

**Анатолій Федорович Крижановський**

*Національна академія правових наук України  
Харків, Україна*

*Кафедра загальної теорії права та держави  
Національний університет «Одеська юридична академія»  
Одеса, Україна*

**Ірена Анатоліївна Бальжик**

*Кафедра загальної теорії права та держави  
Національний університет «Одеська юридична академія»  
Одеса, Україна*

## **КОНЦЕПТУАЛІЗАЦІЯ ЦЕРКОВНОГО ПРАВОВОГО ПОРЯДКУ В СУЧАСНІЙ ДЕРЖАВІ**

**Анотація.** У статті аналізується церковний правовий порядок як складник загальносоціального правового порядку. Визначено, що унікальна природа церковного права та церковного правового порядку є основою для нового прочитання проблеми співвідносності духовного та юридичного начал життя суспільства. За допомогою комплексу сучасних методологічних підходів проаналізовано Святе Письмо та Святе Передання, кодекси канонів та соціальні концепції православної та католицької церков, твори богословів, національне законодавство та міжнародні правові акти, дані соціології, матеріали преси. Церковний правовий порядок, як і загальносоціальний, сполучається з духовністю у тому, що до сфери духовного відносяться усі інтелектуальні і моральні сили людини, її прагнення до свободи та порядку. Осягаючи духовні витoki права і правового порядку, автори виходять з того, що вони є, перш за все, духовною цінністю. Функціонування церковного правового порядку є аргументом у протистоянні тим доктринальним позиціям, які виводять правовий порядок із закону і законності, та акцентує апеляцію до права як його дійсного і надійного підґрунтя. Тому поняття правового порядку і церковного правового порядку співвідносяться як взаємопов'язані, але при тому й відмінні явища. Правове регулювання церковних правовідносин має подвійну природу. Воно здійснюється як правовими актами церкви, так і законодавством держави. Така подвійна залежність створює вразливість церковного правового порядку від характеру і якості світського законодавства. Так само амбівалентний характер має суб'єктна структура церковного правового порядку. В Україні, як у поліконфесійному суспільстві, окремий (автономний) церковний правовий порядок є властивим кожній конфесії. Взаємовідносини, відмінності між конфесіями, взаємодія чи протиріччя між ними так чи інакше впливають на стан церковного правового порядку у суспільстві, а також – на загальносуспільний правовий порядок у цілому

**Ключові слова:** міжнародний правовий порядок, церковний правовий порядок, церква, канонічне право, церковне право, духовність

**Anatolii F. Kryzhanovskyi**

*National Academy of Legal Sciences of Ukraine,  
Kharkiv, Ukraine*

*Department of General Theory of Law and State  
National University "Odesa Law Academy"  
Odesa, Ukraine*

**Irena A. Balzhyk**

*Department of General Theory of Law and State  
National University "Odesa Law Academy"  
Odesa, Ukraine*

## **CONCEPTUALISATION OF THE CHURCH LEGAL ORDER IN THE MODERN STATE**

**Abstract.** *The article analyses the church legal order as a component of the general social legal order. It is determined that the unique nature of ecclesiastical law and ecclesiastical legal order is the basis for a new reading of the problem of the relationship between the spiritual and legal principles of society. With the help of a set of modern methodological approaches, the Holy Scriptures and Holy Tradition, codes of canons and social concepts of the Orthodox and Catholic Churches, works of theologians, national legislation and international legal acts, sociological data, press materials are analyzed. The ecclesiastical legal order, and the general social one, is combined with spirituality in that the sphere of the spiritual includes all the intellectual and moral forces of man, his desire for freedom and order. Comprehending the spiritual origins of law and the legal order, the authors assume that they are, above all, spiritual value. The functioning of the church legal order is an argument in opposition to those doctrinal positions that derive the legal order from the law and legality, and emphasises the appeal to the law as its real and reliable basis. Therefore, the concepts of legal order and church legal order are correlated as interrelated, but at the same time different phenomena. Legal regulation of church relations has a dual nature. It is carried out both by legal acts of the church and by the legislation of the state. Such a double dependence creates a vulnerability of the church legal order to the nature and quality of secular law. The subjective structure of the church legal order is also ambivalent. In Ukraine, as in a multi-confessional society, a separate (autonomous) church legal order is inherent in each denomination. Relationships, differences between denominations, interaction or contradictions between them in one way or another affect the state of the church legal order in society, including – the general legal order*

