



Kingdom of the Netherlands



Legal status of religious minorities in Ukraine and monitoring the operation of laws in the context of religious minorities

ANALYTICAL NOTE

within the project "Religious Minorities of Ukraine and State-Religious Relations", implemented by the Ukrainian Association of Religious Studies with the support of the Human Rights Fund of the Embassy of the Kingdom of the Netherlands in Ukraine in partnership with the All-Ukrainian Council of Religious Associations and the Department of Religious Studies of the Institute of Philosophy.

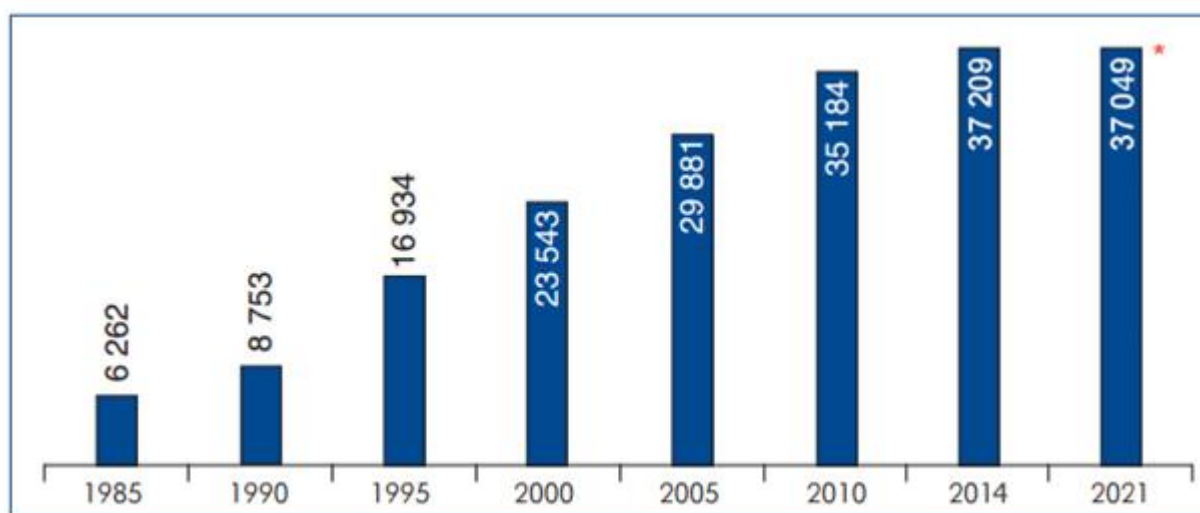
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This report is funded in part or in full by the Human Rights Fund of the Embassy of the Kingdom of the Netherlands. The contents and opinions expressed in this report are the responsibility of the authors and do not necessarily reflect the position of the Embassy.

1. General description

The legislation of Ukraine provides a high level of freedom of religion or belief being the basis for the establishment of religious pluralism in the state and the development of a network of religious organizations of different faiths and denominations. The Law of Ukraine "On Freedom of Conscience and Religious Organizations" created favorable conditions for the development and annual growth of the number and diversity of religious organizations. All these became possible after the proclamation of Ukraine's independence in 1991 and the cessation of Soviet repressive policies in the field of religion.



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Number of religious organizations in Ukraine¹

(* - data for the beginning of 2021 do not include information on the number of religious organizations in the Autonomous Republic of Crimea, which is temporarily occupied by Russia)

This law has not been substantially revised since 1991 (except for the change in the procedure for registering religious organizations as legal entities in 2019) and needs to be improved in the context of the general development of Ukrainian legislation and the transformation of the model of church-state relations towards greater cooperation. Many of its declarative provisions need to be specified in order to create legal mechanisms for their implementation, including the organization of military and medical chaplaincy, the participation of religious organizations in public life and their use of the media, the procedure for conducting religious examinations, and so on.

In addition to the mentioned specialized law, dozens of other legislative acts will regulate specific aspects of believers' life and religious organizations' activities. In addition, many practical issues remain within the competence of local governments, whose decisions often reflect the interests of the religious majority. In view of this, it is at the local level that religious minorities may find it difficult to exercise their rights in full and may not always find support from local authorities as compared to members of the religious majority.

II. Equality of all religions before the law

1 The chart is formed on the basis of official statistics of the state body of Ukraine for religions.

The Constitution of Ukraine declares that “all human beings are free and equal in dignity and rights” (Article 21), and all “citizens have equal constitutional rights and freedoms and are equal before the law”, in connection with which “there can be no privileges based on religious and other beliefs... or other characteristics” (Article 24)².

