Religious Liberty and the Ukrainian State: Nationalism Versus Equal Protection

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Mikhail Gorbachev's Perestroika bequeathed to the successor republics of the former Soviet Union a reform commitment toward full religious liberty. The religious liberty laws enacted during the Perestroika Era by the Soviet government and its subordinate republics were retained by the new post-Soviet independent states in Russia, Ukraine, and Belarus.

More liberal policies toward religious activity resulted, however, in the rise of a number of new confessions in Ukraine, Russia, Belarus and some of the other post-Soviet states. Nationalist forces began to demand the state protection of the traditional churches in Russia and Ukraine against this expanding religious pluralism, by pressing for amendments to the original enactments on religious liberty.

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3. For an analysis of this reaction in Russia, see W. Cole Durham, et al., The Future of Religious Liberty in Russia, 8 EMORY INT'L L. REV. 1, 3-11 (1994); James E. Wood, Jr., The Battle Over Religious Freedom in Russia, 35 JOURNAL OF CHURCH AND STATE 491 (1993).
This essay analyzes the rise of freedom of conscience in Ukraine and the subsequent nationalist retreat from full religious liberty during the three-year period, 1991-1994. The "Law On the Freedom of Conscience and Religious Organizations" (1991), and the "Amendments of December 23, 1993," will be examined together with the function of the Council for Religious Affairs of Ukraine during that period. These official Ukrainian materials will be evaluated by relating them to the provisions on religious liberty of several international treaties to which the Government of Ukraine is a signatory.4

I. THE UKRAINIAN RELIGIOUS MOSAIC AND THE SOVIET LEGACY

The history of Ukrainian religiosity has been somewhat more complex than that of Russia. While Russian culture is historically associated with one dominant church, Ukrainian culture draws from several major traditional faiths: Russian Orthodoxy, an autonomous Ukrainian Orthodoxy, and Greek Catholicism.5

The Russian Orthodox Church was historically the largest confession in Ukraine. The higher clergy was overwhelmingly Russian and this church was governed by the Patriarchate in


Moscow, beginning from the time of the political subordination of most of Ukraine to the Russian Tsarist empire in the seventeenth century. It is well to remember, however, that the Principality of Kiev had been the original center for the reception and spread of Orthodoxy throughout ancient Rus' from 988 A.D., and that it remained the center of Orthodoxy in the Russian lands until the rise of Muscovy in the late fifteenth century.6

The Russian Orthodox Church was the official state church of the Empire until the October Revolution of 1917. It suffered a heavy toll of political suppression during the Soviet era. All religious property was seized by the state in 1918, and only a fraction of it was provided for use by the Church.7 A great number of cathedrals and churches were physically destroyed or converted to other social uses during the Stalin era.8 Many members of the clergy were arrested, imprisoned, and some were executed.9

In an effort to enlist the propaganda efforts of the Church for the war effort against German fascism, Stalin came to an understanding with Russian Orthodoxy during World War II, which resulted in a formal accommodation in 1944.10 The resulting partial “thaw” in church-state relations brought an end to the most blatant forms of persecution in the latter Stalin era and after the dictator’s death, as a portion of Orthodox parishes were officially registered. The remaining members of the largely decimated clergy were, however, tightly subordinated to the Communist Party under the direction of the USSR Council for Religious Affairs, throughout the remainder of the Soviet era.11 Formally subordinated to the USSR Council of Ministers, the Council for

8. Walters, supra note 7, at 13-16.
9. Id.
10. See Ramet, supra note 1, at 34.
Religious Affairs (CRA) was the state arm of the Communist Party for controlling all legal religious activity. Its prior approval was necessary for the appointment of all Orthodox clergy and personnel. The CRA controlled the official registration and behavior of all recognized religious bodies. It was staffed by operatives of the K.G.B. (secret police) and its work was in close liaison with state security organs. During the Gorbachev era of greater "openness" (glasnost'), it was alleged in the press that the K.G.B. recruited operatives even among the higher clergy, one of whom was Metropolitan Filaret of Kiev, head of the Russian Orthodox Church in all of Ukraine.

The Ukrainian Autocephalic (independent) Orthodox Church differed from the Russian Orthodox Church mainly in that it claimed independence from the Moscow Patriarchate, established the use of the Ukrainian language, and appointed Ukrainians, rather than the traditional Russian prelates, to the higher clergy. Ukrainian Autocephalic Orthodoxy was revived after the fall of Russian Tsarism in 1917, and developed rapidly during the 1920s into a major religious force in Ukraine.

During Stalin's campaign against Ukrainian nationalism in the latter 1920s and early 1930s, the Autocephalic Church was suppressed through the arrest of clergy and other activists, the denial of access to churches, and a formal ban issued in 1930. For more than a half century after its official banning by the Soviet regime, Ukrainian Autocephalic Orthodoxy remained a significant underground "catacomb church" in Ukraine until it was again officially recognized in 1990, during Gorbachev's Perestroika.

The western territories of Ukraine had a different political and religious history than those of the central and eastern regions of the country. Austrian and Polish rule of the western

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12. Id.
13. Filaret resigned from his position to the Moscow Patriarchate without publicly confirming or denying these charges. See John B. Dunlop, KGB Subversion of Russian Orthodox Church, 1 RFE/RL RESEARCH REPORT, March 20, 1992, at 51-53; see also Patricia Herlihy, Crisis in Society and Religion in Ukraine, XIV RELIGION IN EASTERN EUROPE 1, 4-6 No. 2 (April 1994).
15. Id. See also Bohdan R. Bociurkiw, The Soviet Destruction of the Ukrainian Orthodox Church,1929-1936, 22 JOURNAL OF UKRAINIAN STUDIES 3, 3-21 (1987).
16. Id.
17. See Ramet, supra note 1, at 33-46; Herlihy, supra note 13, at 11.
territories brought a strong Catholic influence to Ukrainians residing in that region. Originally most of these Ukrainians were Orthodox, but after 1596, they were forcibly incorporated by Poland into Roman Catholic obedience. This Greek Catholic Church (sometimes referred to as the Uniate Church) preserved an Orthodox Slavonic liturgy, but was made allegiance to the Pope in Rome.

