

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief**

Ref.: AL UKR 1/2023  
(Please use this reference in your reply)

8 November 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on minority issues and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 50/17, 52/5 and 49/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **limitations to the right to freedom of conscience, religion or belief in Ukraine, including discriminatory measures imposed on the believers and the monastic community of the Ukrainian Orthodox Church (UOC) and prosecution of persons who refuse to perform the compulsory military service based on their conscientious objection to military service.**

According to the information received:

*Termination of the Kyiv-Perchersk Lavra agreement with the UOC*

The Kyiv-Perchersk Lavra is an ensemble of monastic buildings founded in the mid-11<sup>th</sup> century. It is considered a shrine of Orthodox Christianity and is one of the largest orthodox monasteries in the world, drawing in over thousands of believers regularly. Over time, the monastery, a UNESCO World Heritage site, has become a prominent spiritual and cultural centre. It is considered a religious, educational and administrative centre forming a core element of Ukraine's spiritual heritage. Presently, it provided housing for over 200 UOC monks who perform their ministry on its territory. Until 11 September 2023, it was also used for seminary study of nearly 300 students, and functioned as the administrative centre of the UOC.

On 10 March 2023, the Ministry of Culture and Information Policy (MCIP) announced that the National Preserve "Kyiv-Perchersk Lavra" had informed the UOC monastic community residing in Kyiv-Perchersk Lavra, of the decision to unilaterally terminate Agreement No. 2 dated 19 July 2013. This agreement formalised and allowed the UOC to use part of the premises for free as a monastery. According to the MCIP, the decision to terminate the agreement was taken based on the conclusions of an Interdepartmental Working Group on the Preparation of Proposals and Recommendations for the Organization of the Implementation of Individual Tasks Related to the Activities of Religious Organizations in Ukraine (formed on the basis of Resolution No. 1416 of the Cabinet of Ministers of Ukraine dated 23 December 2022). This Working Group noted several violations by the UOC monastic community and believers of the terms of the Agreement regarding the use of state property. Accordingly, the monastery was expected

to take measures to release buildings and related state property which are on the balance sheet of the Preserve by 29 March 2023. Following the Government's decision to terminate the said Agreement, the UOC clergy supported by their believers, publicly announced their intention to continue occupying the premises despite the termination of the agreement. Thereafter, on 26 March 2023, the UOC initiated its legal case against MCIP's decision to terminate the said rental agreement.

Shortly following the decision to terminate the agreement, on 11 March 2023, the Minister of Culture and Information Policy via a televised interview had stated that "*[n]o one is saying that the life of monks in the Lavra will end after the completion of the revision. But it is an occasion for the monks to decide how they can stay in the Lavra.*" The Minister thereafter mentions that he spoke with the priests who have transferred from the UOC to the Orthodox Church of Ukraine (OCU). The OCU was established in 2019 when the Ecumenical Patriarch granted autocephaly to Ukraine.

On 30 March 2023, the Cabinet of Ministers voided their decision of July 2013 which approved the transfer of Kyiv-Pechersk Lavra buildings into UOC possession. Following this cabinet decision, the Inventory Commission of the MCIP and National Preserve attempted to enter one of the temples at the Lavra. Their access was obstructed by UOC believers. On 31 March 2023, the Commission attempted to enter the temple for a second time but were rendered unsuccessful as they were blocked by praying UOC believers. Thereafter, the National Preserve Lavra submitted a complaint to court against UOC for lack of access to state-owned buildings.

On 1 April 2023, one of main hierarchs of the UOC received a notice of suspicion from the Security Service of Ukraine (SBU) under articles 161 and 436-2 – dealing with inciting inter-religious hatred and justifying Russian aggression and his residence was searched. In another case, on 7 August 2023, a prominent religious leader was sentenced to five years of imprisonment and seizure of property for committing multiple conflict related crimes (under articles 109, 110, 161 and 436-2). He is currently being held under house arrest whilst the verdict is being challenged on appeal.

More recently, on 9 August 2023, the Commercial Court of Kyiv ruled that the decision to terminate the 2013 Agreement which formalised and allowed the UOC to use part of the premises for free as a monastery was legitimate. The court further noted that the Kyiv-Perchersk Lavra is a state-owned religious building. Following this decision, on 10 August 2023, state authorities overseeing the Kyiv-Perchersk Lavra stated that the court also ordered that the transfer of cultural heritage objects and relics from the monastery should be completed by the UOC by the end of the year.

