

Assessment of the “Experts’ Commission Report” on the Ukrainian Orthodox Church

At the request of the Ukrainian Association „Myriany,“ I have assessed the experts’ commission report initiated by the Ukrainian Service for Ethnopolitics and Freedom of Consciousness (DESS) regarding the status of the Ukrainian Orthodox Church (UOC). The religious situation in Ukraine has been difficult and complex for a long time, and has become even more complicated in the time since Russia launched the full-scale war in February 2022. This was my first contact with “Myriany”. I assume the reason to ask me was the fact that I have been dealing for many years with Ukrainian church affairs, that I have published extensively on this issue, and that I as a Roman Catholic theologian from Germany do not belong to any of the parties involved. I have thoroughly read the respective texts and documents and will make a few remarks on the report which cannot be a full assessment. I will not explain the pre-history or go into great length on details which are commonly known.

1. The Statute of the UOC

On May 27, 2022, the UOC adopted a new statute. Until then, it was a “self-administering church with the rights of broad autonomy” within the Russian Orthodox

Church (ROC). This status was given to the UOC in 1990 when the then-exarchate of the ROC in Ukraine was transformed into the UOC. Its main connections to the ROC were the ex officio membership of the UOC primate in the Synod of the ROC and the external representation of the UOC through the ROC. The UOC bishops were members of the ROC bishops' assembly (*arkhiereiskii sobor*) and of the ROC local Council (*pomestnyi sobor*). The decisions of both bodies were binding for the UOC, but the decisions of the ROC synod held only insofar as they respected the UOC's independent administration. UOC members could be elected or appointed to ROC bodies. It was explicitly stated that the UOC received its chrism from Moscow.

The UOC council (*sobor*) which took place in May 2022 eliminated any mention of the ROC, with the exception of a reference (for historical context) to the 1990 document which gave the UOC its status. The UOC's new statute no longer mentioned a relation to the ROC, the membership of the UOC primate in the ROC Synod, the need for the UOC primate to be "blessed" by the Russian patriarch after his election by the UOC episcopate, or other such references. The UOC also changed elements which were linked with its former connection to the ROC, such as introducing a new commemoration formula, the possibility of establishing parishes abroad, and the possibility of producing chrism.

The new statute refers to the 1990 decision by the ROC (expressed in a document produced by then-patriarch Alexy II) when describing itself as "self-reliant and independent" (*samostiina i nezalezhna*). The council decisions refer to a "full self-reliance and independence"¹ These terms have no tradition in Orthodox ecclesiology; nor did the previous expression ("self-administering church with the rights of broad autonomy"). These formulations are newly-coined descriptions serving to delineate the status of the UOC. From the point of view of Orthodox canon law, they are awkward and unspecific, and they do not fit into the traditional scheme, which consists basically of autocephaly or autonomy as forms of independent church existence.

¹ The Ukrainian word "samostiina" is here translated as "self-reliant". A better word would be "autonomous". However, the latter is a technical term from Orthodox canon law which is not used in the original.

2. Methodological problems

In the report of the experts' commission (REC), I see some methodological flaws. I will not discuss questions of general significance, like the legislation on religion which is valid in Ukraine (and which to a high degree is characterized by a Soviet approach). That legislation could itself be subject to criticism. However, I will take it as a given, and evaluate the REC within that framework.

With regard to the focus of the REC, a preliminary remark must be made:

Awkwardness in canon law can be a criterion only for an evaluation which is confessional, i.e. which is made from a theological or inner-ecclesial standpoint with a normative claim. An evaluation that means to be neutral, i.e. from a standpoint of religious studies, as the REC does (REC 5), may note the awkwardness, but cannot take it into account, as it has to be descriptive and analytical. The fact that a certain form of organization of a group (in this case: the UOC) does not exist within the self-understanding of a religious community (in this case: Orthodoxy) can be an issue for that religious community, but it cannot affect that group's freedom of religion. In a democratic society, everybody has the right to organize a religious group according to previously unknown rules and procedures, whatever they might mean in theological terms.