After the dismemberment of Poland at the end of the eighteenth century, these territories came under Russian Tsarist rule, and the Greek Catholics were forcibly reabsorbed into the Russian Orthodox Church during the nineteenth century. The Greek Catholic Church made a considerable resurgence after western Ukraine became part of the reconstituted Republic of Poland at the end of World War I. Poland’s second partitioning by Hitler and Stalin in 1939, placed western Ukraine under Soviet rule in the Ukrainian Soviet Socialist Republic. Again the Greek Catholics were forcibly reabsorbed by the state into the Russian Orthodox Church in 1946, but continued to function as an underground “catacomb church” until official recognition was granted in 1990.

Gorbachev’s more liberal policy toward religious groups stimulated underground communicants of the Ukrainian Autocephalic Orthodox Church and the Greek Catholic Church to boldly return to public worship in 1989. In 1989-90, a number of officially Russian Orthodox parishes threw off their subordination to the Moscow Patriarchate and announced their adherence to the Ukrainian Autocephalic Orthodox Church. The Greek Catholics followed suit, seizing a major cathedral in Lviv. During the year 1989, alone, more than fifty additional parishes in western Ukraine transferred their allegiance from the Russian Orthodox Patriarchate in Moscow to the Vatican in Rome.

The Ukrainian government supported the official registration of a number of Russian Orthodox Churches during

18. See Himka, supra note 5, at 57-59; Subtelny, supra note 6, at 92-102.
19. See id. at 59.
20. See id. at 60-64.
21. Id. at 62-64; see also DONALD W. TREADGOLD, TWENTIETH CENTURY RUSSIA 25 (5th ed. 1981).
22. See Ramet, supra note 1, at 34-46.
23. Id.
24. Id. at 38-43; see also Herlihy, supra note 13, at 4-6.
this period, but initially refused to accept petitions for the recognition of Ukrainian Autocephalic and Greek Catholic Churches. The Chairman of the Ukrainian Council for Religious Affairs even publicly claimed, erroneously, that only Russian Orthodox believers were making requests for the registration of churches, asserting that no other petitions had been received.\footnote{See Ramet, supra note 1, at 34 (citing Keston News Service).} Several major public demonstrations by Ukrainian Autocephalic and Greek Catholic believers then occurred in cities of western Ukraine, involving hundreds of thousands of participants.\footnote{Id. at 43-52.} After Gorbachev's meeting with Pope John Paul II in the Vatican,\footnote{See id. at 36.} and the adoption of the USSR Freedom of Conscience Law in 1990, the Greek Catholic and Autocephalic Churches were finally legally registered in Ukraine.\footnote{See id. at 43.}

The rise of nationalism in Ukraine during the last years of Perestroika resulted in the splitting of the Russian Orthodox Church into two new schismatic churches. Both assumed the title: "Ukrainian Orthodox Church," but one remained affiliated with the Moscow Patriarchate and subject to its veto, while the other organized a totally independent Kiev Patriarchate as its head.\footnote{See Herlihy, supra note 13, at 8-9.} The Autocephalic Orthodox Church refused union with the new Ukrainian Orthodox Church (Kiev Patriarchate), in part, because the alleged former KGB spy, Metropolitan Filaret, had become a major figure in the latter.\footnote{Id. at 8-9.}

This meant that there were now three Orthodox Churches and one reconstituted Greek Catholic Church in Ukraine, each bitterly contesting the claims of the others for jurisdiction over parishes, disputing the use and future control of church buildings and other property. The vigorous opposition of the old Russian Orthodox Church to the legal recognition of these rival confessions, combined with the previously described public social protest mobilized by the other major churches, resulted in an atmosphere of considerable religious antagonism.\footnote{Id. at 8-9; see also Ramet, supra note 1, at 43-52.} This was only heightened by the expectation that the government would soon redistribute properties previously appropriated by
the Soviet regime. Tension mounted as each denomination laid claim to disputed properties.\textsuperscript{32}

In addition to the contending traditional churches, several small Protestant Churches had existed in Ukraine from the late nineteenth century: Evangelical Christians and Baptists, who combined into one denomination during the Soviet era, and the Adventists.\textsuperscript{33} Some Evangelical Christian Baptist congregations were registered during the Soviet era, although a schismatic Baptist "Initsiativniki" sect was considered illegal due to its unwillingness to follow the restrictive laws of the Soviet government.\textsuperscript{34} A few Adventist congregations also functioned with state registration in Ukraine during the Soviet period.

Following the adoption of the USSR Freedom of Conscience Law in 1990, a number of smaller confessions achieved legal recognition in Ukraine. In addition to the Evangelical Christian Baptists and Adventists, they included the Latin-rite Roman Catholic Church, Pentacostals, Methodists, Lutherans, The Church of Jesus Christ of Latter-day Saints (Mormons), The Church of Christ (Campbellites), Jewish synagogues, Jehovah's Witnesses, The Unification Church of the Reverend Moon, Islamic sects, Baha'i, and Hare Krishna, among others.\textsuperscript{35} A few illegal or semilegal offshoot sects from Orthodoxy also operated in Ukraine, the most notorious of which was "The White Brotherhood," which was suppressed by police action in the summer of 1993, following doomsday threats of mass ritualistic suicides.\textsuperscript{36}

In summary, the Ukrainian religious mosaic has been one of an increasing pluralism of faiths. Both Tsarist and Soviet governments sought to forcibly reduce or eliminate religious pluralism by suppressing major alternatives to the Russian Orthodox Church, although a few small sects were tolerated at a minimal level. Gorbachev's Perestroika not only restored

\textsuperscript{32} A most prominent example of this was the prolonged month long sit-in that we witnessed at the front gate of the famous Cathedral of St. Sophia in Kiev during the winter of 1992.


