Fides, Ratio et Patria. Studia Toruńskie 24/2026
ISSN 2392-1463; e-ISSN 2956-3267
s. 195–218

https://doi.org/10.56583/frp.3296

Jan Wiśniewski[*]
Uniwersytet Mikołaja Kopernika w Toruniu
https://orcid.org/0000-0002-2385-5867

Piotr Sadowski[**]
Uniwersytet Mikołaja Kopernika w Toruniu
https://orcid.org/0000-0002-7013-3410

Violations of freedom of religion in Ukrainian territories occupied by Russia in the recent case-law of the European Court of Human Rights

Summary

The article analyses the systemic nature of religious persecution carried out by the Russian Federation in the occupied territories of Ukraine since 2014. The repressive measures include the imposition of Russian legislation, a selectiveness of a registration of religious communities, a confiscation of properties, bans on religious activities, searches, and detention and deportation of a clergy. Communities independent of the Moscow Patriarchate, including the Orthodox Church of Ukraine, the Catholic Churches, Protestant denominations, Jehovah's Witnesses, and Crimean Tatar Muslims, are particularly vulnerable. The authors distinguish acts of religious persecution from

[*] **Jan Wiśniewski** – PhD in the humanities; academic staff member at the Faculty of Law and Administration and the Interdisciplinary Centre for Studies on Technology in Society (ICSTS) at Nicolaus Copernicus University in Toruń. Specializes in the history of the Russian Civil War and contemporary armed conflicts in the former USSR, as well as issues regarding religious persecution.

[**] **Piotr Sadowski** – PhD in law, Assistant Professor at the Department of Human Rights, Faculty of Law and Administration, Nicolaus Copernicus University in Toruń. A law graduate of the Faculty of Law and Administration at Nicolaus Copernicus University in Toruń (holding both a doctorate and a master's degree in law) and the University of Abertay Dundee (Bachelor of Arts in General Studies). Specializes in human rights, as well as immigration and asylum law.

Licencja CC BY-NC-ND 4.0

destructions of religious buildings resulting from hostilities, arguing that classifying an act as a persecution requires proof of its intentional or discriminatory nature. The principal point of a reference for the legal analysis is a judgment of the European Court of Human Rights *in Ukraine and the Netherlands v. Russia*. The Court found that Russia had exercised an effective control over separatist structures and occupied territories of Ukraine and was, therefore, responsible for violations of the European Convention on Human Rights (ECHR) committed there. The killing, torture, and abduction of believers, seizures of places of worship, confiscations of religious literature, and the discriminatory registration system were classified as violations of the freedom of thought, conscience, and religion, so rights protected under Article 9 of the ECHR. The judgment demonstrates a close relationship between violations of religious freedom and infringements of the right to life, the prohibition of torture, right to liberty, and right to respect for private and family life. The article also emphasises the importance of international humanitarian law, which protects religious beliefs and practices, places of worship, and cultural property during armed conflicts and occupations. The authors positively assess the Court's recognition of the systemic nature of Russian repression. However, they criticise the Court's failure to specify precisely what number and scale of individual violations are required to establish the existence of an administrative practice contrary to Article 9 of the ECHR.

Keywords: religious freedom, Ukraine, Russian Federation, occupation, European Court of Human Rights, international humanitarian law

NARUSZENIE WOLNOŚCI RELIGIJNEJ NA TERYTORIACH UKRAIŃSKICH OKUPOWANYCH PRZEZ ROSJĘ W NAJNOWSZYM ORZECZNICTWIE EUROPEJSKIEGO TRYBUNAŁU PRAW CZŁOWIEKA

Streszczenie

Artykuł analizuje systemowy charakter prześladowań religijnych prowadzonych przez Federację Rosyjską na okupowanych terytoriach Ukrainy od 2014 roku. Represje obejmują narzucanie rosyjskiego ustawodawstwa, selektywną rejestrację wspólnot, konfiskatę mienia, zakazy działalności religijnej, przeszukania oraz zatrzymywanie i deportowanie duchownych. Szczególnie narażone są wspólnoty niezależne od Patriarchatu Moskiewskiego, w tym Kościół Prawosławny Ukrainy, Kościoły katolickie, protestanci, Świadkowie Jehowy i muzułmanie krymskotatarscy. Autorzy odróżniają akty prześladowania religijnego od zniszczeń obiektów sakralnych będących skutkiem działań wojennych, wskazując, że uznanie danego czynu za prześladowanie wymaga wykazania jego intencjonalnego lub dyskryminacyjnego charakteru. Głównym punktem odniesienia analizy prawnej jest wyrok Europejskiego Trybunału Praw Człowieka w sprawie Ukraina i Niderlandy przeciwko Rosji. Trybunał uznał, że Rosja

sprawowała efektywną kontrolę nad separatystycznymi strukturami i okupowanymi obszarami Ukrainy, a tym samym ponosi odpowiedzialność za dokonywane tam naruszenia Europejskiej Konwencji Praw Człowieka. Zabójstwa, tortury i uprowadzenia osób wierzących, przejmowanie miejsc kultu, konfiskowanie literatury religijnej oraz dyskryminacyjny system rejestracji zostały zakwalifikowane jako naruszenia wolności myśli, sumienia i religii chronionej przez art. 9 Konwencji. Orzeczenie ukazuje ścisły związek między naruszeniem wolności religijnej a pogwałceniem prawa do życia, zakazu tortur, prawa do wolności oraz prawa do poszanowania życia prywatnego i rodzinnego. W artykule podkreślono również znaczenie międzynarodowego prawa humanitarnego, które chroni przekonania i praktyki religijne, miejsca kultu oraz dobra kultury podczas konfliktów zbrojnych i okupacji. Autorzy pozytywnie oceniają uznanie przez Trybunał systemowego charakteru rosyjskich represji, lecz krytykują brak precyzyjnego określenia, jaka liczba i skala jednostkowych naruszeń pozwala stwierdzić istnienie praktyki administracyjnej sprzecznej z art. 9 Konwencji.

Słowa kluczowe: wolność religijna, Ukraina, Federacja Rosyjska, okupacja, Europejski Trybunał Praw Człowieka, międzynarodowe prawo humanitarne

~ • ~

Introduction

Religious persecution in the territories of Ukraine which were under the Russian Federation control constitutes a persistent element of Russia's policy since 2014. This process began with the occupation of Crimea and the establishment of effective control over parts of the Donetsk and Luhansk regions. Following the launch of a full-scale aggression on 24 February 2022, similar mechanisms were extended to the newly occupied territories of the Kherson and Zaporizhzhia regions. Reports by the Office of the United Nations High Commissioner for Human Rights (OHCHR) indicate that one of the consequences of the occupation included a gradual incorporation of these areas into Russia's legal, administrative, educational, cultural, and information space[1]. This process also extends to the religious sphere. Complete elimination of religion from the public sphere is not the essence of Russian policy, but rather the subordination of religious life to the system established by the occupying power. In practice, this results in differing treatment of individual Churches and religious communities depending on their attitude towards the Russian authorities, their compliance with the law applicable in the Russian Federation, and their association with Ukrainian national and state

[1] Office of the United Nations High Commissioner for Human Rights (OHCHR), *Situation of human rights in the temporarily occupied territories of Ukraine, including the Autonomous Republic of Crimea and the city of Sevastopol: report of the Secretary-General, 1 July–31 December 2025*, 2026.

identity. Communities independent of the Moscow Patriarchate, like the Orthodox Church of Ukraine, the Ukrainian Greek Catholic Church, the Roman Catholic Church, some Protestant communities, Jehovah's Witnesses, and Crimean Tatar Muslims remain particularly vulnerable to repression[2].

