

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the right to privacy**

Ref.: AL UKR 8/2021  
(Please use this reference in your reply)

30 December 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 43/16, 43/4, 41/12 and 46/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Mykola Vyhovsky** (Микола Виговський). Mykola Vychovsky is a human rights defender, who currently works for the CHESNO Movement, a non-governmental organization with expertise in the fields of parliamentary democracy, local government, political finance and elections.

According to the information received:

In the afternoon of 12 October 2021, in Kyiv, Mr. Vychovsky found a device resembling a motion tracker attached to the bottom of his car. The object was sealed in a film, which was attached to a magnet, which turned out to be a GPS tracker with a SIM card.

On 25 October 2021, after inspecting the car at the service station, Mr. Vychovsky discovered another device, probably intended for listening to or recording his conversations. The device was reportedly installed behind the car radio. Mr. Vyhovsky does not know how long the device was there, and reported the incident to the Security Service, however no investigation was reportedly carried out in response.

Mykola Vychovsky actively participated in the action "March for Kyiv", which took place earlier in October 2021, and advocated against the bill "On urban planning reform", adopted in July 2021 at its first hearing. If passed at its second reading, this bill will hinder the realization of the copyright for architects and will benefit developers.

Without wishing to prejudge the accuracy of the information received, we wish to express our concerns at the alleged surveillance and tracking of Mr. Mykola Vychovsky, which may violate his right to privacy and be related to his legitimate human rights activities and the exercise of his right to freedom of peaceful assembly, including his active participation in the "March for Kyiv" movement, and his advocacy against the bill on "Urban planning reform".

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to why no investigation was conducted into the reported surveillance of Mr. Mykola Vychovsky. If such an investigation has since taken place, please provide the results and information regarding any prosecutions which have occurred as a result of the investigation.
3. Please provide information on any legal basis for the alleged surveillance of Mr. Mykola Vychovsky, which can only be carried out by a Government body legally entitled to conduct such activities, using surveillance systems authorized by the law, and with a clearly defined and legitimate purpose that cannot be pursued with less intrusive measures and oversight measures.
4. Please indicate what measures have been taken to ensure that human rights defenders in the Ukraine are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any kind.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ana Brian Nougrères  
Special Rapporteur on the right to privacy

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards:

We would like to refer your Excellency's Government to articles 6, 17, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Ukraine on 12 November 1973, that guarantee the right to life, the right to privacy, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly, respectively.

Article 17(1) of the ICCPR provides for the rights of individuals to be protected, *inter alia*, against unlawful or arbitrary interference with their privacy and correspondence, and provides that everyone has the right to the protection of the law against such interference. "Unlawful" means that no interference may take place except in cases envisaged by the law which in itself must comply with provisions, aims and objectives of the ICCPR. Arbitrariness "is not confined to procedural arbitrariness, but extends to the reasonableness of the interference with the person's rights under Article 17 and its compatibility with the purposes, aims and objectives of the Covenant" (CCPR/C/59/D/558/1993).

Surveillance measures can only be justified when it is prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued. Surveillance, in addition to interfering with the private life of individuals, also interferes directly with the privacy and security necessary for freedom of opinion and expression, and always requires evaluation under articles 12 and 19 of the Universal Declaration of Human Rights (A/71/373).

The right to freedom of expression includes the right to seek, receive and impart information and ideas of all kinds. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, *inter alia*, political discourse, commentary on one's own and on public affairs, and discussion of human rights (Paragraph 11). It is the States' duty to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression and any attack on a person, because of the exercise of this right, can under no circumstance be compatible with article 19 (Paragraph 23). All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims be in receipt of appropriate forms of redress (*Id.*).

Article 19 (2) embraces a right of access to information held by public bodies (Paragraph 18). To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest and make every effort to ensure easy, prompt, effective and practical access to such information (Paragraph 19).

We would also like to remind your Excellency's Government that any restrictions to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 19 (3) of the ICCPR. Under these standards, restrictions must be provided for by law and conform to the strict tests of

necessity and proportionality. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), article 19 (3) may never be invoked to justify the muzzling of any advocacy of human rights (Paragraph 23).

We would further like to recall that Article 21 of the ICCPR recognizes the right of peaceful assembly. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others

We would like to also remind your Excellency's Government of the Human Rights Council resolution 12/16 (A/HRC/RES/12/16), in which the Human Rights Council expresses its concern that violations of the rights to freedom of opinion and expression continue to occur, often with impunity, including arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence, increased abuse of legal provisions on surveillance, search and seizure, and censorship against persons who exercise, seek to promote or defend these rights, including human rights defenders. In resolution 12/16, the Human Rights Council calls upon the States to respect and ensure the respect for these rights, take all necessary measures to put an end to violations of these rights, bring to justice those responsible, ensure that victims of violations have an effective remedy, and refrain from imposing restrictions which are not consistent with article 19 (3) of the ICCPR, including on reporting on human rights and government activities, and expression of opinion and dissent.

Furthermore, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, adopted on 9 December 1998 (also known as the UN Declaration on Human Rights Defenders). Articles 1 and 2 of the Declaration state that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We would also like to bring articles 5 (a) and 17 of the Declaration to the attention of your Excellency's Government. Article 5 (a) establishes that "[f]or the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: To meet or assemble peacefully". Article 17 provides that "[i]n the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

Likewise, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 (a), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental freedoms;
- article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- article 9 (1), which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights; and
- article 12 (2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure, or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Both the General Assembly and the Human Rights Council repeatedly urged the States to create and maintain a safe and enabling environment in which human rights defenders can operate free from hindrance, reprisals, and insecurity (e.g., the General Assembly resolutions 74/146 (A/RES/74/146) and 70/161 (A/RES/70/161), and the Human Rights Council resolutions 22/6 (A/HRC/RES/22/6) and 13/13 (A/HRC/RES/13/13)).

They also repeatedly called upon the States to take all measures necessary to ensure the rights and safety of human rights defenders who exercise the rights to freedom of opinion, expression, peaceful assembly, and association (e.g., the General Assembly resolutions 74/146 (A/RES/74/146), 72/247 (A/RES/72/247), 70/161 (A/RES/70/161), 66/164 (A/RES/66/164), and the Human Rights Council resolution 22/6 (A/HRC/RES/22/6)).

They also strongly condemned the violence against and the targeting, criminalisation, intimidation, and torture of human rights defenders and stressed the need to combat impunity by ensuring that those responsible for violations and abuses against human rights defenders, including against their legal representatives, associates and family members, are promptly brought to justice through impartial investigations (e.g., the General Assembly resolutions 72/247 (A/RES/72/247),

70/161 (A/RES/70/161), and the Human Rights Council resolution 31/32 (A/HRC/RES/31/32).