

Answer

to Dr. Viktor Yelenskyi

Esteemed Head of DESS,
dear Viktor!

Thank you for your letter and the response to my review of the “Report of the Experts’ Commission” (REC). I appreciate that you took the time for such a comprehensive reaction.

I have read your text thoroughly. You will not be surprised that I disagree with you in many—even in almost all—points. But I do not think it is fruitful to continue with an exchange of arguments back and forth. Most probably, we will not convince each other in the end. And you are the person who will make decisions and act politically. I am only a scholar who tries to observe and to analyze the situation; I can comment, but not act effectively. Therefore, I will just address the points which seem especially important to me, and add then some general remarks:

A fundamental methodological problem still persists in my eyes. You state several times, as does the REC, that it was not possible to prove that the UOC is not part of the ROC. But it will never be possible to prove that. Epistemologically, one cannot prove that something is *not*, one can only prove that something *is*. If I were to claim

not to be German, no one could prove that. One could only prove that I *am* German, by positive evidence, such as showing my German passport or another document attesting that I am in fact German. In a similar way, no one can prove that the UOC does not belong to the ROC. The UOC claims it does not. If one does not believe that, or if one wants to check that, one has to present evidence that it *is* part of the ROC. However, no such evidence was presented. I am quite sure that the SBU monitors the movements and the communication of the UOC hierarchs. An exchange of emails, a phone conversation, or a video conference in which the UOC leadership gets advice or orders from the ROC leadership would make the case very clear. But no such evidence has been provided. Again: The UOC claims it is no longer subordinated to a center in Moscow. The REC had to check whether the UOC still belongs to the ROC, and it did not present any positive evidence.

Another point is the application of internal ecclesial rules by the REC. You are completely right, religious studies examine the inner rules of a religious community and make their conclusions—but only in a descriptive way, not in a normative one. To say that the status of the UOC is not in accordance with the canonical rules of Orthodoxy is a legitimate statement because it is descriptive. But to say that the UOC had to declare autocephaly so as not to be part of the ROC is a normative statement, and thus beyond the bailiwick of the Commission. A religious organization can organize itself in an uncanonical way. The assumption that the UOC is part of the ROC because it has not declared autocephaly is wrong. No one can exclude that it has split from the ROC without becoming autocephalous.

You argue that the Experts' Commission is not a state institution. That is of course correct in a formal sense. But the DESS is, as the very name says, a state institution. You as the head of DESS gave the order, the DESS picked the experts, and everyone involved knew that the results would be used for purposes of the state. The experts worked with a state mandate, and they did not compose the report as if it was for a scholarly publication, or a private text. Even if one could argue that the Commission itself is not a state entity, the acceptance of the conclusion by DESS without any changes makes the report a state document, and it is used now by state institutions. So the whole thing is a state enterprise, even though the individual experts are not state employees.

You say that my point about disagreement on how to gain autocephaly is “very distantly related” to the issue. But it was the REC that argued for the need of a *tomos* (for example in 7.2). That is, by the way, another incorrect application of canon law. When one argues that a church needs a *tomos* to be independent, one is arguing from an ecclesial point of view (and even that is not convincing, as the patriarchates in the East and the Church of Cyprus were never issued a *tomos*). As I mentioned, the Kyiv Patriarchate never had a *tomos* and was thus not in accordance with

Orthodox canon law. But it was not and is not the business of the state to take that into account, and so the former UOC-KP was in accordance with Ukrainian law.

In your letter, you also mention the behavior of the UOC hierarchy after 2014. I am aware of many statements and actions that are regarded as tasteless, unpatriotic, or against the position of the government. However, according to Ukrainian law, it is not forbidden to behave tastelessly, to be unpatriotic, or to have different political views than the government. Therefore, none of those hierarchs was ever charged. But even when there are cases opened against them (as recently), the charges are always made against an individual, in the same way that police officers, local administrators, or politicians who have collaborated with the occupiers are brought to court. In the case of the UOC, it is the organization that is accused (as in your letter), whereas no one thinks of charging or banning the police, the local administration, or the political system as such.

But the positions and opinions of individuals are one thing, the official position of an organization is another. And when one judges the UOC, one should judge their official positions. From February 24, 2022, onwards, it has branded the Russian aggression as Russian aggression, and underlined the sovereignty and territorial integrity of Ukraine. That is the clear, consistent position of the highest bodies—by the way, in clear contradiction to the ROC's position.

Let me come to some general remarks, as announced in the beginning. They are not connected to your letter, but to the ecclesial situation in Ukraine in general.

I see and understand, of course, that there is a political intention to ban the UOC, or at least to make it completely insignificant. The Ukrainian State and the institutions in charge have the capacities to do it, and I have no doubt that they will do it. Law 8371 will be passed, a new expertise will be made, and the process will start. I also see that public opinion in Ukraine, at least among large parts of Ukrainian society, supports these measures. That this opinion was engineered to a high degree is another question, but now it exists. Eventually, the UOC, or at least its governing structures, will be banned, and thus the political intention will be fulfilled.

But all this comes at a high price. In your letter you call me a friend of Ukraine, and I think that is a correct characterization. When I express my criticism of what is happening, I do so primarily not for the UOC, but for Ukraine, because I see a development away from what I—as a friend—would like Ukraine to be, namely a democratic state where the rule of law persists. After the publication of my text, Ukrainian friends and colleagues (not only UOC members) thanked me, saying they themselves do not dare to publish such things. With the exception of your letter, I did not get any substantial critique of what I wrote, but only attacks on me as a person. I see a polarization of the society in a situation when unity is needed. I know many UOC clergy and

believers who are Ukrainian patriots, and who are harassed and intimidated by the atmosphere which is now prevailing in Ukraine.

I am in the United States at the moment. Last week, a new speaker of the House of Representatives was elected who has always been against military aid for Ukraine. In his inauguration speech, he did not even mention Ukraine. At the same time, he is somebody for whom Christianity is extremely important. As you know, he is not the only one among the Republicans who thinks like this. It will be very easy for them to use the argument "Why should we support a country that bans Churches?" One can hear already the first voices in this regard. The subtle details which could be arguments against that assumption do not play any role here. I think Ukraine should not provide an open flank for such ideas: the fight against the UOC can have grave consequences for Ukraine. I hope very much I am wrong with my fears.

Again, I appreciate the labor you have taken to react to my text. The exchange of standpoints and a plurality of opinions is the basis for scholarly insights. History will show who of us (if any) was right.

With best wishes

Thomas.