

Comment

Christian Orthodoxy between Geopolitics and International Law. How the War in Ukraine Divided the Orthodox Church

I. The Orthodox Church in Today's Unorthodox World	422
II. The Russian Orthodox Church as a Russian State Agency	425
III. Emergence of the Orthodox Church of Ukraine as a Manifestation of National Independence and Identity	428
IV. Prosecution of the Ukrainian Orthodox Church (Moscow Patriarchate) and EU Integration of Ukraine. Can a Church Be Prohibited in an EU Candidate Country?	429
V. Concluding Remarks	434

The war in Ukraine (from 2014 until present) has proved to be a serious test for Catholic and Orthodox parishes in Ukraine. On one side, the Catholic Church engaged with the peace process between Ukraine and Russia. At one moment, the Pope risked his reputation in Ukraine by undertaking peace negotiations (which he termed as a 'white flag'). On the other side, the Orthodox Church avoided any engagement with the peace process and, instead, ideologically supported the war efforts of the respective countries where they operate. For example, the Russian Orthodox Church reached the limits of the constitutional secularity of the Russian Federation by obliging all priests to pray for 'Holy Russia' and its victory over invaded Ukraine. The church suggested that Orthodox priests who may consider the text of this prayer contradicting their Christian beliefs should be defrocked. In March 2024 the World Russian People's Council proclaimed Russia's invasion of Ukraine as a 'holy war [...] against [the] collective West'.¹ In 2022 Ukraine was given candidate country status to join the EU. Simultaneously, the Ukrainian government limited activities and prosecuted some bishops and priests of the Ukrainian Orthodox Church (Moscow Patriarchate) on grounds of national security interests. These events pose a question about the limits of the legitimate engagement of any Church in intricate geopolitics and compliance with principles of international and European law.

The aim of this article is threefold. First, it scrutinises the historical and geopolitical reasons underlying the conflict between the Russian Orthodox Church and the Ecumenical Patriarchate of Constantinople over the issue of

¹ <<http://www.patriarchia.ru/db/text/6116189.html>>, last access 29 August 2024.

establishing an autocephalous Orthodox Church of Ukraine. Second, it highlights the Russian Orthodox Church's alarming conformism and alliance with the authoritarian Putin regime in Russia. It illustrates that the Russian Orthodox Church became *de facto* the main ideological pillar of Russia's brutal violations of international law and values of humanity in the war in Ukraine. This *finalité* made the Russian Orthodox Church act as a maleficent power (commentators use even stronger definition of 'evil power'). Third, it studies the status of the Ukrainian Orthodox Church (Moscow Patriarchate), which, due to its institutional connection to the Russian Orthodox Church, is seen as a national security threat to war-torn Ukraine. This contribution also examines if the prosecution of the Moscow-affiliated Ukrainian Orthodox Church may be considered a significant impediment to Ukraine's integration into the European Union (EU).

These cases provide a good illustration of the dilemma faced by the Orthodox Church in the context of the war in Ukraine. The Church can either serve the national interests and geopolitical realities of its patron state or promote eternal Christian values of humanity, peace and non-violence at the expense of its reputation and well-being. The solution might look obvious but is in fact extremely difficult since no Christian church in the world can successfully confront totalitarian/autocratic regimes that openly disregard the fundamentals of international law and common values of humanity.

I. The Orthodox Church in Today's Unorthodox World

The two biggest Christian churches in the world – the Catholic and Orthodox churches – are distinguished by different institutional ideologies. The Catholic Church is a centralised religious organisation that is chaired by one primary priest, the Pope, who is also a monarch and head of the State of Vatican City. In contrast, the Orthodox Church is not a unified religious structure but a heterogeneous religious institution that is composed of 17 autocephalous self-governing churches. Each of them is chaired by a primary priest – a patriarch, metropolitan or archbishop. All of these autocephalous churches are independent and do not recognise a single supreme ecclesiastical authority above them. Traditionally, the Ecumenical Patriarch of Constantinople is seen as the 'spiritual leader' of Christian Orthodoxy. This can be explained by the historical importance of the seat of Constantinople, being the cradle of Orthodoxy in the world. However, even the alleged role of the Ecumenical Patriarch of Constantinople as '*primus inter pares*' is disputed in modern Orthodoxy.

