



In consultative status with the United Nations Economic and Social Council

Public organization "Public Advocacy"

Submission on new technologies, including information and communications technology, and their impact on the promotion and protection of human rights in the context of assemblies, including peaceful protests

The Ukrainian Orthodox Church has been openly persecuted by the state authorities for almost 5 years. Temples of the Ukrainian Orthodox Church are illegally seized; believers are beaten up by the radicals and the police; the parliament of the last convocation passed the law depriving the UOC of its canonical name; criminal cases are opened against priests for defending their faith and their parishioners. More detailed information on specific violations of the rights of believers is available in the newsletters of violations of the rights of the UOC, which are regularly published by the Department for External Church Relations of the UOC¹.

A number of violations of the rights of the UOC believers are explicitly related to the destructive state information policy that was applied to the participants of the peaceful protest – All-Ukrainian Cross Procession. Such an information policy, in particular, consisted in the adoption by government authorities of discriminatory decisions and the dissemination of these decisions in the media; high incidence of hate speech against participants in the peaceful religious procession, aimed at comprehensively restricting their rights; promoting radical groups to commit offences against participants in the procession.

In fact, on October 30, 2018 there was signed a Communication Statement of the UN Special Rapporteur on extrajudicial executions without due process and arbitrary executions. It was also signed by the UN Special Rapporteur on the promotion and protection of the right to freedom of thought and expression, the UN Special Rapporteur on the right to freedom of peaceful assembly and association, and the UN Special Rapporteur on freedom of religion or belief. This document is an inquiry from the abovementioned Special Rapporteurs to the State of Ukraine in order to obtain an answer with clarifications regarding the violations of the rights of believers of the Ukrainian Orthodox Church.

Considering the reasons for this situation with the UOC, it must be noted that violations of the believers' rights of the UOC are eventuated by the policy of the ex-president of Ukraine P. Poroshenko supporting the non-canonical and religious organizations of the Ukrainian Orthodox Church of the Kiev Patriarchate and the Ukrainian Autocephalous Orthodox Church being unrecognized by the plenitude of Ecumenical Orthodoxy. Such a policy has been implemented in Ukraine since 2015, which led to a wave of seizures of temples in 2015-2017 and to numerous protests by our believers². To protect their rights believers

¹ <https://vycz.church.ua/files/2019/04/Bulletin-1-25.01.2019-04.04.2019-ENG.pdf>; <https://vycz.church.ua/files/2019/04/Bulletin-2-04.04.2019-28.05.2019-ENG.pdf>; <https://vycz.church.ua/files/2019/04/Bulletin-3-29.05.2019-10.06.2019-ENG.pdf>; <https://vycz.church.ua/files/2019/08%D0%91%D1%8E%D0%BB%D0%BB%D0%B5%D1%82%D0%B5%D0%BD%D1%8C-%E2%84%965-ed.-eng-2.pdf>

² See periodical review of the human rights organization on violations of the UOC rights in 2014-2016 years: https://publicadvocacynetwork.org/wp-content/uploads/2018/04/Report-of-NGO_about-violations-of-rights-of-UOC1.pdf

systematically appeal to the police, prosecutors, central and local authorities, and courts. Unfortunately, many lawsuits are pending, but believers cannot always enjoy the effective protection of their rights in the law enforcement system of Ukraine.

In 2018, since the decree of the Patriarch Bartholomew of Constantinople to grant autocephaly to breakaway religious entities the UOC-KP and UAOC, the number and intensity of violations of the rights of our believers has increased significantly. For example, according to the official data of our Church, the number of illegal reregistration of statutes of the UOC religious communities in favor of the “OCU” by the officials of state regional administrations amounted to: in Volyn Region - 67, Rivne Region - 48, Chernivtsi Region - 11, Zhytomyr Region - 15, Khmelnytsky Region - 42, Ternopil Region - 27, Vinnytsia Region - 2, Ivano-Frankivsk region - 2, Transcarpathian region - 5, Poltava region - 1, Kirovograd region - 1, Kyiv region - 1. All in all, the number of illegal re-registrations has affected 222 religious communities of the UOC³.

