**Summary to the Decision of the Grand Chamber of the Constitutional Court of December 27, 2022 No. 4-r/2022 in the case upon the constitutional petition of 49 People's Deputies of Ukraine regarding the conformity of the Law of Ukraine “On Amending Article 12 of the Law of Ukraine “On Freedom of Conscience and Religious Organisations” regarding the statutory name of religious organisations (associations) that are part of the structure (affiliate with) a religious organisation (association), governing centre (administration) of which is located outside Ukraine in a state that is recognised by law as having implemented military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine” (the case regarding the full statutory name of religious organisations)**

49 People’s Deputies of Ukraine applied to the Constitutional Court of Ukraine with a request to declare the Law of Ukraine “On Amending Article 12 of the Law of Ukraine “On Freedom of Conscience and Religious Organisations” regarding the statutory name of religious organisations (associations) that are part of the structure (affiliate with) a religious organisation (association), governing centre (administration) of which is located outside Ukraine in a state that is recognised by law as having implemented military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine” of December 20, 2018 No. 2662-VIII (hereinafter referred to as the Law No. 2662-VIII) as inconsistent with the Constitution (unconstitutional).

The authors of the petition emphasise that the Law No. 2662-VIII does not comply with the provisions of Articles 6, 8, 19, 35, 36, 37, 84 and 88 of the Constitution, as well as argue that the Law No. 2662-VIII “levels religious freedom and interreligious peace in Ukraine, violates the constitutional rights and freedoms of citizens, in particular, freedom of conscience and religion, the right to freedom of association in organisation for the protection of one’s affairs and freedoms and the satisfaction of interests, the right to freely practice religious cults and ritual rites, individually or collectively, conduct religious activities, and the impugned Law is a direct intervention of the state in church affairs, which is contrary to the provisions of Articles 35.1, 35.2, 35.3, 36.1, 36.5, 37.1, and 37.4 of the Constitution”.

The subject of the right to constitutional petition considers the Law No. 2662-VIII to violate the constitutionally guaranteed right of everyone to freedom of conscience and religion, the right of citizens of Ukraine to freedom of association in public organisations, as well as the procedure established by the Constitution of Ukraine to prohibit the activity of associations of citizens.

According to the authors of the petition, the Law No. 2662-VIII does not comply with the provisions of Articles 6.2, 8.2, 19.2, 84.2, 84.3, and 88.3 of the Constitution, since the constitutional procedure for its consideration and adoption was violated.

The Constitutional Court takes into account that the solution of the issues raised in the constitutional petition requires clarifying the purpose of introducing restrictions on the right to freedom of conscience and religion in relation with the right to freedom of association in public organisations.

The Constitutional Court proceeds from the fact that the constitution-maker has adopted the Constitution being “aware of responsibility before God, our own conscience, past, present and future generations| (paragraph seven of the preamble to the Constitution).

When delivering this Decision, the Court took into account not only probable (hypothetical) risks that could exist in the process of adoption of the Law No. 2662-VIII, but also real consequences and threats from the activities of religious organisations (associations), the governing centre (administration) of which is located outside the borders of Ukraine in a state recognised by law as having carried out military aggression against Ukraine and/or temporarily occupied its territory, in the conditions of a prolonged full-scale war of aggression against the Ukrainian state, encroachment on its sovereignty, territorial integrity and people’s lives.

The Constitutional Court proceeds from the fact that the right to freedom of conscience and religion, guaranteed by the provisions of Article 35 of the Constitution, is an individual right that differs from the institutional rights of religious organisations (associations).

The Constitution and international standards on freedom of religion protect the right to have, adopt and leave a religion (*forum internum*), as well as the right to practice a religion both individually and collectively (*forum externum*).

The internal aspect of the right to freedom of conscience and religion (*forum internum*) is an absolute right that cannot be restricted in any way. At the same time, the state has the right to restrict the external aspect of the right to freedom of conscience and religion (*forum externum*).

Based on the content of Article 35 of the Constitution, the state, guaranteeing the specified right to freedom of thought and conscience (religion), is obliged to create conditions for the realisation of this right, namely: to ensure freedom of conscience and religion and the opportunity to practice religion; to prevent encroachments on this freedom by third parties; do not encroach on this freedom on one’s own.

