

Table of Contents

- ***NEW MEANS FOR LEGAL DEFENCE OF RELIGIOUS RIGHTS AND FREEDOMS***
- ***LEGAL DEFENSE OF RELIGIOUS ORGANIZATIONS IN UKRAINE***

New means for legal defence of religious rights and freedoms

Prof. Dodina Yevgeniya, correspondent of *Human Rights Without Frontiers Int.* in Ukraine (*) dodina_yev@yahoo.com

HRWF Int. (14.07.2004) - Email info@hrwf.net - Website <http://www.hrwf.net> -- Since the new Constitution of Ukraine was passed (in 1996), state power is divided into the legislative, executive and judicial branches. The purpose of the check and balance system is to prevent power usurpation by any of the branches of power. Judicial control over the execution of state power is one of the mechanisms of check and balance system. The new constitution included creation of administrative justice to protect citizens' rights and freedoms from violation by government bodies, making it more likely that religious freedom would be developed further. The Constitution of Ukraine, Civil Procedural Code of Ukraine, the Law of Ukraine "On Citizens' Applications" and others, establish the conditions under which a citizen may lodge a complaint against a state or a local government agency, an official or a functionary if the citizen feels that his rights or freedoms have been violated. These complaints are considered in general court.

Complaints by Individuals

In accordance with the Constitution of Ukraine, the citizens of Ukraine as well as foreigners and people without citizenship legally residing in Ukraine have equal religious rights and freedoms, and equal obligations. They have the same right to appeal to the court to defend their religious rights.

Physical persons (citizens of Ukraine, foreigners and others) can apply to the general court on the grounds of Chapter 31-A of the Civil Procedural Code of Ukraine, which provides for the right to apply to court with a complaint, if the person considers that his/her religious rights, freedoms or legal interests were violated by a decision, action or inactivity of government bodies, bodies of local government, officials and functionaries. Leaders of enterprises, institutions and organizations are also subject to the court for their decisions, actions or lack of action, irrespective of their position, property status, duties and tasks.

Such a complaint may be lodged with the court immediately after the violation occurs, or it may be lodged after the decision, action or lack of action is reviewed by a superior of the one making the decision. Lodging a complaint in court prevents the execution from acting against which it was lodged. According to Art. 248-4, Chapter 31-A of the Civil Procedural Code of Ukraine, the complaint is considered at an open court session in a 10-day term. If the complaint is found well grounded, the court rules that the decision, action or inactivity in question is illegal, and obliges the government bodies, bodies of local government, officials and functionaries to meet the applicant's demands and to eliminate the violation.

A concrete example is provided by a member of a religious group whose doctrine forbids using an national identification number.

State taxation and religious right to refuse an identification number

For example, the College of Judges of the Civil Cases Court Chamber of the Supreme Court of Ukraine made a decision on such a case on November 5, 2003, (published in the journal "Yuridichniy Vistnik Ukraini" ("The Juridical Herald of Ukraine") Nr 48, dated November 29 – December 5, 2003). In May 2002, Mrs. B. complained to the court that her rights had been violated. She asked the court to rule as illegal the *inactivity* of the officials from the state taxation agency which failed to register her law-based refusal of an identification number, to exclude her from the State Register of Physical Persons, and to put a special note in her passport confirming this provision. In this regard, Mrs B. referred to Article 1, Part 2 of the Law of Ukraine, dated December 22, 1994, with changes made on June 16, 1999, entitled "On the State Register of Physical Persons – Payers of State Taxes and Other Obligatory Payments" Mrs. B. claimed that she has a right to make all kinds of payments without the identification number. She argued that officials of the state taxation agency refused to include the special note in her passport, because there is as yet no mechanism or regulation for carrying out the provision contained in Article 1, Part 2 of the 1994 law.

Yalta city court denied Mrs B's claim on December 3, 2002. This decision was upheld by the College of Judges of Civil Cases Court Chamber of the Crimea Republic Court of Appeal on February 17, 2003.