**Keywords:** *international legal order, church legal order, church, canon law, church law, spirituality*

## **INTRODUCTION**

The stable life of society, organised on the principle of the rule of law, is a goal for a modern state organisation and a reference point for the development of the legal system. In the legal dimension, such an organisation of public life can be called a legal order. The objective content of the legal order is set by the whole system of social relations, the system of values of society, which, refracted through the law, become legal values. In turn, the spiritual origins of the legal order lie not only in purely legal matters, but also in other socially supported social regulators and values. Among them, religion and related phenomena, processes and relations continue to play an important role. In Ukrainian society, the church traditionally retains a high authority: according to the latest sociological research, 64% of Ukrainian citizens trust it [1]. Therefore, adherence to religious norms and norms of church law plays a significant role in shaping the legal order in Ukraine. The ecclesiastical legal order arises and functions within the framework of the general social (national) legal order, and, consequently, receives from it defining features and characteristics. The development of the legal system in the Ukrainian lands, as well as in other regions of Europe, is integral to ecclesiastical law. If the legal norms based on customs differed significantly in different regions, the norms of ecclesiastical law were the same everywhere, which laid the foundation for the development of a single legal system with common ideas about the legal order.

At the same time, the fact of the church legal order illustrates the diversity of manifestations of the legal life of society, allows the understanding of law beyond its positivist vision, characterises the legal system of modern society as a complex, multilevel phenomenon. The functioning of the ecclesiastical legal order is an argument in opposition to those doctrinal positions that derive the legal order exclusively from law and legality, and emphasizes the appeal to law as its real and reliable basis. Therefore, it is important to correctly correlate these interconnected, but also different phenomena – the legal order and the church legal order.

The topic of the article stated by the authors corresponds to several categories of jurisprudence, namely such as: formal and informal legal order, religious legal system, church law. Research on these categories of

jurisprudence in recent years has to some extent addressed the issue of ecclesiastical law. In the monograph "The Catholic Church and International Law" [2] proves that the Catholic Church, as a social structure and a special legal order, plays an important role in international law. In particular, he highlighted the legal nature of the Catholic Church and its international legal doctrine, the activities of Catholicism in the international arena and its impact on the development of international law and international relations. However, the issue of canon law and order in the monograph is devoted to relatively modest attention [2]. About canon law as a separate legal order, correlated with international public law, and church law as a legal order, correlated with state law, writes V. Lastovskiy [3, p. 150]. However, these works give the impression that their authors identify the concept of legal system and legal order.

The dissertation of O. Melnychuk does not directly analyse the phenomenon of church law, but the author draws an important conclusion about the most favourable model of state-confessional relations, which will not have a devastating effect on national cultures, and at the same time will ensure the individual's right to freedom of religion, namely, the model of autonomy of the state and the church, where the church by its status is an institution of civil society [4]. The rule of law as a component of the religious legal system is to some extent covered by D. Lukianov in his monograph, however, outside the study of this scholar remained specific features of church law and order [5]. It is worth noting that in more than 60 dissertations defended during the independence of Ukraine on church law, church-state relations, etc. [6], the question of the essence, components or features of the church legal order was not raised.

Canon law in most European countries is an integral part of the European legal order. At the same time, the concept of the legal order in the Western legal tradition is somewhat different from that in the national legal doctrine. It is often narrowed down to a set of legal guidelines in force in a given society, or to an analysis of the sources of law. In particular, this is how the church law is represented by C. Gallagher, who studies the doctrinal foundations of the church law on the example of Rome and Byzantium [7]. The historical and legal context of the role of the Roman Catholic Church in the formation of the rule of law based on the rule of law is studied by Ch. North, C. Gwin [8, p. 127]. The question of the limits of the church's intervention in the formation of normative bases of the legal order, in particular, in lawmaking and precedent lawmaking [9], remains debatable. However, in general, the problem of determining the nature, foundations and features of the church legal order in foreign jurisprudence was not raised. In the situation of the existence of church schism in the Orthodox Church in Ukraine, the issue of the church legal order becomes especially important.

