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### Public Organization “Public Advocacy”

## **REPORT ON THE CURRENT FIGHT CORRUPTION CHALLENGES IN UKRAINE**

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 on violations of the rights of the UOC, which are regularly published by the Department for External Church Relations of the UOC<sup>1</sup>.

A number of violations of the rights of the UOC believers are explicitly related to the destructive state information policy. 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 religious communities of the UOC, aimed at comprehensively restricting their rights; promoting radical groups to commit offences against believers.

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 Ukrainian Orthodox Church, it must be noted that violations of the believers' rights of the UOC are eventuated by the policy of ex-president of Ukraine P. Poroshenko who supports the non-canonical religious organizations of the Ukrainian Orthodox Church of the Kiev Patriarchate and the Ukrainian Autocephalous Orthodox Church being unrecognized by the plentitude 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 believers<sup>2</sup>. To protect their rights, believers 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 Patriarch Bartholomew of Constantinople was issued to grant autocephaly to breakaway religious entities – the UOC-KP and UAOC, the number and intensity of violations of the rights of our

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<sup>1</sup><https://vzcz.church.ua/files/2019/04/Bulletin-1-25.01.2019-04.04.2019-ENG.pdf>;  
<https://vzcz.church.ua/files/2019/04/Bulletin-2-04.04.2019-28.05.2019-ENG.pdf>; <https://vzcz.church.ua/files/2019/04/Bulletin-3-29.05.2019-10.06.2019-ENG.pdf>;  
<https://vzcz.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>

<sup>2</sup> 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](https://publicadvocacynetwork.org/wp-content/uploads/2018/04/Report-of-NGO_about-violations-of-rights-of-UOC1.pdf)

believers has increased significantly. For example, according to the official data of our Church, the number of illegal re-registration 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 UOC<sup>3</sup>.

*Taking into consideration the United Nations Convention against Corruption, as well as Resolution № 41/9 adopted by the Human Rights Council on 11 July 2019, being concerned about the seriousness and widespread prevalence of corruption in relation to believers of the Ukrainian Orthodox Church, as well as the incidence of problems posed by such cases, we place special hopes in the Office of the United Nations High Commissioner for Human Rights to consider the following cases of corrupt practices.*

**i) Public officials of state and local self-government bodies of Ukraine deprive the religious communities of the UOC of immovable property in the interests of third parties and officials themselves.**

Intentionally abusing their official powers, in violation of the laws of Ukraine, officials of state and local self-government bodies of Ukraine, acting by the predetermined patterns, illegally make changes to the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations. As a result, the religious communities of the UOC are deprived of their legal personality, while their property is transferred to outsiders who call themselves the newly created OCU.

For better understanding, we offer the following example:

The building of the church of the Nativity of the Most Holy Theotokos in Zhytomyr district has been the property of the Ukrainian Orthodox Church approximately since 1780.

On March 10, 2019 Oleg Kovalsky, a deputy of the Baranovka City Council, abused his authority and convened a meeting of citizens, during which he called to seize the premises of the church and transfer it to the newly-created denomination of the Orthodox Church of Ukraine.

According to Part 3 of Art. 36 of the Law of Ukraine “On Local State Administrations”, local state administrations are prohibited from interfering with the economic activities of enterprises, institutions and organizations, except in cases specified by law.

However, the meeting was also attended by the following state officials: head of the Baranovka City Council Anatoly Dushko, head of the Baranovka District State Administration Nikolai Velchinsky, deputy of the Zhytomyr Regional Council Natalia Kokitko.

In accordance with Part 3 of Art. 8, citizens who are not members of a religious community are not entitled to take any decisions that concern the religious community.

Violators of law disguise their absence of juridical rights by organizing the so-called poll among local residents who are supposed to “correctly” answer the question what confession they would like to have in their locality. Normally such an inquiry pretends to look like “referendum”, even though it is considered a formal act; it doesn’t include all local residents and is not conducted within a legal procedure stipulated by the Ukrainian legislation. People, who do not go to church and who hardly know what it is all about, usually take part in such pseudo-referendums.