In addition, the state has the right to apply measures that limit the right to freedom of thought, conscience (religion), in particular, for reasons of public safety (Article 35.2 of the Constitution), as well as the right to freedom of association in public organisations for reasons, namely, of national security (Article 36.1 of the Constitution).

Interference with the right to freedom of thought and conscience (religion) in the aspect of its implementation usually takes the form of obligations that the state imposes on a specific subject, which are aimed at achieving the goal defined in the law.

Analysis of the provisions of the Law No. 2662-VIII gives a reason to conclude that the introduced changes do not concern the internal aspect of the right to freedom of thought and conscience (religion). Limitations of this right in terms of clarifying the name of certain religious organisations (associations) refer exclusively to its external aspect (*forum externum*).

The Constitutional Court notes that the right of a religious organisation (association) to be named is a component of the right to freedom of thought and conscience (religion) in combination with the right to freedom of association in public organisations. Religious organisations (associations) are entitled to decide independently their internal affairs. Such autonomy of religious organisations (associations) is guaranteed by a legislative prohibition for the state to interfere in the legitimate activities of religious organisations (Article 5.4 of the Law No. 987-XII). The autonomy of religious organisations (associations) also means the right to have their own name. Defining its own name is the message of the religious community *urbi et orbi*, *i.e.* a public proclamation to society about the existence of a religious organisation (association) and about its religious beliefs. The name of a religious organisation (association) reflects how a religious community represents itself to other religious entities, how it wants to be perceived by people and society in general. Consequently, religious organisations (associations) can choose a name guided by their own dogmas, canons, principles, etc. However, this does not mean that the right to own a name is absolute. Based on this, the Constitutional Court came to the conclusion that the right of a religious organisation (association) to have its own name, constituting the right to freedom of thought and conscience (religion) in combination with the right to freedom of association in public organisations, is subject to restrictions established by national and international norms in accordance with lawful (legitimate) aim.

According to the current legislation, the issues of the names of any legal entities, public associations (organisations) are regulated by the norms of the Civil Code and the other laws, and not by the norms of the Basic Law.

The state recognises the right of a religious community to be subordinate in canonical and organisational matters to any religious centre (administration) operating in Ukraine and abroad, and to freely change this subordination by making appropriate changes to the statute (regulation) of the religious community (Article 8.3 of the Law No. 987-XII).

A religious organisation is recognised as a legal entity from the date of its state registration; a religious organisation as a legal entity has rights and obligations in accordance with the current legislation and its statute (regulation) (Article 13 of the Law No. 987-XII).

The Law No. 2662-VIII does not introduce a different approach towards a certain religious organisation (association), but clarifies the general requirements of the state for the registration and accounting activities of religious organisations (associations) in the case of the subordination of such a religious organisation (association) to the governing centre (administration) located outside Ukraine in a state that is recognised by law as having implemented military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine.

The Constitutional Court concluded that the provisions of Section I of the Law No. 2662-VIII regarding the clarification of the names of religious organisations (associations) do not violate the constitutional right to freedom of thought and conscience (religion), the right to freedom of association in public organisations, and, therefore, the right of subordination religious centre (administration) and the free change of this subordination.

Religious organisations (associations) are a special type of legal entities acting on the basis of their statutes, developed to reflect their belonging to a particular religion, dogmas, canons, principles. Religious organisations (associations) are an external form (*forum externum*) of exercising the Ukrainian citizens' constitutional right to freedom of thought and conscience (religion), namely, to freely perform religious cults, ritual rites individually or collectively, conduct religious activities and interact with other subjects by creating a religious organisation (association) (Articles 35, 36 of the Constitution).

The legislator, regulating the procedure for the registration and accounting activities of religious organisations (associations) subordinate to religious centre (administration) located outside Ukraine in a state that is recognised by law as having implemented military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine, guided by the provisions of Articles 35.2, 36.1, 37.1 of the Constitution, had the right to apply restrictions in the form of the obligation of such religious organisations (associations) to clarify their name in this part and reflect the full name in their statute documents.

The Constitutional Court considers the restriction of freedom of thought and conscience (religion) in combination with the freedom of association in public organisations [in terms of the obligation to clarify the name of religious organisations (associations)] as lawful, and therefore permissible.

The Constitutional Court takes into account the fact that the adoption of this Decision takes place in the conditions of martial law, introduced by the Decree of the President of Ukraine “On the Introduction of Martial Law in Ukraine” dated February 24, 2022 No. 64/2022, as amended, during the struggle of the Ukrainian people against aggression of Russian Federation, which leads to the conclusion of the Constitutional Court on the proportionality of the measures applied.