These limiting measures and consequent incidents of hate speech and incitement to violence targeting believers and the monastic community of the UOC have materialized amidst assertions, including by Ukrainian authorities, that the UOC did not declare themselves a canonically independent church in their relations with other orthodox communities, most notably, with the Russian Orthodox Church (ROC). The ROC continues to consider UOC as an autonomous church formally belonging to their structure, while the UOC has

declared the opposite since 25 February 2022 and formally changed their statutory documents excluding all references to ROC and its leader since May 2022. Further on 12 May 2022, a statement issued by the Holy Synod of the UOC condemned the military aggression of the Russian Federation against Ukraine.

In the aftermath of the developments relating to the Kyiv-Perchersk Lavra, a notable increase in incidents of hate speech and calls to violence against believers of the UOC were recorded from several areas, mainly within the Western regions of Ukraine. For instance, on 28 March 2023, unidentified individuals forcefully broke into the remaining UOC church in Ivano-Frankivsk. This attack involved spraying teargas and forcible removal of believers and clergy from the building. Between 1 February and 31 July 2023, a dozen cases of physical violence and several cases of threats of violence resulting from conflicts between parishioners of different Orthodox Christian communities were documented. On 4 April 2023, Khmelnytsky city council ruled to terminate all agreements of municipal land possession by UOC. Later that day, Khmelnytsky region council ruled a similar decision, banning UOC in the entire region. Several city and regional councils also banned “activities of the UOC” in their respective areas.

#### *Other restrictive measures against those connected to the UOC*

From November 2022, the SBU conducted searches in several monasteries, offices, education facilities and other premises of the UOC in Kyiv, Rivne, Zhytomyr, Ivano-Frankivsk, Chernivtsi, Dnipropetrovsk, Khmelnytskyi, Cherkasy, Volyn, Kherson, Ternopil, Poltava and Zakarpattia regions. In December 2022, the National Security and Defense Council of Ukraine applied personal sanctions against seven members of the UOC leadership. These sanctions included the blocking of personal accounts, withdrawal of licences and permits, bans on renting or acquiring state-owned property, and seizure of awards and acknowledgments issued by the state.

#### *Conscientious objection*

Conscientious objections are addressed through the law of Ukraine No.1975 of 12.12.1991 “On alternative (non-military) service”, which provides for alternative service. Article 1 states that alternative service is a service that could be used instead of conscription with the objective of fulfilment of national duty. Article 2 states that the right to an alternative service is available to citizens of Ukraine if the performance of a military duty is contrary to their religious convictions, and these citizens belong to religious organizations operating in accordance with the legislation of Ukraine and whose doctrine does not allow the use of weapons. Accordingly, the status of a conscientious objector to military service can be obtained during military conscription or reservist training.

However, following the declaration of martial law on 24 February 2022, a letter issued by the Ministry of Defence of Ukraine in August 2022 noted that “the temporary military service in Ukraine is no longer implemented. Therefore, the implementation of alternative service is not applicable.” Within the same timeline, Ukraine also issued a travel ban restricting most men

between the ages 18-60 from leaving the country.

These developments have led to several prosecutions of conscientious objectors. In many cases, the court decision does not specify the issue of conscientious objection, but they note that the accused was charged under article 336 of the Criminal Code of Ukraine which provides for a punishment by imprisonment for a term of two to five years for evading mobilisation.

#### *Case of Vitaly Alekseienco*

On 1 June 2022, Mr. **Vitaly Alekseienco** was issued an order to appear on 2 June 2022 and perform military service. The order was issued by the Ivano-Frankivsk City Territorial Centre of Recruitment and Social Support of the Ministry of Defense of Ukraine. Mr. Alekseienco, a Christian of the evangelical faith by confession, presented himself on the given date and stated that due to his religious beliefs he cannot serve in the military and take up arms, but can give alternative service. Mr. Alekseienco, had previously served in alternative service in 1996-1998 in the city of Zarafshon (Republic of Uzbekistan) prior to moving to Sloviansk in Donetsk oblast of Ukraine.

Thereafter, Mr. Alekseienco was given an extension until 6 June 2022 to confirm the circumstances. On 6 June when he presented himself to the Ivano-Frankivsk City Territorial Centre of Recruitment and Social Support, he was informed that his request for a referral to alternative service was denied and would that have to perform military service. Mr. Alekseienco reiterated his refusal to perform military service due to his religious beliefs. The matter was then reported to the police by the officers of the Ivano-Frankivsk City Territorial Centre of Recruitment and Social Support.