When analysing Russian religious persecution, however, a distinction must be maintained between repressions motivated by religion or directed against freedom of religion and the destruction of religious buildings resulting from hostilities. Since February 2022, hundreds of churches, Orthodox churches, houses of worship, mosques, and other religious sites have been destroyed or damaged. In its 2026 report, the USCIRF identified at least 700 places of worship and other religious sites that had been damaged or destroyed since the beginning of the full-scale invasion. The sheer scale of the destruction, however, does not automatically justify classifying every such case as an act of religious persecution. Such a classification requires evidence demonstrating, *inter alia*, an intentional nature of the act, an existence of a discriminatory policy, or a link between the repression and an individual's religious affiliation or religious activity[3]. By contrast, acts of the occupant's administration which involve banning of religious communities, an imposition of the Russian registration system, a confiscation of religious property, searches of places of worship, penalties for missionary activity, and the detention and deportation of clergy are far more unequivocal in nature. The latest findings of the OHCHR confirm that this pattern has continued. In the second half of 2025, the Russian occupant's authorities imposed administrative penalties on individuals and organisations for the so-called illegal missionary activity, including holding religious services in private homes and failing to comply with Russian requirements concerning the labelling of religious literature and religious facilities[4].

Religious persecution should, therefore, be interpreted as part of a broader process of an institutional and socio-cultural integration of the occupied territories into the Russian Federation. The imposition of Russian legislation transforms conditions under which religious communities previously operated, eliminating or marginalising organisations deemed undesirable. At the same time, it privileges those religious structures capable of functioning within the Russian political and legal system. Religion thus becomes one of arenas in which a struggle over an

[2] C. Wanner, *How Russia Weaponized Religion in the War on Ukraine*, https://inkstickmedia.com/how-russia-weaponized-religion-in-the-war-on-ukraine/ November 6, 2024; United States Commission on International Religious Freedom (USCIRF), *Russia's Religious Freedom Violations in Ukraine*, Washington, D.C.; OHCHR, *Report on the Human Rights Situation in Ukraine, 1 December 2024–31 May 2025*, 30 June 2025.

[3] USCIRF, *Annual Report 2026*, Washington, D.C. 2026, chapter "Russia".

[4] OHCHR, *Report on the Human Rights Situation in Ukraine, 1 June–30 November 2025*, 9 December 2025, para. 105.

identity of inhabitants of occupied territories is played out, rather than being merely a matter of a religious affiliation[5]. Of particular significance are the measures targeting the Orthodox Church of Ukraine, whose autocephaly and independence from Moscow contradicts the Russian narrative of a unified Orthodox religious space encompassing Russia and Ukraine[6]. In light of reports by international organisations, restrictions on religious freedom in the Russian-occupied territories of Ukraine may, therefore, be regarded as systemic in nature. They are not limited to isolated acts of violence against clergy or believers but comprise a set of interconnected instruments: the imposition of restrictive Russian legislation, the selective registration of religious organisations, the dissolution of certain communities, the confiscation of property, interferences in pastoral activities, as well as criminal repression, and pressure exerted on clergy and believers. This policy forms part of a broader process aimed at eroding Ukrainian cultural and identity space in the occupied territories, while simultaneously facilitating their gradual incorporation into the Russian political, legal, and social order[7].

This research is based on dogmatic and legal analysis. An important part of this article is focuses on an analysis of international law, as well as case law of the European Court of Human Rights (the ECtHR, the Court) and soft law of the United Nations. Decisions of the ECtHR are binding only states-parties to these proceedings. However, the ECtHR coherently interprets the European Convention on Human Rights[8], so even if there is no formal precedence *de iure* rule in the ECtHR, judges try to keep precedence *de facto*.

A decision to focus this article on regional (European) law is not incidental. The Council of Europe's "jewel in a crown", which is the ECHR has been adopted shortly after the World War II. The preamble to this act reaffirms its signatories "profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend". This underlines the coherence of this law, which binds like-minded states sharing common social, economic, and technological, among others, factors with the UN law. In this way,

[5] Institute for Religious Freedom; S. Shumylo, *The Crisis in Ukrainian Orthodoxy: Trends, Challenges and Possible Ways of Overcoming*, 11 November 2024, https://irf.in.ua/p/146; O. Predko and M. Ptytsia, *Religious Faith in the Context of the Russian-Ukrainian War: Challenges and Risks*, „*Occasional Papers on Religion in Eastern Europe*" 2025, no. 6.

[6] USCIRF, *Russia Country Update*, Washington, D.C.

[7] OHCHR, *Situation of Human Rights in the Temporarily Occupied Territories of Ukraine, 1 July–31 December 2025*, 2026; OHCHR, *Forced Displacement from Territory of Ukraine Occupied by the Russian Federation*, 2026.

[8] *The 1950 European Convention on Human Rights and Fundamental Freedoms* (ETS No. 005).

the Council of Europe (the CoE) ensures practical implementation of the UN Universal Declaration of Human Rights[9], but also other treaties which have been adopted under the aegis of the UN.

For many decades Europe was free from war. The last notable military conflict was a 1990's war in a former Yugoslavia resulting in e.g. an adoption of directive applicable to a massive arrival of persons seeking protection in the EU Member States[10]. Therefore, regional norms like the ECtHR have been implemented in peace and democracy. Nevertheless, cases involving military actions have been decided by the ECtHR but until the MH17 case[11] – they have not focused on such big number of casualties. Therefore, an analysis of the ECtHR's approach to freedom of thought, conscience and religion (Article 9 of the ECHR) in times of a full-scale military invasion provides an important guideline on an importance of that right in times of exceptional situations.

Russia was a member of the CoE when it attacked Georgia in August 2008, and Ukraine in February 2022[12]. Moscow withdrew from this organisation when the CoE bodies' called it to immediately cease aggression against Ukraine[13]. However, the ECtHR can still decide cases against Russia, if Russian infringements of the Convention occurred before 16 September 2022. Having this in mind, and recalling the consistency of interpretation lines of the ECtHR it can be said that reflections from this article are of practical nature, because they may impact on other cases, not only against Russia, which will be decided by the ECtHR.