The Constitution does not contain any provisions that would directly or indirectly prohibit the state from carrying out religious examinations of the statutes (regulations) of religious organisations (associations). It follows from the provisions of Articles 35.2, 35.3, 36.1, and 37.1 of the Constitution that the state must check the creation of political parties, public organisations and associations for compliance with the requirements defined by the Constitution. One of the legitimate means of such verification is the examination of the statutes (regulations) of political parties, public organisations and associations, carried out in accordance with the law by authorised entities.

Conducting a religious examination in accordance with paragraph 2 of Section II “Transitional and Final Provisions” of the Law No. 2662-VIII does not and objectively cannot lead to a violation of either the freedom of religion itself or the rights derived from it guaranteed by the Constitution.

The Constitution of Ukraine and a number of international treaties, agreed to be binding by the Verkhovna Rada, and which have become a part of the national legislation, allow for the possibility of infringing on human rights under certain circumstances and conditions. These circumstances include acts of armed aggression that threaten not only the territorial integrity of the state subjected to an armed attack, its political independence, state sovereignty, but also the existence of the state itself, which is the object of the aggression *per se*.

The restriction established by paragraph 5 of Section II “Transitional and Final Provisions” of the Law No. 2662-VIII is lawful (legitimate) in its aim and objectively justified, since it contributes to ensuring the defence capability of the state and the combat capability of Armed Forces’ units under the conditions of armed aggression, complies with the criteria for certain limitations that are reasonable and justifiable in a democratic society, and therefore is constitutional.

In the context of the provision of Article 152.1 of the Constitution, a normative act in respect of which the procedural requirements established directly by the Constitution, and not by other acts of law, have been violated, may be recognised as unconstitutional. The Constitutional Court leaves without consideration the constitutional petition to the extent that it is substantiated with reference to the provisions of the Rules of Procedure of the Verkhovna Rada, approved by the Law “On the Rules of Procedure of the Verkhovna Rada of Ukraine” dated February 10, 2010 No. 1861-VI, as amended, in particular, Articles 27, 473. 48.3, 48.5, 48.6, 102.4, and 114.2.

Any combination of the quantitative data given in the constitutional petition regarding the registration and voting of People’s Deputies at the plenary session of the Verkhovna Rada during the adoption of the Law No. 2662-VIII indicates that the facts of the violation of the requirement regarding their personal voting established by the provision of Article 84.3 of the Constitution of Ukraine, despite the very presence of such facts, did not have a significant impact on the achievement of the final result, i.e. the adoption of a normative act in accordance with the provision of Article 91 of the Constitution. The Constitutional Court therefore does not find a violation of the provisions of Articles 84.2 and 84.3 of the Constitution during the adoption of the Law No. 2662-VIII.

The provisions of the Law No. 2662-V III are clear and unambiguous, they are predictable in their consequences, they are formulated with sufficient clarity and comprehensibility, namely, in such a way that religious organisations (associations) have no obstacles to regulate their behaviour in accordance with the specified legislative provisions.

The Law No. 2662-VIII as a whole has a legitimate legal basis, since it was adopted in a constitutional manner, it defines a legitimate aim, and thus is necessary in a democratic society and complies with an urgent public need in Ukraine.

Thus, the Constitutional Court of Ukraine held to declare the Law of Ukraine “On Amending Article 12 of the Law of Ukraine “On Freedom of Conscience and Religious Organisations” regarding the statutory name of religious organisations (associations) that are part of the structure (affiliate with) a religious organisation (association), governing centre (administration) of which is located outside Ukraine in a state that is recognised by law as having implemented military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine” dated December 20, 2018 No. 2662-VIII, Article 12 of the Law “On Freedom of Conscience and Religious Organisations” dated April 23, 1991 No. 987-ХІ as amended by the Law of Ukraine “On Amending Article 12 of the Law of Ukraine “On Freedom of Conscience and Religious Organisations” regarding the statutory name of religious organisations (associations) that are part of the structure (affiliate with) a religious organisation (association), governing centre (administration) of which is located outside Ukraine in a state that is recognised by law as having implemented military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine” dated December 20, 2018 No. 2662-VIII as such that comply with the Constitution (are constitutional).

**References:**

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