Thus, state agents and local self-government authorities, grossly violating the norms of the current legislation of Ukraine, held a gathering of city residents. Please note that the main purpose of this

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<sup>3</sup><https://law.church.ua/2019/06/19/u-kijevo-pecherskij-lavri-vidbulisya-chergovy-zbori-predstavnikiv-jeparxialnix-yuridichnix-viddiliv-upc-2/>

meeting of city residents was to transfer real estate property from its rightful owner – the UOC religious community – to a third party by unlawfully transferring the legal entity itself through amendments to the registry.

As a result of the decision, the “newly elected” owners of immovable property brutally assaulted the legitimate members of the religious community of the Ukrainian Orthodox Church. The UOC parishioners were beaten and thrown outside the territory of the church. The front doors of the church were forcefully cut off. In the end, the temple was sealed. The worshippers, including women and children, found themselves locked in the premises of the church and left without access to toilet from 10 a.m. to 11 p.m.

“The culmination of all the above developments was the adoption by the Baranovka City Council of the Decision “On Regulation of Religious Relations” No. 1648 of March 12, 2019, according to which the Baranovka City Council condemned the head of the UOC religious community and recognized his actions as ‘unlawful, anti-state, inciting religious hatred and aggravating social and political tension in the community ... support the decision ... on the transition to the Orthodox Church of Ukraine’.”

Pursuant to Part 4 of Art. 5 of the Law of Ukraine “On Freedom of Conscience and Religious Organizations”, the state is not allowed to interfere with the lawful activities of religious organizations.

Despite the fact that the legislation of Ukraine strictly forbids state bodies and local authorities to intervene in church matters, despite the fact that not a single law of Ukraine grants the right to local authorities to take over the functions of the judiciary and evaluate the actions of whatever individual / legal entity, and furthermore to recognize any actions as unlawful and anti-state, the deputies of the Baranovka City Council nevertheless violated the law, manifestly pursuing their interests and those of the third parties.

According to Ukrainian law, officials can act exclusively within their powers, and the adoption of such decrees indicates (1) the excess of powers by the deputies of the Baranovka City Council, i.e. in violation of the law, (2) the abuse of their official position, (3) a clear interest in transferring real estate property from the rightful owner to the third party.

In accordance with Resolution № 41/9, adopted by the Human Rights Council on 11 July 2019, “the States shall, in accordance with their respective legal systems, endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption, including by ensuring transparency, access to public information, accountability, non-discrimination and meaningful participation in the conduct of public affairs.”

Therefore, public officials of the Baranovka City Council, in the exercise of their functions in order to obtain an undue advantage for third parties, issued an illegitimate and inadmissible decision.

In light of such a reckless, blatant and manifestly unlawful decision of the Baranovka City Council, the NGO Public Advocacy forwarded a number of requests urging to indicate legal grounds for the initiation, conduct and participation of officials in an illegal meeting of citizens.

In its official response No. 02-12 / 899 dated July 29, 2019<sup>4</sup>, the Baranovka City Council wrote a blatant lie that the decrees or other documents whereby it was decided on the meeting or participation of officials were not issued by the Baranovka City Council, while the mayor was present at the meeting in order to avoid an inter-confessional strife, to ensure public order and to protect the rights and interests of citizens.

In its official response of July 25, 2019<sup>5</sup>, the Zhytomyr Regional City Administration noted that Ukrainian legislation does not provide for permanent membership in a religious community, therefore a meeting of a territorial community can make decisions for a religious community.

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<sup>4</sup>See the full translated text in Supplements to this Report

<sup>5</sup>See the full translated text in Supplements to this Report

In its official response No. 02-18 / 4 dated August 12, 2019<sup>6</sup>, the Baranovka District State Administration replied that Nikolai Velchinsky did not participate in the meeting as the head of the Baranovka District State Administration.