9 *The General Assembly resolution 217 A (III) of 10 December 1948, Paris*.

10 *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof* (OJ EC L 212 of 7.8.2001). It was applied only once – in 2022 and since then it is consequently prolonged. *Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection* (OJ EU L 71 of 4.3.2022).

11 Judgement of the ECtHR of 9 July 2025, Application nos. 8019/16, 43800/14, 28525/20 and 11055/22 in *Ukraine and the Netherlands v. Russia*.

12 Judgement of the ECtHR of 14 January 2021, Application nos. 20958/14 and 38334/18 in *Grand Chamber Admissibility Decision in the case of Ukraine v. Russia (re Crimea)*.

13 *Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe (Adopted by the Committee of Ministers on 16 March 2022 at the 1428ter meeting of the Ministers' Deputies)*; *PACE Resolution 2436 (2022) on The Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes. Text adopted by the Assembly* on 28 April 2022 (15th sitting).

1. State's obligations from international law

1.1. Treaties and *ius cogens*

States can be held responsible for infringements of international laws if these laws are considered to be *ius cogens* norms, so norm which do not have to be ratified by states to be effective. This interpretation is commonly accepted by states. Nevertheless, there is no commonly agreed catalogue of this type of norms[14]. Based on, *inter alia*, decisions of the International Court of Justice (the I.C.J.), and research findings[15] it can be said that this catalogue may include:

1. prohibition of use of force and a threat to use force;
2. prohibition of genocide;
3. prohibition of crimes against humanity;
4. prohibition of war crimes of a fundamental character;
5. prohibition of torture and cruel, inhuman or degrading treatment;
6. prohibition of slavery and the slave trade;
7. prohibition of racial discrimination and apartheid;
8. right to selfdetermination of peoples;
9. basic rules of international humanitarian law.

If the catalogue of *ius cogens* is hard to agree, then it is even more complicated to agree on how to understand the content of this catalogue. This is why conventions increase efficiency of human rights.

States can be held liable only for infringements of treaties, which they have ratified. However, rights and freedoms may be referred to in different conventions, what may raise uncertainties regarding their interpretation. Owing to an autonomous interpretation rule, the terms which are used in treaties are binding only as regards an interpretation of these treaties. Nevertheless, states cannot effectively try to evade their responsibilities by a reference to a membership in international organisations or even national constitutions. This rule gains particular importance in case of colliding interpretations of regional and the UN laws. In such cases, an interpretation from the UN gets a preference.

The UN law is composed of the UN Charter[16], but also more specialized regulations. They include International Covenant on Civil and Political Rights (which also includes rights to religion)[17] and specialized treaties (so laws focusing on a selected group of persons or selected themes). Specialized treaties include

[14] W. Czapliński, A. Wyrozumska, *Prawo międzynarodowe publiczne: zagadnienia systemowe*, Warszawa 2014, p. 40.

[15] Cf. Ibid., pp. 38–46.

[16] *Charter of the United Nations,* 24 October 1945, 1 UNTS XVI.

[17] *International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966*, UNTS, vol. 999, p. 171 and vol. 1057, p. 407.

conventions applicable to international humanitarian law (the IHL) and human rights law. Therefore, the same theme may be regulated at the same time by human rights law (e.g. Article 9 of the ECHR) and IHL (e.g. Article 46 of Geneva Convention relative to the Protection of Civilian Persons in Time of War, hereinafter: the GCof1949 [18]). Explanation of a relationship between these laws which has been delivered by the ECtHR in MH17 case is, therefore, very valuable.

1.2. A notion of jurisdiction

At the beginning, an important clarification must be made. Some treaties (like the Covenant) apply within the territory of a state-signatory to that treaty. Other conventions (like the ECHR) apply to jurisdiction of a state. The ECHR has not defined that term. However, it is understood as a sphere within which a State exercises legal authority and factual power[19]. Identification of jurisdiction may be particularly problematic in case of a war[20]. In its well-known case the Court ruled that under the ECHR its jurisdiction clause is essentially territorial. This means that extraterritorial jurisdiction is exceptional and can be applied only when "effective control" requires actual control over territory, not a single *airstrike*. This led to the conclusion that the applicants were not within the jurisdiction of the NATO States.

An issue of an "effective control" was also clarified in case in which the Court declared that jurisdiction during actions conducted by army in other country may exist[21]. This reasoning was expanded when the Court declared Russian effective exercise of jurisdiction in Transnistria, so in a territory of Moldova, owing to Russia's military, economic, and political support to the Transnistrian regime[22]. Similar reasoning in *Loizidou v. Turkey* made the Court find Turkish responsibility, because its "Government have acknowledged that the applicant's loss of control of her property stems from the occupation of the northern part of Cyprus by Turkish troops and the establishment there of the [Turkish Republic of Northern Cyprus] „TRNC". Furthermore, it has not been disputed that the applicant was prevented by Turkish troops from gaining access to her property."[23]. The Court

[18] *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 U.N.T.S. 287.

[19] More in e.g.: O.A. Hathaway, P. Levitz, E. Nielsen, A. Nowlan, W. Perdue, C. Purvis, S. Solow, J. Spiegel, *Human Rights Abroad: When Do Human Rights Treaty Obligations Apply Extraterritorially?*, "Arizona State Law Journal" 2011, vol. 43.

[20] Judgement of the ECtHR of 12 December 2001, 52207/99 in *Banković and Others v. Belgium and Others*, Reports of Judgments and Decisions 2001-XII.

[21] Judgement of the ECtHR of 16 November 2004, 31821/96 in *Issa and others v. Turkey,* paras. 71–74. In that case applicants failed to prove that Turkish army was present at that territory.

[22] Judgement of the ECtHR of 8 July 2004, 48787/99 in *Ilaşcu and Others v. Molova and Russia*.

[23] Judgement of the ECtHR of 18 December 1996, 15318/89 in *Loizidou v. Turkey*.

added in paras. 43-44 that "[…] the principles underlying the Convention cannot be interpreted and applied in a vacuum. Mindful of the Convention's special character as a human rights treaty, it must also take into account any relevant rules of international law when deciding on disputes concerning its jurisdiction [...]. In this respect it is evident from international practice and the various, strongly worded resolutions […][of the of United Nations Security Council] that the international community does not regard the „TRNC" as a State under international law […]", so neither TRNC nor Turkey can claim a property, which remains under Cyprus position[24]. This is an important view, having in mind that the MH17 case originated in actions committed in two areas recognized by Russia (but not other countries) as states.

It should be underlined that occupation is a "situation will amount to occupation when an area is actually placed under the authority of a hostile army; a State occupies territory that is not its own when, and to the extent that, it exercises effective control over it" (para. 147 of the MH17 case). The ECtHR has based this reasoning on the I.C.J.'s interpretation and on the Hague Regulations[25]. In that way it ensured coherence of an interpretation of regional human rights law (the ECtHR) with universal system of human rights protection (the UN law).

