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UKRAINE: Real threats, but freedom of religion or belief concerns

By Dmytro Vovk, @VovkDmytro (<https://x.com/VovkDmytro>)

Clerics and believers of the Ukrainian Orthodox Church - Moscow Patriarchate (UOC) have and are facing criminal charges of justifying Russian aggression and hate speech. Many have been prosecuted for criticising the rival Orthodox Church of Ukraine and the state's religious policies. The state faces a real threat of the utilisation of religion to justify Russian aggression, but uses tools - imposing a blatant ban on the UOC and turning inter-Orthodox relations in Ukraine into a security issue - that are neither reasonable nor proportionate.

Russia's war against Ukraine, and especially its full-scale invasion of Ukraine launched in February 2022, has strengthened the Ukrainian state's interference into religious affairs. It has also turned its relations with the Ukrainian Orthodox Church (the UOC, which is historically and ecclesiastically affiliated with the Moscow Patriarchate) into a security issue.

Concerns over the UOC's affiliation, the alleged or already proved in court involvement of several UOC bishops and priests in crimes against national security, and also the growing public support for the imposition of extraordinary restrictions on the UOC, have all resulted in a draft law aiming to ban the UOC (https://www.forum18.org/archive.php?article_id=2896) for its links with Russia and a variety of security measures and criminal proceedings against UOC clerics and believers. Parliament, the Verkhovna Rada, finally approved the law on 20 August and it then went to President Volodymyr Zelensky for signature.

[UPDATE: The President signed the Law on 24 August and it comes into force on 23 September (https://www.forum18.org/archive.php?article_id=2932).]

Many clerics and believers of the UOC have and are facing criminal cases on charges of justifying Russian aggression and inciting religious hatred. Many of the cases are instigated or have the involvement of the Security Service of Ukraine (SBU). One such is the case of Fr Mykola Danylevych, the Kyiv-based deputy head of the UOC Department of External Relations (see below).

The SBU appears to interpret criticism of state policies regarding the UOC as well as UOC clerics' verbal attacks on other religious communities, and above all, on the UOC's rival Church - the Orthodox Church of Ukraine (OCU) recognised by the Ecumenical Patriarchate of Constantinople - as dissemination of "pro-Kremlin" or "Russian propagandist" narratives (see below).

Clerics and believers of the UOC have been punished for often harsh rhetoric against the OCU. However, OCU clerics and believers are rarely punished for often harsh rhetoric against the UOC (see below).

While combating religious hatred and speech justifying the Russian attack on Ukraine, the state should follow international standards and recommendations in this field. These include:

- religious hatred should not be perceived as a national security issue per se;
- restrictions imposed on religious speech must be applied in a non-discriminatory manner;
- claims of religious superiority or inferiority do not constitute religious hatred or extremism;
- court assessments of religious hatred cases cannot be abstract and non-contextual;
- international law tends to perceive anti-hatred norms as, first of all, a legal tool to protect vulnerable groups and religious minorities (see below).

Fr Mykola Danylevych's case

One of the most prominent cases against clerics of the Ukrainian Orthodox Church (UOC, which is historically and ecclesiastically affiliated with the Moscow Patriarchate) is that of Fr Mykola Danylevych. He is the Kyiv-based deputy head of the UOC Department of External Relations.

In April 2024, the Security Service of Ukraine (SBU) charged Fr Danylevych with incitement of religious hatred (Criminal Code Article 161) and justification of Russian aggression (Criminal Code Article 436-2). He was obliged to appear before the investigator at any time and is still waiting for his case to be resolved in a Kyiv court.

According to the SBU

(<https://ssu.gov.ua/novyny/sbu-povidomyla-pro-pidozru-odnomu-iz-ochilnykiv-upts-mp-yakyi-zaklykav-pomolytisia-za-rashystiv-u-viini-proty-ukrainy>), Fr Danylevych called for the "joint prayer with the occupiers" and systematically used his Telegram-channel (<https://t.me/MykolayDanylevych>) (a one-way feed in Telegram messenger) to share "pro-Kremlin narratives" among his over 2,800 subscribers.