\textsuperscript{34} LANE, supra note 33, at 146-48.

\textsuperscript{35} Ramet, supra note 1, at 43-52.

religion to a position of social respectability for the first time since 1917, but the "Law On Freedom of Conscience" of 1990, was the first legislative enactment genuinely establishing religious liberty in the history of the Eastern Slavic peoples. Perestroika left a legacy to post-Soviet Ukraine of the full legal recognition of religious pluralism.

As already shown, however, the Ukrainian reality at the demise of the Soviet Union was of a rapidly increasing pluralism of religious confessions in which serious unresolved antagonisms remained among the major churches. It was feared that religious conflict might reinforce existing regional cleavages in Ukraine, as the Russian Orthodox Church was the major confession in the eastern russified areas, the Ukrainian Orthodox Church was strong in Kiev and the center, and the Greek Catholic and Autocephalic Churches were predominant in the western territories.

II. THE UKRAINIAN FREEDOM OF CONSCIENCE LAW

The enactment by the USSR Supreme Soviet of the "Law On Freedom of Conscience and Religious Organizations" in 1990, was followed by corresponding legislation in some of the constituent republics. In Kiev, the Supreme Soviet of the Ukrainian Soviet Socialist Republic enacted a "Law On Freedom of Conscience and Religious Organizations" on April 23, 1991, which followed the main provisions of the All-Union Law, but also sought to address the unique problems of the Ukrainian religious mosaic discussed above. This law was retained by the new Republic of Ukraine after independence was proclaimed and the USSR was dismantled at the end of 1991.

Like its precursor at the all-union level, the Ukrainian Law of April 23, 1991, was an historic charter on freedom of conscience for all perspectives regarding religion, although, as will be shown, it was not without flaws. Its main provisions will be compared to the standards on religious liberty of several international human rights treaties to which Ukraine is a signatory.

The act defines freedom of conscience as follows:

37. See supra note 2.
38. Id.
All citizens shall have the guaranteed right of freedom of conscience. The above right shall include the freedom to have, to adopt and to change religion or convictions at one's own choice and the freedom to profess individually or together with other persons any religion or to profess no religion, to establish religious cults, to express openly and to spread freely one's own religious or atheistic convictions.\textsuperscript{40}

The above provisions of the Ukrainian Act appear to be in compliance with Article 9 of the European Convention for the Protection of Human Rights and Freedoms,\textsuperscript{41} and with Article 18 of the International Covenant on Civil and Political Rights,\textsuperscript{42} in all respects except for one important exception. These international human rights treaties, to which Ukraine is a signatory, begin with the phrase: “Everyone has the right,” whereas the Ukrainian Law uses the much less inclusive phrase: “All citizens shall have the right.”\textsuperscript{43}

The official handbook used by The Council for Religious Affairs during the years, 1991-1994, claimed that “freedom of conscience is guaranteed in Ukraine to anybody who stays on its territory irrespective of the period of stay.”\textsuperscript{44} While this is what the 1991 law ought to say in order to be compatible with international human rights commitments, it is not how the text actually reads. The inadvertent or intentional exclusion of noncitizens from the full rights and freedoms of the Act is a serious flaw, and particularly so when considering the amendments to the Act which were passed on December 23, 1993, which will presently be considered.

While granting freedom of conscience to all, the Ukrainian Act, like its all-union counterpart, established no dominant church or churches, nor did it employ the terms, “traditional” and “non traditional,” in making any distinctions among confessions.\textsuperscript{45} As Article 5 declares: “All religions, faiths, and religious organizations shall be equal before the law. Establishment of any advantages or restrictions for one

\textsuperscript{40} Ukrainian Act, supra note 2, art. 3.
\textsuperscript{41} European Convention, supra note 4, art. 9(1).
\textsuperscript{42} ICCPR, supra note 4, art. 18(1); see also ECHR, supra note 4, arts. 9-10; Durham, et al., supra note 3, at 14-15.
\textsuperscript{43} Ukrainian Act, supra note 2, arts. 1-4, 6, 23-24, 27-28.
\textsuperscript{44} Handbook for Religious Affairs, supra note 4, at 8.
\textsuperscript{45} Ukrainian Act, supra note 2, arts. 3, 5, 8.
religion, faith or religious organization to the prejudice of others shall be prohibited.\textsuperscript{46}

In addition to the non establishment of any dominant church, there were provisions expressly separating church and state,\textsuperscript{47} and separating the state educational system from the church.\textsuperscript{48} The Act also went so far as to explicitly prohibit government financing of bodies promoting, conducting, or opposing religion.\textsuperscript{49}

The Law On the Freedom of Conscience envisages the state exercising benevolent neutrality toward legally equal religious bodies. In contrast to the old USSR Constitution of the Brezhnev era,\textsuperscript{50} Article 1 includes a recounting of "duties of the state to religious organizations," which precedes the stating of duties of religious organizations to the state and society.\textsuperscript{51} One of these enumerated state "duties" is to "overcome the negative consequences of state policy with respect to religion and church" of the previous Soviet era.\textsuperscript{52} In this connection, religious bodies are granted the right to make claims for the return of properties formerly appropriated by the state.\textsuperscript{53} The Act also makes voluntary contributions and other acquired income of religious organizations tax exempt, except revenues derived from profit-making economic enterprises.\textsuperscript{54}