In her cassation complaint, plaintiff B asked the Supreme Court to overturn the lower court decisions and to satisfy her demands, referring to improper application of material laws by the lower courts. The College of Judges of the Civil Cases Court Chamber of the Supreme Court of Ukraine determined that the cassation complaint must be satisfied on the grounds she put forward.

When the lower courts refused to satisfy Mrs. B's complaint, they agreed that Article 1, Part 2 of the Law provides for a person's right to refuse an identification number, to inform the appropriate government bodies about this decision, to make obligatory payments in accordance with the previously established form of discount, and get a special note in the passport about this, but because, at present, the precise mechanism to implement the provision for special notes in the citizens' passports is absent, the state tax agency officials refusal to make this entry was lawful.

Nevertheless, this conclusion is wrong. According to Article 67 of the Constitution of Ukraine, everyone is obliged to pay taxes and duties in the order and in the amount defined by law. The state taxation agency oversees and enforces the laws governing taxation and registration of taxpayers – physical persons.

According to Article 1, Part 2 of the Law of Ukraine, dated December 22, 1994, with changes made on June 16, 1999, entitled "On the State Register of Physical Persons – Payers of State Taxes and Other Obligatory Payments", previously established forms of registering payers of taxes and other obligatory payments are maintained for people who, because of their religious or other beliefs, refuse to accept the identification number and inform the appropriate taxation bodies about this.

Thus, the above-mentioned Law provides that the taxpayer in question has a right to fulfil her constitutional obligations to pay taxes and other obligatory payments without having to accept an identification number but choosing instead

the alternative form of registration. Therefore, the state taxing agency officials' refusal to offer Mrs. B. the alternative form of registering of physical persons – taxpayers – is unlawful. The same Law provides that a special note is made in the passports of people requesting the alternative method, stating that they have a right to make all payments without the identification number. Arguments from the state taxing inspection officials that a concrete mechanism of making such notes is absent cannot serve as grounds for their refusal to honor this provision.

As the circumstances of the case were defined by the court correctly and fully, but the material law was applied improperly, the College of Judges of the Civil Cases Court Chamber of the Supreme Court of Ukraine satisfied Mrs. B's cassation complaint using Article 340 of the Civil Procedural Code, overturning the December 3, 2002, Yalta city court decision and the February 17, 2003, resolution of the College of Judges of the Civil Cases Court Chamber of the Crimea Republic Court of Appeal, declaring the decisions unlawful. Further the Supreme Court obliged the tax authorities to add the special note to B's passport, stating that she has a right to make all kinds of payments without the identification number.

Complaints by Procurators

Defense of religious rights and freedoms is also carried out by Procurators' bodies, the task of which is to provide relentless enforcement of laws by all state and public organizations (NGOs), citizens, etc. Therefore, the legislators gave procurators the right to appeal to court if they consider that a body's legal act, an official's decision, activity or inactivity is unlawful and violates citizens' religious rights and freedoms. At a first stage, a procurator can address a complaint to the official or the institution that committed a violation of a citizen's religious rights. If the answer is negative or if there is no answer within ten days, the procurator may lodge an appeal to the court. In this case, lodging an appeal also enjoins the state, public organization or citizen from continuing the action.

For example, the following case was described in the article "The Procurator's Protest was Declined. He Lodged a Complaint in Court" (published in newspaper "Golos Ukraini" (Voice of Ukraine) Nr 160 dated September 4, 2002). It describes the protest of the Rivne Region procurator, the III class State Counselor of Justice, N. Golomsha, against the decision of Rivne Regional Council N143 dated March 24, 2002, "On the Introduction of a New Subject, "Christian Ethics", in General Schools of Rivne Region". The procurator had instructed the Council to bring its decision into harmony with the laws of Ukraine; but the deputies of the newly elected Council voted against compliance with the procurator's protest. N. Golomsha appealed to court. During its September 23 session, the local Rivne City Court supported the procurator's request, ruling his demands lawful and abolishing the decision of the July 23, 2002, Regional Council to ignore the procurator's direction. The court obliged the Rivne Regional Council to change at its nearest session clause 1 of its previous decision on the introduction of "Christian Ethics" in General Schools, and formulate it as follows: "recommend to introduce teaching the subject "Christian Ethics" in general schools of Rivno Region as an optional component of the school program". This means that the decision in this wording has a nature of recommendation, the classes on Christian Ethics will be optional (non-obligatory) rather than a required subject, and the students will attend the class only if they choose to. (A description of the original course description and requirement was published in newspaper "Golos Ukraini", (Voice of Ukraine) Nr 184 (2935), October 8, 2002.)