The purpose of this article is to define origins, nature and manifestations (signs) of the church legal order – determined the complex nature of the research methodology.

## 1. MATERIALS AND METHODS

The ecclesiastical legal order, like the general social one, must be based on the pluralism of legal sources, first of all on those that have their origins in natural law, on the standards of human rights and freedoms recognised by the civilized world. Therefore, the source of the research presented in this article was the Holy Scriptures and Holy Tradition, codes of canons and social concepts of the Orthodox and Catholic Churches [10], works of theologians, national legislation and international legal acts, sociological data, press materials.

The methodological basis of the study is a combination of classical (historical, formal-legal, comparative-legal, theological-philosophical methods) and modern (phenomenological, anthropological and synergetic approaches and hermeneutic, statistical and systemic methods) methodology. Understanding the church legal order in Ukraine, a phenomenon that has deep socio-cultural and historical origins, requires reference to its historical roots, which leads to the use of the historical method, which uses the techniques of retrospection, historical comparison, historical analogy, historical typing and historical periodisation. The formal-legal method is necessary to clarify the provisions of national law and international law, and also allows to clarify the content of ecclesiastical law, as the basis of ecclesiastical law, in particular, the Code of Canon Law of the Latin Church in 1983, Books of the Rules of the Holy Apostles, the Holy Ecumenical and Local Councils, and the Holy Fathers, including concordats and other international treaties concluded in the interests of the church.

The comparative law method was used to identify common and different in understanding the legal order in the doctrines of different Christian churches. The axiological approach was useful for understanding the values and social significance of the church legal order. The hermeneutic method is an assistant in clarifying the content of ecclesiastical and legal guidelines in their historical and modern context for understanding both ecclesiastical and public legal order. In addition, to clarify the content of the provisions of ecclesiastical law used the method of exegesis, used in the interpretation of Scripture, reference to the works of the holy fathers. The phenomenological approach unfolds the legal order as a specific legal reality, the form

of existence of which is characterised by the overflow of the legal order (system of established in society, dominant legal relations) in the public consciousness.

Anthropological approach puts the subject of law at the center of legal development and is the basis for the formation of modern legal order. Synergetic approach was useful for characterising the self-organising nature of the legal order as a socio-legal system. It is the synergetic projection of the legal order that is able to reveal its new substantive aspects, which can thoroughly update the modern theory of the legal order, including the ecclesiastical one. The use of methods of analysis and synthesis allowed analysing the theological and legal nature of the church. Theological and philosophical method has opened up the possibility of analyzing the social teachings of the Catholic and Orthodox Churches, which are the substantive basis of the Church's activities in the international arena and its doctrinal approaches in international law, which means and regulates relations between participants in international communication. Within the framework of the theological and philosophical method, the principles of building an international order on the basis of natural international law and ethical guidelines of Christian churches are also considered. The systematic method was used in the study of the peculiarities of the status of Christian churches in international law. The statistical method was used to generalise the processes associated with the existence of the church legal order, to illustrate the facts of international treaties, the participation of representatives of Christian churches in international organizations, the peaceful settlement of international disputes and interreligious dialogue.

## 2. RESULTS AND DISCUSSION

### *2.1. Category of church law and order in the context of law and order*

The ecclesiastical legal order, as a component of the general legal order, is a necessary precondition and a real legal background for the civilised functioning and development of human society. Like the whole order in society, the legal order is not only proper or possible, but most importantly – the actual quality of everyday legal life of society. The factuality (i.e. the presence here and now) of the legal order is evidence of the implementation in real life of the categorical legal imperative of Kant, according to which “it is necessary to act so that the free expression of your will is compatible with the freedom of everyone in accordance with universal law.” (Since I have deprived the will of every impulse that could arise for it from obeying some law, nothing is left but the conformity of actions such as with universal law, w which alone is to serve the will as its principle, that is, I ought never to act except in such a way that I could also will that my maxim should become a universal law) [11, p. 14-15]. As established in the coordinates of law order, security and predictability of social life of individuals, social groups and society as a whole, the legal order is an important social and personal need, and hence value. In the conditions of correlation of human existence in the coordinates of the proper and the existing, the legal order unfolds from the proper (law) to such a real being, which is real, embodied in the dominant human societal law-abiding behavior, and constitutes a certain, law-based system of social life. “Law and order – says Yu. Oborotov – acts as a semantic purpose of law, which is achieved by ensuring the stability of human existence” [12, p. 6]. As a real state of the legal order achieved by the society of its vital activity, the legal order permeates all its spheres, reveals the most important aspects of the influence of law on social life. It is through the legal order is the interaction of law and other spheres of public life – economic, social, political, and even spiritual. Being constantly under pressure from these areas, the legal order, due to the recurrence of certain models of human behavior, transforms single and to some extent random lawful behavioral acts in the established matter of social interaction on a legal basis. Thus, the legal order is formed under the influence of all components of public life, as a point of intersection of legal interests of social communities, individuals and other various subjects of law, as a result of interaction of different types of legal behavior and relations of participants.