The liberating of religious association from state domination in Ukraine is further indicated by the provision which frees a local "religious community," (parish or congregation) from the obligation to notify state authorities of its establishment.\textsuperscript{55} This conforms to Principle 16(d) of the Vienna Concluding Document of the Conference on Security and Cooperation in Europe that were promulgated in 1989.\textsuperscript{56} Prescribed procedures for official registration by the state are necessary, according to the Ukrainian Act, for the religious

\textsuperscript{46} Id. art. 5.
\textsuperscript{47} Id.
\textsuperscript{48} Id. art. 8.
\textsuperscript{49} Id. art. 5.
\textsuperscript{51} Ukrainian Act, supra note 2, art. 1.
\textsuperscript{52} Id.
\textsuperscript{53} Id. art. 17.
\textsuperscript{54} Id. arts. 18-19.
\textsuperscript{55} Id. art. 8.
\textsuperscript{56} Vienna Concluding Document, supra note 4, princ. 16(d).
community to become a "legal person," entitled to enter into contracts or legally binding actions, such as the sponsoring of visas for foreign visitors. A decision by the state respecting an application for official registration must be rendered within 30 days. Denial of registration must be justified in writing and this decision may be appealed to the courts.

The Ukrainian Act legitimized the actions of a number of religious communities that had changed affiliation from the Russian Orthodox Patriarchate to the Greek Catholic Church or the Autocephalic Orthodox Church, in spite of the protests from the Russian Church. "The state shall recognize the right of a religious community to be subordinate in canonical organizational matters to any religious center (administration) acting either in the Ukrainian SSR or beyond its boundaries and to change such subordination at its own discretion."

Religious bodies are empowered by the Act to own property, printing establishments, and economic productive enterprises (such as a farm); to operate charities, seminaries, monasteries, and retreats; and to conduct religious education. Individual believers are assured the right, as parents or legal guardians, to bring up their children in their own religious values. These expanded rights and powers conform to the provisions for protecting religious liberty specified in the Vienna Concluding Document of the Conference on Security and Cooperation in Europe.

Such individual and organizational rights were also extended to international relations by Article 24 of the original 1991 Act without any significant restrictions. "Religious organizations and believers shall have the right either individually or together with others to establish and maintain international relations and direct personal contacts." Participants going and coming have the right "to carry with them religious literature and other information materials of religious content." Religious organizations were assured the right "to send citizens abroad to study at clerical institutions

57. Ukrainian Act, supra note 2, art. 8.
58. Id. arts. 24-25.
59. Id. art. 8.
60. Id. arts. 6, 10, 17-20, 22-23.
61. Id. art. 3.
63. Ukrainian Act, supra note 2, art. 24.
and receive foreign citizens for similar purposes.\(^{64}\) The revision of Article 24 was the main objective of the amendments of December 23, 1993, which will be examined below.

The Act specifies that religious organizations with "governing centers" abroad may freely carry out their activities in Ukraine if they do not breach Ukrainian legislation.\(^{65}\) Agreements are to be made between the state and these foreign religious centers, and their activities are expected to conform to such agreements.\(^{66}\)

The Act also provides for the dissolution of religious communities by their members. In very terse language, Article 16 originally provided for the termination of religious communities also "by judgement."\(^{67}\) This implies judicial decision, but no process or appeal procedure is outlined. The amendment of this article in December 1993, will also be discussed below.

Although greatly enlarging the breadth of religious activity, the Act also specifies some restrictions. First, Article 3 declares that the manifesting of religious convictions is subject to those restrictions "necessary for the protection of public security and order, life, health and morality as well as the rights and freedoms of other citizens."\(^{68}\) This has some similarity to provisions of international human rights documents, but is a somewhat more vague formulation of permissible state restrictions.

Article 9(2) of the European Convention for the Protection of Human Rights and Freedoms is identical to Article 18(2) of the International Covenant on Civil and Political Rights in providing that "Freedom to manifest 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 safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."\(^{69}\)

\[^{64}\text{Id.}\]
\[^{65}\text{Id. art. 9.}\]
\[^{66}\text{Id.}\]
\[^{67}\text{Id. art. 16.}\]
\[^{68}\text{Id. art. 3.}\]
\[^{69}\text{European Convention, supra note 4, art. 9(2); ICCPR, supra note 4, art. 18(2).}\]
As Durham, Homer, van Dijk, and Witte have pointed out, the European Court of Human Rights has interpreted this to mean that any interference with religious liberty must be motivated "by a pressing social need, and must be proportionate to the legitimate aim pursued." State interference should be no greater than necessary and should utilize the "least intrusive means possible." This more restrictive language might have improved the Ukrainian provision in protecting against the possibility of administrative abuse.

The second restriction is mentioned in Article 5. "No religious organization shall intervene in activities of other religious organizations, carry out any kind of preaching of hostility, intolerance to disbelievers and believers of other faiths." The inclusion of this provision is understandable given the religious conflict during the Gorbachev era, but it is unfortunately very vague. There is no clear definition of what constitutes hostility or intolerance. Does, for example, the teaching of one of the Orthodox Churches that it alone is the "true Orthodox faith," and that other churches have "departed from correct teachings and proper authority," constitute "hostility" or "intolerance?" If so, probably all confessions would be guilty of breaching the law. If hostility means something beyond the expression of doctrinal disagreement, then this needs to be specified. The failure to do so leaves the door open for selective administrative abuse of nontraditional, politically unpopular confessions.