(*) Odessa National Academy of Law, Institute for Training of Professional Judges , Ukraine

Legal defense of religious organizations in Ukraine

Some cases against state governmental bodies

Dr Yevgeniya Dodina, Lawyer and Associate Professor at the Odessa National Academy of Law, dodina_yev@yahoo.com

Freedom of conscience is guaranteed by the Constitution of Ukraine. Citizens have equal constitutional rights and freedoms and are equal before the law.

Registration and activities of religious organizations are regulated by the Law of Ukraine "On Freedom of Conscience and Religious Organizations."

According to legal provisions, religious organizations have the right to file a complaint with a court if their rights are violated. Two procedures are available:

1. filing a complaint with general courts (this concerns cases directly listed in the Civil Procedure Code of Ukraine);
2. filing a complaint with commercial courts in all other cases.

General Court Proceedings

According to Chapter 31-B of the Civil Procedure Code of Ukraine, general courts consider complaints related to decisions made by governmental bodies concerning religious organizations on the following issues:

- exceeding the legally established terms for making decisions on the registration of statutes of religious organizations;
- refusing to register statutes of religious organizations;
- maintaining and using religious buildings and property.

According to the Law of Ukraine "On Freedom of Conscience and Religious Organizations," the statutes of religious communities are to be registered either by Regional State Administrations, by Kiev or Sevastopol City State Administrations, or by the Government of the Republic of Crimea. The statutes of religious centers, administrations, monasteries, religious brotherhoods, missions and religious education institutions are to be registered by the State Department of Religious Affairs of Ukraine.

The founders of religious organizations can lodge a complaint in the case of the first two aforementioned issues.

Complaints related to decisions of local state bodies are to be lodged in Regional Courts, in Kiev or Sevastopol City Courts, in the Republic of Crimea Supreme Court. Complaints related to decisions of the State Department of Religious Affairs are to be filed with the Supreme Court of Ukraine. They must be filed within one month from the date of the decision, which is being challenged.

The court must examine the complaint concerning a decision of a state governmental body about one of the issues mentioned in chapter 31-B of the Civil Procedure Code of Ukraine within 10 days at an open court session. Failure of one

of the parties to appear in court does not prevent the court from considering the complaint. If the court rules that the decision in question is in violation of the law, it issues a ruling in favor of the plaintiff. If the court finds that the decision of the government body was in conformity with the law, then it non-suits the plaintiff. In both situations, the decision of the court concerning the complaint is sent to the plaintiff and to the governmental body summoned to appear. Two cases of appeal to a general court follow.

Case
Brotherhood in the Name of All Saints v. the Department of Religious Affairs of the Donetsk Regional State Administration

In May 1997, Mr. I. lodged a complaint about the decision of the Department of Religious Affairs of the Donetsk Regional State Administration. The plaintiff, Mr. I., stated that on February 15, 1997, a group of 10 people founded a religious organization – “Brotherhood in the Name of All Saints” - and Mr. I. was elected the head of the “Brotherhood”. On February 21, 1997, he, as the head of the “Brotherhood”, applied for registration as a new, religious organization, submitting the required application and its statutes to the Department of Religious Affairs. The Department of Religious Affairs failed to forward the documents to the registering body, and in May 1997 returned them to the plaintiff, stating that the created organization was not religious.