Furthermore, nor do all 17 autocephalous Orthodox churches share the same status nor enjoy universal and undisputed mutual recognition. For instance, there are only four fully and universally recognised ancient orthodox patriarchates: the Ecumenical Patriarchate of Constantinople, the Greek Orthodox Patriarchate of Alexandria, the Greek Orthodox Patriarchates of Antioch and the Greek Orthodox Patriarchates of Jerusalem. Also, there is a limited number of universally recognised national patriarchates and archbishopsrics. The Russian Orthodox Church is the largest among these in terms of territory and financial might. It consists of a number of autonomous churches that are located in other countries but which remain under the jurisdiction of the Russian Orthodox Church.²

Such institutional diversity and lack of a single spiritual and institutional centre within contemporary Orthodoxy led to a situation in which each autocephalous Orthodox Church (usually confined within a territory of one country) had to find the best possible compromise with the respective government and ruling regime in order to survive and to ensure the best possible conditions for its functioning and spiritual influence. Unfortunately, this juncture inevitably brings any autocephalous Orthodox Church into the highly troubled waters of internal and external politics. For instance, in case of friction with the ruling regime of a State, the local Catholic church and its parishes may appeal for support and protection from the Vatican. In the same situation a local Orthodox church has no choice but to submit itself into long-lasting dependency on the regime in which this church is located, especially when such a regime is not internationally recognised as democratic.

In our current turbulent times, Orthodoxy experiences an ongoing rivalry between some autocephalous churches for ideological and spiritual leadership. The most entrenched rivalry exists between the Ecumenical Patriarchate of Constantinople and the Russian Orthodox Church. The former is the oldest and most authoritative ancient Orthodox patriarchate. The latter operates within the biggest country, occupying one-sixth of the planet, possesses a rich and lucrative estate worldwide and enjoys the undisputed support of Russian President Vladimir Putin's powerful authoritative regime. With all these elements taken together, the Russian Orthodox Church is the richest and largest (in terms of its geographical jurisdiction) Orthodox church in the world.

² The autonomous Japanese Orthodox Church and the Ukrainian Orthodox Church, self-governing churches (Moldova Orthodox Church, Latvian Orthodox Church, Estonian Orthodox Church, Orthodox Church abroad) and several smaller regional Orthodox churches under the jurisdiction of the Russian Orthodox Church.

The rivalry between the Ecumenical Patriarchate of Constantinople and Russian Orthodox Church rests on long-lasting historical claims.³ However, the true confrontation between the Ecumenical Patriarchate of Constantinople and the Russian Orthodox Church emerged after the collapse of the Soviet Union. Gradually, these two patriarchates beamed different ideological and spiritual lights. While the Ecumenical Patriarchate of Constantinople stood behind the principles of non-interference in state issues, the Russian Orthodox Church accepted a role as the official state church and supporter of Putin's centralised, nationalistic, and despotic regime.

This dispute culminated in October 2018 when the Russian Orthodox Church broke all relations with the Ecumenical Patriarchate of Constantinople in response to the latter granting *tomos* (autocephalous status) to the Orthodox Church of Ukraine (alternative to the Moscow-controlled Ukrainian Orthodox Church). This action created a schism with the Russian Orthodox Church, which means a breaking of all institutional and religious communication between the two churches, including 'eucharistic communion' (participation in Liturgy services and the sharing of Holy Communion) as well as mentioning Ecumenical Patriarch Bartholomew I of Constantinople in special religious services.

This conflict is notable for several reasons. First, the Ecumenical Patriarchate of Constantinople does not enjoy any legal primacy or privileged status among autocephalous Orthodox churches. In fact, it is one of the smallest and poorest patriarchates. However, the historical and reputational weight of the Ecumenical Patriarchate of Constantinople is enormous. It has its seat in the historical part of the city of Istanbul where ancient Constantinople was located and, thereby spells out the legitimacy of Orthodoxy worldwide. Furthermore, the Constantinople Patriarchate played the role of the original legitimiser of almost all Orthodox autocephalous churches worldwide, including the Russian Orthodox Church in 1589.

Second, the Russian Orthodox Church considers itself as a leading Orthodox beacon in accordance with the notorious doctrine of 'Moscow – as a third Rome'.⁴ This doctrine takes its origin from the 15th century when Russian bishops stated that Moscow should be regarded as the 'Third Rome'

³ The Russian Orthodox Church acquired its legitimacy from the ancient Ecumenical Patriarchate of Constantinople in 1589. Furthermore, the Russian Empire based and justified its significant imperial expansion in the 18th and 19th centuries in the Caucasus and Black Sea region by claiming it needed to defend the interests of the Ecumenical Patriarchate of Constantinople. For instance, this policy led to the disastrous Crimean war in 1853-1856. See Orlando Figes, *The Crimean War: a History* (Henry Holt and Company 2011), 15-40.

⁴ Dimitri Strémooukhoff, 'Moscow the Third Rome: Sources of the Doctrine', *Speculum* 28 (1953), 84-101.

after the fall of Christian Constantinople (the Second Rome) in 1453. It provided legitimacy for the Russian Orthodox Church as the only true legitimate representative of the Orthodox Church in the world. This concept perfectly fits the ideological foundation of the war in Ukraine; that is, *inter alia*, it is construed as an act of resistance against corrupted ‘Western’ values.