Apparently, starting from 2015 until the present day, violations of the rights of believers of the Ukrainian Orthodox Church are systemic, which is why the Holy Synod of the UOC issued several documents that actually hold the state authorities and Patriarch Bartholomew accountable for mass violations of the rights of believers⁴:

- pursuant to the decision of the Holy Synod of the UOC dated December 7, 2018: “To state that on the part of the state authorities, baseless criminal prosecutions are carried out and pressure is exerted on the episcopate, clergy and faithful of the Ukrainian Orthodox Church in order to force them to take part in the so-called unification council [Constituent Assembly on the establishment of a new Local Church]. To consider such actions as violation of the constitutional right of Ukrainian citizens to freedom of religion”.
- pursuant to the decision of the Holy Synod of the UOC dated April 3, 2019: “We ask the state authorities not to interfere in church affairs, and thereby not contribute to the incitement of religious hatred through their actions, and to also cancel the requirements of the Law of Ukraine No. 2673-VIII of 17.01.2019 on the compulsory renaming of the Ukrainian Orthodox Church; as being unconstitutional and contrary to the norms of Ukrainian and international law and basic principles of human rights and freedoms. We also appeal to the government not to facilitate forcible seizures of our Church parishes by illegal re-registration. The Lord gives rulers power not for the creation of discord in society, but for the cultivation of peace, tranquility and harmony among all citizens of the country”⁵.

Thus, the Ukrainian Orthodox Church has in fact officially stated that its rights are violated by the state pursuing a systematic and coordinated policy of infringing on the rights of religious organizations and UOC believers at different levels of the exercise of the right to freedom of religion. Concern over the situation of the Ukrainian Orthodox Church was also expressed by OHCHR, which in its “Report on the situation with the human rights in Ukraine dated February 16 - March 15, 2019” stated the following:

«86. The OHCHR monitored the process of the transition of parishes and religious communities from the Ukrainian Orthodox Church to the newly formed Orthodox Church of Ukraine, noting that these processes are often of a conflicting nature and in some cases were accompanied by violence from supporters of both Churches. The OHCHR has documented 9 cases accompanied by violence from supporters of the Orthodox Church of Ukraine in the Kiev and Rivne regions. The OHCHR is concerned about the involvement of non-religious actors, in particular local authorities and extreme right-wing groups, in the process of such transfers, as well as police inaction during the above incidents.

³ <https://law.church.ua/2019/06/19/u-kijjevo-pecherskij-lavri-vidbulisya-chergovi-zbori-predstavnikiv-jeparzialnix-yuridichnix-viddiliv-upc-2/>

⁴ <https://news.church.ua/2019/04/03/statement-of-the-holy-synod-of-the-ukrainian-orthodox-church-on-the-current-situation-in-ukrainian-and-world-orthodoxy/?lang=en>

⁵ <https://news.church.ua/2019/04/03/statement-of-the-holy-synod-of-the-ukrainian-orthodox-church-on-the-current-situation-in-ukrainian-and-world-orthodoxy/?lang=en>

87. In six cases, the OHCHR has documented constant intimidation and threats against clergy and parishioners of the Ukrainian Orthodox Church even after the communities lost control of the temples. In addition, in at least ten documented cases, the police were reported to have contributed or not responded to violence, threats and intimidation, although they were present at the scene.

88. On 22 April 2019, the Kiev District Administrative Court decided to suspend the process of compulsory renaming of the Ukrainian Orthodox Church until a final court decision. In accordance with the amendments to the Law of Ukraine “On Freedom of Conscience and Religious Organizations” adopted by the Parliament on December 20, 2018, the Ukrainian Orthodox Church was obliged to accomplish the process of renaming before April 26, 2019”.

The description the human rights challenges, faced by UOC believers, in the context of peaceful protests and the impact on the believer's rights of new technologies in the context of such assemblies

In July 2016 there was held a Cross Procession upon the blessing of the Ukrainian Orthodox Church Primate - a peaceful procession of faithful followers of the Ukrainian Orthodox Church who aimed to make a spiritual deed of praying for peace in Ukraine. The Cross Procession started off from the two most well-known monasteries - the Holy Dormition Pochayiv Lavra (Pochayiv city, Ternopil region, Western Ukraine), the Holy Dormition Sviatogorsk Lavra (Sviatogorsk city, Donetsk region, Eastern Ukraine,) and finished in Kyiv city on 27 July 2016 on the holiday of Baptism of Kievan Rus, on the territory of the Holy Dormition Kyiv-Pechersk Lavra. Despite a peaceful character of the religious procession, the All-Ukrainian Cross Procession suffered not only discriminatory attacks, hate speech, forceful obstacles during the journey, juridical counteractions on the part of authorities, other actions, including those characteristic of criminal offences, but also became a litmus test to reveal the actual attitude of certain civil servants to their citizens, as well as evidence to the inequitable and intolerant behavior. Regretfully, the character of utterances of some individuals, holding high-rank positions in the government, proves there have been mainstreamed an ideological and juridical lines of pressure with regard to the Ukrainian Orthodox Church, targeted both at reducing the scope of rights of this religious denomination and all kinds of discrimination of the Church adherents.

In accordance to paragraph 1 of the Human Rights Council resolution 38/11 “that States have the responsibility, including in the context of peaceful protests, to promote and protect human rights and to prevent human rights violations and abuses ... and calls upon States to avoid the abuse of criminal and civil proceedings, or threats of such acts at all times”.