Speaking of "occupation", no formal "approval" of the occupied is needed for jurisdiction to arise over that area to those, who effectively control it. Article 2 of the GCof1949 it is also irrelevant if the occupation took place after military conflict, whether the whole territory or a part of it was captured, if there was a spontaneous military reaction of local people or if such acts have not materialized. What is important is a physical control over the territory and persons staying there.

The biggest challenge is to prove a correlation between specified actions of identified subjects and their results. Previously the ECtHR declared that in the "context of chaos" during the active phase of armed conflict, it "lacks the legal basis to assessing acts of war and active hostilities in the context of an international armed conflict outside the territory of a respondent State"[26]. Nevertheless, in para 229 of an admissibility decision in MH17 case, the ECtHR explicitly supported a declaration of 26 Governments who noted in paras. 695-703 of the above-cited case that this interpretation doesn't "generally exclude jurisdiction

[24] *Ibidem*.

[25] *Regulations concerning the Laws and Customs of War on Land, annexed to the 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land*, 18 October 1907; Judgement of the I.C.J. of 19 July 2024, in *Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* I.C.J. Reports 2024.

[26] Judgement of the ECtHR of 21 January 2021, Application no. 38263/08 in *Georgia v. Russia (II),* para. 142.

in an international armed conflict". Therefore, even though in Georgia II case the Court declared a lack of Russian jurisdiction, it used facts of the MH17 case to find Russian jurisdiction. These facts include the Court's findings in para 356 of the MH17 case that "by 11 May 2014, the separatist operation as a whole was being managed and coordinated by the Russian Federation". Importantly, judges referred to "the high number of Russian troops deployed in the border regions of the Russian Federation in the spring of 2014, in preparation for further deployment to eastern Ukraine […][but also to providing] training in camps near the border to Russian soldiers prior to their deployment in eastern Ukraine […] [and the fact that Russia] established that senior members of the Russian military had been present in command positions in the separatist armed groups and entities from the outset". The ECtHR also noted that on 5 March and 24 June 2024 a pre-trial chamber of the International Criminal Court issued warrants of arrest for four individuals (then Defence Minister Mr Shoigu and three other senior figures in the Russian armed forces). Reference in para. 356 of the MH17 case to "senior members" is important, because it can also give a rise to responsibility of the command for planning actions, as it was decided in *the McCann and Others v. the United Kingdom*[27].

This reasoning is confirmed by the fact that even in "the absence of any information to suggest a decrease in the level of control exercised by the respondent State over the "DPR" and the "LPR", and the formalisation of the control already exercised by that State through the purported "accession" of the two territories to the Russian Federation and the retroactive application of Russian criminal law to the territories (..), the Court finds that these areas continued to be under the effective control of the respondent State throughout the period falling within the temporal jurisdiction of the Court" (para. 331). Consequently, the ECtHR declared Russian jurisdiction in the MH17 case.

However, even if territory is temporarily under control of the other army, "direct artillery support" can be seen as an exercise of control, as the ECtHR noted in para 358 of the MH17 case. This is one of the most important clarifications from the ECtHR – judges stated that they will focus on "the alleged violations [because] all stem from the alleged widespread campaign of targeted and indiscriminate bombing and shelling by Russian agents of territory in Ukraine which was not under Russian effective control" (para. 611). So, the widespread nature and the duration of the indiscriminate bombing and shelling justified the interpretation which differs from above-cited *Banković* case.

Finally, it clearly stems from the IHL that occupation is of a temporary nature. Based on that Marcinko correctly reflected that this implies that "the occupier

[27] Judgement of the ECtHR of 27 September 1995, Application no. 18984/91 in *McCann and Others v. the United Kingdom*.

cannot unilaterally decide on the fate of the occupied territory or change the principles of its legal order. Actions by the occupying authorities aimed at establishing sovereignty over the occupied territories or at annexing these territories constitute a violation of international law and are ineffective under this law."[28]. That author specifies further that establishing puppet governments also contradicts with a status of an occupation. It seems rational to consider "governments" which are not internationally recognized to be this kind of "governments". Hence, Donetsk and Lugansk should be considered as actors under Russian jurisdiction. Regrettably, the ECtHR has not made such an explicit declaration.

2. Limiting state's responsibility

2.1. Introduction

This article is focuses on freedom of thought, conscience and religion. This right is widely recognized in international law, including at the United Nations level and in different regional contexts[29]. Therefore, it can be said that right to religion is recognized as one of the most important human rights and freedoms. Freedom of religion (Article 9 of the ECHR) is not, however, mentioned in Article 15(2) of the ECHR, which provides a catalogue of rights which cannot be derogated "in time of war or other public emergency threatening the life of the nation". Certainly, derogation can be applied only temporarily.

Article 15(2) of the ECHR may suggest that states may derogate that right e.g. prohibit by law practicing all religions by all persons unspecified individually in public places. However, such an interpretation would ignore an importance of *forum internum* (so right to hold beliefs) which has an absolute character. This explains why for now, no Council of Europe state has explicitly derogated Article 9 of the ECHR, but they derogated e.g. a right to a peaceful assembly, which is strictly correlated with a right to practice religion, what is discussed below.

However, state authorities may use laws to e.g. give a decision to an individual religious group prohibiting its members to practice religion. Such a decision is, therefore, given individually and it stems from a general use of law.

[28] M. Marcinko, *Główne założenia międzynarodowego prawa humanitarnego konfliktów zbrojnych*, w: *Międzynarodowe prawo humanitarne konfliktów zbrojnych*, D. R. Bugajski, Z. Falkowski, M. Marcinko, K. Sałaciński, M. Żeligowski, P. Łubiński (ed.), Warszawa 2014, p. 37.

[29] Cf. respectively: *International Covenant…*; *African Charter on Human and Peoples' Rights ("Banjul Charter")* (CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)), https://www.refworld.org/legal/agreements/oau/1981/en/17306 [accessed: 4.03.2026]; *Charter of Fundamental Rights of the European Union* (Consolidated text EU OJ C 202 of 7.6.2016).

2.2. The application of derogations and limitations on freedom of religion

Freedom of religion includes right to primarily practice religion individually in private[30]. However, in para. 112 *Svyato Mykhaylivska Parafiya v. Ukraine* case judges confirmed that religious practice includes right to practice religion "in public and within the circle of those whose faith one shares. Since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention [so freedom of assembly and association], which safeguards associative life against unjustified State interference". This close relationship between two freedoms explains, why states effectively derogated freedom of religion in its communitive aspect by derogating freedom of assembly during COVID-19 times.