II. The Russian Orthodox Church as a Russian State Agency

The Russian Orthodox Church has been stigmatised as an agency of the Russian state for many centuries. The reform and consequent division of the Russian Orthodox Church (*raskol*) in 1688 marked the end of this church as an independent religious and moral institution in tsarist Russia. The first Russian Emperor Peter the Great demolished the institution of the patriarchy and downgraded the Russian Orthodox Church to the level of a governmental office under the control of a senior civil servant. This status lasted for 200 years. It led to the gradual loss of the Russian Orthodox Church’s credibility and reputation since priests, as civil servants, were expected to break the seal of confession to report on possible crimes against the state. After the communists came into power in 1917, the Russian Orthodox Church faced horrific prosecutions, expropriation of property, and the mass closure of churches. During World War II, Stalin’s regime reinstalled the Russian Orthodox Church with the hope of using it as an ideological tool to fight Nazi Germany. The Russian Orthodox Church remained under the grip of the Soviet regime and under control of Soviet security services until the end of the Soviet Union.⁵

The renaissance of the Russian Orthodox Church came with the collapse of the Soviet Union in 1991. At this time the Russian Orthodox Church regained its moral and religious authority and successfully substituted the hypocritical communist ideology of the former Soviet Union with religious content. However, widespread corruption and close collaboration with the increasingly authoritarian Putin regime has gradually compromised the role of the Russian Orthodox Church as a religious and moral beacon in post-Soviet Russia. Since coming into power in 2000, President Putin has consis-

⁵ Andrey Soldatov and Irina Borogan, ‘Putin’s Useful Priests: The Russian Orthodox Church and the Kremlin’s Hidden Influence Campaign in the West’, *Foreign Affairs*, 14 September 2014, <<https://www.foreignaffairs.com/ukraine/putins-useful-priests-russia-church-influence-campaign>>, last access 29 August 2024. ‘Patriarch Kirill worked for the KGB in the 1970s, Swiss media reports’, *Euronews*, 6 February 2023, <<https://www.euronews.com/2023/02/06/patriarch-kirill-worked-for-the-kgb-in-the-1970s-swiss-media-reports>>, last access 29 August 2024.

tently treated the Russian Orthodox Church as one of the tools of state ideology, disregarding the status of the Russian Federation as a secular state as provided in its Constitution and primary laws.⁶ President Putin also quickly realised the strength and scope of the Russian Orthodox Church's soft power over the Russian speaking population in the other newly independent countries of the former Soviet Union. Obviously, the autocratic regime of Vladimir Putin cannot accept any degree of autocephaly of the Orthodox Church in Ukraine.

Commentators highlight three dimensions of power enjoyed by the Russian Orthodox Church under Putin's regime. The first dimension is 'soft power'. It means that the Russian Orthodox Church exercises and cements an influence on ethnic Russians and Russian speakers beyond the borders of the modern Russian Federation to manifest their spiritual unity with Russian ideology and the religious narratives of the so-called 'Russian World'. The second dimension is 'sharp power', e. g., backing the Ukrainian invasion and condemning those who either recognise or support the autocephalous Orthodox Church of Ukraine. The third dimension is 'evil power', which provides explicit support to and serves the interests of the Russian government's immoral and unethical state actions, such as the invasion of Ukraine by its military forces.⁷

The soft power of the Russian Orthodox Church is exacerbated through the weaponisation of Russian culture and language. The Russian regime considers Russian culture and language as effective tools of Russian foreign policy and warfare.

There are two dimensions of the soft power of the Russian Orthodox Church. The first dimension is about fostering cultural links and ties to the Russian Federation with another country with a view to contributing to the achievement of Russian foreign policy objectives. For instance, the Concept for Russia's Humanitarian Policy Abroad of 2022 stated that

'[Russian culture] as an instrument of "soft power", contributes to strengthening the international standing of Russia, the formation of its objective perception abroad, and the neutralisation of anti-Russian sentiments of political and ideological origin. International cultural and humanitarian cooperation is required to foster favourable conditions for the implementation of foreign policy tasks.'⁸

⁶ The Law on Freedom of Conscience and Religious Associations (1997) declares that all religions are equal before the law and recognises the Russian Federation as a secular state without a state religion. Articles 19, 28 of the Russian Constitution.

⁷ Alar Kilp and Jerry G. Pankhurst, 'Soft, Sharp, and Evil Power: The Russian Orthodox Church in the Russian Invasion of Ukraine', *Occasional Papers on Religion in Eastern Europe* 42 (2022), 1-21.

⁸ Edict of President of the Russian Federation 'Concept of Humanitarian Policy of the Russian Federation Abroad', No. 611, 5 September 2022.