Despite of mentioned above, actions of the state authorities were directed at restricting the rights of the Cross Procession participants in view of the following facts.

In fact, the executive committee of Zhitomir “with a view to preventing clashes and conflicts between the participants and city residents turned to court with an intention of changing the itinerary of the religious column. The administrative court of Zhitomir resolved to dismiss the claim of the executive committee of Zhitomir City Council to Zhitomir UOC diocese on restrictions of the Cross Procession without hearing on the merits. The court decided to leave the lawsuit without consideration⁶. At the same time, the court’s press-service hastened to refute the statement that the court had recognized the Cross Procession event lawful and noted in its press release that the court had just declined the claim out of formal reasons: “By adopting a decision the court was guided by the provisions of Part 2 Art. 182 of the Administrative Legal Proceedings Code of Ukraine, which enshrines that a lawsuit, filed on the day of holding an event, determined by Part 1 of the Article hereof, or afterwards, remains without consideration. Owing to the fact the lawsuit was filed to the court on 18 July 2016, i.e. the day of holding a cross procession by Zhitomir Diocese of the Ukrainian Orthodox Church on the territory of Zhitomir city, the claim was left

⁶ <http://rian.com.ua/society/20160719/1013361891.html>

unconsidered,” the court remarks.

On 22.07.2016 Borispol City Council approved a decision “On Prohibition of the Cross Procession for Peace of the Ukrainian Orthodox Church (Moscow Patriarchate) through Borispol city”⁷.

Despite the fact this institution is not authorized to restrict peaceful processions, still the decision was further taken advantage of by the UOC opponents to create forceful obstacles for the Cross Procession participants.

We have to admit the actions of state authorities in this case contrary to the paragraph 2 of the Human Rights Council resolution 38/11 that “calls upon States to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association, including by ensuring that domestic legislation and procedures relating to the rights to freedom of peaceful assembly, of expression and of association are in conformity with their international human rights obligations and commitments, to clearly and explicitly establish a presumption in favour of the exercise of these rights, and that they are effectively implemented”.

As the Cross Procession pilgrims were approaching Kyiv city, the authorities took a number of actions, directed at the restriction of the Cross Procession movement along the city. For instance, MIA spokesmen made an official declaration that the “Cross Procession” had been stopped and its participants would continue their journey by buses⁸. MIA head Arsen Avakov announced the Cross Procession would be prevented from coming into Kyiv by the police. He wrote about it on his Facebook page on July 26: “In the situation at hand, being the Minister of Internal Affairs, I am not guided with the categories of religious rituals, but with the categories of the public order priority... Explosive devices and real shell plantings, which were found out in the morning along the planned itinerary, left no doubts that threats and provocations are real. By the forces of the National Police and National Guard, the MIA managed to block the movement of the Cross Procession along the streets of Kiev”, wrote Avakov⁹. At the same time, though, the MIA chiefs were not able to comment on the fact that, according to the legislation of Ukraine, restrictions or prohibitions of peaceful processions can be enacted only upon the court decision.

The above-mentioned does not match with the paragraph 4 of the Human Rights Council resolution 38/11 that “calls upon States to facilitate peaceful protests by providing protestors, to the extent possible, with access to public space within sight and sound of their intended target audience, and by protecting them, without discrimination, where necessary, against any form of threat or harassment, and underlines the role of local authorities in this regard”.

Moreover, the force, including actions with signs of criminal offences, was used to the UOC faithful-participants of the Cross Procession in view of the following facts.

On 14 July 2016 along the route of the Cross Procession, moving from the Holy Dormition Sviatogorsk Lavra, 20 km away from Poltava, there was hanged a poster on the bridge under construction, which content was offending for the believers.

Moreover, in the forest belt on the roadside people in camouflage were waiting for the Cross Procession to make photo and video records of the pilgrims against a scandalous poster. The poster featured the Cross Procession equal to the LGBT-parade, with the “still life” on the Easter cake reminiscent of a reproductive organ.

“These people do not even understand they discredit themselves with such “poster” commented on the occurrence Archimandrite Joseph (Kovetsky), who led the right wing of the Cross Procession. - Of course, their aim is to make us feel outraged, lose our balance, offend us. They won’t succeed. We are praying for

⁷ <https://borispol-rada.gov.ua/item/25604-pro-zaboronu-khresnoi-khody-myru-ukrainskoi-pravoslavnoi-tserkvy-cherez-misto-boryspil.html>

⁸ <https://www.unian.net/society/1438173-krestnyiy-hod-ostanoven-ego-uchastniki-zavtra-budut-peredvigatsya-po-kievu-na-avtobusah-mvd.html>

⁹ <https://kp.ua/incidents/546162-v-kyev-polytsiya-ne-propustyt-krestnyi-khod>

their lost souls as well”.