For a purpose of an analysis of actions in Ukraine under jurisdiction of Russia it is important to underline that the Court repeated that "The believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention."[31]. An arbitrary interference includes decisions given without legal grounds. However, also decisions which:

1. favor one religious group over another;
2. interfere in internal religious disputes;
3. use administrative or legal tools to pressure a religious community;
4. act with bias or hostility toward a particular confession.

can be seen as arbitrary. In *Hasan and Chaush v. Bulgaria*, the Court held that the State must avoid "arbitrary interference" in religious leadership disputes[32]. Therefore, it can be concluded that a reference to a lack of arbitrariness is not a vague moral term. It is defined also by a reference to a standard of a democratic society, because "The autonomous existence of religious communities is indispensable for pluralism in a democratic society" *(para. 118 of Svyato Mykhaylivska Parafiya v. Ukraine). Hence, ensuring freedom of religion is not only a matter of a letter of law, but also a requirement envisaged in the ECTHR's preamble.*

3. Application of international law to cases against Russia

3.1. Analysis of freedom of religion in the MH17 case

For the purpose of this article it is essential to underline that the Court did not separately assess a violation of Article 9 of the ECHR in the context of military

[30] Judgement of the ECtHR of 14 June 2007, Application no. 77703/01 in *Svyato Mykhaylivska Parafiya v. Ukraine,* para. 112.

[31] Ibid., para. 121.

[32] Judgement of the ECtHR of 26 October 2000, Application no. 30985/96 in *Hasan and Chaush v. Bulgaria*.

attacks. Instead it focused on Articles 2, 3, 8 and Protocol No. 1 of the ECHR. This reiterates the importance of right to life and freedom from torture. Exemplifications of infringements are numerous in the analysed case. Many of them come from the Office of the High Commissioner for Human Rights (OHCHR), but also Forum 18, Mission Eurasia, and the Special Monitoring Mission to Ukraine. The Court unquestionably noted in para 1268 that it "considers this material to constitute credible and reliable primary evidence upon which it may rely in the establishment of the facts". Hence, all facts cited below come from the MH17 case and, if needed, it is explicitly stated if that reasoning was quoted by the ECtHR. Exemplifications of infringements considered by the Court include:

1. deaths of over 10,000 civilians and injuries of around 20,000 persons, although the numbers are likely to be higher – the vast majority of these deaths and injuries were the result of attacks with explosive weapons (para. 343); and
2. collapse of buildings and houses under the shelling in Mariupol, in some instances killing and injuring persons, and whole areas of the city in ruins with scarce water, heating and food supplies, witnesses had seen the Russian armed forces fire at a hospital, leading to civilian casualties and damage to the building (para. 345).

Article 9 of the ECHR has not been separately interpreted in the MH17 case. Still, judges directly applied facts identified for a purpose of infringements of right to life and freedom from torture to freedom of religion. This clearly suggests that the Court limited its focus in addressing facts which are essential to present a background of the analysis. This approach can be justified by the fact that:

1. right to life has been infringed when e.g.:
   1.1. "There are numerous reports of religious leaders being ill-treated, abducted during religious activities and, in some cases, killed by separatists in eastern Ukraine" (para. 1269);
   1.2. "Four evangelical ministers had been killed in Sloviansk and more than forty believers were still listed as missing. In her eyewitness testimony, the wife of one of those killed explained how armed separatists had turned up at the church and abducted the four parishioners." (para. 798);
2. freedom from torture has been infringed when e.g.:
   2.1. "Mission Eurasia's report on "Religious persecution in Eastern Ukraine and Crimea 2014" referred to an incident where a pastor for the Word of Life Church in Pryvillia, in the Luhansk region, had been beaten by separatists and then forced to clean up an abandoned factory" (para. 803);
   2.2. the Baptist Union Church in Molodohvardiisk church was brutally interrogated (para. 1227);

2.3. "The separatists in the "DPR" and the "LPR" quickly declared the UOC-MP [the Ukrainian Orthodox Church of the Moscow Patriarchate] to be the main religious group in occupied territory. They harassed and persecuted religious figures of other religions or Christian churches as well as civilians engaging in worship in the context of those religions and churches, in breach of the requirements of international humanitarian law" (para. 1269).

Nevertheless, infringements of Article 9 of the ECHR were also noted in connection with right to liberty (Article 5) and right to private and family life (Article 8) when e.g.:

1. "The premises had been searched, religious literature had been confiscated and two Muslim practitioners had been questioned and forced to sign a commitment not to leave "DPR" territory" (para. 1226). Similar actions happened after an interruption of a worship of the Baptist Union Church in Molodohvardiisk (para. 1227);
2. the Baptist Union Church in Molodohvardiisk church leader house was searched, hard drive and literature, as well as the SIM card were seized (para. 1227);
3. the "DPR's ministry of culture" had initiated the removal from public libraries of publications it regarded as "extremist", including included books on "political and religious figures (para 1255);
4. "places of worship were seized by separatists, with reports indicating a lack of tolerance for what separatists called "sects", in most cases apparently intended to cover all religious practice outside the context of the UOC-MP" (para. 1269);
5. „there is also evidence of the banning of religious material, which was deemed to be "extremist" by separatist administrations and institutions" (para. 1269);
6. "In 2022 the Russian occupation administration "nationalised" property from religious communities and repurposed it for their own ends" (para. 1271);
7. twelve Baptist books, including the Gospel of John, the main hymnbook used by the Council of Churches Baptists, their regular magazine and children's books were also included on a list of extremist materials (para. 124).

The above-discussed *iunctim* between Articles 2, 3, 5, 8, and 9 of the ECHR clearly indicates that it is not one fact that results in an infringement of one right or freedom, but one fact results in an infringement of right or freedom which results in an infringement of other right. Therefore, e.g. torture of local persons infringes Article 3 of the ECHR, but "In so far as the allegations under Article 9 concern the unlawful deprivation of liberty, ill-treatment and torture and extrajudicial killing of civilians on account of their belonging to or practising their religion, such conduct quite clearly cannot be justified under Article 9 § 2" (para. 1273).

Some infringements were clearly initiated by or strengthened by an intensively of infringements of other rights. Religious reasons clearly manifest correctness of this view. In para. 1115 of the MH17 case judges stressed that "There are also examples of what appear to be purely opportunistic abductions of individuals who found themselves in the path of armed separatists. […] Journalists, religious leaders, Ukrainian civil servants, activists and those holding pro-Ukrainian unity views were particularly targeted". In other words, although in majority of its analysis judges stressed the indiscriminate violence of Russian actions leading to infringements of human rights. The Court stressed in para. 1274 of the MH17 case that "The seizure and confiscation of religious property and materials was frequently carried out as yet another manifestation of the general violence and lawlessness perpetrated by separatists across territories in their hands". In this way, the ECtHR clearly indicated that even a general no discriminative violence can consist of several infringement "layers". This view is further supported by the Court's observation in para. 1260 that individuals had also been targeted "in the context of a generalised practice of disrupting and preventing the right of those not adhering to the UOC-MP to practise their religion". This interpretation correlates with para. 1115 of the MH17 case in which the Court showed that some groups of persons were exposed to higher degree of violence. Still, in other parts of the MH17 judgement the Court underlined that even in their situation the violence was of indiscriminate nature. This is because as it can be seen in the examples listed in the above different religious groups the UOC-MP were discriminated in a similar way.