Similarly, the Law of Ukraine "On Freedom of Conscience and Religious Organizations" enshrines the equality of citizens regardless of their attitude to religion and expands the content of constitutional provisions. In particular, “citizens of Ukraine are equal before the law and have equal rights in all spheres of economic, political, social and cultural life, regardless of their attitude to religion”³. In addition, the law provides for liability for "any direct or indirect restriction of the rights, establishment of direct or indirect preferences of citizens depending on their attitude to religion, as well as incitement to hostility and hatred or insult to the feelings of citizens" (Article 4). Such liability is provided by Article 161 of Ukraine’s Criminal Code. Besides, the Code provides for the aggravation of criminal penalties for crimes committed on the grounds of "religious hostility or discord" or on the grounds of "religious intolerance"⁴.

The Law of Ukraine “On Freedom of Conscience and Religious Organizations” also states that “All religions, denominations and religious organizations are equal before the law. It is not permissible to establish any advantages or limitations of one religion, denomination or religious organization over others” (Article 5). These legislative provisions are mostly observed during the legislative work of the parliament, in the activities of the government in general and central executive bodies in particular. As an example, there are no legal provisions in Ukraine that establish the special status of one or more religions or religious denominations. Moreover, all legislative acts that determine the legal status of religious organizations do not discriminate on the basis of religion or denomination. The practical application of the equality principle of all religions before the law ensures the equal legal status of all religious communities – either they belong to the denominations of the religious majority or minority ones.

The Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine" prohibits discrimination in various forms, including on the grounds of religious and other beliefs, "by state bodies, authorities of the Autonomous Republic of Crimea, local governments, their officials, legal entities public and private law, as well as individuals” (Article 6). In this case, “a person who believes that he or she has been discriminated against has the right to file a complaint with state bodies, authorities of the Autonomous Republic of Crimea, local governments and their officials, the Ukrainian Parliament’s Commissioner for Human Rights and/or the court in the manner prescribed by law ”(Article 14)⁵.

III. Legislative provisions, that are difficult for religious minorities to implement

Despite the equality of all proclaimed in Ukraine’s legislation, regardless of religious or other beliefs, some difficulties in communities of religious minorities may arise, **first of all**, due to the human factor, when certain officials make increased demands on them. The following facts occur, as an example, in next situations:

- During the consideration of statutory documents submitted for state registration of a religious community as a legal entity.

From the 20 years of experience in protecting human rights of the Institute for Religious Freedom, it is possible to conclude that the independent religious communities that do not belong to already

2 <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

3 <https://zakon.rada.gov.ua/laws/show/987-12>

4 <https://zakon.rada.gov.ua/laws/show/2341-14>

5 <https://zakon.rada.gov.ua/laws/show/5207-17>

registered religious associations are more likely to encounter unreasonable comments on their statutes and/or delays, and sometimes even unforeseen legal requirements for registration documents (as an example, requirements to provide copies of passport documents, taxpayer's identification codes, other personal data of the founders of a religious community).⁶

- The provision of Article 14 (paragraph 34) of the Law of Ukraine “On Freedom of Conscience and Religious Organizations” guarantees “If necessary, the body that registers the statutes (regulations) of religious organizations may request the opinion of the local public administration, the executive body of the village, settlement, city council, as well as specialists. In this case, the decision to register the statutes (regulations) of religious organizations is made within three months”⁷.

Such highly discretionary powers of the registration authority create grounds for abuse and discrimination against religious minorities by officials. Similar risks also exist due to the lack of legal regulation of the appointment and religious examination procedure, which according to Article 30 of the Law should be provided by the central executive body implementing state policy in the field of religion, with the participation of representatives of religious organizations and relevant specialists.

- Local governments are in no hurry to re-register communal land plots used by religious organizations from expensive leases to the right of free permanent use provided for in Article 92 of Ukraine's Land Code. The same applies to the initial allocation of land to religious organizations on the right of permanent use (and without land auction, as provided for in Article 134 of the Code) instead of lease agreements, which provide for rent for land use⁸.

This area also remains a potential field for corruption and abuse, from which religious minorities suffer the most, often without supporters and advocates among local councilors.