A third restriction is mentioned in Article 4. No one may "evade the fulfillment of duties established by the Constitution," by reference to religious convictions, although specific legislation can provide "the substitution of the fulfillment of one duty for another by reason of one's convictions." A separate law, for example, provides alternative service for conscientious objectors to military service on religious grounds. The freedom of conscience of minorities might have been more adequately safeguarded, however, if some more encompassing statement had been entrenched in this basic law rather than depending on additional specific legislation as each case arises.

71. Ukrainian Act, supra note 2, art. 5.
72. Id.
The Law On Freedom of Conscience and Religious Organizations contains additional provisions designed to control and mediate religious conflict which deserve analysis. Article 17 invests the executive committees of regional governments with the responsibility of resolving disputes concerning the "possession or use of cult buildings and property."\(^{74}\) The decisions of these bodies can be appealed in the courts.\(^{75}\) "Any unauthorized seizure of cult buildings or appropriation of cult property shall be prohibited."\(^{76}\)

The main device of the Act for preventing religious conflict from reinforcing regional political conflict is to deny religious organizations the right to participate in political affairs.\(^{77}\) "Religious organizations shall not take part in activities of political parties and shall not support them financially, shall not nominate persons as their candidates to the state bodies of power, shall not carry out agitation or financing of election campaigns of any candidates to the said bodies."\(^{78}\)

This is not, however, a complete ban on personal political activity. Article 5 permits priests and clerics to "take part in political life to the same extent as all citizens," but not as representatives of religious bodies.\(^{79}\) Religious bodies are also assured of the right "to take part in social life and to use mass media to the same extent as social organizations," except (presumably) to participate in political campaigns.\(^{80}\)

Perhaps the most significant departure of the Ukrainian Act from the original USSR Act, was in its retaining of a fairly significant regulatory role for the State Council for Religious Affairs. Since the Council for Religious Affairs had been a Soviet device for state suppression of freedom of conscience, the USSR Act in Moscow reduced the role of this agency to providing information and assistance to religious communities, and helping them establish international ties.\(^{81}\) The Russian Republic Freedom of Conscience Law in 1990, went even further, totally abolishing the Council for Religious Affairs.\(^{82}\)

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74. Ukrainian Act, supra note 2, art. 17.
75. Id.
76. Id.
77. Id. art. 5.
78. Id.
79. Id.
80. Id.
81. USSR Act, supra note 2, arts. 12, 24.
82. Cf. USSR Act, supra note 2 with RSFR Law On Freedom of Religion,
The Ukrainian Act, however, preserved the Council for Religious Affairs, no doubt because of the perceived need to monitor and ameliorate the conflicts which existed among major confessions. The resolution of conflicts among religious organizations and control over their adherence to the Act was given to "local city councils and their executive committees." The Act assigns the Council for Religious Affairs to assist local government bodies "to ensure the state policy in respect of religions and the church." In addition to information and assistance functions, the Council for Religious Affairs is to "carry out the registration of the charters of religious organizations ... as well as the amendments and supplements to such charters." The Council for Religious Affairs used this power over registration, together with its control over information, in the early 1990s to gradually regain the traditional regulatory power over religious bodies that it had enjoyed during the Soviet period, as will be shown below. The decision, therefore, to preserve a fairly strong Council for Religious Affairs, as I shall show in Part IV, worked toward the gradual reduction of religious autonomy from the state.

On balance, the Law on the Freedom of Conscience and Religious Organizations was an historic achievement in the establishment of human liberty in Ukraine, although, as I have shown, it was not without significant weaknesses. The Act created legal circumstances which promoted the rapid expansion of religious activity and the proliferation of many new confessions.

III. RISING PLURALISM, NATIONALISM, AND THE 1993 AMENDMENTS

The collapse of communism was accompanied by a widespread spiritual crisis which led many people in the former Soviet Union to undertake a search for religious values. In Ukraine, a number of people returned to some version of the

supra note 2.
83. Ukrainian Act, supra note 2, art. 30.
84. Id.
85. Id.
86. Id.
Orthodox religious heritage, although the splintering of the Church into separate antagonistic confessions confused and alienated a significant portion of the population. Others expressed keen disappointment in Orthodoxy after reading revelations in the press showing the close ties of the Church to the Communist Party and secret police during the Soviet era.

This resulted in fairly weak public support for traditional Orthodoxy in Ukraine. Polls seem to indicate that personal religious belief grew rapidly among former citizens of the Soviet union, with an increasingly large group avoiding any denominational affiliation. Others took advantage of the opportunities provided by the Freedom of Conscience Law to investigate the newer, nontraditional faiths which were increasingly available through foreign evangelism. The Latinrite Catholic Church, a wide variety of Protestant evangelical groups, The Church of Jesus Christ of Latter-day Saints (Mormons), Jehovah's Witnesses, the Unification Church of the Reverend Moon, Hare Krishnas, Islamic sects, Baha'i, the White Brotherhood, and others were active, quickly establishing groups of local adherents.

The Council for Religious Affairs has estimated that on January 1, 1990, there were 6,000 local religious communities (registered parish associations) in Ukraine, but by January 1, 1994, there were 15,000. The number of communities and the pluralism of denominations were both expanding rapidly. While constituting only a small fraction of the total population, (estimates indicate no more than 1%), the newer confessions grew rapidly during the 1991-94 period. Significant foreign evangelical support was given for such activities as evangelistic crusades, lectures, conferences, media advertising, humanitarian service, literature, and missionaries.

