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ABOUT FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION IN UKRAINE 2017-2019

Recommendations to the state of Ukraine

In order to comply with the right to freedom of association, as enshrined in *Articles 36-37 of the Constitution of Ukraine*, as well as *Article 22 of the International Covenant on Civil and Political Rights*, the following measures should be taken:

- Consider in parliament and adopt a special law on peaceful assembly, taking into account the recommendations of the Venice Commission. The law should regulate such issues as guarantees of the right to spontaneous, peaceful assembly and counter-assembly; contain an exhaustive list of reasons for limiting gatherings; stipulate the duty of the police to guarantee the safety of participants in peaceful assemblies. An appropriate legal framework should also be created for the courts to consider questions of the prohibition of assemblies and the application of administrative and criminal liability for violations of the procedure for holding peaceful assemblies.
- Provide political parties and public associations with a transparent procedure and equal opportunities for registration at the level of the MJU, regardless of their ideological position and attitude towards the current Ukrainian authorities. Discrimination against individual parties and organisations when applying this procedure for political reasons is unacceptable; withdraw the lawsuit of the MJU on the prohibition of a number of political parties as a disproportionate measure that significantly restricts the right to freedom of association.
- Apply at the level of security bodies the provisions of the anti-separatism legislation strictly in accordance with the obligations of states in accordance with paragraph 1 of Article 19 of the ICCPR, and not to use them to stifle or persecute opposition parties and organisations, as well as participants of peaceful gatherings and rallies expressing alternative opinions on state political issues and the situation in the country.
- Give a proper legal assessment of the actions of right-wing paramilitary groups and ensure an objective and comprehensive investigation into their activities. The existence of any paramilitary formations inside parties and public organisations, in accordance with article 37 of the Constitution of Ukraine, should be prohibited.

About freedom of peaceful assembly and association in Ukraine 2017-2019

1. During 2014-2018 a number of opposition political parties in Ukraine reported that they experienced difficulties in registering their statutory documents with the Ministry of Justice (*hereinafter referred to as “MJU”*) that are necessary for participating in elections. There are also cases when the MJU, through the court, sought a **ban on the activities of opposition parties**. The

most significant precedent was the ban on the activities of the Communist Party of Ukraine in December 2015. Representatives of the party challenged the ban in Ukrainian courts and in the ECHR. On June 20th 2018 the District Administrative Court of Kiev opened proceedings in accordance with the lawsuit of the Ministry of Justice of Ukraine on the ban (forced dissolution) of the "Uspishna Kraina" party. The party regards the process as being politically motivated¹. Court hearings in the case continue in 2019.

2. The practice of law enforcement conducting searches in the offices and homes of employees of organisations holding ideological positions alternative to the current government remained widespread. Such investigative actions, as a rule, were carried out on the eve of planned peaceful actions in order to paralyze the organisation. In most cases, the actions of law enforcement bodies were synchronized with acts of aggression carried out by right-wing groups against these organisations and their peaceful assemblies. Thus, on the eve of the peaceful rallies dedicated to Victory Day on May 9th 2018, a series of searches were carried out in the offices and at representatives of the Communist Party of Ukraine in Kiev and the organisation "Labour of the Kharkov Region" in Kharkov. A similar situation happened on the eve of the planned peaceful actions for the 75th anniversary of the liberation of Kiev on November 6th 2018. The SBU conducted a series of searches at the homes of political activists, thereby blocking their participation in the event².

3. Security bodies and right-wing radical groups have also pressured organisations and associations representing the interests of the Russian national community. Thus, on December 7th 2018 in Poltava SBU officers searched the homes of members of the Coordinating Council of Organisations of Russian Compatriots of Ukraine. They were accused of committing a crime against the foundations of national security of Ukraine under Part 1 of Article 110 of the CCU³. On May 13th 2019 in Lvov, SBU officers searched the house of the head of the regional community of Russian culture "Rus"⁴.

4. On May 15th 2015, Ukraine adopted the law "On the condemnation of the communist and national-socialist (Nazi) totalitarian regimes in Ukraine and the prohibition on the

¹ The lawsuit was brought forward by the Ministry of Justice at the initiative of the Prosecutor General of Ukraine in the person of the Chief Military Prosecutor Anatoly Matios. Previously, Matios, through his public statements, has repeatedly demonstrated a biased negative attitude towards the party <https://uspishna-varta.com/ru/novyny/zachistka-oppozicii-nakanune-vyborov-minyust-hochet-zapretit-partiyu-usp%D1%96shna-kra%D1%97na>

² Thus, on November 6th 2018, SBU officers raided the apartments of the human rights activist and the leader of one of the parties. On November 9th, the SBU also searched the apartments of the leaders of a public organization that co-organised peaceful actions. The SBU announced searches of "members of a pro-Russian public organization" in the framework of criminal proceedings, part 1 of article 109 ("actions aimed at forcibly changing or overthrowing the constitutional order or seizing state power") and part 1 of article 1111 of the Criminal Code ("treason").