Upon being charged, Mr. Alekseienco pleaded guilty to article 336 of the Criminal Code of Ukraine on advice of the investigator. However, he refused to repent for his conscientious objection to military service. On 15 September 2022, Vitaly Alekseienco was found guilty of committing an offence under article 336 of the Criminal Code of Ukraine. He was sentenced to imprisonment for one year. On 16 January 2023, Ivano-Frankivsk Appeal Court rejected Mr. Alekseienco's appeal against his one-year prison term and on 18 February 2023 a cassation complaint was submitted to the Supreme Court. On 25 May 2023, the Supreme Court overturned the conviction and ordered his immediate release from prison. The Court also ordered a retrial in the original court over his refusal to be mobilised.

#### *Case of Mr. Andrii Anatoliiovych Vyshnevetskyi*

Mr. **Andrii Anatoliiovych Vyshnevetskyi** was ordered to join the armed forces of Ukraine in September 2022 (during the mobilisation). Mr. Vyshnevetskyi is a conscientious objector on pacifist and religious grounds and is a member of the Ukrainian Pacifist Movement. He had declared conscientious objection and requested for discharge. Mr. Vyshnevetskyi was denied of the opportunity to be recognised as a conscientious objector by Commandment of Ground Forces citing current regulations of the military service and presidential decrees. At present, Mr. Vyshnevetskyi remains at the frontline. He has submitted a lawsuit to the

Supreme Court of Ukraine against the President requesting for the procedure for dismissal from military service on the basis of conscientious objection to be established.

*Case of Mr. Yuri Sheliashenko*

More recently, on 3 August 2023 a criminal investigation was initiated against **Mr. Yuri Sheliashenko**, the Executive Secretary of Ukrainian Pacifist Movement, an NGO focused on advocating, practising and protecting human rights for peace and to conscientious objection to military service. Mr. Sheliashenko was served with a formal suspicion in justifying Russian aggression. This crime is punishable by up to 5 years in prison with the possibility of confiscation of property under art. 436-2 part 2 of the Criminal Code of Ukraine. The alleged criminal act was the sharing of a statement titled "Peace Agenda for Ukraine and the World" adopted by Ukrainian Pacifist Movement on 21 September 2022, with the Ukrainian leadership. This statement allegedly justifies Russian aggression. Mr. Sheliashenko has since been subjected to search of his apartment on 3 August 2023, seizure of computer and smartphone and night house arrest (from 15 August and extended till 30 November 2023).

Without prejudice to the accuracy of the abovementioned allegations, we wish to express our concern about an alleged pattern of harassment against the UOC and its believers, which appears to be related to the legitimate and peaceful exercise of their rights to freedom of religion or belief, to freedom of expression and to freedom of association enshrined in articles 18, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR) ratified by the state of Ukraine in 1973. In particular, we are concerned about this pattern of intimidation depicted by the abovementioned allegations targeting the UOC monastic community and believers to change their religious affiliation. This runs counter to the prohibition of coercion enshrined in article 18 of the ICCPR. We are also concerned about the resultant backlash (due to the calls to violence and administrative sanctions imposed on the UOC in general) that may be faced by UOC believers which effectively restrict their right to manifest their religion.

We are also concerned about the prosecution of persons who refuse to perform the compulsory military service based on reasons of conscientious objections, including those who are involved in advocating the right to conscientious objection to military service. In this regard, we would like to remind your Excellency's Government that the right to conscientious objection to military service derives from the right to freedom of thought, conscience and religion pursuant to article 18 of the Universal Declaration of Human Rights and the ICCPR. (A/HRC/50/43, para. 57).

Should they be confirmed, the above-mentioned allegations would also contravene articles 2 (effective remedies), 3 (non-discrimination), 9 (liberty and security of persons) and 26 (equal and effective protection against discrimination on any ground) guaranteed under the ICCPR.

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.

We are issuing this appeal in order to safeguard the rights of individuals concerned from irreparable harm and without prejudicing any eventual legal determination.

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 information and/or comment(s) you may have on the above-mentioned issues.
2. Please provide information about the legal and factual grounds on which the order of eviction of UOC monks from Kyiv-Perchersk Lavra is based.
3. Please indicate if all feasible alternatives to eviction from Kyiv-Perchersk Lavra have been explored in the alleged case and if so, please provide details as to why proposed alternatives to the eviction have been deemed unsuitable.
4. Please indicate what legal procedures and remedies are available, including notice periods, and access to legal aid and to adjudicative bodies, for the monastery residents to challenge the eviction from the Kyiv-Perchersk Lavra.
5. Please explain any measures taken to ensure continuing access to the Kyiv-Perchersk Lavra for all people, including for educational and cultural purposes, and to enjoy their cultural rights in accordance with international standards.
6. Please explain what measures your Excellency's Government intends to take to ensure the preservation and maintenance of the Kyiv-Perchersk Lavra, and the preservation of its universal value, including ensuring that its obligations under the UNESCO World Heritage Convention, and rules derived from it, will be met.
7. Please provide information on the steps taken to prevent, investigate and prosecute acts of violence perpetrated against persons belonging to UOC in Ivano-Frankivsk and information on the legal grounds of discriminatory measures taken against UOC by local councils.
8. Please indicate any measure taken to ensure that right to freedom of religion or belief of Mr. Andrii Anatoliiovych Vyshnevetskyi, and Mr. Vitaly Alekseienco is being respected.
9. Please provide information regarding the status of the investigation of Mr. Yuriy Sheliashenko including the factual and legal grounds for his night house arrest.
10. Please explain how the decision taken to suspend the implementation of alternative service as provided for through law of Ukraine of