Nevertheless, the above-mentioned structure of rights has been puzzled in para. 1187 of the MH17 case where "The Court notes that the applicant Ukrainian Government's complaints under Article 9 of the Convention essentially concern the intimidation, harassment and persecution of religious groups aside from the UOC-MP, and interference with their community worship and other forms of the collective manifestation of their faith through [underlined by Authors] the abduction, ill-treatment and killing of religious leaders and adherents of such religious groups; the confiscation and seizure of their places of worship and other religious facilities; and the establishment and implementation of a discriminatory system of mandatory registration for religious groups". This shows that the Court accepted Ukrainian analysis of facts of the case. The Courts interpretation of IHL read with para. 273 of the MH17 judgment clearly indicates a close *iunctim* between right to life (Article 2 of the ECHR), freedom from torture (Article 3 of the ECHR), right to liberty (Article 5 of the ECHR), and freedom of religion (Article 9 of the ECHR). As the Court put it in para. 1260 of the MH17 case "individuals had been targeted on account of their positions as leaders of religious communities". This has to be read in conjunction with para. 1270 of the MH17 case where the

Court explicitly declared that "Religious leaders and parishioners were pursued on charges of organising or attending illegal gatherings". In that way, the ECtHR re-confirmed that freedom of religion includes right to worship in a group.

There is, however, a problem with a relationship between the Court's observations in paras. 1269 and 1270 of the MH17 case. In the first part the ECtHR declared that "Members of the Jehovah's Witnesses appear to have been particularly targeted". This Russian practice is unsurprising, having in mind that the Court have found systemic infringement of these group rights in Russia. However, the Court has not refereed to previous Russian conducts. This may indicate that the ECtHR decided to clearly separate infringements during peace time and during military conflict. Nevertheless, having in mind the importance of this reflection, the Court should clearly make a standing on that point.

Even though the Jehovah's Witnesses were mentioned in para. 1269 of the MH17 case, in a subsequent paragraph the Court declared that "The measures described in the evidence were applied to religious communities outside the UOC--MP including other Christian communities, Muslim communities and, notably, Jehovah's Witnesses". The order in the enumeration may suggest that Christian communities were the most affected group. This is possible considering a religious profile of Ukrainian population, but this should be clarified in the judgement.

Moreover, freedom of religion is protected under IHL. Article 46 of the Hague Regulations explicitly states that "Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated". This Court used it in para. 1035 ("The obligations of humane treatment and respect for life and the prohibition of the murder during international armed conflict"), para. 1068 (an application of the IHL to *hors de combat*), and para. 1267 (the Court's reasoning on Article 9 of the ECHR) of the MH17 judgement. Therefore, although the ECtHR has not extensively deliberated on a relationship between Article 46 of the Hague Regulations and Article 9 of the ECHR, it is clear that such a relationship exists. The Court also confirmed that Article 9 of the ECHR must be interpreted in line with the Hague Regulations ("in harmony with international law "so far as possible"„, see para. 430). The fact that these reflections were made in a different context of the MH17 case does not contradict that view, because of the above-mentioned explicit reference to the Hague Regulations in part focusing on Article 9 of the ECHR.

These references are important, because in para. 1275 of the MH17 case judges explicitly referred to IHL to state that under these laws "No legal basis for the seizure and confiscation of religious property or for the mandatory registration [and operation, what the ECtHR later added,] of religious communities can be discerned in international humanitarian law". The Court has not re-interpreted that infringement. However, it declared that this violation "is sufficient, in itself,

to enable the Court to conclude that the impugned measures were not "prescribed by law"„. Notably, a reference to "an accumulation of identical or analogous breaches of Article 9" of the ECHR is made in a subsequent paragraph of the case. This correctly manifests the importance of right to religion even in times of a military conflict. Unfortunately, in the MH17 case lacks re-confirmation that "It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned."[33].

Moreover, the Court reflected that acts referring to "extremism" do not satisfy "quality of law" and "lawfulness" tests. This is because they use terms which are subject to a broad interpretation. This reasoning is consistent with pervious case-law, because it was already in 2022 when the Court declared the impermissibly broad definition of "extremism activities", coupled with a lack of judicial safeguards, led to a finding of a violation of Article 9 of the ECHR on the basis that the interference was not "prescribed by law"[34].

Additionally, the ECtHR declared in para. 1270 of the MH17 case that "Even where registration was theoretically open to all, in practice it was applied restrictively to refuse registration to a number of religious organisations on grounds which were not disclosed". This clearly exemplifies an arbitrary interference. Hence, these laws cannot effectively limit Article 9 of the ECHR. The ECtHR expanded this reasoning and provide a valuable statement that "It is also questionable whether any law purporting to limit to the followers of registered religious organisations only the right guaranteed by Article 9 of the ECHR to manifest one's religion would satisfy the "lawfulness" requirement in light of the fundamental inconsistency of such a law with the requirements of that provision". This is not an innovative approach (the Court itself has referred to its previous judgement). Nevertheless, confirming appropriateness of this view in a military conflict reality is another indication of an importance of the analysed right.

Speaking of changes in law, a status of an occupied territory seriously affect possibilities to change laws in that territory. As Łubiński correctly notes "the principle of preserving the legal system previously existing in the occupied territory is adopted, particularly civil, family, and labor law. Criminal legislation in force in the occupied territory also remains in force, except where it has been repealed on the grounds that it posed a threat to the security of the occupying power or constituted an obstacle to the application of the Convention Relating

[33] Judgement of the ECtHR of 10 June 2010, Application no. 302/02 in *Jehovah's Witnesses of Moscow and Others v. Russia,* para. 99.

[34] Judgement of the ECtHR of 7 June 2022, Application no. 32401/10 in *Taganrog LRO and Others v. Russia*.

to the Protection of Civilian Persons in Time of War."[35]. There is nothing in the facts of the case which could demonstrate that the amended laws were introduced to ensure respect to IHL. It is also unquestionable that a peaceful worship doesn't amount to "a threat to the security of the occupying power", even if it is practiced in a group. Hence, even "numerous" and "almost daily" inter-religious Prayer Marathons which were held in Donetsk could not justify an introduction of such laws. Nevertheless, the Court has not made such references in its decision.