Leading prelates of the Orthodox Churches of Eastern Europe and the new states of the former Soviet Union began to publicly speak out during 1992-93, opposing the international missionary support for the newer confessions. These appeals

88. Id. at 401.
89. Id.
92. See Wood, supra note 3, at 499-500; see also Natsional'nost' i religii, PRAVDA UKRAINII, Aug. 14, 1992, at 3.
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received favorable attention from some nationalists who enjoyed positions of political influence in Ukraine.93

The political legitimacy of post-Soviet Ukraine, like that of the other successor states of former USSR, is strongly associated with the task of restoring a traditional national culture, long suppressed within a multinational empire. The state was considered to have the task of restoring the predominance of Ukrainian language, history, music, art, and other traditional cultural institutions that had been suppressed by Russian Tsarism and the Soviet regime.

Traditional religious institutions were among these casualties of the Soviet period, and some nationalists viewed the state as having the obligation to restore historically dominant faiths that had been decimated by the communists in order to bring about the spiritual renewal of Ukrainian society. The restoration of traditional faiths was now being threatened by the flowering of the strange new religions “imported from abroad,” which were supported by the ample human and material resources of international evangelism. Those taking such a position believed that, to promote the reflowering of Ukrainian nationalism and spiritual renewal of society, the state should erect protective barriers against the importing of increased religious pluralism.94

The problem for the nationalist religious agenda was that the Law On the Freedom of Conscience and Religious Organizations did not provide any legal basis for the selective fostering or restricting of personal or group religious activity domestically or internationally. As previously shown, this Act is a charter for the equal protection of all perspectives about religion. “All religions, faiths and religious organizations shall be equal before the law. Establishment of any advantages or restrictions for one religion, faith or religious organization to the prejudice of others shall be prohibited.”95

In 1992, the Ukrainian Parliament established the powerful “Parliamentary Commission For Spiritual Enlightenment and Renewal of Society.” Its official objective was to fulfill the task mentioned in Article 1 of the Law On Freedom of Conscience: to “overcome the negative consequences

93. Id.
94. Id.; cf. also John Anderson, RELIGION, STATE AND POLITICS IN THE SOVIET UNION AND SUCCESSOR STATES 221 (1994).
95. Ukrainian Act, supra note 2, art 5.
of the (past Soviet) state policy in respect to religion and society.\textsuperscript{96}

The Parliamentary Commission on Spiritual Enlightenment and Renewal of Society demonstrated its commitment to the nationalist agenda by drafting and proposing some important amendments to the Law On Freedom of Conscience and Religious Organizations, which were adopted by the Parliament on December 23, 1993.\textsuperscript{97} President Leonid Kravchuk signed these amendments into law in January 1994.\textsuperscript{98}

The nationalist revision of the Freedom of Conscience Law in Ukraine did not involve a direct and wholesale attack on the egalitarian provisions of the original Act. The latter, more drastic strategy had been followed by the nationalists in Moscow, who sought to fundamentally change the Russian Freedom of Religion Law in the August 1993 amendments. The international uproar against the Russian amendments was sufficient to cause President Boris Yeltsin to refuse to sign them, even though they had been passed overwhelmingly by the Russian Parliament.\textsuperscript{99}

The nationalist revision in Kiev was more adroit. The egalitarian principles of the original act did not need to be gutted to attain the nationalists' objective. Since the original Act granted freedom of conscience and manifestation of religious beliefs specifically "to citizens," all that the revisers felt needed to be done was to amend it to seriously restrict the religious freedom of "noncitizens" in Ukraine, and to prevent or drastically restrict the entry of human and material resources from abroad. Ukrainian officials could still claim, in their view, that its legislation maintains full freedom of conscience and equal religious liberty rights for all Ukrainian citizens, just as in the original 1991 Act.

I shall argue that the effect of the 1993 Amendments to Article 24 and 16 is a significant reduction of religious freedom both for noncitizens and citizens in Ukraine. Furthermore, the restriction of religious rights for foreigners in Ukraine is an

\textsuperscript{96} P. Yefimov, \textit{Novaya komissiya Radi}, HOLOS UKRAINY, KIEV, Aug. 9, 1992, at 3.

\textsuperscript{97} P. Ivanenko, \textit{Novoe Zakonodatel'stvo o religii}, HOLOS UKRAINY, KIEV, Dec. 29, 1993, at 4-5.

\textsuperscript{98} \textit{Novoe Zakonodatel'stvo o religii}, HOLOS UKRAINY, KIEV, Jan. 9, 1994, at 4.

\textsuperscript{99} See Durham, et al., \textit{supra} note 3, at 9-10.
equally serious violation of international human rights commitments as it is a reduction of citizen rights.

A. The Amendment to Article 24

As shown above, the original form of Article 24 offered no significant restrictions upon international religious relations or upon the religious activities of foreigners in Ukraine. The Amendment approved by the Ukrainian Parliament, however, involved a major curtailment of international religious contact:

Clergymen, preachers of religion, instructors (teachers), and other representatives of foreign organizations who are foreign citizens temporarily staying in Ukraine, may preach religious dogmas, perform religious rites and practice other canonic activities only in those religious organizations on whose invitations they came, and upon an official agreement with the state body which has registered the statute of the corresponding religious organization.

The first thing to notice about the Amendment to Article 24 is that it effectively bars entry of all foreign representatives of faiths that do not already exist as legal entities in Ukraine. This is the effect of the requirement that they must be personally invited by an already legally registered religious community, because no other confession is likely to extend such an invitation. This not only curtails the manifesting of religious beliefs by noncitizens in Ukraine, but also effectively prevents the access of Ukrainians to any totally new faith.

This amendment seriously disadvantages foreigners in Ukraine, in comparison to citizens, in the exercise of religious liberty. As previously emphasized, all of the international human rights instruments consistently require that the freedom of religion and expression be extended to all persons. The restrictions on the right of foreigners to teach religious values or to perform religious rites in Ukraine is a considerable narrowing of the freedom of expression that they enjoyed before the amendment came into force, and is incompatible with a number of provisions of international human rights documents.

