

Church-State-Relations After Maidan

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ABSTRACT

One crucial demand of the protesters on Maidan Square was a fundamental reform of the public administration. Yet the relationship between the church and state in Ukraine also requires restructuring. Due to the confusing allocation of authority, the state's attempts to influence religious life and the privileging of large churches, the author calls for the abolition of the state department of religious affairs.

The situation after the Euro-Maidan (2013/14) differs significantly from the situation after the Orange Revolution (2004). The expectations are much greater now and Ukrainian society is demanding profound reforms of the organizational structure of the state. The present state apparatus has to a large extent lost its functionality and its justification under the new political and economic conditions. The capacities of the post-Soviet system of public administration have been exhausted, and the society requires fundamental changes regarding the areas of activity and effectiveness of its state institutions. This will be illustrated in my exploration of the example of church-state relations.

A STATE INSTITUTION FOR RELIGIOUS AFFAIRS?

In Ukraine there is currently a rather popular notion – even at the top of the religious organizations – that the reintroduction of a state administrative apparatus for religious matters (a committee or even a ministry) is the not wisest option. I also categorically reject this idea. In the form currently being proposed in Ukraine, a *state institution for religious matters* is essentially a mummified remnant of Stalin's legacy. If we refrain from sugarcoating it, it is basically a comfortable means of controlling and shaping the religious sphere, and there are diverse methods for doing so. They span from the distributive system (allocation of real estate, state privileges, the recognition or non-recognition of legal persons, etc.) to bans and oppressive

measures (e.g. banning religious masses, the reduction of quotas for foreign dignitaries or missionaries, the rejection of humanitarian aid deliveries, among other things).

The role which a state institution plays in religious matters becomes very clear when comparing the involvement of the church in the Orange Maidan with that observed during the

Euro-Maidan: in 2004 the *state committee for religious matters* fully exerted its administrative capacities and influence over the church hierarchy, and therefore succeeded in significantly restricting the potential of the church during 2004's Maidan, in particular when compared to the current one. The *All-Ukrainian Council of Churches and Religious Organizations* did not exhibit the same determination it is now exhibiting, and therefore even neutral appeals to peacefully solve the conflict in 2004 were rejected by some church leaders. Subsequently separate appeals were voiced by alternative church associations, e.g. the *Council of Representatives of Christian Churches of Ukraine* or the *Council of Evangelical-Protestant Churches of Ukraine*. There were also individual appeals made by the different heads of the churches. In 2013/14 the situation was entirely different, though. One of the reasons lies in the long-term decentralization of state influence on the clergy and their resultantly increasing ability to independently coordinate and tackle problems of the church and society. This is particularly evident in the activities of the *All-Ukrainian Council of Churches and Religious Or-*

ganizations, which has even independently established high-level international diplomatic contacts.

The current church-state relationship, which is based on a strict separation between the church, state, and school system, does not meet the current needs of Ukrainian society. The state has continuously attempted to limit the churches' means for action and their influence on society and to intervene in various ways into the internal matters of church life (e.g. regarding their international activities and relationships, the training of clergymen and church employees, as well as their financial concerns). Therefore, the attempts by the state to regulate its relationship with the church down to the last detail are ineffective under contemporary circumstances.

MUDDLED RESPONSIBILITIES AND COMPETENCE

There is also no longer a basis for doing so: in 2013, the government mandated the Ministry of Culture by law to "implement government policy in the area of religion" (Collection of Laws "Freedom of Belief and Conscience and Religious Organizations", see RGOW 1/2013, p. 7). However, the responsible department directors of the Ministry of Culture perceived religious matters to be an unnecessary burden. This in turn undermined the influence of the government over the needs of the religious communities in these regions, and the final effective means to sanction insubordination were lost. Those departments which had previously dealt with religious matters were restructured (de facto downsized) and merged with departments of cultural affairs.

Therefore, most departments are not responsible for cases even remotely having to do with religion. For example, the new *Department for Religious Affairs* in the Ministry of Culture was

given the responsibility to modify the identified number of believers in the Ukrainian Orthodox Church – Moscow Patriarchate; it is clear, though, that this modification may only be made by the financial authorities. The Collection of Laws "Freedom of Belief and Conscience and Religious Organizations" stipulates that state institutions within the realm of their responsibilities "exert state control to comply with the freedom of belief and conscience and religious matters." Yet officials from the Ministry of Justice, the Ministry of the Interior, the Security Service, and other institutions delegate this authority to the *Department for Religious Affairs*, which evidently cannot make any decisions outside its restricted area of competence.