³ <https://uspishna-varta.com/ru/novyny/v-poltave-proshli-obyski-i-dopros-uchastnikov-koordinatsionnogo-soveta-organizatsiy-rossiyskikh-sootechestvennikov-ukrainy>

⁴ <https://uspishna-varta.com/ru/novyny/vladimir-saltykov-svyazyvayet-provedeniye-obyskov-s-redaktorskoy-deyatelnostyu>

propaganda of their symbols". Article 436-1 was introduced into the Criminal Code, which stipulates **criminal liability in the form of imprisonment for 5 to 10 years for "manufacturing and distributing communist or Nazi symbols and propaganda of communist and national-socialist (Nazi) totalitarian regimes"** committed by an organized group of persons. According to the open data of the prosecutor's office, during 2018 38 criminal offenses were taken on record under Article 436 of the CCU. From these, reports of suspicion were presented in 3 cases, and the cases themselves were sent to the court with an indictment.

5. In May 2017, Article 173-3 - "Production and Propaganda of the St. George's (Guard) Ribbon" - was additionally introduced in the Code of Ukraine on Administrative Violations. An administrative fine or administrative arrest of up to 15 days was introduced for this violation. As a rule, law enforcement bodies apply this article to participants in rallies and processions dedicated to Soviet historical events (Victory Day in the Great Patriotic War on May 9th, days of the liberation of cities from fascist invaders, etc.)⁵. At the same time, **ultra-right groups using stylized swastika and other Nazi symbols freely conduct events in Ukraine.**

6. **Namely representatives of ultra-right factions** (such as "National Corpus"/"Azov", "Right Sector", "Svoboda", "C14"/"Sich", "Bratstvo", "Tradition and Order", "Sokol", etc.) **were used during 2014-2019 by law enforcement bodies to disperse opposition rallies and to carry out attacks on organisations possessing alternative political views.** For example, during the electoral campaign in January-March 2019, the right-wing group "C14" claimed responsibility for attacking a number of offices of opposition political parties and spoiling the propaganda billboards of a number of presidential candidates⁶. Representatives of "C14" publicly acknowledged that "during rallies posing possible threats" representatives of the SBU actually ask for their help⁷.

7. **Having informal connections with, and the protection of, the security bodies, such groups almost with impunity attacked their ideological opponents:** events held by the left-wing ideology⁸, rallies against de-communisation and in defence of cultural and historical memory

⁵ During the celebration of May 9th 2018, which more than 460,000 people took part in, the police detained 28 people. In relation to 16 of them, charges were brought precisely for wearing the St. George's ribbon. In addition, in Odessa the police chased and stopped a car exhibiting prohibited symbols of the USSR, and in Lvov a pensioner who came to lay flowers at the memorial wearing a T-shirt bearing a Soviet coat of arms was fined. On May 9th 2019 the police detained 45 people for wearing symbols prohibited in Ukraine.

⁶ On February 9th 2019 in Kiev, representatives of "C14" tried to have a brawl at a campaign rally of the presidential candidate Yuliya Tymoshenko, but were detained by law enforcement bodies. After this incident, representatives of the group made no attempts to conduct direct street actions.

⁷ Interview with the leader of "C14" Evgeny Karas
http://news.liga.net/politics/interview/s14_kto_oni_i_pochemu_im_pozvoleno_bit_lyudey

⁸ On January 19th 2018 in Kiev, members of the "C14", "Sokol", and "Tradition and Order" organisations disrupted the annual rally of representatives of the "left-wing" youth, timed to coincide with the anniversary of the tragic death of the human rights activist Stanislav Markelov and the journalist Anastasiya Baburova, who were killed by Russian neo-Nazis in 2009. Eight people were detained at the rally. The organizers of the rally reported that it was not right-wing radicals who were detained, but namely the rally's participants.

(Soviet holidays)⁹, and events of the women's movement and LGBT community¹⁰. Representatives of right-wing radical groups do not hide their participation in the attacks and publicly broadcast threats, post videos of the attacks on their social networks. In most cases, the **police do not intervene** in the events or even coordinate their actions with the attackers. The police, as a rule, remove themselves from the investigation into these incidents or, in some cases, begin an investigation under the article "Hooliganism" (Part 1 of Article 294)¹¹. Attacks are committed by the same individuals who virtually go unpunished.