100. Ukrainian Act, supra note 2, art. 24.
102. ICCPR, supra note 4, arts 18-19; ECHR, supra note 4, arts. 9-10; see also Durham, et al., supra note 3, at 14-15.
In addition, the Amendment to Article 24 also narrows the religious liberty of Ukrainian citizens. The International Covenant on Civil and Political Rights guarantees to all persons the "right to seek, receive and impart information and ideas of all kinds, regardless of frontiers." In excluding representatives of new faiths and in limiting the activities of those who can get into the country, the Amendment to Article 24 violates this provision, as well as Article 6 of the Ukrainian Act, which assures citizens full access to religious information and proclaims "the right to study any religious teaching." It may also be argued that since the newer confessions are dependent on the training and teaching help of foreign representatives, that the Amendment disadvantages them, thus violating the equal treatment provision of Article 5 of the Ukrainian Act.

The second observation to be made about the Amendment to Article 24, is that it is designed to prevent any further geographical expansion of religious work already established in Ukraine by foreign representatives of newer confessions, because they can work only in the location of the already registered religious group that officially invited them. Foreign religious workers in Ukraine may not expand their activity to any new cities. The Council for Religious Affairs has confirmed this interpretation in its handbook on the Act. This aspect of the Amendment also violates the same international human rights provisions and Articles of the 1991 Ukrainian Act as discussed above, inasmuch as it reduces the rights of both noncitizens to manifest their religious beliefs and limits the right of citizens to receive information about new faiths.

Third, the Amendment is vague or ambiguous in saying that foreign teachers may preach or perform rites "only in those religious organizations on whose invitations they came." Does this mean that they may serve only in the city where the inviting organization exists, or does it mean that they may serve only on the premises of the building owned or rented by it for worship services? If the latter, more restrictive interpretation is adopted, foreign teachers are effectively de-
nied any public evangelical functions other than participating in worship services. The less restrictive interpretation would permit foreign teachers to teach within the city limits where the inviting organization operates, and would, therefore, allow evangelical work with people who are not members of the religious community.

This provision of the Amendment has been interpreted both ways by regional representatives of the Council for Religious Affairs, and the official handbook says nothing to resolve the ambiguity.108 The more restrictive interpretation violates the provisions of international treaties by denying the right of noncitizens to spread their beliefs to nonbelievers.109 The less restrictive interpretation violates the same provisions discussed in the first two points. The fact that this provision is left ambiguous in the Amendment and in the interpretation by the Council for Religious Affairs is itself an uncertainty that restricts free expression in an unwarranted manner.

Fourth, the invitation of the local religious community is not sufficient to obtain a visa for a foreign religious volunteer. The invitation must be approved by the regional or local government body that registered the religious community. Denial of state approval of the invitation requires no explanation to the local church, and there is no appeal. In actuality, the Council for Religious Affairs controls this process through its regional representative, whose recommendation to the regional government is accepted as the will of a superior Republic level agency that is de facto as powerful as a central ministry.110

The control over visas for foreign religious teachers is, therefore, totally in the hands of representatives of the Council for Religious Affairs, who are free to implement their own agenda or their own personal prejudices. This provision reveals that the religious communities have no autonomy from the state whatsoever in the invitation of foreign citizens for religious contacts under the Amendment.

B. The Amendment of Article 16

The Amendment to Article 16 also significantly weakens religious liberty in the Ukrainian Freedom of Conscience law.

108. Id.
109. European Convention, supra note 4, art. 9; ICCPR, supra note 4, art. 18.
110. Interviews with CRA Regional Representatives in Donetsk (May 1993) and in Odessa and Simferopol (March 1994).
This article is concerned with procedures for terminating or discontinuing a legally established local religious organization.

The original tersely worded Article 16 permitted the state to terminate a local religious association “by judgement,” presumably when its representatives breach the responsibilities required by the Act. The original article provided no judicial process or remedies or statement of cause. The Amendment also fails to outline judicial process or remedies, but expands causes for termination into a very extensive list of vaguely stated violations.

The list of grounds for “terminating the activity of a religious community” by the state are as follows:

If it encourages religious hostility and hatred toward unbelievers and believers of other confessions; if it humiliates national dignity or insults the feelings of citizens on the basis of their religious convictions; if it compels citizens to confess or refuse to confess a particular religion, to participate or not participate in church services, religious rites and ceremonies, religious studies; if it causes harm to the health of citizens, licentiousness and other infringements upon personal dignity and rights of citizens under the pretext of performing religious rites and ceremonies; if it systematically, flagrantly violates legal regulations regarding the performing of public church services, religious rites, ceremonies and processions; if it teaches citizens not to perform their constitutional obligation, involving violations of civil order or infringement of rights and property of civil, state or religious organizations.111

None of these grounds are described in careful legal language. Such an exceedingly detailed, yet vaguely worded, amendment would seem to provide almost endless possibilities for administrative officials to bring charges against an unpopular or unfavored religious body in court. Its effect is to impose a chilling restraint on the freedom of religious expression by comparison with the original 1991 Act.

The Amendment specifies that charges may be brought by a prosecutor or the regional government that originally registered the association. Yet regional governments came to depend on recommendations by representatives of the Council for Religious Affairs during the 1991-94 period. The Amendment pro-

vides no appeal or redress from the decision of the court. Once the court "terminates all its activity," the religious community has all of its assets appropriated by the state without compensation or appeal. The effect of such a draconian and vaguely worded Amendment is to further reduce the autonomy and freedom of religious communities from the control of state administrators.