Second, there are some legal provisions that limit the constitutional rights of believers or create grounds for their discrimination. This can be seen mostly in the implementation of the constitutional right to replace military service by alternative (non-military) service if military service contradicts the religious beliefs of a citizen (Part 4 of Article 35 of the Constitution of Ukraine), namely:

- Article 2 of the Law of Ukraine “On Alternative (Non-Military) Service” states that “Citizens of Ukraine have the right to alternative service if the performance of military service contradicts their religious beliefs and these citizens belong to religious organizations operating in accordance with the legislation of Ukraine, whose beliefs do not allow the use of weapons.”⁹

In contrast to the provisions of Part 4 of Article 35 of the Constitution of Ukraine, the peculiarity of those provisions of the law is that the condition for obtaining the right to alternative (non-military) service should be membership in “religious organizations whose beliefs do not allow the use of weapons” in particular operating without state registration. However, in our opinion, the condition of belonging to certain religious organizations as well as the exhaustive list of such denominations approved by the Cabinet of Ministers of Ukraine are unconstitutional, because, according to Article 22 of the Constitution of Ukraine, “the content and scope of the existing rights

6 <https://irs.in.ua>

7 <https://zakon.rada.gov.ua/laws/show/987-12>

8 <https://zakon.rada.gov.ua/laws/show/2768-14>

9 <https://zakon.rada.gov.ua/laws/show/1975-12>

and freedoms shall not be diminished by an adoption of new laws or by introducing amendments to the effective laws”.

- Clause 2 of the Regulations on the Procedure for Alternative (Non-Military) Service, approved by the Resolution of the Cabinet of Ministers of Ukraine of November 10, 1999 # 2066, states that “Citizens of Ukraine have the right to alternative service if military service contradicts their religious beliefs and if they belong to religious organizations operating in accordance with the law, the doctrine of which does not allow the use of weapons. The list of such religious organizations is approved by the Cabinet of Ministers of Ukraine.”

The Cabinet of Ministers of Ukraine approved the "List of religious organizations whose beliefs do not allow the use of weapons", which is an appendix to the above-mentioned government decree and includes only 10 denominations, namely:

- Reformed Adventists;
- Seventh-day Adventists;
- Evangelical Christians;
- Evangelical Baptists;
- Penitents;
- Jehovah's Witnesses;
- Charismatic Christian churches (and churches equated to them according to registered statutes);
- Pentecostals (and churches equated to them according to registered statutes);
- Christians of the Evangelical Faith;
- International Society for Krishna Consciousness¹⁰.

Thus, in practice, the application of this List by military commissariats, commissions on alternative (non-military) service in local state administrations, investigators, prosecutors and courts leads to the fact that believers belonging to religious organizations not included in this List (mostly religious minorities) are forced to make enormous efforts to win their constitutional right to alternative (non-military) service, and are sometimes even prosecuted for evading military service. While considering the right to alternative (non-military) service both in administrative and criminal cases, the courts refer to the List, approved by the Cabinet of Ministers of Ukraine, as one of the mandatory criteria for deciding on the right of a person to replace military service with alternative (non-military) service.¹¹

In our opinion, since the right to alternative (non-military) service is a constitutional right of Ukrainian citizens, laws and governmental acts in this area must comply with Part 4 of Article 35 of the Constitution of Ukraine and must not limit its application to additional requirements, including the believing conscript affiliation to any religious organization. The provisions of the above-mentioned government decree, which restrict the exercise of the constitutional right of believers to alternative (non-military) service by the condition of belonging to the exclusive list of religious organizations, seem even more unconstitutional.

It should be noted another imperfection of Ukraine’s legislation, that is, believers who belong to the religious organizations whose beliefs allow the armed defense of their country, cannot claim to replace military service with alternative (non-military) on the basis of conscience and personal beliefs, which, again, can be regarded as a restriction of the constitutional right enshrined in Part

10 <https://zakon.rada.gov.ua/laws/show/2066-99-%D0%BF>

11 <https://reyestr.court.gov.ua/Review/69167701>

4 of Article 35 of the Constitution of Ukraine¹². In addition, despite the recommendations of international organizations, today the legislation of Ukraine provides the right to alternative (non-military) service only on religious grounds. At the same time, the right to freedom of conscience of citizens with non-religious beliefs (for example, pacifist), which do not allow them to perform military service, is currently not protected.

- There have also been cases in which local governments have decided to reduce the land rent and other communal property, real estate tax or utilities in relation to only a single religious organization, which has put all other religious organizations in an unequal position (mostly among religious minorities) who could not take advantage of such benefits.¹³
- Requirements of certain by-laws or departmental acts regarding the appearance (clothing, head coverings) of civil servants, police, other service workers, teachers and students of educational institutions, etc. in practice may limit the right of access to such work of believers of certain religions (as an example, Muslim women wearing the hijab; Jewish men wearing the yoke; nuns). The issue of religious clothing and head coverings can also be raised during passport control and in many other cases.