Up until now this article has focused more on a collective approach to Article 9 of the ECHR. Nevertheless, the ECtHR confirmed that this law can also be used separately, only using facts invoked in other articles. The Court confirmed that Article 9 of the ECHR can be applied "by itself" also to military conflict. Regrettably, this is the weakest point in the ECtHR argumentation. In conclusions the Court merely referred to "an accumulation of identical or analogous breaches of Article 9 of the Convention between 11 May 2014 to 16 September 2022 which are sufficiently numerous and interconnected to amount to a pattern or system of intimidation, harassment and persecution of religious groups aside from the UOC-MP. For the reasons set out below, there is no doubt that the violations of Article 9 described were officially tolerated by the superiors of the perpetrators and by the higher authorities of the respondent State" (para. 1276). This may suggest that the ECtHR found that a set of individual violations constituted a base for finding a violation of Article 9 of the ECHR. This view is confirmed in para. 1277 in which the Court finds Russia "responsible for an administrative practice in occupied areas of Ukraine of intimidation, harassment and persecution of religious groups aside from the UOC-MP in violation of Article 9 of the Convention in the period between 11 May 2014 and 16 September 2022". Still, the Court did not indicate how it interpreted these individual violations. It is, therefore, unclear whether the judgment would have been the same had the total number and scale of violations been smaller, and by how much smaller they would have had to be for the ECtHR to find otherwise than in the judgment under review.

3.2. The IHL on cultural property

Finally, freedom of religion includes right to practice religion in religious places. Among others, Article 27 of the Hague Regulations explicitly states that "In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, […], provided they are not being used at the time for military purposes". To apply that law "It is the duty of the besieged to indicate the presence

[35] P. Łubiński, *Rozdział 7. Ochrona ludności cywilnej ochrona uchodźców* [in:] *Międzynarodowe prawo humanitarne konfliktów zbrojnych*, D. R. Bugajski, Z. Falkowski, P. Łubiński, M. Marcinko, K. Sałaciński, M. Żeligowski, P. Łubiński (eds.), Warszawa 2014, p. 214.

of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand". It should, therefore, be stressed that a church or a place of a worship may at the same time be "a building dedicated to religion […] or charitable purposes", and "a historic monument". Consequently, even if one side of a military conflict doesn't recognize a place as a religious place, the place may need to be identified as serving charitable purpose or as a historic monument.

However, under the IHL some religious places may obtain more far-going protection. They may be protected as world and national heritage by specialized IHL conventions. Among others, under Article 1 of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter: UNESCO Convention)[36] "cultural property" includes:

1. movable or immovable property of great importance to the cultural heritage of a nation, for example, monuments of architecture, art or history, whether religious or secular; complexes of buildings of historical or artistic importance in themselves; works of art, manuscripts, books and other objects of artistic, historical or archaeological importance, as well as scientific collections and important collections of books, archives or reproductions of the above-mentioned property;
2. centres containing a significant amount of cultural property as defined in subparagraph (a). a) and b), hereinafter referred to as „historic sites".

Contrary to, the Hague Regulations under the UNESCO Convention religious sites are protected if they themselves constitute cultural property[37]. However, if they do not constitute such property, they are entitled to protection as civil rights. Under Article 4 of the Convention parties to that law must refrain from using such property and its immediate surroundings and the means intended for the property protection for purposes that might expose them to destruction or damage in the event of armed conflict, and from committing any hostile acts against it. This protection applies also in case of imperative military necessity. Decision on relying on the necessity is made by the officer commanding a unit equivalent to a battalion or larger, or a force smaller in size where circumstances do not permit otherwise. Such a decision may be made as long as that cultural property, by its intended use, has been transformed into a military objective and there is no other practicable way of achieving a similar military advantage to that afforded by directing an enemy attack against it, and the necessity may be

[36] *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict,* 14 May 1954, 249 U.N.T.S. 240.

[37] On the scale of Ukrainian heritage places destroyed by Russians and the EU's support to Ukraine in A. Główczewska, *The European Union's policy towards the destruction of Ukrainian cultural heritage: selected aspects of EU-Ukraine cooperation* [in:] *EU-NATO and the Ukrainian status-quo: panel discussion*, O. Balatska, E. Balashov, A. Khudoliy (eds.), Ostroh 2024, pp. 15–17, DOI:10.25264/5.03.2024

invoked only if and for as long as there is no possible choice between such use of the cultural property and another practicable method of obtaining a similar military advantage. This high degree of a decision level and a reference to imperative military necessity (not to military necessity) proves the importance of this form of protection.

Finally, it has to be stressed that Article 28 of the UNESCO Convention requires each State Party to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention. Szpak correctly notes that the 1999 Protocol II to this Convention expanded and clarified these provisions[38]. She underlined that any person commits an offence within the meaning of the Protocol if, intentionally and in violation of the 1954 Hague Convention or this Protocol, that person commits any of the following acts:

1. makes cultural property under enhanced protection the object of attack;
2. uses cultural property under enhanced protection or its immediate surroundings in support of military operations;
3. causes widespread destruction or combats cultural property protected under the Convention or this Protocol;
4. makes cultural property protected under the Convention and this Protocol the object of attack;
5. commits theft, pillage, misappropriation, or acts of vandalism directed against cultural property protected under the Convention.

Protocol I Additional to the Geneva Conventions relating to the Protection of Victims of International Conflicts of 1977 establishes as a war crime the directing of attacks against historical monuments, works of art or religious places, clearly recognised as constituting the cultural or spiritual heritage of nations and which have been granted special protection by virtue of a separate agreement[39]. Finally, also Article 8 of the Rome Statute considers as war crimes attacks on buildings dedicated to religion or charitable purposes, and historic monuments[40]. Also Article 3(d) of Updated Statute of the International Criminal Tribunal for the Former Yugoslavia gave the Tribunal the power to prosecute persons violating the laws or customs of war, including seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science. Hence, it can be said that protection of places of worship is an important part of the IHL.

[38] A. Szpak, *Międzynarodowe prawo humanitarne*, Toruń 2014, pp. 327–330.

[39] *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 U.N.T.S. 3.

[40] *Rome Statute of the International Criminal Court,* 17 July 1998, 2187 U.N.T.S. 3.

Summary

The speed and scale of the Russian military invasion on Ukraine, the numbers of deaths and injuries, as well as an issuance on 5 March and 24 June 2024 a pre-trial chamber of the ICC issued warrants of arrest for four individuals has convinced the ECtHR to find Russian jurisdiction in the MH17 case. The Court has used the case also to examine a relationship between the IHL and human rights.

The ECtHR found that killing and torturing believers of different religions (including Christian communities other then UOC-MP, Muslims, and Jehovah's Witnesses), confiscation of religious materials and prohibition of reproducing them, confiscation of places of worship to use them for other purposes, and limiting right to worship other than that of the UOC-MP violated freedom of religion protected under Article 9 of the ECHR. These reflections were made after recalling the importance of the IHL laws. This clearly re-confirms that "the Court's case-law demonstrates that the specific provisions of international humanitarian law do not displace Convention guarantees in situations of armed conflict. Rather, they are used as an interpretative tool when determining the scope of human rights guarantees in such situations." (para. 428 of the MH17 case).

