations in Ukraine is a complex double procedure and needs to be simplified. Vague provisions of the law led to the illegal expansion of the discretionary powers of the authorities, which in turn allowed them to determine in full or in part the application of the type and content of the executive decision. The vague limits of the discretion of the administrative bodies when reviewing the statutes of religious organizations lead to an increase in the number of lawsuits. In this regard, there is an urgent need to improve existing legislation in terms of providing a normative definition of types of religious organizations, their differences from each other, delimitation of competencies of central and local executive bodies, abolition of double registration, the procedure of religious examination, etc.

The generalizations made it possible to scientifically substantiate the following proposals aimed at changes in the functioning of the mechanism of implementation of state policy in the field of socio-religious relations:

allowing the state registration of religious organizations by submitting documents in electronic form with an electronic signature;

developing state standards for protocols and statutes of religious organizations submitted to a state body, as their absence leads to unjustified denials of state registration.

To ensure the implementation of a unified state policy in the field of socio-religious relations, it is necessary to create territorial (regional) subdivisions of SSUEFC and transfer powers to register religious communities from regional state administrations to SSUEFC which would have unified approaches.

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