The second dimension of the soft power is the claim that the Russian culture justifies the leading role of Russia in the multipolar world order after winning the war against Ukraine and the West and securing Russia's leading place in the future world order.⁹ For instance, the Concept of Foreign Policy of the Russian Federation of 31 March 2023 underlines

‘Russia’s unique position as a distinctive state-civilisation, a vast Eurasian and Euro-Pacific power that united the Russian people and other peoples who comprise the Russian world’s cultural and civilisational community’.¹⁰

This work was done through the promotion of Russian language in post-Soviet countries, including the russification of the Ukrainian population in the occupied areas of Ukraine.¹¹

The evil power of the Russian Orthodox Church reached its peak on 27 March 2024 when the World Russian People’s Council (a Non-Governmental Organization [NGO] and annual public forum under the auspices of the Russian Orthodox Church)¹² adopted an ideological document that proclaimed Russia’s invasion of Ukraine as a ‘holy war’ and ‘a new stage in the national liberation struggle [...] against the criminal Kyiv regime and the collective West’.¹³ The document also outlined the meaning and scope of the notorious ‘Russian world’ (*russkiy mir*) concept as ‘wider than the state borders of both the present-day Russian Federation and greater historical Russia’.¹⁴ The World Russian People’s Council endorsed the objective Russian foreign policy as the ‘re-unification of the Russian people’ while maintaining Russia’s place as a ‘leading centre of a multipolar world’.¹⁵ Additionally, the document cemented the so-called ‘trinity doctrine’, which erroneously claims that the ‘Russian nation’ consists of ethnic Russian, Belarusian, and Ukrainian ethnic and linguistic subgroups. Furthermore, this document states that Russia waged a war not only against Ukraine but also against the entire collective West represented by the North Atlantic Treaty Organization (NATO) and the USA.¹⁶

⁹ Edict of President of the Russian Federation ‘On State Policy to Secure and Strengthen Traditional Russian Spiritual-Moral Values’, No. 809, 9 November 2022.

¹⁰ Edict of President of the Russian Federation (n. 9).

¹¹ <<https://bit.ly/3WXSA40>>, last access 29 August 2024.

¹² <https://en.wikipedia.org/wiki/World_Russian_People%27s_Council>, last access 29 August 2024.

¹³ <<http://www.patriarchia.ru/db/text/6116189.html>>, last access 29 August 2024.

¹⁴ <<http://www.patriarchia.ru/db/text/6116189.html>>, p. 1, last access 29 August 2024.

¹⁵ <<http://www.patriarchia.ru/db/text/6116189.html>>, p. 1, last access 29 August 2024.

¹⁶ <<http://www.patriarchia.ru/db/text/6116189.html>>, p. 1, last access 29 August 2024.

III. Emergence of the Orthodox Church of Ukraine as a Manifestation of National Independence and Identity

Independent Ukraine has long cherished the idea of a national-oriented autocephalic Orthodox church. The Ukrainian Orthodox Church (Moscow Patriarchate), regardless of its autonomous status, did not meet this criterion because of its close institutional and ideological link to the Russian Orthodox Church. That is why Ukrainian President Petro Poroshenko (2014-2019) vehemently lobbied for and succeeded in the establishment of the autocephalic Orthodox Church of Ukraine as an alternative to the Ukrainian Orthodox Church (Moscow Patriarchate) and as a manifestation of Ukrainian independence with an authentic culture and language. Ukraine is a multinational and multi-confessional country where most of Ukrainians consider themselves as Christian Orthodox.¹⁷ On the eve of the war with Russia in 2013, the Ukrainian Orthodox Church (Moscow Patriarchate) was the largest Orthodox church in Ukraine comprising about 28 % of Orthodox believers.¹⁸ Altogether, the Russian Orthodox Church was the most influential religious organisation in Ukraine in the period between 1991 and 2014. After the so-called 'Orange revolution' in Ukraine in 2004, then Ukrainian President Viktor Yuschenko intensified his efforts to convince the Ecumenical Patriarchate of Constantinople to grant autocephaly to the Orthodox Church of Ukraine. Unfortunately, these efforts failed since the Ecumenical Patriarchate of Constantinople did not want to endanger already strained relations with the Russian Orthodox Church over the previously proposed autocephaly of the Orthodox Church of Ukraine. Nevertheless, blatant violations of international law by the Russian Federation in 2014 and open support of these actions by the Russian Orthodox Church forced the Ecumenical Patriarch of Constantinople Bartholomew I to sign the official recognition (Greek *tomos*) of the autocephaly of the Orthodox Church of Ukraine on 5 January 2019. This recognised the Orthodox Church of Ukraine's equal status with other autocephalous Orthodox churches but under jurisdiction of the Ecumenical Patriarchate of Constantinople. On the eve of this historic event, the Russian Orthodox Church broke communion with the Ecumenical Patriarchate of Constantinople and triggered the Moscow-Constantinople schism. The Russian invasion of Ukraine on 24 February 2022 was a litmus test for the

¹⁷ In 2023 about 63 % of believers in Ukraine identified as Christian Orthodox, see <<https://www.rbc.ua/rus/news/nazvana-kilkist-prihilnikiv-riznih-religiynih-1676467801.html>>, last access 29 August 2024.