The history of Orthodoxy and of Christianity in general is full of examples in which the rules of canon law were not observed; we can see many such cases today as well. The UOC is not the only Orthodox Church in the world which is organized in a way that is not foreseen by the canons. In general, churches never function in an ideal form corresponding to all of their rules and prescriptions. That can be seen in Orthodoxy, in the Catholic Church, and in many other religious communities.

2.1 Logic of reasoning

The UOC claims that it has severed its connections to the ROC. The Commission has, according to its own description, the task of finding out whether that is true. It describes its aim as determining whether the UOC has an "ecclesial-canonical connection and belonging" to the ROC, according to its (the UOC's) statute "and to documents that have an immediate connection to it" (REC 4). There are obviously

doubts about the status of the UOC which can be understood in the context of the war Russia launched against Ukraine. Logically, the Commission has to research the evidence at its disposal and to come to a conclusion. It cannot deal with possibilities, hypothetical assumptions, potential actions, and non-facts—which it, however, does.

2.2 Chronology

The UOC claims that it severed its relationship with the ROC when it adopted a new statute in May 2022. Therefore, for an analysis of its current status, one has to take into account this document and other documents and acts which were written or performed after May 2022. One cannot prove anything about the UOC's belonging to the ROC today with earlier documents which were written when the UOC did not claim to be independent from the ROC. However, some of the documents the Commission takes into account were written more than thirty years prior to the UOC's 2022 council (6.2, 6.3, 6.4). They cannot be a tool for interpreting the new statute. Things can change and they do change.

2.3 Origins of evidence

It is clear that the ROC does not acknowledge the independence of the UOC. ROC propaganda says that UOC decisions were made under the pressure of the Ukrainian state authorities. The UOC has no means of influencing the Russian statements. That means that no ROC document can prove anything in connection with the UOC, especially if any such document originated before May 2022. To rely on any documents, statutes, and other sources from Russia and from the ROC is highly problematic, as this way a Russian organization can influence Ukrainian political and administrative decisions. If the ROC changes its statute—for example, by mentioning other religious communities in Ukraine—the Ukrainian state would be obliged to react. It is questionable why the Ukrainian legislation should make itself dependent on Russia. Therefore, Russian documents (or any foreign documents) cannot have validity for a Ukrainian evaluation of any question.

2.4 Proof *ex negativo*

The REC states several times that there were no documents known to the Commission that proved or disproved a certain point. However, for a proper analysis one has to take into account the evidence which is there, and not to ponder about possible other sources. The REC comes to the conclusion that the UOC is still part of the ROC. Then it has to show that with existing material, and not with speculations about non-existing items. In a similar way, the REC criticizes that the first hierarch of the UOC in his letters to the head of the DESS does not mention the word “autocephaly” (REC 7.4.1). The Commission is in no position to prescribe the wording of documents it uses. From the fact that the word is not used it cannot be concluded whether a certain circumstance is given or not.

3. Assessment of facts

In addition to the methodological flaws, the REC also interprets some facts and document in a way that is not convincing. It departs from theological assumptions that are disputed and therefore questionable.

3.1 Application of inner-ecclesial criteria

The REC refers several times to inner-Orthodox theological (ecclesiological) principles. Apart from the fact that the Commission is not a body entitled to apply canon law, a report written by scholars of religion for a state institution cannot take church law as its basis (see preliminary remark). If the UOC prefers to have a position that is neither autonomous nor autocephalous, but “self-reliant and independent”, it is not the task of the REC to judge whether that is in accordance with canon law, and to draw any consequences from that. One cannot exclude that the UOC is not in connection with the ROC anymore, but exists in a canonically questionable way. Similarly, the REC names concrete demands of what the UOC should have done for becoming autocephalous (informing other churches, clarifying its relationship to the Orthodox Church of Ukraine, etc., REC 7.4.2). That seems to be a direct violation of freedom of religion. It cannot be the task of a state institution to prescribe how a

religious community must organize itself. The UOC might be a church isolated from all other Orthodox churches. Then the state authorities would have to accept it. The principles of Orthodox ecclesiology (which would of course contradict such an idea) must not be applied here.