The modern legal order is a complex structured, multilevel, infrastructurally branched socio-legal phenomenon. It covers all aspects of the legal life of society, consolidating its fragmented parts and aspects into a relatively unified and holistic picture of the structure and functioning of the legal sphere. The legal order manifests itself in the coordinates of the state (national legal order), as well as at the interstate level – integrative and international legal order. In modern conditions, the interaction, flow, and even combination of these legal orders is increasingly manifesting itself. The national legal order is closely related to the legal and institutional infrastructure of a particular state-organised society, and reflects the historical and social features of its legal development.

The state of the legal order serves as a certain background, or “legal climate”, in which the life of individuals and society as a whole takes place. Lack of proper legal order, chaos and the dominance of various manifestations of disorder have a destructive effect on life, consciousness, and even human health. Therefore, because in the period of wars, interethnic conflicts or other social disturbances, the established order of society

suffers, the quality of life achieved by society decreases sharply, and the spiritual sphere of life suffers. Negative results can affect the minds of several generations of people, and overcoming them takes many decades. Therefore, the legal order with good reason can be attributed to the phenomena that are vital to man and society. This means that the legal order is related to the vitality of man, as a set of innate qualities and abilities that ensure his life in nature. Taken in the vital dimension, man acts as a living, corporeal being, as an organism under the rule of natural laws and subject to the mechanisms of biological determination. As an individual, i.e. as an indivisible part of nature, man does not have freedom in the socio-ethical sense, but depends entirely on the requirements of natural necessity, which affects the natural processes occurring in the body and human consciousness [13]. In this sense, natural processes are the most powerful determinants of the organisation of human life and society, including in the legal sphere. Therefore, law and the legal order will be perceived by man as necessary when they are defined as “natural”, i.e. those that do not contradict the natural imperatives of human existence. It is in this capacity that the legal order becomes relevant to the functioning of the spiritual sphere. According to the apt remark of I. Ilyina, the legal order embodies “law in its main essence, and is necessary for man the image of his spiritual life on earth, or otherwise: it is a necessary form of” meeting “the supreme good and the human soul” [14, p. 232]. And it is clear that such a search for the spirit of all and for all forces the will to focus with special force on creating a general and legal order [14, p. 236]. Progress, human approach to law and free existence in its parameters are not a one-time act: “It is possible for an animal to completely renounce the law; it will carry out the triumph of naive power. It is impossible for a person as a creator of the economy to live outside the law, but it is possible to limit one superficial appearance of law, one scheme of law, cultivating and applying bad and unjust “positive norms”. Only a person as a creator of spiritual life has access to normal legal consciousness, only he is given the search and finding the right law, because only he is open to the purpose of law and its living source [14, p. 236].

## *2.2. The spiritual nature of the church law and order*

The ecclesiastical legal order, and the general social one, is combined with spirituality in that the sphere of the spiritual includes all the intellectual and moral forces of man, his desire for freedom and order. Comprehending the spiritual origins of law and order, we must proceed from the fact that they are, above all, spiritual value. And although the material form (texts of laws, constitutions, other legal acts – what is called “letters of the law”) the existence of law is an important feature of it, no less important is what constitutes the “spirit of law” – all that does not always have textual-material embodiment, but, thanks to the expression of the ideals of goodness and justice serves as a reliable means of distinguishing between right and wrong. Similarly, according to Maximus the Confessor, the ideals of the righteous life of man, created in the image and likeness of God, are articulated in commandments, rules and laws. They are not imposed by some foreign force, external to humanity [15, p. 42, 52].