¹⁸ <<https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/riven-religiinosti-do-vira-do-tserkvy-konfesiynyi-rozpodil-ta-mizhtserkovni-vidnosyny-v-ukrainskomu-suspilstvi-ystopad-2023r>>, last access 29 August 2024.

Russian Orthodox Church. Patriarch Kirill and senior bishops of the Russian Orthodox Church did not condemn the invasion of Ukraine but openly supported the official narrative of the Russian government. This action seriously undermined the credibility of the Russian Orthodox Church and its affiliated churches in Ukraine. As a result, the war triggered considerable flow of parishes and believers from the Ukrainian Orthodox Church (Moscow Patriarchate) to the newly established Orthodox Church of Ukraine. Since 2018 about 1,700 parishes of the Ukrainian Orthodox Church (Moscow Patriarchate) have changed their jurisdiction (out of about 11,000 parishes). Since the invasion of Ukraine in 2022 about 600 parishes (8 % of the Ukrainian Orthodox Church's [Moscow Patriarchate] parishes) followed.¹⁹

IV. Prosecution of the Ukrainian Orthodox Church (Moscow Patriarchate) and EU Integration of Ukraine. Can a Church Be Prohibited in an EU Candidate Country?

The decline of influence of the Russian Orthodox Church and its Ukrainian branch (Ukrainian Orthodox Church [Moscow Patriarchate]) started in 2014 when the Russian Federation annexed Crimea and launched hybrid attacks in Eastern Ukraine. All these actions bluntly violated international law but were frequently justified by President Putin by the supposed need to protect rights and interests of Russian-speaking Ukrainians. The Russian Orthodox Church did not condemn the actions of the Russian authorities, but openly supported them. Before formalising the annexation of Crimea, President Putin justified it by highlighting

‘our [Russian and Crimean] history and pride. Here is the ancient city of Khersones [located in Crimea] where saint prince Vladimir was baptised. His spiritual action – conversion to Orthodoxy – laid down the foundation of a common culture, values and civilisation that unite the peoples of Russia, Ukraine and Belarus’.²⁰

The same rhetoric has been shared by the head of the Russian Orthodox Church Patriarch Kirill in his public sermons and speeches since 2014.

In 2014, it became clear that the status of the Ukrainian Orthodox Church (Moscow Patriarchate) as part of the Russian Orthodox Church became

¹⁹ <<https://bit.ly/3AfdCSJ>>, last access 29 August 2024.

²⁰ Speech of President Vladimir Putin on 18 March 2014, <<http://www.kremlin.ru/events/president/news/20603>>, last access 29 August 2024.

ambiguous. To avoid this the Russian Orthodox Church gradually agreed to extend the autonomy of the Ukrainian Orthodox Church (Moscow Patriarchate) without breaking its strong institutional and canonical links with Moscow. The moment of truth came on 24 February 2022 when the Russian Federation invaded Ukraine. As previously mentioned, President Putin justified the invasion of Ukraine *inter alia* by alluding to the supposed Western policy aiming to compromise 'traditional Russian values' and to impose on Russian and Ukrainian people Western 'pseudo values'.²¹

The Ukrainian Orthodox Church's (Moscow Patriarchate) reaction to the invasion of Ukraine by Russia was straight-forward. The head of the Ukrainian Orthodox Church (Moscow Patriarchate) Metropolitan Onufriy openly condemned the invasion by stating that it was 'a repetition of the sin of Cain, who killed his own brother out of envy. Such a war has no justification either from God or from people'.²² The culmination of the break with the Russian Orthodox Church took place on 27 May 2022. The Synod of the Ukrainian Orthodox Church (Moscow Patriarchate) held a meeting and proclaimed full independence from the Russian Orthodox Church. All references to the Russian Orthodox Church in the statutes of the Ukrainian Orthodox Church (Moscow Patriarchate) were removed. Furthermore, the Synod of the Ukrainian Orthodox Church (Moscow Patriarchate) expressed open disagreement with the positions and statements of Patriarch Kirill and called for Russo-Ukrainian peace negotiations. Currently, the legal status of the Ukrainian Orthodox Church (Moscow Patriarchate) is dubious. On the one hand, it considers itself as an autonomous church that is fully independent from the Russian Orthodox Church. On the other hand, the Ukrainian Orthodox Church (Moscow Patriarchate) is not recognised as an autocephalous church and the Russian Orthodox Church continues to regard it as its integral part with autonomous status. This situation creates grounds to consider the Ukrainian Orthodox Church (Moscow Patriarchate) as *de facto* part of the Russian Orthodox Church.

Furthermore, the Ukrainian government continues to consider the Ukrainian Orthodox Church (Moscow Patriarchate) as a threat to its national security in time of war. The Security Service of Ukraine opened about 25 criminal investigations against priests of the Ukrainian Orthodox Church (Moscow Patriarchate) for 'instigation of religious hatred and calls for unconstitutional changes to the territorial independence and borders of

²¹ Speech of President Vladimir Putin on 24 February 2022, <<https://ria.ru/20220224/obraschenie-1774658619.html>>, last access 29 August 2024.