Considering this decision unlawful, the plaintiff asked the court to oblige the Department of Religious Affairs to forward the documents to the registering body. On June 25, 1997, the Donetsk Regional Court decided to dismiss Mr. I.’s complaint. Mr. I. then appealed to the Supreme Court of Ukraine. In his appeal, Mr. I. asked the Supreme Court to overrule the Regional Court decision and to issue a new ruling obliging the Department of Religious Affairs to forward the documents to the Regional State Administration for registration. The Supreme Court of Ukraine ruled that the complaint had to be satisfied because in its considerations, the Donetsk Regional Court determined that the registration documents submitted by the applicant did not correspond to the requirements of the Law of Ukraine “On Freedom of Conscience and Religious Organizations”; therefore, under the terms outlined in Chapter 31-A of the Civil Procedural Code, the Department of Religious Affairs acted lawfully when it refused to forward them for registration.

The Supreme Court however said these conclusions could not be considered valid. By concentrating on Chapter 31A of the Civil Procedure Code of Ukraine, the Donetsk Regional Court ignored elements of Chapter 31B and of Article 14 of the Law on Freedom of Conscience and Religious Organizations. Additionally, a number of details regarding the rights and duties of the various parties were left unresolved.

According to Article 14 of the Law of Ukraine “On Freedom of Conscience and Religious Organizations,” the text of the statutes for registration of religious communities (upon registration, religious organizations acquire the status of legal persons) is entrusted to Regional, Kiev and Sevastopol City State Administrations, and - in the Autonomous Republic of Crimea – to the Government of this Republic. When studying the complaint, the Donetsk Regional Court did not examine whether the Regional Department of Religious Affairs had the right to refuse to forward the text of the statutes to the registering body. According to Art. 4, par. 11 of the “Standard Provisions on the Department of Religious Affairs of the Regional, Kiev and Sevastopol City State Administrations,” (approved by the Decree of the Cabinet of Ministers of Ukraine dated June 29, 1996, Nr 697), the Department of Religious Affairs of the Regional State Administration is

responsible for examining whether the statutes of the religious community are in compliance with the current law and for forwarding its conclusions to the Regional State Administration. The conclusions of the Department regarding the compliance or non-compliance with the current law of a religious organization's documents are examined by the Administration when making its decision to register the organization or to refuse its registration. However, the mentioned "Standard Provisions" do not state that, if the documents do not conform to the current law, the Department of Religious Affairs of the Regional State Administration has the right to refuse to forward the religious organization's documents to the Administration.

When the Donetsk Regional Court decided that the documents submitted by the religious organization "Brotherhood in the Name of All Saints" did not correspond to the current law and refused to forward these documents to the Administration, the Donetsk Regional Court violated Article 14 of the Law "On the Freedom of Conscience and Religious Organizations" by taking over the functions of the registering body. The Supreme Court also ruled that the Donetsk Regional Court had to take its decision according to the proceedings described in Chapter 31B instead of Chapter 31A.

An additional question not examined by the Donetsk Regional Court was whether Mr. I. submitted his application for registration to the appropriate agency. According to Part 2 of Article 14 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations", religious centers, administrations, monasteries, religious brotherhoods, missions and spiritual educational institutions are to submit their statutes for registration not to regional state administrations, but to the central government body for religious affairs – the State Department of Religious Affairs.

As the Donetsk Regional Court failed to clear up all these circumstances in due order, the Supreme Court overruled its decision and sent back the case to the Donetsk Regional Court for new investigation. (Published in the magazine "The Decisions of the Supreme Court of Ukraine", 1998).

Case
Kostopol Religious Community of the Ukrainian Orthodox Church of the Moscow Patriarchy v. the Head of the Rivne Regional State Administration

On April 18, 1997, the Kostopol religious community of the Ukrainian Orthodox Church of the Moscow Patriarchy (UOC MP) of St. Alexander's Nevsky Church appealed against the decision of the Head of Rivne Regional State Administration, dated March 24, 1997, Nr 168, paragraph 2. The complaint of the UOC MP religious community stated that its statutes were registered on the decision of Rivne Regional State Administration, designating the St. Alexander's Nevsky Church in Kostopol as their house of worship. The UOC MP religious community had been using this house of worship for its services for a long time, the last renting contract being signed on July 8, 1996 for a term of two years. Nevertheless, according to the decision of the Head of Rivne Regional State Administration dated March 24, 1997, the St. Alexander's Nevsky Church was also designated as the place of worship of the religious community of the Ukrainian Orthodox Church of Kiev Patriarchy (UOC KP).