From this will receive the spiritual origins of law and the legal order – those interrelated moral principles on which the law is based, and according to which the legal order is formed. Therefore, the preservation and maintenance of the rule of law does not violate the autonomy of the individual: fulfilling the requirements of the law, he does not force himself and is not afraid of coercion, because she seeks the same goal, which serves the law. The issue of the spiritual in relation to law is unfolding and deepening in the context of understanding the unique nature of ecclesiastical law and ecclesiastical legal order. The church as a social institution is a subject of legal life in various forms and manifestations. As noted by L. Skene and M. Parker, the role of the church, for example, in the development of law is manifested in the fact that some politicians vote for a bill according to their religious preferences, or the church acts as a lobbyist for certain bills, or even interferes in the judiciary [9, p. 215]. And the limits of such interference are quite sensitive matter. An example of this is the reaction of Polish society to recent changes in abortion legislation, which were introduced under pressure from the Catholic Church [16].

Functioning in the coordinates of secular law gives rise to a wide range of legal relations of the church, its components with state institutions in the public law sphere, as well as with other subjects of law – in private law. The nature of the ecclesiastical legal order derives from the uniqueness of ecclesiastical law – its special subject, which does not coincide with the subject of national law, inherent in ecclesiastical law extraterritoriality of legal regulation. Another “ordering” feature of church law – the specific methods of rule-making and the nature of the impact of its rules on social relations in order to streamline them. Internal ecclesiastical law, and the legal order created under its influence, do not have a close relationship with state power, as is inherent in secular law. However, the church legal order is an integral part of the general legal order, and if internal relations and processes in it do not conflict with secular law, the state does not interfere in this area.

The status of ecclesiastical law has another aspect that manifests itself not only in terms of influence on the church, but also on the general legal order. This is a phenomenon called “external” ecclesiastical law. History has known that the church was outlawed, as was the case in ancient Rome under Emperor Nero or in communist Albania under the 1976 Constitution. However, the norm was the existence of religion in the legal field, which was formed by state legislation, which enshrined the legal status of the church in society. The legal order both in society and within the church largely depends on the extent to which state legislation accurately and adequately regulates the church's relations with the state and society. This is evidenced by the legislative experience of post-Soviet countries, which were forced to start a “new page” in relations between the state and the church after their independence. Different, rather different vectors of creating a normative-legal basis for the functioning of denominations were reflected here: if in the former Baltic Republic the legislative models that existed there before the Soviet annexation were used, in Ukraine the legislator focused on the USSR law. “On Freedom of Conscience and Religious Organisations” [17]. Such different starting positions largely determined the nature and content of the legal consolidation of the legal status of the church, its functions in society and the specific features of its relations with the state.

Interestingly, the legislation of Ukraine has not used the term “church” for a long time, giving different meanings to religious communities. The peculiarities of the attitude to the church in the conditions of sovereign Ukraine had the specificity that the negative consequences of the religious (more precisely – anti-religious) policy of the Soviet period acquired special significance here. The specificity of the legislation of Ukraine is manifested in the fact that the state registration of the statutes of religious associations in general (churches, dioceses) is not provided. Certain rights of churches are ensured by the registration of the statutes of their centers (metropolitanates, diocesan administrations, consistories, centers). The current model of state-church relations in Ukraine demonstrates the weakness of the power vertical, and the concentration of powers to regulate the religious sphere in the hands of local administrations has identified marked regionalism in the development of relations between government and religious denominations, which also manifests itself in different ways through the state of the legal order in this area.

### *2.3. The ratio of ecclesiastical and secular law*

The problem of the relationship and interaction of ecclesiastical and secular law is of great importance in the context of the formation of the legal order in society. The situation in this area cannot yet be described as optimal. The shortcomings of secular law do not contribute to the optimal organization of social relations in the functioning of the church, and, consequently, affect the state of law and order in society as a whole and in the church-legal sphere. With regard to lawmaking in the religious sphere, the following should be emphasized: this activity requires not only high professional and legal competence, “jewelry” use of legal techniques and technologies, but also deep knowledge of the religious situation, as well as wisdom and tolerance. The principle of “do no harm” by analogy with medicine is just as important in the extremely sensitive area, which is the religious and ecclesiastical sphere.