²² <<https://religionnews.com/2022/02/24/orthodox-patriarch-of-moscow-kirill-calls-on-all-parties-to-avoid-civilian-casualties-in-ukraine/>>, last access 29 August 2024.

Ukraine'. Leases of key historical religious centres like the Pechersk Lavra Cathedral in Kyiv were terminated. In December 2022, the National Security Council of Ukraine asked the Ukrainian government to prepare a draft law on prohibiting the activities of religious organisations in Ukraine that are affiliated with the Russian Federation.²³

On 20 August 2024 the Parliament of Ukraine adopted a law (thereafter, the Law) prohibiting the Russian Orthodox Church and its affiliated churches in Ukraine, which was signed four days later by President Volodymyr Zelenski.²⁴ This Law envisages the full ban of the Russian Orthodox Church as a foreign religious organisation registered in Russia. This ban is justified on the grounds of national security in times of war (Russia obviously being an aggressor to Ukraine). The Law states that the Russian Orthodox Church supports the ongoing aggression against Ukraine and does not offer rituals over fallen Ukrainian soldiers. Importantly, this Law does not openly ban the Ukrainian Orthodox Church (Moscow Patriarchate) but prohibits activities of any church affiliated with the Russian Orthodox Church. Supporters of this Law argue that such prohibitive measures do not violate Articles 9 (freedom of thought, conscience, and religion) and 11 (freedom of assembly and association) of the European Convention on Human Rights. The fact of the affiliation of a religious organisation (church) with the Russian Orthodox Church should be provided by the specialised state agency in issues of ethnic policy and freedom of consciousness. The Law guarantees a nine-month transition period to be granted to a religious organisation (church) suspected in affiliation with the Russian Orthodox Church to break any formal and informal links with the latter. Thereafter, in the event of continued affiliation with the Russian Orthodox Church, a religious organisation (church) will be prohibited from using state and municipal property for its activities and their members will not be allowed to serve as chaplain in the Ukrainian Army. Undoubtedly, the Ukrainian Orthodox Church (Moscow Patriarchate) will be the first to be tested against the criteria of its affiliation with the Russian Orthodox Church.

In the meantime, the statutory documents define the Ukrainian Orthodox Church (Moscow Patriarchate) as a self-governing church with rights of wide autonomy within the Russian Orthodox Church. This status still presumes a certain dependency on the decision-making bodies of the Russian Orthodox Church. The same problems are being faced by the Moldovan Orthodox

²³ <<https://www.bbc.com/russian/features-63828614>>, last access 29 August 2024.

²⁴ <<https://www.liga.net/ua/all/opinion/shcho-vkliuchaie-finalna-versiia-zakonu-pro-za-boronu-rosiiskoi-pravoslavnoi-tserkvy>>, last access 29 August 2024 and <<https://www.rada.gov.ua/news/razom/242636.html>>, last access 29 August 2024.

Church, which enjoys a similar status and connection to the Russian Orthodox Church. Like the Ukrainian government, the Moldovan government is considering how to limit its influence on the territory of Moldova.²⁵ Similar challenge is faced by the government and the Parliament of the Czech Republic.²⁶

Certainly, this Law, together with the consistent policy of the Ukrainian government to limit the activities of the Ukrainian Orthodox Church (Moscow Patriarchate) on the grounds of national security, should be tested against its compatibility with Ukraine's EU candidate country status and ongoing EU membership negotiations. In this context, the strict abidance with rules and standards is key. In particular, the treatment of the Ukrainian Orthodox Church (Moscow Patriarchate) by the Ukrainian government should comply with the principle of proportionality and be in line with fundamental human rights standards and common values of the EU and the Council of Europe.

In February 2022, Ukraine applied for EU membership. The EU accession negotiations were launched in June 2024.²⁷ The issue of freedom of consciousness is an undisputable part of the EU *acquis* in the field of human rights. Therefore, Ukraine must ensure the equal treatment of all religious beliefs and confessions in Ukraine. The Ukrainian Orthodox Church (Moscow Patriarchate) remains one of the largest Orthodox churches in Ukraine with about 8,100 parishes in 2024.²⁸

Article 21 of the EU Charter on Fundamental Rights enshrines the non-discrimination of religion or belief. Article 10 of the EU Charter refers to freedom of thought, conscience, and religion including the right to manifest religion or belief in worship, teaching, practice, and observance. Ukraine's actions will be closely monitored during the EU accession negotiations. The issue of non-discrimination of conscience and religion will be part of the 'fundamentals' cluster, which will be open for the entire duration of the EU accession negotiations. Hungary has already expressed its dissatisfaction with the treatment of the Ukrainian Orthodox Church (Moscow Patriarchate) by the Ukrainian government. Patriarch Kirill was deliberately excluded from personal EU sanctions on the insistence of the Hungarian government in

²⁵ <<https://blogs.korrespondent.net/blog/world/4668982/>>, last access 29 August 2024.