3.2 Biased position

In connection with this, the REC does not apply Orthodox ecclesiology in a neutral way but takes a position in a question that is disputed and unresolved within Orthodoxy. It is well known that there is no consensus in world Orthodoxy about how to gain autocephaly. The REC departs from one of the (at least) two ways which are discussed in Orthodox theology, and takes it as a given. Therefore, it comes to its conclusion, but it is biased. One could even argue that the majority of Orthodox Churches, and probably also the majority of Orthodox Christians, do not represent this position. The opinion given by Ecumenical Patriarch Bartholomew which is quoted in the REC (6.6, wrongly as an “official explanation”: the Ecumenical Patriarchate has several ways in which it can express its official standpoints, but private letters are not among them) is a clear sign of the disunity in Orthodoxy in this regard. It is highly problematic to quote it as a proof, as if everybody would agree. There is an ongoing debate which the REC completely ignores.

One of the points in question is the idea which can be found in the REC that an independent church needs a “*tomos*” (REC 7.2). In Ukraine, the “Ukrainian Orthodox Church – Kyiv Patriarchate” existed for more than 25 years without any *tomos*, claimed to be autocephalous, and was in full accordance with Ukrainian law (though inconsistent with Orthodox ecclesiology).

3.3 Neglect of acts

The REC mentions some changes that have been made in the UOC after May 2022 (consecration of chrism, parishes abroad, commemoration, 6.5). It interprets them, however, only in the framework of whether they are necessary for an autocephalous church. The REC misses the fact that the primate of the UOC started to celebrate liturgy immediately after May 27, 2022, like the first hierarch of an autocephalous

church, namely by commemorating the primates of the other autocephalous churches. The REC states that it is according to the canons when only the first hierarch of the UOC commemorates his patriarch. But the present UOC primate stopped this practice. It is important to underline that there is a substantial difference between the commemoration of a first hierarch (which each bishop does) and the commemoration of **fellow** first hierarchs (which only primates of independent churches do). This difference is also expressed in the formula of the commemoration which was changed in the UOC, without the REC noting it.

As for the establishment of parishes abroad, it must be said that not a single local Orthodox Church protested that act (whereas the parishes organized by the UOC-KP were never recognized by the other Orthodox churches). UOC priests living and serving here in Germany are in contact with priests and bishops from other Orthodox churches. There were liturgies where UOC clergy concelebrated with clergy from other Churches which would not be the case if these parishes and priests would not be regarded as legitimate.

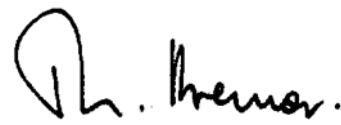
The production of chrism is, as the REC states, not the privilege of an autocephalous church. But it is a significant change in the liturgical life of the UOC and a direct contradiction of the rules the ROC foresees for the UOC. The reference to the old Kyivan tradition of producing the chrism gives it additional weight.

4. Legal problem

According to Ukrainian law, a religious organization about which a report is made has the right to participate in the process. The UOC had been invited to send an observer to the group. It protested when the composition of the Commission became known since several of its members had spoken out earlier for a ban of the UOC. The UOC requested a different composition for a more balanced evaluation which was not granted by the DESS. Instead, the Commission took two letters by the primate of the UOC as the UOC representation (REC 3). These letters, however, were written before it was known that a commission would write a report. Thus, it cannot be excluded that the REC was written under violation of Ukrainian law.

5. Conclusion

The REC has significant flaws and shortcomings in both the methodological and the factual respects. It takes into account facts which speak in favor for the outcome and neglects the others. It is biased in its evaluation and misrepresents given facts. It presents no positive evidence of any kind that the UOC still belongs to the ROC. Therefore, the REC cannot be regarded as a proof, and its results are not convincing.

A handwritten signature in black ink, appearing to read 'Th. Bremer.', is centered on the page.

(Prof. em. Dr. Thomas Bremer)