On Monday, 25 July 2016, the UOC Cross Procession could not get to Borispol city due to the roadblocks having been arranged at the city entrance. According to mass media, “In order to avoid attacks from protestants, the Procession participants decided to detour - along Brovary by-road. Having learnt about it, the participants of the protest meeting made a move to interception and began to throw eggs and plastic bottles at the column. In their turn, the members of the National Guard and police tightly encircled the pilgrims - which prevented clashes and pushed back aggressive activists... Governor of Kyiv region Maksim Melnichuk, who’d arrived at the meeting, reminded the believers they “had to comply with the decision of the City Council session on prohibition of procession through Borispol”¹⁰.

In the evening of 26 July 2016 several dozens of violent people in camouflage blocked the traffic of the buses that were supposed to deliver the faithful of the UOC Odessa Diocese to Kyiv for their participation in the All-Ukrainian Cross Procession¹¹. At 10 p.m. there was scheduled a departure of 10 buses with over 500 pilgrims for them to join the rest participants of the Cross Procession on the following day in Kyiv. On the eve it was reported about a planned provocation of forceful disruption of this travel: threats were coming from radical organization “Automaidan Odessa” that posted on its official site calls to pierce bus tyres and burn them. Odessa Diocese turned in advance to the law enforcement administration of Odessa region with a request to prevent this provocation.

We want to remind that Human Rights Council paragraph 4 of the Human Rights Council “urges all States to avoid using force during peaceful protests, to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force, and also to ensure that assistance and medical aid are rendered to any injured or affected person at the earliest possible moment” in accordance to the paragraph 10 of the Human Rights Council resolution 38/11.

Nevertheless, “automaidan provocateurs openly urged their adherents to get together in their office to subsequently organize pogroms of buses with pilgrims from Odessa. In fact, the site of Odessa radicals already had a photo of a crushed and earlier burnt bus. There are also threats here towards bus drivers,” underscores the press-service of the Diocese.

The application also says, “Due to this we address the administrative staff of the SBU Office in Odessa region, Prosecutor’s Office of Odessa region, regional Police Service with a request to curb probable provocations on the part of extremist organizations, planning to assault Odessa-based pilgrims of the Cross Procession. We also request about furnishing a relevant number of your staff members so that they could accompany an autocolumn with pilgrims, since the radicals do not hide their intentions to attack the faithful along the whole route”.

The above-referred violations were accompanied by unlawful pressure on human rights defenders and mass media in view of the following facts.

Anton Gerashchenko accused the UOJ of “an attempt to incite interfaith hatred in Ukraine”. He published on his Facebook page the following information: “For those who want to clear the issue in question - how, why, and what for the UOC MP decided to arrange such a large-scale event - I recommend to study the background of the public organization “Union of Orthodox Journalists”, which sprang up last autumn and which, since March of the current year, according to its most active member Viacheslav Pikhovshek, has affirmed that “a religious war in Ukraine is highly probable. My opinion is that it makes sense for the SBU and Foreign Intelligence Service of Ukraine to monitor the work of this public organization. “Peacekeeper” project has already listed this organization in the plan to scrutinize its role in trying to stir up interreligious hostility in Ukraine” he said.

¹⁰ <https://www.rbc.ua/styler/zhizn/krestnyy-hod- pravoohraniteli-otbivali-ataki-1469458716.html>

¹¹ <http://news.church.ua/2016/07/27/v-odesse-radikaly-s- ugrozami-spaliti-zhivem-ne-pustili-veruyushhix-v-kiev-dlya- uchastiya-v-krestnom-xode/?lang=ru>

Responding to A. Gerashchenko's comments, the UOJ declared that "his words are not just remarks of the offended person. This is a direct threat posed to the UOJ journalists and the freedom of speech they bear. Namely the threat! A lot of Ukrainians know perfectly well what the "Peacekeeper" site, supervised by Mr. Gerashchenko, is all about. Everybody remembers an innocent death of journalist and publicist Oles Buzyna and other people, whose data were published on this particularly "peacekeeping" resource," state the journalists and add they address Ukrainian and international human rights advocacies, mass media trade unions and those of the Union of Ukrainian Journalists, OSCE, UNO, and others with a request to defend their rights to the media freedom. Besides, they also reserve the right to appeal to courts - even the international ones - filing lawsuits on slander and violation of the Constitution as well as the Ukrainian laws and norms of the International Law.

Therefore, we believe and anticipate the new Ukrainian power to repair the mistakes of the predecessors and stop the violation of our believers' rights. We also request the international community to fully support Ukraine in this respect.