²⁶ Aneta Zachova, 'Czech Lawmakers Call for Probe into Orthodox Churches, Citing Links with Kremlin', EURACTIVE.cz, 23 August 2024.

²⁷ Roman Petrov, 'Bumpy Road of Ukraine Towards the EU Membership in Time of War: "Accession Through War" v "Gradual Integration"', European Papers (European Forum), 27 December 2023. <<https://www.europeanpapers.eu/en/europeanforum/bumpy-road-ukraine-towards-eu-membership-time-war>>, last access 29 August 2024.

²⁸ <[https://en.wikipedia.org/wiki/Ukrainian_Orthodox_Church_\(Moscow_Patriarchate\)](https://en.wikipedia.org/wiki/Ukrainian_Orthodox_Church_(Moscow_Patriarchate))>, last access 29 August 2024.

2022. There is a possibility that Hungary may block the EU accession negotiations of Ukraine at any stage by referring to the possible discrimination of the Ukrainian Orthodox Church (Moscow Patriarchate). Such a protective stance by the Hungarian government towards the Russian Orthodox Church can be explained not by the presence of a considerable Russian Orthodox community or by a consistent policy to protect religious minorities in Hungary, but by the strategy to ensure the continuing ideological, cultural, and religious influence of the current Russian regime in the EU.²⁹

The official position of the Ukrainian government is that the prosecution of the Ukrainian Orthodox Church (Moscow Patriarchate) has nothing to do with discrimination on basis of conscience or belief.³⁰ The bone of contention is the entity's links with the Russian Orthodox Church, a religious organisation which formally supports the aggressor state, namely Russia. The Ukrainian government insists that once the Ukrainian Orthodox Church (Moscow Patriarchate) manages to eliminate any formal and informal links with the Russian Orthodox Church there will be no sanctions against it.³¹

The Law of 20 August 2024, banning the Russian Orthodox Church in Ukraine, received an ambivalent echo around the world. Immediately after the Law was signed by the President of Ukraine, Pope Francis issued a sharp statement 'Please, let no Christian church be abolished directly or indirectly. Churches are not to be touched'.³² If the Ukrainian Orthodox Church (Moscow Patriarchate) does not dissolve its formal and informal ties with the Russian Orthodox Church or deliberately ignores this within the nine-month transitional period, it could be prosecuted by the Ukrainian state and possibly banned. Inevitably, members of the Ukrainian Orthodox Church (Moscow Patriarchate) will use all means of judicial protection in Ukraine and in Europe (at the European Court of Human Rights) to defend their course. Also, a ban on the Ukrainian Orthodox Church (Moscow Patriarchate) could considerably complicate Ukraine's relations with the United States (US) and the EU. Therefore, the Ukrainian government and judiciary must implement the law in full compliance with principles of the European Convention on Human Rights and the EU Charter of Fundamental Rights, most impor-

²⁹ See the European Parliament's Committee hearing on Russian influence in the EU (case of Hungary) on 27 October 2022, <[chrome-extension://efaidnbmnnibpcajpcglefindmkaj/https://www.europarl.europa.eu/cmsdata/256493/OJ%20item%204_peter_kreko_ing2_hearing_20221027_speaking_points.pdf](https://www.europarl.europa.eu/cmsdata/256493/OJ%20item%204_peter_kreko_ing2_hearing_20221027_speaking_points.pdf)>, last access 29 August 2024.

³⁰ <<https://rpr.org.ua/news/porushennia-svobody-virospovidannia-chy-zakhyst-natsionalnoi-bezpeky-rozbyraiemo-zakon-pro-zaboronu-rpts/>>, last access 29 August 2024.

³¹ <<https://www.dw.com/ru/zelenskij-otreagiroval-na-slova-papy-rimskogo-o-zaprete-rp-c-v-ukraine/a-70065223>>, last access 29 August 2024.

³² <<https://www.catholicnewsagency.com/news/258917/pope-francis-on-ukraines-russian-orthodox-church-ban-churches-are-not-to-be-touched>>, last access 29 August 2024.

tantly in line with the principle of proportionality, when dealing with national religious organisations (churches) suspected of being affiliated with the Russian Orthodox Church. Otherwise, an unjustified prohibition of the Ukrainian Orthodox Church (Moscow Patriarchate) could jeopardise the military support of Ukraine by the US and its allies and slow down the accession negotiations of Ukraine to join the EU.