Consequently, the officials of the aforesaid bodies indicate that they were present at the meeting at which the religious community of the UOC was deprived of its legal personality and real estate property, but not as officials.

We ask you to pay particular attention to the fact that no sanctions were imposed on the leaders of this illegal assembly who had committed a number of offences. Neither criminal, nor civil, nor administrative proceedings were ever instituted. In turn, this testifies to a pre-planned corruption scheme under which a vulnerable group of the population, namely the UOC believers, is affected by corruption in the exercise of their rights systematically, unlawfully and with impunity.

The above corruption scheme of transferring real estate property from legal owners – the UOC religious community to third parties has been repeated in almost every region of Ukraine over the past 5 years. We note regretfully that the cases of corruption described above are not given coverage, they are not investigated, nor are they exposed by the State of Ukraine. As a result, the church property is hardly returned to its rightful owners – communities of the Ukrainian Orthodox Church. For the most part, the assaulters don't even bother to return the property stolen from the church interior as they believe it to be their "trophies".

At best, law enforcement manages to prevent bloodshed. Religious institutions of the Ukrainian Orthodox Church, instead of having efficient protection of their rights against criminal acts overt, are offered to file suits and wait for years for "law and justice", which people tend to believe less and less given a "blind eye" of the government.

**ii) Public authorities and the judiciary, pursuing the interests of third parties, refuse to consider cases in which religious communities demand the restoration of legal personality alongside the real estate property that belonged to such communities by the right of ownership.**

Religious communities of the Ukrainian Orthodox Church, based on the circumstances, appealed to the national legal remedies. With conflict escalating, the number of claims filed by religious organizations to law enforcement bodies of different levels – police, prosecutors, the ombudsman, courts, the president, the head of the Verkhovna Rada of Ukraine and the prime-minister – has increased manifold.

In all cases of violation of their religious rights, believers would file a claim on the opening of criminal proceedings upon the seizure of churches, incitement of religious hatred and disruption of religious services. However, the authorities disregard these facts.

Though more than 200 criminal proceedings were opened upon the applications of believers only in Western Ukraine, none of them has been brought to court so far. Furthermore, the analysis of jurisprudence confirms that community representatives have repeatedly complained to the court about the inaction of the investigators who are unwilling to investigate cases against the new church structure – Orthodox Church of Ukraine (OCU).

Ukrainian courts refuse to consider any cases related to the loss of legal personality of the UOC religious communities. For example, the Vinnitsa Court of Appeal in case No. 133/1399/19 of October 1, 2019 indicated that the courts are not authorized to consider issues that are approved by a decision of the general meeting of the community, so the case is subject to closure due to the fact that the case is not subject to consideration in civil proceedings (including in any jurisdiction).

The religious communities are therefore fully deprived of the right to a fair trial by a competent, independent and impartial tribunal.

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<sup>6</sup>See the full translated text in Supplements to this Report

**iii) Due to the political interest of the highest authorities of Ukraine, access for the religious communities of the UOC to the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations is completely blocked**

We deeply deplore the fact that about 95% of all applications of religious communities to the State Registration Service and the Ministry of Culture of Ukraine with a request to make amendments to the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations regarding the approval of a new version of the statute, changes of the head of the community, changes in the location of the legal entity are not considered at all by the above mentioned body, otherwise formal grounds are given to refuse such requests.

According to the information we have, the reason for violating the laws of Ukraine by the State Registration Service and the Ministry of Culture of Ukraine is an exclusive interest of third parties in creating obstacles to the activities of the Ukrainian Orthodox Church in the territory of Ukraine.

Consequently, the foregoing bears witness to the UOC religious communities having a discriminatory access to public services, which definitely exacerbates the exposure of the UOC to negative social implications.

The above demonstrates that the State of Ukraine fails to ensure the efficient implementation of the decrees and resolutions which were adopted on this matter by the UN bodies; the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a counter corruption culture.

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.

Additional information by link: [www.protiktor.com/corruptionukr](http://www.protiktor.com/corruptionukr)

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