To summarize, the 1993 Amendments effectively reduce the religious liberties originally provided under the Ukrainian Freedom of Conscience Law. They not only seriously disadvantage noncitizens in the manifesting of their religious beliefs, but they also diminish the right of freedom of information of religious seekers in Ukraine who desire alternatives to the traditional faiths. The disadvantaging of the newer religious bodies violates the "equal protection of all faiths and perspectives" of the Act. The expansion of vaguely worded grounds for the state liquidation of an unfavored religious body is a significant brake on freedom of expression.

IV. THE RISE AND FALL OF THE COUNCIL FOR RELIGIOUS AFFAIRS

As previously explained, the 1991 Act granted the Council for Religious Affairs powers to help "ensure the state policy respecting religions," that were greater than those provided in the USSR Act. Nowhere in the 1991 Act, however, was it anticipated that the Council for Religious Affairs would again become the centralized powerful agency for controlling religious practice that it had been during the Soviet era. This is what the Council for Religious Affairs became, however, during the 1991-94 period.

In 1992, the Council for Religious Affairs was granted control over the registration of visas for foreign religious volunteers by the Ministry of Foreign Affairs. The Office of Visa Registration (OVIR) acted only upon the approval of the Council. The 1993 Amendments gave the Council for Religious Affairs de facto control also over the invitation process for the granting of visas, as explained above.

112. Id.
113. Ukrainian Act, supra note 2, art. 30.
115. Id.
By May 1993, the Republic Council for Religious Affairs had centralized its direction of regional representatives, so that its approval was necessary for their granting of registration of charters for religious communities applying for legal recognition. The Council began also to direct regional representatives in the approval or denial of visa invitations for foreign religious workers, sometimes giving orders about which groups could invite foreign representatives and what the goals would be. There is some evidence that regional government representatives took direction from the Council and its regional representatives on religious questions much as they would from a regular Republic-level Ministry. The broader and vaguer grounds for judicially liquidating unfavored religious bodies, contained in the Amendment to Article 16, gave the Council greater power to exercise discipline and control.

The Chairman of the Council for Religious Affairs was Mr. A. Zinchenko, who also was a deputy in Parliament until the election of 1994, and who was closely associated with the nationalists on the Commission for Spiritual Enlightenment and the Renewal of Society. The Council for Religious Affairs had achieved sufficient central control over the regulation of religious bodies by 1993, that it was well suited to become the vehicle for implementing the new, more restrictive religious policy.

No official data is available concerning the implementation of the 1993 Amendments by the Council for Religious Affairs. Religious leaders in various cities claimed, however, that there was a radical reduction in the granting and renewal of visas for foreign religious workers during the close of 1993 and the entire year of 1994. By June 1994, they claimed that foreign religious workers associated with evangelical work, humanitarian service, and leadership training in the newer confessions had been reduced to a very small number.

In the controversies between the major traditional churches, the Council for Religious Affairs was accused by major rival prelates of favoring the Ukrainian Orthodox Church (Kiev

116. Interviews with CRA Regional Representatives, in Donetsk (May 1993) and Khar'kov (June 1993).
117. Id.
118. Id.
119. Interviews with religious leaders in Kiev, Donetsk, Khar'kov, Odessa, and Simferopol (February, March, May, and June 1994).
120. Id.
Patriarchate) and of exercising too much authority over religious life. Their recommendation to the Parliament was that the Council for Religious Affairs be abolished.\(^{121}\)

In the parliamentary elections of 1994, Chairman Zinchenko of the Council for Religious Affairs did not stand for reelection. In the Presidential Election Runoff in June 1994, President Kravchuk was defeated by Leonid Kuchma. One of the first acts of newly elected President Kuchma was to disband the Council for Religious Affairs, which was carried out on July 28, 1994.\(^{122}\)

By the autumn of 1994, the administration of religious affairs had not been further clarified. By 1995, however, the Council for Religious Affairs had been reconstituted as an agency within the Ministry of Culture.\(^{123}\) The nationalist policy and the 1993 Amendments of the Freedom of Conscience Law had not, at this writing, been reversed.

V. CONCLUSION

The Amendments of December 23, 1993, to the 1991 Ukrainian Law on Freedom of Conscience and Religious Organizations represent a policy of major retreat from full religious liberty for citizens and noncitizens alike. They represent an attempt to use the state to control the growth of the newer religious confessions in Ukraine, in response to appeals by Orthodox prelates in Ukraine and in various other countries. They represent a partial return to the historic Soviet and Tsarist practice of the state limitation of the expansion of religious pluralism.

The Amendments violate Ukraine’s obligations under international human rights treaties as well as the spirit and letter of the 1991 Act. Article 32 of the Law on Freedom of Conscience instructs the government that where Ukrainian legislation contravenes the international treaties, “then the rules of the international treaty shall be applied.”\(^{124}\) The Handbook of the Council for Religious Affairs supports this remedy: “In case

\(^{121}\) Interview with prelate, in Kiev (June 1994); information confirmed by interview with Deputy of Parliament, in Kiev (June 1994) and also by interview with Professor of Jurisprudence, in Kiev (June 1994).

\(^{122}\) News broadcast (Radio Ukraine, July 30, 1994).


\(^{124}\) Ukrainian Act, supra note 2, art. 32.
the legislation of Ukraine does not comply with some of [the international treaty] regulations, these regulations will be in force until the legislation of Ukraine is brought in correspondence with it.

In spite of the reining back of the Council for Religious Affairs, the 1993 Amendments and the nationalist religious policy continue to stand in Ukraine. The inauguration of the new Kuchma Administration is a favorable moment for Ukraine to reverse the retreat from religious liberty that occurred from 1991-94. Article 32 of the 1991 Law should be invoked to bring Ukrainian legislation and religious practice into full conformity with the international human rights treaty obligations which the government of Ukraine has assumed.