The specificity of the church legal order is determined by the following: the church as a special social organism is a complex structural entity consisting of believers, church ministers, its self-government and administration, and therefore seeks internal unity, integrity and order. Church law as a set of norms and rules aims to ensure these characteristics of church life. The internal legal order in the church is legal in nature and ecclesiastical in form. The church legal order is a multilevel, multi-element development that combines legal orders in parishes, monasteries, fraternities, sororities, and spiritual educational institutions. The primary creator and bearer of the church legal order is a parishioner (believer), including a clergyman – a minister of the church. Church law in Ukraine is a long-term factor in state-and-law-making, and the church itself is an important subject in the development of original cultural and spiritual foundations of consciousness and existence of Ukrainian society. In the orbit of ecclesiastical law there are a large number of organizations, institutions, individuals who in one way or another influence the state of the legal order in a particular territory of the country or region. But ecclesiastical law also applies extraterritorially. The canonical territory of the church often goes beyond the territory of the country, which also characterises both the configuration and features of the functioning of the church legal order.

Speaking of the legal order, it should be considered from a teleological standpoint. And here the whole church and secular authorities diverge. The main goal of the church is not to achieve social justice, but to warn people about divine justice. The purpose of the church is not to call for righteousness, but to tell of the divine righteousness of Jesus Christ, not to point out who to choose in elections, but to point out the One who chose many for eternal life. An important feature of the ecclesiastical legal order is that the norms and principles of ecclesiastical law are moral and imperative, and can not, as is typical of legal precepts, be provided by physical coercion or means of economic (fines, etc.) coercion. Observance of the norms of church law is ensured by

their authority, and by moral and spiritual means. Nevertheless, being a law in the true sense, ecclesiastical law is a system-forming factor both in relation to the ecclesiastical and in relation to the general legal order. As a special independent system of law that is different from the law of the world and is not related to it, church law has its own structure. To characterise the ecclesiastical legal order, the division of ecclesiastical law into internal and external ecclesiastical law is decisive.

For the development of the legal order – both ecclesiastical and public, it is important that ecclesiastical and secular law have a significant common history: they exist as organic components of mononorms in pre-state society. Further distinction and transformation of each type of social norms has its own special trajectory, which is determined by their specific nature, purpose and functional characteristics. However, this “primordial”, “genetic” connection of religious and legal norms is crucial in understanding the ordering of public life, including modern. For secular law, and thus to achieve the desired level of general legal order, of great importance is preserved by ecclesiastical law, its close connection with moral and spiritual values and norms. This feature of ecclesiastical law should be used as a potential for law enforcement influence on public life. A striking example of the “integrative” nature of religious norms are the Ten Commandments, which combine “religious imperatives”, “moral imperatives” and the most important imperatives of law.

Extremely interesting in terms of the peculiarities of the influence of ecclesiastical law on the development of ecclesiastical legal order are the ways of formulating (legal technique) legal prescriptions in ecclesiastical law. This is in line with the essence of the church as a union based on religious faith and sustained by the power of persuasion. Church laws are usually drafted and formulated not so much in the imperative tone of secular laws as in the form of rules that persuade and instruct, that is, affect the will through conscience. This way of formulating church law corresponds to the unique sanctions used here, which threaten the offender – the wrath of God, heavenly punishment or disciplinary punishment imposed by the church itself (excommunication from its community).

#### *2.4. Church law as a component of public law*

To understand the nature and complex structure of the ecclesiastical legal order, it is necessary to proceed from the classification of the right to civil (secular) and ecclesiastical (canonical) formed in the Middle Ages. At the same time, church law itself, depending on the source, is divided into Divine law, based on a clearly expressed Divine will, and positive, or ecclesiastical, law in the narrow sense of the word, based on legislative acts of the Church itself. In addition, depending on whether the law regulates the internal life of the Church or its relations with other social and political entities, distinguish between internal and external ecclesiastical law. The division of ecclesiastical law into written (written by the legislature) and customary (unwritten, which is preserved by tradition and custom) is used. Finally, ecclesiastical law is divided into general law, which includes laws binding on the World Church, and private law, which constitutes legislation that applies to individual local churches. These components of church law are likely to be reflected in the structure of church law.