The Court also clearly declared that even a general non-discriminatory violence can make several infringement "layers". In such a combination of violations of human rights, in the MH17 case some groups of persons were exposed to higher degree of violence, because of "their positions as leaders of religious communities".

The Court confirmed that Article 9 of the ECHR can be applied "by itself" also to military conflict. Regrettably, this is the weakest point in the ECtHR argumentation. In conclusions the Court merely referred to "an accumulation of identical or analogous breaches of Article 9 of the Convention between 11 May 2014 to 16 September 2022, but it left it unclear whether the judgment would have been the same had the total number and scale of violations been smaller, and by how much smaller they would have had to be for the ECtHR to find otherwise than in the judgment under review.

The Court has not awarded compensation. Nevertheless, it noted that any future award to Ukraine would have to have due regard to the establishment of the Register of Damages by the CoE, and the ongoing discussions concerning a future compensation mechanism.

Bibliography

References

Law

African Charter on Human and Peoples' Rights ("Banjul Charter") (CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), https://www.refworld.org/legal/agreements/oau/1981/en/17306 [accessed: 4.03.2026].

Charter of Fundamental Rights of the European Union (Consolidated text EU OJ C 202 of 7.6.2016).

Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ EC L 212 of 7.8.2001).

Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ EU L 71 of 4.3.2022].

Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287.

Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 U.N.T.S. 240.

International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, UNTS, vol. 999, p. 171 and vol. 1057, p. 407.

PACE Resolution 2436 (2022) on The Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes. *Text adopted by the Assembly* on 28 April 2022 (15th sitting).

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 U.N.T.S. 3.

Regulations concerning the Laws and Customs of War on Land, annexed to the 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land, 18 October 1907.

Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe (Adopted by the Committee of Ministers on 16 March 2022 at the 1428ter meeting of the Ministers' Deputies).

Rome Statute of the International Criminal Court, 17 July 1998, 2187 U.N.T.S. 3.

The 1950 European Convention on Human Rights and Fundamental Freedoms (ETS No. 005).

The Universal Declaration of Human Rights, the General Assembly resolution 217 A (III) of 10 December 1948, Paris.

Case law

Judgement of ECtHR, 12 December 2001, Application no. 52207/99, Banković and Others v. Belgium and Others, Reports of Judgments and Decisions 2001-XII.

Judgement of ECtHR, 16 November 2004, Application no. 31821/96, Issa and others v. Turkey.

Judgement of ECtHR, 27 September, Application nos. 1995, 18984/91, McCann and Others v. the United Kingdom, 18984/91.

Judgement of the ECtHR, 10 June 2010, Application no. 302/02, Jehovah's Witnesses of Moscow and Others v. Russia.

Judgement of the ECtHR, 14 January 2021, Application nos. 20958/14 and 38334/18, Grand Chamber Admissibility Decision in the case of Ukraine v. Russia (re Crimea).

Judgement of the ECtHR, 14 June 2007, Application no. 77703/01, Svyato Mykhaylivska Parafiya v. Ukraine.

Judgement of the ECtHR, 18 December 1996, Application no. 15318/89, Loizidou v. Turkey.

Judgement of the ECtHR, 21 January 2021, Application no. 38263/08, Georgia v. Russia (II).

Judgement of the ECtHR, 26 October 2000, Application no. 30985/96, Hasan and Chaush v. Bulgaria.

Judgement of the ECtHR, 7 June 2022, Application no. 32401/10, Taganrog LRO and Others v. Russia.

Judgement of the ECtHR, 8 July 2004, Application no. 48787/99, Ilaşcu and Others v. Molova and Russia.

Judgement of the ECtHR, 9 July 2025, Application nos. 8019/16, 43800/14, 28525/20 and 11055/22, Ukraine and the Netherlands v. Russia.

The I.C.J., 19 July 2024, Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, I.C.J. Reports 2024.

Literature

Czapliński W., Wyrozumska A., *Prawo międzynarodowe publiczne: zagadnienia systemowe*, Warszawa 2014.

Główczewska A., *The European Union's policy towards the destruction of Ukrainian cultural heritage: selected aspects of EU-Ukraine cooperation* [in:] *EU-NATO and the Ukrainian status-quo: panel discussion*, O. Balatska, E. Balashov, A. Khudoliy (eds.), Ostroh 2024, DOI:10.25264/5.03.2024

Hathaway O. A., Levitz P., Nielsen E., Nowlan A., Perdue W., Purvis C., Solow S., Spiegel J., *Human Rights Abroad: When Do Human Rights Treaty Obligations Apply Extraterritorially?*, "Arizona State Law Journal" 2011, vol. 43.

Łubiński P., *Rozdział 7. Ochrona ludności cywilnej ochrona uchodźców* [in:] *Międzynarodowe prawo humanitarne konfliktów zbrojnych*, D. R. Bugajski, Z. Falkowski, P. Łubiński, M. Marcinko, K. Sałaciński, M. Żeligowski, P. Łubiński (eds.), Warszawa 2014.

Marcinko M., *Główne założenia międzynarodowego prawa humanitarnego konfliktów zbrojnych* [in:] *Międzynarodowe prawo humanitarne konfliktów zbrojnych*, D. R. Bugajski, Z. Falkowski, M. Marcinko, K. Sałaciński, M. Żeligowski, P. Łubiński (eds.), Warszawa 2014.

Predko O., Ptytsia M., *Religious Faith in the Context of the Russian-Ukrainian War: Challenges and Risks*, „Occasional Papers on Religion in Eastern Europe" 2025, no. 6.

Szpak A., *Międzynarodowe prawo humanitarne*, Toruń 2014.

Wanner C., *How Russia Weaponized Religion in the War on Ukraine*, November 6, 2024.

Reports

Institute for Religious Freedom; S. Shumylo, The Crisis in Ukrainian Orthodoxy: Trends, Challenges and Possible Ways of Overcoming, 11 November 2024.

Office of the United Nations High Commissioner for Human Rights (OHCHR), *Situation of human rights in the temporarily occupied territories of Ukraine, including the Autonomous Republic of Crimea and the city of Sevastopol: report of the Secretary-General, 1 July–31 December 2025*, 2026.

OHCHR, *Forced Displacement from Territory of Ukraine Occupied by the Russian Federation*, 2026.

OHCHR, *Report on the Human Rights Situation in Ukraine, 1 December 2024–31 May 2025*, 30 June 2025.

OHCHR, *Report on the Human Rights Situation in Ukraine, 1 June–30 November 2025*, 9 December 2025, para. 105.

OHCHR, *Situation of Human Rights in the Temporarily Occupied Territories of Ukraine, 1 July–31 December 2025*, 2026.

United States Commission on International Religious Freedom (USCIRF), *Russia's Religious Freedom Violations in Ukraine*, Washington, D.C.

USCIRF, *Annual Report 2026*, Washington, D.C. 2026, chapter "Russia".

USCIRF, *Russia Country Update*, Washington, D.C.