According to par. 2 of this decision, the Department of City Building and Architecture of the Regional State Administration has to be concluded a separate agreement for the use of St. Alexander's Nevsky Church with the UOC KP religious community. Since the agreement with the UOC MP religious community

was still in force and its members did not agree to share the church building with the UOC KP religious community, the former asked the Rivne Regional Court to rule unlawful par. 2 of the Head of Rivne Regional State Administration decision. The Rivne Regional Court dismissed the complaint of the UOC MP religious community on September 5, 1997.

In its appeal to the Supreme Court, the UOC MP religious community asked to overrule the Rivne Regional Court decision on the grounds that it violated civil law and failed to provide a proper assessment of the collected proofs.

The Supreme Court ruled in favor of the UOC MP religious community on the following grounds.

The Rivne Regional Court had justified its refusal by referring to Article 17, par. 3 of the Law of Ukraine "On the Freedom of Conscience and Religious Organizations", which however does not stipulate that a separate agreement for using a religious building can not be concluded with another community, even if an agreement of the same nature was concluded previously with another religious community. According to the Supreme Court, this decision can not be considered valid on the grounds that the Rivne Regional Court disregarded the provisions of Article 17, par. 8 and 3 of the said Law. According to Article 17, par. 8, agreements for the use of property by religious organizations – places of worship – can be annulled in conformity with the civil law of Ukraine.

The documents investigated by the Rivne Regional Court show that the statutes of the UOC MP religious community were registered in 1991 and that agreements for the use of the St. Alexander's Nevsky Church were concluded before any claim of the UOC KP religious community. The court failed to give due consideration to this element of the case and to pay attention to the fact that the said agreement is a civil law contract, which according to Article 17, par. 8, of the Law can be annulled only by civil law. Article 17, par. 3, of the Law does not provide the court with sufficient ground for its conclusion that more than one religious community may conclude an agreement for the use of a place of worship, especially when a valid agreement with another community is pre-existing; the decision contradicts the content of civil law norms.

As the Rivne Regional Court failed to provide a proper assessment of the collected proof, the College of Judges on Civil Cases of the Supreme Court of Ukraine finally overruled its decision and sent back the case to the Rivne Regional Court for new investigation. (Published in "Liga" Law Collection, electronic database.)

Commercial Court Proceedings

Other categories of cases concerning the rights of religious organizations, which are not listed in Chapter 31-B of the Civil Procedure Code of Ukraine, are to be investigated by commercial courts (Before the implementation of the Law of Ukraine Nr 2539-III, dated June 21, 2001, commercial courts were called courts of arbitration.) These are cases opposing religious organizations to each other as well as religious organizations to other legal persons.

For example, in this category of cases fall appeals lodged by religious organizations against decision of appropriate governmental state bodies concerning the restitution or the transfer of ownership of religious buildings or property to religious organizations.

Before the Law of Ukraine "On Freedom of Conscience and Religious Organizations" (1991) was implemented, all the places of worship and religious buildings used by churches and religious communities were owned by the state (under Article 366 of the Administrative Code of the Ukrainian SSR issued in 1927). The Administrative Code of the Ukrainian SSR has never been invalidated and is therefore still in force. Consequently, the state is still the legal owner of the religious buildings and property. According to Article 4 of the Law of Ukraine "On Ownership" (1991), appropriate governmental bodies have the right to own, use and manage these buildings and property, and to take any legal actions concerning them.

On March 4, 1992, the President of Ukraine issued Decree Nr 125 "On the Measures Concerning the Restitution of Religious Property to Religious Organizations" which required from the relevant state governmental bodies to reconstitute or to transfer the ownership of the religious buildings, which were used in a non-appropriate way, to the religious organizations in 1992-1993. Due to technical difficulties, the implementation of this provision was extended until January 12, 1997, by the President of Ukraine's decree Nr 53/94 dated June 6, 1994.