Third, in a number of cases, public or local authorities are objectively unable to provide the same number of opportunities for all religious organizations – denominations of the religious majority as well as religious minorities. As an example, this may occur in the following situations:

- Land plot allocation for the construction of religious or auxiliary buildings; provision of use or lease of premises or real estate of communal property.

The land fund and urban development plan usually do not allow allocating a plot of land for the construction of a religious building for each religious community operating in a particular territorial community. Therefore, local councils often make decisions in the interests of religious denominations, which, accordingly, will be able to meet the religious needs of the majority of residents of this territorial community. In such cases, such decisions of local authorities cannot be considered discriminatory, except in the case of openly biased actions or omissions aimed at obstructing the activities of religious minorities. An example of a biased, discriminatory attitude may be a situation where the land fund of a territorial community allows the allocation of land for a religious minority, but on the initiative of local officials or under the influence of the religious majority, such a decision is blocked.

- It is impossible to ensure the appointment of military priests (chaplains) in the Armed Forces of Ukraine and other military formations of representatives of all religions and denominations, which include servicemen of a particular military unit. However, religious minorities still can perform religious service (pastoral care) in the military on a voluntary basis.

Paragraph 4 of Section V of the Regulations on the Service of Military Clergy (Chaplaincy) in the Armed Forces of Ukraine, approved by the order of the Ministry of Defense of Ukraine dated 14.12.2016 # 685, defines the procedure for appointment to military priests (chaplains): “If in a military unit one position of military priest (chaplain) is held, the commander of the military unit, taking into account the confessional affiliation of the personnel, makes a decision on determining the religious organization that nominates a candidate for this position. If there are two or more positions of military priests (chaplains) in a military unit, candidates for these positions must be

12 In this case, the Court of Appeal upheld the legality of the sentence of an Orthodox Christian for evading military service, arguing, inter alia, the absence of Orthodox religious communities in the list of religious organizations whose beliefs do not allow the use of weapons.: <https://reyestr.court.gov.ua/Review/55750078>

13 As an example, the decision of the Zaporizhia City Council № 25 of 25.02.2009 on the approval of the amount of rent to the Zaporizhia Diocese of the Ukrainian Orthodox Church for the use of land: <https://zp.gov.ua/uk/documents/item/1453>

from different religious organizations, taking into account the denominational affiliation of the personnel. When deciding which candidate for the position of military priest (chaplain) to choose, the command of the military unit conducts an anonymous survey of the military unit personnel to determine the confessional affiliation of the personnel. Its results is recorded in the protocol and considered when making a decision.”

It is obvious that there are objective restrictions on the maximum number of military priests (chaplains) in a particular military unit. Therefore, the state is not able to provide such an opportunity for all denominations, especially among religious minorities. The military command seeks to cover as many religious servicemen as possible with the pastoral activities of the staff chaplain, that is why (according to the results of an anonymous survey) preference is given to military priests from among the religious majority.

At the same time, servicemen from religious minorities can meet with the priest of their denomination due to the possibility of their activities on a voluntary basis. For this purpose, the above-mentioned Regulation contains the following norm:

“If it is necessary to strengthen the chaplaincy, the commander of the military unit has the right to assign a request to the Main Department of Moral and Psychological Support of the Armed Forces of Ukraine to send clergy to the military unit for religious service (pastoral care) on a voluntary basis”¹⁴.

- The issue of providing military personnel, staff and patients of medical institutions, staff and prisoners in the penitentiary system with the opportunity to eat in accordance with their religious beliefs (vegetarian, kosher, halal menu) remains open.

The adoption of new standards for nutrition in these institutions could demonstrate the good will of the state to adapt to the religious needs of people of different faiths or beliefs. This kind of adaptation will testify to Ukraine's commitment to high standards of religious freedom.

- Concluding agreements on interaction between central executive bodies, local self-government bodies only with certain religious organizations – mostly, representatives of the religious majority.