One of the greatest problems of this current model of church-state relations is also the shifting of tasks and double responsibilities. Currently the *Department for Religious Affairs* in the Ministry of Culture has practically been degraded to a secondary dimension and to a registry office of religious institutions. Furthermore, this registration process is duplicated by the State Registry Office in the Ministry of Justice to the extent that double registrations of religious associations take place in practice. Yet the existence of a special *Department for Religious Affairs* by no means guarantees that scandalous registrations do not occur. For example, in the Cherkasy region a religious congregation was registered, which immediately turned itself into a "Church of Satanism" after registration. Moreover, the heads of several registered churches were clearly conducting dubious business by embezzling money and real estate from the members of their congregations.

Two additional functions of the *Department for Religious Affairs* have entirely no practical significance. In view of the visa waiver for the

citizens of most western countries, where most missionaries come from, the granting of entry visas has become entirely obsolete. Although previously important, the approval of humanitarian aid deliveries has become a mere formality. The Ministry of Social Affairs dealt with these approvals in the past few years and generally one single official has made the decision.

PRIVILEGING INDIVIDUAL CHURCHES

Why do the heads of certain churches support the idea of reviving a special governmental institution for religious affairs and even the extension of its responsibilities? In my view, this not only has to do with tradition. As an arbitrator, such a central body presides not only over administrative issues and everyday matters, but above all supports certain churches in their claims to exclusive rights and the protection of representative functions. For example, the applied statistical methods undeniably favor the Orthodox Church communities, grant them financial advantages, and even give them moral justification for taking advantage of statistical tricks. In Ukraine there is nothing that comes close to an objective statistical model to calculate the number of adherents to any given church. A count is taken of registered communities and communities operating without registration, some of which were only founded in order to claim not yet restituted churches for themselves without there being any active community life to support them. The real number of believers of communities can vary widely, but in official statistics they appear in the same category. The state authorities rely on these statistics and privilege the “large” churches.

The helplessness of the *Department for Religious Affairs* of the Ministry of Culture in solving problematic issues has forced the churches in

the past few years to use other forms of leverage to address such issues. The means of state institutions to pass laws or regulations were so limited that several churches that had cultivated direct contacts with parliamentarians were able to pass bills more effectively and quickly than those that first “had to be ground by the mills of the Ministry”. The *Department for Religious Affairs*, by contrast, must first coordinate all bills with the responsible ministry in advance and, in addition, bills are only introduced to parliament by the ministerial cabinet. This process can take three to twelve months. And if a proposed law requires money from the state budget, it is delayed from the very beginning.

ABOLITION OF THE INSTITUTION FOR RELIGIOUS ISSUES

As part of the process of European integration in Ukraine, national legislative procedures must be adapted to European norms. In my view, this means that an institution at the governmental level that regulates the church-state relationship should be abolished. This is by no means a new insight – a decree by President Yushchenko from 2005 to abolish the State Committee for Religious Matters stated that the “elimination of the committee is justified by the necessity to restructure state agencies in line with the obligations of Ukraine towards the Council of Europe”. The decision to abolish the State Committee for Religious Affairs was motivated by the President’s view that the government should not intervene into religious life, because the practice of religion is a private matter. If religious institutions faced problems, they should turn to the courts. However, due to the situation at that time, the *State Committee for Religious Affairs* was instead revived. The main reason can likely be seen in the fact that efforts were made to find a fun-

damentally new regulation for governmental and penal matters in cases of violations of the freedom of conscience. Ukraine was unable to systematically document violations against the freedom of belief and conscience and to introduce practical steps beyond administrative and penal sanctions. The increasing disputes over real estate and church property, the government's favoritism based on the principle of numerical strength and not the principle of equality before the law, and the churches' claim to play an important role in public life were the main catalysts for reviving a central *State Body for Religious Affairs and National Minorities*. The governmental apparatus also still wanted to maintain the right to grant the status of a religious organization under strict control, which had to do with the granted privileges (cheaper electricity and gas supply, cheaper credits, etc.). The independent state body for religious matters and national minorities was not abolished until 2010 (see G2W 4/2011, p. 11) and subsequently was set up in the Ministry of Culture as the *Department for Religious Affairs*.