The SBU additionally claims that Fr Danylevych, who also coordinates a network of UOC parishes abroad, spread "Russian Federation propagandist narratives" wrapped into spiritual assistance to Ukrainian refugees. Fr Danylevych called these accusations politically motivated and connected them to his role in the UOC Department of External Relations.

While the SBU provided no further details regarding Fr Danylevych's case, previously the SBU had reported about criminal cases regarding other UOC clerics involved in "disinformation about the social-political situation in Ukraine", including "so-called 'persecutions'" against the UOC.

The SBU also informed

(<https://ssu.gov.ua/novyny/sbu-povidomyla-pro-pidozru-mytropolitu-i-sekretariu-upts-mp-z-zhytomyrshchyny-yaki-provokuvaly-re-lihiinu-vorozhnechu>) about a UOC metropolitan who had written "pro-Kremlin leaflets and brochures". In these, the SBU alleged, he "offended religious feelings of Ukrainians, diminished convictions of believers belonging to other religions and promote hostile views regarding them".

In addition, the SBU points to religious hate speech criminal cases initiated against UOC clergy as part of its work to protect Ukraine's national security.

Therefore, the SBU appears to interpret criticism of state policies regarding the UOC (so-called "persecutions") as well as UOC clerics' verbal attacks on other religious communities, and above all, on the UOC's rival church - the Orthodox Church of Ukraine (OCU) recognised by the Ecumenical Patriarchate of Constantinople - as dissemination of "pro-Kremlin" or "Russian propagandist" narratives.

Criminal cases against UOC clerics

Fr Mykola Danylevych is not the only UOC priest accused of incitement of religious hatred and / or the justification of Russian aggression. The Registry of Court Decisions (<https://reyestr.court.gov.ua/>) contains dozens of court verdicts and procedural rulings in such cases. Some of these were initiated against UOC clerics and closely-related believers that presumably used religious arguments or their ecclesiastical status to blame and label other religious communities and justify the Russian attack on Ukraine.

For example, in June 2022, a Ukrainian Orthodox Church - Moscow Patriarchate (UOC) cleric serving in Dnipropetrovsk Region was sentenced to suspended imprisonment (<https://reyestr.court.gov.ua/Review/105060826>) on charges of inciting hatred against Ukrainians and Jews. While conducting a service, the cleric claimed to his flock, in a clearly anti-Semitic manner, that the division between Russians, Ukrainians and Belarusians was created by Jews, who also provoked a "civil war" between Russia and Ukraine. He also claimed that Jews "educated many nationalists during the last 30 years [of Ukrainian independence], they have whole battalions, whole brigades fighting [in this war]".

In February 2024, a UOC cleric's wife was sentenced to suspended imprisonment (<https://reyestr.court.gov.ua/Review/117255446>) by Vilnyansk District Court of Zaporizhzhia Region on charges of justifying Russian aggression. She shared in an online chat the argument that "in Ukraine, Russia is fighting to the death with an unequivocal anti-Orthodoxy. ... The essence of the Ukrainian regime is the war against Orthodoxy. ... Russia did not provoke them; the war just de-masked them and forced them to hurry up. ... The Orthodox Church of Ukraine was created with the only goal—to turn Ukraine into an anti-Russian project, which is impossible without undermining Orthodox unity [between Russia and Ukraine]. ... Russia's only fault is that previously it lacked the strength to choke off a wriggling-out young serpent but waited until [this serpent] became a dragon."