V. Concluding Remarks

This article opened with a comparison between two major Christian churches (the Orthodox and Catholic ones). In contrast to the Catholic Church, a centralised organisation with a Pope that acts as head of state of Vatican City, the lack of a single universally recognised institutional, spiritual, and financial centre of Orthodoxy has led all autonomous Orthodox churches to seek uneasy compromises with governments and regimes where these churches operate. Throughout its long history, the Russian Orthodox Church was given several historic opportunities to become a truly independent religious institution, reflecting the rich heritage of Russian history and culture. Unfortunately, the Russian Orthodox Church became an effective ideological tool of Vladimir Putin's autocratic regime in return for massive political, financial, and ideological support. The annexation of Crimea and the war in Donbas in 2014 along with the invasion of Ukraine in 2022 was justified and endorsed by the Russian Orthodox Church. It ended up in disgrace and lost the Church's prestige and spiritual authority inside and outside modern Russia. It could be argued that the Russian Orthodox Church joined the ranks of participants in the hybrid warfare of Russia against Ukraine and the West.

For independent Ukraine, where the majority of the population are Christian Orthodox, the status of a national church became an important part of the national political agenda. Since 2004, Ukraine had been in search for its own national autocephalous Orthodox church. The Ukrainian Orthodox Church (Moscow Patriarchate) failed to perform this role. Support of the war against Ukraine by the Russian Orthodox Church placed the Ukrainian Orthodox Church into the obscure role of an agent of Moscow's ideological influence in Ukraine. In this situation the only option to acquire a national autocephalous church was to seek recognition of autocephaly from the Ecumenical Patriarchate of Constantinople, forming the Orthodox Church of Ukraine under the Constantinople Patriarchate. Initially, the Patriarch Bartholomew I was reluctant to enter into open conflict with the Russian

Orthodox Church over the autocephaly of the Orthodox Church of Ukraine. However, in 2019 he took this bold step. This action caused one of the most significant religious splits in the history of Orthodoxy between the Patriarchate of Constantinople and the Russian Orthodox Church.

The invasion of Ukraine by Russia in February 2022 put the end to any hopes of co-existence between the Ukrainian Orthodox Church (Moscow Patriarchate) and the autocephalous Orthodox Church of Ukraine. The brutal realities of warfare and the increasing involvement of the Russian Orthodox Church as one of the actors of the war forced the Ukrainian government to start the process of gradually dismantling the dominant position of the Ukrainian Orthodox Church (Moscow Patriarchate) in Ukraine. These actions resulted in the termination of the lease of religious historic sites and monasteries as well as the opening of investigations on Moscow-loyal bishops and priests on grounds of national security. However, this policy may constitute a potentially damaging trap for Ukraine on its road towards full EU membership.

It goes without saying that the status of the Ukrainian Orthodox Church (Moscow Patriarchate) will be under the close surveillance of some of the EU Member States within the most important cluster of the EU membership negotiations called 'fundamentals'. Any expressed criticism on behalf of the EU Member States of the Ukrainian policy towards the Ukrainian Orthodox Church (Moscow Patriarchate) may lead to the entire blockage of EU membership negotiations on the grounds of incompatibility with the first 'Copenhagen criteria' (human rights and European common values). Of course, it is in Ukraine's interests to avoid this. The only strategy should be full compliance with European common values on freedom of conscious and religious freedoms.³³ All actions of the Ukrainian government should be proportionate and in line with relevant case law of the Court of Justice of the EU and the European Court of Human Rights.

The role of the Orthodox Church in Russia and Ukraine after 2014 illuminates how contemporary religious institutions can be directly engaged in global geopolitical conflicts if they unquestionably share and support the nonlegitimate and often criminal policies of their patron states. For the Russian Orthodox Church, the rational choice between Christian values, international law, and immediate geopolitical gains was decided in favour of the latter. Overall, the war in Ukraine, the most significant and tragic geopolitical challenge of the 21st century, demonstrated the weaknesses of contemporary Orthodoxy. The absence of a universally recognised spiritual and

³³ On EU common values see, Luke Dimitrios Spieker, *EU Values before the Court of Justice* (Oxford University Press 2023), 384.

institutional leader among the autocephalous Orthodox churches, the desire to embark upon a path of conformism and full ideological support of violations of international law and humanistic values considerably undermined the reputation of Orthodoxy. Still, for any Christian church the core question remains open: can and should eternal Christian values always take primacy over other geopolitical and material benefits? Unfortunately, this article does not solve that conundrum. However, the articulation of the problem is a possible step forward in the process of opening up further discussion.

*Roman Petrov**

* Jean Monnet Chair in EU Law at the National University of Kyiv-Mohyla Academy (Ukraine), Philipp Schwartz Research Fellow at the Max Planck Institute for Comparative Public Law and International Law. Author is deeply grateful for support and insightful comments from Prof. Anne Peters, Dr. Carolyn Moser, Prof. Regina Elsner, Dr. Adam Ure and Derek Stemple. Work on this article was supported by Alexander von Humboldt Stiftung and by the EU-funded Horizon projects EMBRACE and RE-ENGAGE.