Thus, the church legal order, which arises and operates in society, is an integral element, part of the general (national) legal order. As a component of the general legal order, the church legal order bears the imprint of history, culture, morals, customs and traditions of a particular society. This becomes obvious when comparing the realities of Ukraine and its immediate surroundings. On the other hand, the peculiarities of the development of church life in Ukraine in the absence of national statehood for a long time also left its mark on its configuration. And despite the fact that polyconfessional Ukraine in modern conditions sometimes leads to social tensions and conflicts, such a model of institutionalisation of the church system is one of the safeguards against the spread of totalitarianism and autocratic political and legal regime in government.

The ecclesiastical legal order receives the distinction of sacredness, which comes from all the specifics of the church life of clergy and the community of believers, internal and external relations in the church, the specific features of legal regulation and others. For example, the special composition of the subjects of ecclesiastical law and legal order, their unique legal status is brightly colored by the fact that obtaining ecclesiastical legal personality is preceded by the performance of certain religious sacraments (baptism, anointing, ordination). These sacraments, conditioned upon their special procedure and design, are deeply engraved in a person's mind, and significantly affect his future life and behaviour. Therefore, all relations between the subjects of ecclesiastical law, not only within the church life, but also outside it, are marked by these features of attachment to the religious community. The presence in the minds of religious beliefs and knowledge, which modifies communications and relations between participants in church relations, affects the meaningful behavior, and as a result – the formation of both ecclesiastical and secular legal order. The sacredness of religious sacraments has a dual nature – on the one hand, they belong to dogmatic theology, and

on the other hand, the procedure for their implementation belongs to church law, has a legal nature, and, embodied in the lawful conduct of church life, is already an element of church legal order.

## CONCLUSIONS

Thus, the church legal order has the following characteristics and features that distinguish it from other types of legal order:

1. Legal regulation of church relations has a dual nature. It is carried out both by legal acts of the church and by the legislation of the state. Such double dependence creates vulnerability of the church legal order to the nature and quality of secular legislation, and sometimes leads to aggravation of conflicts in relations between denominations. This requires a special sensitivity of the “secular” legislator to the processes that are developing in the church life of the country.

2. Another feature is the partial influence of the state and its law enforcement institutions on the formation and maintenance of the church legal order. The main burden of ensuring the church's legal order is borne by the institutions of the church – its bodies, clergy, the community of believers and others. The role of state institutions in ensuring the rule of law is manifested in the external relations of the church with society, as well as in the observance by believers of the laws of the country.

3. The subjective structure of the church legal order is ambivalent. As noted, the subjects of ecclesiastical law are believers, church ministers, its officials and church self-government bodies. On the one hand, these are, as a rule, citizens of Ukraine who must observe secular law, and thus create a general legal order. On the other hand, a significant part of their lives takes place in the field of functioning of church law, i.e. against the background of the church legal order. Thus, those social roles that carry certain social strata, manifest themselves in the various legal orders that they create at this time.

4. The subjective composition of the church legal order forms its horizontal-vertical structure. “Horizontally” the church legal order is a set of legal orders of its bearers – believers, ministers, hierarchs of self-government bodies and other structural entities. The prevailing opinion in the literature is that ecclesiastical law, in contrast to public law, is not territorial but personal. At the same time, the legal order has a certain connection to the territory – the boundaries of the church community, the diocese, etc.

5. The lawful behaviour of the subjects of ecclesiastical legal relations is of a dual nature for the ecclesiastical legal order: observance and execution of secular law by believers and clergy are a factor in maintaining both the general legal and ecclesiastical legal order. On the other hand, the “secular” offenses of the faithful have a negative impact on both the state of public law and the church.

In Ukraine, as in a multi-confessional society, a separate (autonomous) church legal order is inherent in each denomination. Relationships, differences between denominations, interaction or contradictions between them in one way or another affect the state of the ecclesiastical legal order in society, as well as – the general legal order in general.