In April 2024, a UOC priest serving in Sumy Region was sentenced to suspended imprisonment (<https://reyestr.court.gov.ua/Review/118571515>) on charges of justifying Russian aggression. While preaching and communicating with believers, he blamed Ukraine for the start of the war with Russia in 2014 and blamed Europe for the dissolution of ancient Rus and the USSR and what he claimed was its current intention of using Ukraine as a means to dissolve Russia. The priest insisted that "the Third World War has been going on... But Russia is not fighting against Ukraine.... Again, all Europe led by America is going to war against Russia."

However, in many cases UOC clerics' harsh religious speech (primarily against the OCU) does not refer explicitly to the

Russia-Ukraine war. For example, a UOC cleric serving in Dnipropetrovsk Region was convicted on charges of inciting religious hatred (<https://reyestr.court.gov.ua/Review/112928118>) for his religiously-based criticism of the OCU. The court argued that the cleric provoked the negative stance towards the OCU by putting the Church's name into quotation marks, thereby implying that the OCU is not a real Church but, as the cleric had maintained, "a superficial project of the unification of Ukrainian Orthodoxy ... with purely political and electoral goals".

A UOC believer and member of a UOC-affiliated non-governmental organisation was fined for inciting religious hatred (<https://reyestr.court.gov.ua/Review/113669642>) by comparing the OCU with "a train going down to the abyss", labelling its believers as "insane, evil-minded and demonic people", and calling the OCU leader, Metropolitan Epifany, "a sick person" with no sense of conscience or humanity.

A UOC cleric based in Dnipropetrovsk Region was punished for claiming that the UOC was "the only true faith" while the OCU were schismatics and cultists, "a political party and a pure fraud" headed by an "illegitimate leader". The cleric insisted that the OCU had no grace, and its believers will not be saved. The Amur-Nizniodniprovskiy District Court of Dnipropetrovsk described these speeches as incitement to religious hatred (<https://reyestr.court.gov.ua/Review/112928118>).

A UOC believer was accused of inciting religious hatred (<https://reyestr.court.gov.ua/Review/110533069>) for offending OCU members at a meeting of an Orthodox community in the village of Tarasivka in Kyiv Region and, then, on her Facebook account, condemning OCU members who raided her community's property and beat her fellow believers.

Combating religious hatred: International law perspective

The Ukrainian state has a strong legitimate interest in combating religious hatred and speech justifying the Russian attack on Ukraine. While doing this, however, the state should follow international standards and recommendations in this field.

First, religious hatred should not be perceived as a national security issue per se. Obviously, freedom of religion or belief (FoRB) cannot be utilised to justify the Russian aggression. However, criticism of the state's religious policy or even spreading religious hatred should not be turned into a security issue simply because the state considers a particular religious community (in this case the OCU) as the national religion or more patriotic or more loyal to the state.

Similarly, criticism of state policies in the religious domain, either on a religious or political basis, or of the state's perceived favouritism of the OCU, generally fall within the scope of freedom of speech – including of UOC clerics and believers. It should not be considered a threat to national security and prosecuted as such.

Second, there is no one particular model of regulation of religious speech that fits international law. The scope of protected speech can vary from a broader approach in the United States to more restricted models in Europe. However, restrictions imposed on religious speech must be applied in a non-discriminatory manner.

In Ukraine, relations between the two biggest Orthodox churches are overheated on both sides. Orthodox Church of Ukraine (OCU) clerics and supporters call the UOC clergy and believers people who are "sick with the Russian Orthodox Church of the FSB" (<https://t.me/padrePoltava/4212>), have a "conscience of the cultist type" (<https://life.kyiv24.news/news/u-viryan-upcz-mp-svidomist-sektantskogo-typu-ekspert>) and "traumatised by the Moscow faith in worshipping" (https://www.facebook.com/story.php?story_fbid=pfbid0MXxr2Bv48oFc16W41kXUSHEyhdgefTxFm59ForYFpu5YwrgQKQPJ5AVnqzZPj468l&id=100000006348890) and, therefore, need some treatment before joining a "real" Church. They blame UOC believers for "bringing war to Ukraine" (<https://www.facebook.com/reel/685218397069632>) and accuse the UOC of religious extremism (<https://www.facebook.com/menzakvg/posts/pfbid0q849kzVRhz3bUvNc56LwbPhWZJqcKqD6pPxTsAEZmEVLcGpzXCLZnQ9C7tTXEe1JI>). With only a few exceptions (<https://reyestr.court.gov.ua/Review/103648124>), the state does not attempt to restrict this type of speech.