8. **The existence of paramilitary right-wing radical groups in Ukraine poses a significant threat to human rights and is a serious challenge to the democratic space as a whole.** *Article 37 of the Constitution of Ukraine* expressly states that political parties and public organisations must not have paramilitary groups. At the same time, armed paramilitary groups are openly operating in a number of ultra-right parties and nationalist organisations. Their activities were not only not suppressed by representatives of law enforcement bodies, but also publicly encouraged by the leadership of the Ministry of Internal Affairs. Thus, the **"National Druzhina" unit** operates within the framework of the "National Corpus" party (formerly "Azov"), which positions itself as "guardians of public peace", but have all the signs of a militarised formation. On January 29th 2018, the group arranged an oath of representatives in the center of Kiev. 600 "combatants" in grey camouflage "swore allegiance to the Ukrainian nation" and marched in the center of the capital. Right-wing radical groups **annually hold the "Ukrainian March of Order" in Odessa on May 2nd** (a day of remembrance for the tragedy at Kulikovo Field on May 2nd 2014, where 48 people died). In October, the "March of the Ukrainian Insurgent Army", which during the Second World War was known for its collaboration with the Nazi regime and participation in Jewish pogroms, takes place in Kiev¹².

⁹ On April 13th 2018, in Kiev, the police actually refused to protect representatives of veteran organisations during a peaceful assembly near the monument to General Vatutin. Representatives of the "C14" group blocked access to the monument, and doused both it and the participants of the event with paint. They also publically threatened and insulted the veterans, and sprayed tear gas at the crowd. An elderly woman was hospitalised with an eye burn. As a result of the incident, one of the "C14" representatives was detained, but was released without charge on the same day. "C14" publicly reported about the attack on the peaceful assembly and the subsequent blocking of the police station on their online resources, demanding the release of their representative.

¹⁰ On November 18th 2018, representatives of right-wing radical groups in Kiev disrupted a transgender march organised by Amnesty International Ukraine. During the event, which lasted only a few minutes, two protesters and three journalists were injured. Despite the presence of the police, the opponents of the march began to throw smoke bombs and spray gas canisters. Among the attackers there were members of the "Bratstvo", "Tradition and Order", "Christian National Front", "Katekhon", "Sisterhood of St. Olga" organisations, as well as several "C14" supporters, were seen. During the rally, unidentified men hit Michael Colborne, a journalist from Canada. The journalist of "NewsOne" and the correspondent of "Sharj.net" also suffered.

¹¹ As a rule, representatives of nationalist organizations receive extremely "soft" sanctions for offenses committed. Thus, the Desnyansky district court of Kiev exempted from criminal liability and charged Roman Shevchenko and Pavel Moroz as participants in the market pogrom at the Lesnaya metro station (May 2017). Another offender Yaroslav Tkachenko was sentenced to a minimum sentence of 1 year of probation.

¹² <https://uspishna-varta.com/ru/novyny/marsh-upa-molitva-za-avtokefaliyu-i-pokrova-kak-proshli-massovy-meropriyatiya-v-ukraine-14-oktyabrya>

9. According to human rights defenders, the **tolerant attitude of the authorities and law enforcement bodies towards members of right-wing radical groups has actually legitimised their aggression against public activists possessing an alternative point of view, religious communities of the UOC, ethnic minorities, and representatives of the LGBT community.** After the defeat of the former president Petro Poroshenko in the election in April 2019, right-wing radical groups noticeably decreased their activity. At the same time, all cases of violence carried out earlier require an investigation and the prosecution of the perpetrators.

This shadow report was prepared **by the All-Ukrainian Association “Uspishna Varta” (“Successful Guards”)**. “Uspishna Varta” is a human rights platform that unites lawyers, public figures, and volunteers to protect the political and civil rights and freedoms of citizens of Ukraine, as well as to provide support for people and organizations that are persecuted for their political beliefs. Our main function is to monitor violations of the rights and freedoms of citizens in Ukraine and to make them public for a prompt response and to defend the affected people and organisations. We collect evidence of violations for the further transfer of these facts to the responsible authorities of Ukraine, and if a reaction does not follow, then they are transmitted to the world community and international organisations.

The UN Economic and Social Council (ECOSOC) at its coordination and management meeting on 23rd July 2019 adopted the recommendation of the Committee on Non-Governmental Organizations (NGOs) to grant special consultative status to AUA “Uspishna Varta”.

More information about our initiative can be found on our website. <https://uspishna-varta.com/>

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