The expected transformation of the relationships between the state and church must go hand in hand with a comprehensive change in how the government agencies deal with religion. When Stalin created the Agency for the Russian Orthodox Church, he gave the responsible KGB General Karpov precise instructions for how it should be directed. A European-oriented policy regarding religion must be grounded upon other principles than the totalitarian principles introduced during Soviet times. This way, there would be no more such absurd statements as that of the director of the *Department for Religious Matters and National Minorities*, who refers to tasks entrusted to him by the security service of Ukraine as the basis of the activities of this department.

One example of this is the scandalous letter of the Ministry of Culture from 3 January 2014 to the head of the Ukrainian Greek-Catholic Church demanding it to cease its currently illegal activities. It was referring to the prayer tent on Maidan Square (see RGOW 2/2014, p. 7). After the Euro-Maidan it should be clear that administrative sanctions for the sake of discipline or for solving problems related to citizens' freedom of belief and conscience must be abolished. Instead the institution of an ombudsman for freedom of belief and conscience should be created, who is vested with the necessary authority vis-à-vis the central and regional government agencies. Essentially the functions which the state *Department for Religious Affairs* assumes nowadays coincide for the large part with the functions of an ombudsman. The institution of ombudsman can be based either within the ministerial cabinet, as is the case with the authorized representative for national minorities, fighting corruption, or European integration, or it can be based within the presidency as is the case with the authorized representative for the protection of minors or Crimean Tartar Affairs.

An ombudsman for religious matters should, above all, systematically register violations against the freedom of belief and conscience and react to these violations with practical steps, which are not based on administrative sanctions. Moreover, he should promote the churches' own organizational potential, which can have a positive impact on the government and on society. Therefore, churches should cease their ongoing efforts to win over the *Department for Religious Affairs*, because they are senseless.

The introduction of a European procedure for solving problems regarding the freedom of belief and conscience calls for a legal solution instead of administrative-bureaucratic direc-

tives; this would also span to church life in the state. In this context, the role of the associations of religious organization increases (which can already be observed currently). They should gradually take over the function of coordinators of (inter-)church initiatives and could also assume effective observation functions.

NEW MODEL OF CHURCH-STATE RELATIONS

Such organized changes are decisive for the introduction of a fundamentally different model of church-state relations – for a model which is based on a partnership between the state, church and religious organizations. This new model would result in severe changes in the relationship between the church and state, e.g. the transformation of the so called special status of religious institutions to a normal social establishment. This is certainly a painful path, as the state aid, which is the pleasant side of the comfortable regulation of church-state relations, is extraordinarily practical for the large churches.

The already ongoing introduction of a partnership-like model for the church-state relationship in Ukraine has the particularity that the current cooperation between both sides forestalls the corresponding legal foundation which it should enable in the first place. This also creates problems: the state should above all unambiguously determine whether it actually ensures the equality of all religions based on the equality of all religions before the law. This detail is decisive. Currently only equality before the law is guaranteed. However, is there really an equal status of religious organizations, thus their equal treatment in terms of rights, possibilities, and obligations in comparison with other subjects in Ukraine? The answer is no. Irrespective of the demands of smaller religious organizations, they are not treated as equals of the large churches. This

pertains to essentially all areas in the lives of religious minorities.

The autocratic introduction of a so called “expanded legal space” for certain religious institutions, which may not even formally contradict the conventional legislation, should definitely be reconsidered and modified if necessary. European experiences show that there are different possibilities of solving this problem. Besides general legislation which regulates the relationship between the church and state, there are also special agreements or concordats under the condition that state requirements are met in one way or another. Something comparable is now developing in Ukraine as well, where the *All-Ukrainian Council of Churches and Religious Organizations* has de facto obtained the exclusive entitlement to represent the rights and claims of religious organizations in the relationships between the church and state. For many years the responsible parties in Ukraine only conducted talks with representatives of this organization, and on socially important occasions the religious organizations were only represented by representatives of the *All-Ukrainian Council of Churches and Religious Organizations*. It is obvious that the legal stipulation of the status of certain churches (or their interest associations) is only a matter of time in Ukraine.

A system of mutual obligations which is supported by law also contributes to gaining a grip on the problem of subversive propaganda and agitation, the teaching of religious intolerance towards other religious communities or political (primarily pro-Ukrainian) convictions – which are very evident among representatives of several churches.

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