A list of religious buildings – important monuments of architecture – that can not be allotted to religious organizations for permanent use is established in the Decrees of the Council of Ministers of the Ukrainian SSR dated April 5, 1991, Nr 83 "On the List of Architecture Monuments Not Liable to Allotment for Permanent Use to Religious Organizations", and of the Cabinet of Ministers of Ukraine dated September 14, 1991, Nr 198 and dated June 8, 1992, Nr 311 "On Exclusion of Some Items from the List of Religious Buildings – Important Monuments of Architecture Not Liable to Allotment for Permanent Use to Religious Organizations". According to these decrees, the ownership of the religious buildings mentioned on this list cannot be transferred to religious organizations.

Due to the importance of these questions, the Higher Court of Arbitration of Ukraine issued explanations in a document entitled "On some questions which arise with the implementation of the Law of Ukraine 'On the Freedom of Conscience and Religious Organizations' ", referenced Nr 02-5/109 and dated February 2, 1996, with amendments referenced Nr 04-5/609 and dated May 31, 2002.

According to these explanations, a religious community becomes a legal person as soon as its statutes are registered either by Regional State Administrations, by Kiev or Sevastopol City State Administrations, or by the Government of the Republic of Crimea. Religious centers and administrations, monasteries, religious brotherhoods, missions and religious educational institutions are all recognized as legal persons as soon as they are registered by the State Department of Religious Affairs of Ukraine. As a legal person, a religious organization has rights and duties in accordance with laws in force and with its statutes.

According to the aforementioned explanations of the Higher Court of Arbitration, buildings and property designated for worship are meant to satisfy the citizens' religious needs. Therefore, buildings used to accommodate priests or other religious servants can not be considered worship structures, if they are not an integral part of a worship building and are not situated on the plot of land used for the place of worship. The designation of a place of worship is established through technical inventory documents. In case of controversy about the status of a building or property, a commercial court can appoint experts to sort it out.

According to Article 8 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations," the state recognizes that a religious community has the right to be affiliated with and to change its affiliation with any religious denomination acting in Ukraine or abroad. Therefore, changes in the affiliation of a community can not lead to the cancellation of all previous agreements or contracts because they were concluded on behalf of the religious community and were signed by its representatives. This principle was in force before the Law as well

- Articles 28-32 of the Provisions on Religious Associations in the Ukrainian SSR approved by the Decree of the Supreme Soviet of Ukraine on November 1, 1976, with further changes and additions;
- Article 20 of the Law of Ukrainian SSR "On Protection and Use of History and Culture Monuments";
- paragraphs 59 and 61 of the "Provisions on Protection and Use of History and Culture Monuments" approved by the decree of Council of Ministers of USSR on September 16, 1982, Nr 865.

At the same time, according to paragraph "B" Article 10 of the "Provisions on Religious Associations", religious communities could use for their prayer meetings a building (premises) put at their disposal by individual citizens or they could rent the premises from the City or District Council of the People's Deputies.

In this last case, according to Article 34 of the Provisions, the renting contract is to be concluded by individual believers, who are then responsible for the implementation of this contract. Consequently, commercial courts can not be seized in case of modification, execution and cancellation of such a contract.

Under Article 16 of the Law, the activities of a religious organization can be discontinued because of its reorganization (schism, amalgamation, or absorption) or liquidation. In this regard, any contract for the free use of buildings for worship or other purposes also comes to an end, by regulation of Article 331 of the Civil Code of Ukraine.

According to Articles 17 and 18 of the Law, a religious community or another religious organization (monastery, brotherhood, mission, or spiritual educational institution) is the owner of the estate property, movables or financial assets it has raised or acquired, and not the central religious denomination as a judicial person (Ukrainian Orthodox Church of Kiev Patriarchy, Ukrainian Catholic Church, etc.)

According to Article 17 of the Law, buildings and other state property used free of charge for worship, or rented for free use, can be allocated to religious organizations by decisions of Regional, Kiev and Sevastopol City State Administrations in Ukraine, and in the Autonomous Republic of Crimea on the base of the President of Ukraine's Decree dated March 4, 1992, Nr 125 "On the Measures Concerning the Restitution of Religious Property to Religious Organizations".