## REFERENCES

- [1] Assessment of the situation in the country, trust in public institutions and politicians, electoral orientations of citizens. (2021). Retrieved from <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/otsinka-sytuatsii-v-kraini-dovira-do-institutiv-suspilstva-ta-politykiv-elektoralni-orientatsii-gromadian-berezen-2021r>.
- [2] Otrosh, M.I. (2017). *The place and role of the Catholic Church in international law*. Kyiv: Feniks.
- [3] Lastovskyi, V.V. (2019). Canon law: The nature of the relationship with state and international law. *International Relations: Theoretical and Practical Aspects*, 3, 143-152.
- [4] Melnychuk, O.P. (2021). *State-church relations (administrative-legal aspect)* (Doctoral dissertation, Zaporizhzhia National University, Zaporizhzhia, Ukraine).
- [5] Lukianov, D.V. (2015). *Religious legal systems in the modern world*. Kharkiv: Pravo.
- [6] Bilash, O.V. (2018). Historiography of state-confessional law on the basis of dissertation research of Ukrainian lawyers (1991-2017). *Uzhhorod National University Herald. Series: Law*, 52(1), 69-75.
- [7] Gallagher, C. (2002). *Church law and church order in Rome and Byzantium: A comparative study*. London: Routledge.
- [8] North, Ch.M., & Gwin, C.R. (2010). Religion and the emergence of the rule of law. In *Religion, economy, and cooperation* (pp. 127-156). New York: De Gruyter.
- [9] Skene, L., & Parker, M. (2002). The role of the church in developing the law. *Journal of Medical Ethics*, 28, 215-218.
- [10] Code of Canon Law. (1983, January). Retrieved from [https://www.vatican.va/archive/cod-iuris-canonici/cic\\_index\\_en.html](https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html).

- [11] Kant, I. (1997). *Groundwork of the metaphysics of morals*. Cambridge: Cambridge University Press.
- [12] Oborotov, Yu.N. (2008). Axio-normative principles of law and order. In *Modern law and order: National, integrative and international dimensions: Abstracts of the international scientific-practical conference* (pp. 6-9). Odesa: Odesa National Law Academy.
- [13] Bachynyn, V.A. (1999). *Philosophy of law and crime*. Kharkiv: Folyo.
- [14] Ilyin, Y.A. (1994). On the essence of legal consciousness. In *Collected works* (Vol. 4.; pp. 149-415). Moscow: Russkaya Kniga.
- [15] Harakas, S.S. (1977). Eastern Orthodox perspectives on natural law. In *Selected papers from the annual meeting (American Society of Christian Ethics)* (pp. 41-56). Retrieved from <https://www.jstor.org/stable/23564839>.
- [16] Walker, S. (2020). Poland delays abortion ban as nationwide protests continue. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2020/nov/03/poland-stalls-abortion-ban-amid-nationwide-protests>.
- [17] Lamoreaux, J.W., & Lincoln, F. (2018). The Russian Orthodox Church, the Kremlin, and religious (il)liberalism in Russia. *Palgrave Communications*, 4, 115-118. doi: 10.1057/s41599-018-0169-6.
- [18] Solik, M., & Baar, V. (2019). The Russian Orthodox Church: An effective religious instrument of Russia's "soft" power abroad. *Acta Politologica*, 11(3), 13-41. doi: 10.14712/1803-8220/9\_2019.
- [19] Van Reken, C.P. (1999). The church's role in social justice. *Calvin Theological Journal*, 34, 198-202.

**Anatolii F. Kryzhanovskyi**

Doctor of Legal Science, Professor

Corresponding Member National Academy of Legal Sciences of Ukraine

National Academy of Legal Sciences of Ukraine

61024, 70 Pushkinska Str., Kharkiv, Ukraine

Acting Head of the Department of General Theory of Law and State

National University "Odesa Law Academy"

65009, 2 Akademichna Str, Odesa, Ukraine

**Irena A. Balzhyk**

PhD in Law, Associate Professor

Associate Professor of the Department of General Theory of Law and State

National University "Odesa Law Academy"

65009, 2 Akademichna Str, Odesa, Ukraine

**Suggested Citation:** Kryzhanovsky, A.F., & Balzhyk, I.A. (2022). Conceptualisation of the church legal order in the modern state. *Journal of the National Academy of Legal Sciences of Ukraine*, 29(1), 50-58.

**Submitted:** 18.03.2022

**Revised:** 19.04.2022

**Accepted:** 20.05.2022