The case law of the European Court of Human Rights shows that it will not violate international obligations in the field of religious freedom and equality of rights of different religions, if the state concludes agreements on cooperation or special legal status (concordats) with certain religious organizations that have made special historical contribution to the development of culture and religious identity of the people or now play a special role in social service and statehood. However, the European Court determines that the necessary condition for such interaction with religious denominations is the absence of discrimination against other religious organizations in their exercise of any rights guaranteed by law, including the possibility of concluding such agreements for religious minorities, if they so wish. At the same time, in situations where the state refuses individual religious organizations to enter into cooperation agreements, the European Court considers it important to find out whether there was a difference in the attitude of "objective and reasonable justification", i.e. whether a "legitimate aim" was pursued and whether there was a "reasonable proportion" between the measures taken and the aim pursued. The Court emphasizes that the State must strictly follow the principle of equality enshrined in Article 14 of the European Convention on Human Rights in many areas of relations with religious organizations in order to ensure religious freedom.¹⁵

IV. Activities of religious communities as a legal entity or not being a legal entity

14 <https://zakon.rada.gov.ua/laws/show/z0010-17>

15 Vasin, Maksym. Constitutional and legal principles of interaction between the state and religious organizations in Ukraine. - Dissertation for the degree of Candidate of Law. Sciences for speciality: 12.00.02 "Constitutional law; municipal law". – Kyiv: NAU, 2021. – P.160-161.

Article 8 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" provides for the possibility of religious activity without notifying state bodies. This right is exercised by the religious minorities not being a legal entity. This is an important achievement for religious freedom in Ukraine. Due to frequent denials of state registration, unreasonable comments on statutory documents, delays in the registration process due to local authorities' conclusions or religious expertise, for many independent religious communities and new religious movements, the only opportunity to profess one's faith is legal religious activity.

Religious communities without state registration have the right to:

- conduct worship services and religious rites, in particular in premises rented by believers as individuals;
- publicly spread their faith, in particular to organize peaceful assemblies, rallies, demonstrations in accordance with Article 39 of the Constitution of Ukraine;
- print and distribute religious literature;
- organize groups for religious education of adults and children, in particular Sunday or Saturday schools;
- carry out charitable activities and charity both individually and through public and charitable organizations founded by believers as individuals;
- participate in public life.¹⁶

At the same time, the lack of legal capacity of a legal entity is unacceptable for many religious communities seeking state recognition, property, special legal status for registered non-profit religious organizations, and building their own religious network and hierarchical structure of religious denominations. The importance of being a legal entity is also related to the ability of a religious community to protect its rights in court when it comes to property rights, for example.

In addition, the religious community's activities not being a legal entity carry risks of losing control of property and funds, which in this case are not on the legal entity's balance and accounts, but they are usually under the sole control of the religious leader or close associates.

As a legal entity religious communities have the following additional rights to:

- acquire, own and dispose of movable and immovable property (land, buildings, cash, etc.);
- build religious and other buildings necessary for religious and charitable activities (without paying land tax);
- open bank accounts in different currencies and use them to collect donations that are not taxable;
- use special reduced prices for natural gas, electricity, and other utilities;
- delegate chaplain priests to provide pastoral care to their fellow believers in military formations, penitentiaries, and medical institutions;
- invite foreign clergy, religious preachers, mentors, other representatives of foreign organizations, whose religious activities require the approval of a state body for religions, in accordance with Article 24 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations";
- be a member of public and other advisory councils at public authorities and local governments in accordance with the resolution of the Cabinet of Ministers of Ukraine "On ensuring public participation in the formation and implementation of public policy" of November 3, 2010 # 996;
- establish educational institutions of different levels of accreditation, which issue state-recognized certificates of education, in accordance with the Law of Ukraine "On Education";

¹⁶ Vasin, M. Your right to freedom of religion. Manual for believers, religious communities, and government officials / Maksym Vasin. - Kyiv: Media World, 2020. – P.8-9.

- establish periodicals in accordance with the Law of Ukraine “On Printed Mass Media (Press) in Ukraine”;
- set up public associations together with other legal entities in accordance with the Law of Ukraine “On Public Associations”;
- found charitable organizations in accordance with the Law of Ukraine “On Charitable Activities and Charitable Organizations”;
- receive and distribute humanitarian aid from abroad without taxation on the basis of the Law of Ukraine "On Humanitarian Aid";
- establish enterprises and other legal entities for the production of liturgical literature and cult objects, as well as publishing, printing, production, restoration and construction, agricultural and other enterprises;
- establish non-state pension funds in accordance with the Law of Ukraine “On Non-State Pension Provision”¹⁷