12.12.1991 No.1975 “On alternative (non-military) service”, is compatible with the right to conscientious objection to military service derived from article 18 of the ICCPR.

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.

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

Nicolas Levrat  
Special Rapporteur on minority issues

Nazila Ghanea  
Special Rapporteur on freedom of religion or belief

## **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 relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We refer to the International Covenant on Civil and Political Rights (ICCPR), ratified by Ukraine on 12 November 1973, and, in particular, its article 18 which stresses that "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice and freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching".

The Human Rights Committee emphasised in General Comment No. 22 (HRI/GEN/1/Rev.1) paragraph 3 that article 18 of ICCPR "distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19(1); "the freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private. The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts." (paragraph 4).

Article 18 (2) stated that "[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice, while the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) reiterates the above provision in article 1 (2). The Human Rights Committee emphasised in General Comment No. 22 (HRI/GEN/1/Rev.1) paragraph 5 that article 18 (2) "bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18(2). The same protection is enjoyed by holders of all beliefs of a non-religious nature."

We would also like to recall that article 22 of the ICCPR protects the right to freedom of association, under which everyone has the right to associate with others and pursue common interests. Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly, and these rights can only be restricted in very specific circumstances, where the restrictions serve a legitimate public purpose recognized by international standards and are necessary and



proportionate for achieving that purpose.

Further, the Human Rights Committee has stated that the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship (see CCPR/C/21/Rev.1/Add.4 paragraph 4).

We also note that the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55) highlights in article 6 that the right to freedom of thought, conscience, religion or belief includes the freedom, "to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes". In article 2 (1) it states that: "[n]o one shall be subject to discrimination by any State, institution, group of persons, 6 or person on grounds of religion or other belief". Furthermore, we would like to refer your Excellency's Government to article 4(2), according to which: "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs". In its General Comment No. 35, the Human Rights Committee has found that the arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of religion (art. 18). It has also stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary.

In addition, Human Rights Council resolution 6/37 para. 9 (e) urges States "To exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction". Para. 9 (g) of the resolution urges States "To ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes."

We would also like to remind your Excellency's Government that the former Special Rapporteur on freedom of religion or belief in his report to the General Assembly A/76/380 has noted that while article 18 (2) of the International Covenant on Civil and Political Rights protects against "coercion which would impair [the] freedom to have or to adopt a religion or belief [of choice]", the drafting history of the Covenant suggests that this protection includes freedom from certain forms of "psychological" influence, which legal scholars interpret to include coercive alteration of thought. There is no single definition of "coercion" within international human rights law. Across national jurisdictions, definitions vary but generally include use of force, or an express or implied threat that puts the victim in immediate and reasonable fear of the consequences, thereby compelling the victim to act contrary to their will. In examining coercion claims, the Human Rights Committee has affirmatively considered that threats of violence or penal sanction, as well as restrictions on access to education, medical care, employment or participation in public life, are coercive acts that contravene article 18 (1) and (2) of the Covenant. Importantly, architects of the Covenant reasoned that coercion "should not be construed as applying to moral or intellectual persuasion".

In addition, we would like to draw the attention of your Excellency's Government to General Comment No. 22 issued by the Human Rights Committee (CCPR/C/21/Rev.1/Add.4): "Many individuals have claimed the right to refuse to perform military service on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. (...) The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service." We would also like to note that in February 2022, the Human Rights Committee in its concluding observations on Ukraine noted its concern that "conscripts, including conscientious objectors, are hunted down and delivered to military assembly points against their will and about conscripts being subjected to arbitrary detention." (para. 29, CCPR/C/UKR/CO/8).

Furthermore, article 19 of the ICCPR states that "everyone shall have the right to hold opinions without interference" and "everyone shall have the right of freedom of expression". Article 19 requires the States to guarantee the right to freedom of expression (Id.). 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. Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. The Human Rights Council Resolution 12/16 calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.