The transfer of the ownership of religious buildings to religious organizations that never owned these buildings is possible on the condition that there is no lawful claimant to these buildings in the neighborhood.

Paragraph 6 of the April 23, 1991 Verkhovna Rada Decree "On the Order of Implementation of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" (in the version of the Verkhovna Rada Decree dated December 23, 1993, "On Changes Introduced in the Verkhovna Rada Decree 'On

the Order of Implementation of the Law of Ukraine On the Freedom of Conscience and Religious Organizations' ") requires the appropriate government bodies to transfer the ownership of religious buildings and property to religious organizations, taking into account the following circumstances:

- the rights of the religious communities to which these buildings and property belonged at the time of their transfer to the government ownership;
- the rights of the religious communities that used these buildings with a legal authorization;
- the expenses incurred by a religious community for the construction and maintenance of a religious building and the duration of the use of the said building;
- the existence of other religious buildings in the city and their use by religious communities of the appropriate denominations;
- all other relevant circumstances.

The decision of the appropriate government body must be justified. When implementing the restitution decision or when settling counterclaims for ownership of a given property, no single circumstance has priority over another. According to the April 23, 1991 Decree, the commercial court has to take into account all the listed and other important circumstances, their interrelationships as well as the principles of equality of all religions, denominations and religious organizations, as provided by Article 5 of the Law. It means that the court must consider the mutual rights and legal interests of various religious communities and recognize the necessity to provide adherents of all religions, denominations and groups with equal worship opportunities in specially accommodated premises. Moreover, commercial courts should defend the interests of migrants who left religious buildings and property in Ukraine and who now claim the enjoyment of their rights on the religious property which was transferred to the government ownership. For example, when determining the use of a specific building, government bodies must consider if the enjoyment of this right belongs to a community of migrants or their descendants. Evidence confirming the described circumstances can be provided by the Ministry of Foreign Affairs of Ukraine, foreign institutions, etc.

Restitution of religious buildings and property means returning their ownership to a religious organization of the same denomination, i.e. communities of the Orthodox Church, the Roman Catholic Church, etc. Certificates from State archives and from the State Department of Religious Affairs of Ukraine, archive documents of religious organizations, decisions of local government bodies and other written proofs can be considered evidence for the ownership of a particular property by a particular religious organization. Therefore, commercial courts are to require from the State Department of Religious Affairs of Ukraine or archive institutions the necessary certificates, information or decisions for solving the disagreement, or to hear officials of these institutions at the court session.

Article 71 of the Civil Code of Ukraine determines the general deadline for the introduction of applications. When a religious organization gets or can get to know a possible violation of its rights, it can lodge a complaint with a court according to the general deadline. In case a religious organization was registered after a decision of a state governmental body concerning, for example, the restitution of a place of worship to a specific religious group, this organization which also claims the ownership of the said place of worship has the right to apply to the court directly after its registration under the general terms of Article 71.

On the basis of the President of Ukraine's Decree dated March 4, 1992, Nr 125 concerning the restitution of state-owned religious property and buildings to religious organizations, the state started a procedure of retrocession after investigating about their historical owner. Religious organizations are not entitled to claim ownership of specific religious buildings and property through courts as long as they belong to the state but they are entitled to initiate proceedings through commercial courts to challenge what they consider wrong re-allocations of the said religious building and property to another religious organization.

The decision by the relevant government body to reconstitute or transfer the ownership of a religious building or property to a religious organization is irreversible. The change of ownership of a building or other property can only be invalidated by a decision of a commercial court. As a rule, commercial courts must recognize the necessity of a procurator's participation in court proceedings for such cases.

In conclusion, the effectiveness of the implementation of religious rights and freedoms in Ukraine will depend to a great extent on the existence of a strict legal framework regulating the rights and duties of religious organizations and on the role of the various law enforcement actors such as the concerned state bodies, the local governmental bodies, officials and staff.