As noted in the OSCE/ODIHR recommendations, the ability to form a legal entity to act collectively in the common interest is one of the most important aspects of the right to freedom of association, without which this right would be meaningless.¹⁸ As for establishing a religious community, the refusal to grant it a legal entity is recognized by the European Court of Human Rights as interference with the exercise of the right to freedom of religion, in violation of Article 9 of the European Convention on Human Rights (both for the community and its members)¹⁹. In this regard, the OSCE participating countries have undertaken to "grant, at their request, associations of believers who profess or are willing to profess their faith within the constitutional framework of their countries, the recognition of the status accorded to them in their respective countries"²⁰

V. RECOMMENDATIONS

In order to take into account the interests and peculiarities of religious minorities, as well as their better integration into the religious and social life of Ukrainian society, prevent their marginalization and activities in the shadows (on the verge of law) in the absence of the possibility of state registration or its significant complication as a legal entity **it is proposed to consider the following recommendations for improving Ukraine’s legislation and the practice of its application:**

1. To develop and adopt comprehensive amendments to the procedure for state registration of religious organizations as a legal entity and the procedure for amending information on them in the Unified State Register of Legal Entities, Individual Entrepreneurs, and Public Associations, which should include the following:
 - to implement fully the “single window” principle by harmonizing the provisions of Articles 12 – 16 of the Law of Ukraine “On Freedom of Conscience and Religious Organizations” with the Law of Ukraine “On State Registration of Legal Entities, Individuals – Entrepreneurs, and Public Associations” and the Law of Ukraine “On Administrative services” (including a single and exhaustive list of documents submitted for registration, the procedure for their submission and deadlines);

17 Vasin, M. Your right to freedom of religion. Handbook for believers, religious communities and government officials / Maksym Vasin. - Kyiv: Media World, 2020. – P.9-10.

18 Guidelines on the Legal Personality of Religious or Belief Communities // OSCE Office for Democratic Institutions and Human Rights. - Warsaw: OSCE / ODIHR, 2015. – P.21.

19 ECtHR Case “Kimlya and others v. Russia” - Application # 76836/01 and 32782/03 of October 1, 2009. (§84).

20 In accordance with paragraph 16.3 of the Final Document of the Vienna Meeting of the States Parties to the Conference on Security and Cooperation in Europe of January 15, 1989.

- to remove from Article 12 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" provisions that require the inclusion in the statute (regulations) of a religious organization information about its location;
- to determine in the Law of Ukraine "On Freedom of Conscience and Religious Organizations" the procedure for carrying out expert examination and an exhaustive list of cases in which it is appointed, as well as to remove the provisions of paragraph 34 of Article 14 of the Law on the possibility of applying to the local authorities and specialists for conclusions on the applicant";
- to remove from Article 14 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" provisions that require the submission to the registering authority of lists of participants in the general meeting of the religious community.

2. To develop and adopt comprehensive amendments to the Law of Ukraine "On Alternative (Non-Military) Service" and Resolutions of the Cabinet of Ministers of Ukraine of November 10, 1999 # 2066, which should provide for the following:

- abolishing the List of religious organizations whose beliefs do not allow the use of weapons, which is an appendix to the resolution of the Cabinet of Ministers of Ukraine dated 10.11.1999 # 2066;
- removing provisions that limit the constitutional right of Ukrainian citizens to substitute military service for alternative (non-military) service with additional requirements, such as membership in religious organizations of a particular religion or membership in religious organizations in general;
- replacing the procedure for referral to alternative (non-military) service, substituting the requirement for early submission of a written application (not later than two calendar months before the start of the statutory period of conscription for military service) for the requirement to submit such application no later than the seventh day the moment of receiving the summons for conscription for military service;
- determining the procedure for referral to alternative (non-military) service during mobilization, including in the Law of Ukraine "On Mobilization Training and Mobilization".

3. To develop and adopt amendments to the Land Code of Ukraine, which provide:

- giving religious organizations the right to acquire land plots for non-profit purposes (amend Article 82 of the Code);
- exempting religious organizations from having to pay rent for the land they use during the processing of their applications for re-registration of such land for permanent use.

4. To elaborate on providing the military, staff and patients of medical institutions, staff and prisoners in the penitentiary system with the opportunity to eat in accordance with their religious beliefs (vegetarian, kosher, halal menu).

5. To pay attention to the issue of religious clothing and head coverings when developing requirements for the appearance of representatives of different professions, in order to remove, if possible, barriers to access to these types of professional activities of members of religious minorities. This will require government agencies, institutions, agencies and educational institutions to introduce a different approach to regulation in these areas that are more sensitive to the characteristics of religious minorities.