While such statements by OCU clerics and believers may not necessarily constitute hate speech, the state's differential approach demonstrates that its anti-hatred measures are inconsistent and might be biased.

In another example, the UN Human Rights Monitoring Mission in Ukraine (HRMMU) documented "a surge in hate speech and several incidents of violence against [Ukrainian Orthodox Church - Moscow Patriarchate] UOC members" (https://www.ohchr.org/sites/default/files/2023-06/23-06-UkraineHRMMU-three-months-update-ENG_0.pdf) in April 2023. Public officials, bloggers and opinion leaders used discriminatory and inflammatory rhetoric and openly incited violence against clergymen and supporters of the UOC." Yet, the HRMMU noted: "The [Ukrainian] Government and law enforcement authorities did not effectively address the incidents of hate speech during the reporting period" (1 February - 30 April 2023).

Third, claims of religious superiority or inferiority do not constitute religious hatred or extremism (as noted by the 2019 OSCE/ODIHR Freedom of Religion or Belief and Security: Policy Guidance (<https://www.osce.org/odihr/429389>), p. 49), if they

are not followed by the incitement to violence, hatred or discrimination. Thus, both the UOC and the OCU - as well as any other religious communities or individuals - shall be allowed to argue for the exclusivity of their faith.

Fourth, court assessments of religious hatred cases cannot be abstract and non-contextual. While deciding whether a certain speech constitutes incitement of religious hatred, courts should take into account the context of the speech and provide a nuanced, case-by-case assessment. The cases already considered and being considered by Ukrainian courts do not prove that their approach to the assessment of religious speech is nuanced enough.

The 2017 Rabat Plan of Action (<https://www.ohchr.org/en/freedom-of-expression>) on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence recommends applying a six-pronged test, taking into account:

- 1) the social and political context;
- 2) the status of the speaker;
- 3) the intent to incite the audience against a target group;
- 4) the content and form of the speech;
- 5) the extent of its dissemination;
- 6) the likelihood of harm, including how imminent it might be.

Importantly, international law tends to perceive anti-hatred norms as, first of all, a legal tool to protect vulnerable groups and religious minorities (see the 2024 Report by the UN Special Rapporteur on Freedom of Religion or Belief on the advocacy of hatred based on religion or belief A/HRC/55/47

(<https://www.ohchr.org/en/documents/thematic-reports/ahrc5547-hatred-basis-religion-or-belief-special-rapporteur-freedom>)). In these terms, the state should consider whether harsh criticism or even hatred against the OCU, as sociologically the biggest Ukrainian religious group, always require a criminal-law response.

Real threat, but freedom of religion or belief concerns

The cases of Fr Danyilevych and some other Ukrainian Orthodox Church - Moscow Patriarchate (UOC) clerics and believers signal that state policies regarding the UOC provoke FoRB concerns. While the state attempts to address a real threat of the utilisation of religion to support and justify the Russian aggression, it is inclined to do this by using tools - in particular by imposing a blatant ban on the UOC and by turning inter-Orthodox relations in Ukraine into a security issue - that are neither reasonable nor proportionate.

- Dmytro Vovk (<https://x.com/VovkDmytro>) is a visiting professor at the Benjamin N. Cardozo School of Law. He also runs the Center for the Rule of Law and Religion Studies at Yaroslav Mudryi National Law University in Ukraine. (END)

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More reports on freedom of thought, conscience and belief in all Ukraine (<https://www.forum18.org/archive.php?country=88>)

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Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY