



2024 WARSAW HUMAN DIMENSION CONFERENCE

**Plenary Session 3: Fundamental
Freedoms I**

WRITTEN STATEMENT

On Criminal Prosecutions against Dissidents in Ukraine

SUBMITTED BY **PUBLIC ORGANIZATION PUBLIC ADVOCACY - non-governmental organizations in special UN ECOSOC consultative status**

Distinguished delegates and representatives of the Organization for Security and Co-operation in Europe,

We gather here today with a profound sense of urgency and concern regarding the escalating issue of unjust prosecutions faced by journalists and human rights defenders. The statement of our organisation refers to the problems on this issue in Ukraine. This matter lies at the heart of not only national integrity but also the fundamental democratic tenets and freedoms that underpin our societies and the broader international community.

Ukraine, currently embroiled in significant geopolitical and internal challenges, has, regrettably, expanded the application of its criminal statutes in ways that appear to undermine civil liberties and democratic freedoms. Articles 111 and 161 of the Ukrainian Criminal Code, initially designed to safeguard national security, are being wielded to stifle dissent and critical voices within the country. These legislative tools, aimed at protecting state sovereignty, are instead leveraging vague and broad interpretations that facilitate the persecution of religious leaders, journalists, and defenders of human rights under the guise of prosecuting treasonous acts.

These legal actions contravene the principles laid out by the European Court of Human Rights, as exemplified in the landmark judgment in *The Sunday Times v. The United Kingdom*, which underscores the necessity for laws to be clear and foreseeable to enable citizens to regulate their conduct accordingly. The current legal practices in Ukraine diverge from these

principles by criminalizing governmental criticism and opposition, activities which should be protected under the international commitment to freedom of expression.

This assembly is an opportunity to collectively acknowledge and address the deterioration of civil liberties in Ukraine and to propose pathways for both Ukraine and the broader international community to rectify these concerns.

Let us consider this problematic in more detail:

We are deeply concerned by the fact that Ukraine is unjustifiably broadening the scope of criminal law, particularly Article 111 of the Criminal Code of Ukraine, which prescribes severe penalties for treason, as well as Article 161 of the Criminal Code of Ukraine, which the Ukrainian state prosecution system regularly uses to persecute bishops and other believers of the Ukrainian Orthodox Church for their criticism of other denominations and attempts to defend themselves against violence and the illegal seizure of their property.

According to the legal norms in force in Ukraine, specifically Articles 2 and 3 of the Criminal Code of Ukraine, an act can be considered a crime and can entail criminal liability only if it is expressly provided for by criminal law and defined with sufficient clarity. Every person must be able to clearly understand what is specifically the criminal behavior.

Unfortunately, in Ukraine, criminal cases are now initiated almost regularly for statements criticizing government officials, comments posted on social networks, journalistic publications, and opinions shared in interviews on YouTube.

In this regard, it is important to highlight the legal position of the European Court of Human Rights, which in its decision in the case of *The Sunday Times v. The United Kingdom* (Application no. 6538/74) stated: "49. In the Court's opinion, the expression 'prescribed by law' implies two requirements....a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate their conduct: they must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."

In the context of this ECHR decision, it should be noted that in Ukraine, not only ordinary people – social media users, but also professional lawyers and journalists could not have anticipated that they would be imprisoned and criminally prosecuted for treason merely for criticizing the authorities.

Delving into the substantive preparation of charges in such cases, one can conclude that they are uniform and follow a template accusation scheme. The Security Service of Ukraine collects publications, statements, and articles by individuals and sends them for linguistic examination to an institution subordinate to the Security Service of Ukraine even

though criminal law stipulates that such examinations cannot be conducted by these kinds of institutions. However, this prohibition is widely ignored. The linguistic examination then comes up with a written report containing numerous non-legal constructs not provided for by law. The linguist accuses people without any legal basis of "discrediting Ukraine", "denying Ukraine", "negative biased tendentious information", "disseminating information that contributes to (creates conditions for) the formation of a negative image of Ukraine at the international level, destabilizing the internal political situation; exacerbating and destabilizing the socio-political situation."

It is evident that these formulations are absurd, abstract, and lack legal definition, yet this does not prevent either the state prosecution or the courts from making decisions to arrest people.

And since the norms of Ukraine's criminal law do not define the aforementioned abstract verbal constructs as crimes, the prosecution generalizes these "expert conclusions" and subsumes them, for example, as "assistance in subversive activities against Ukraine", since this phrase, without any clarification of its meaning, is included in Article 111 of the Criminal Code of Ukraine.

To better understand the issue, let us quote the main definition of the crime under Article 111 of the Criminal Code of Ukraine: "1. High treason, that is an act wilfully committed by a citizen of Ukraine to the detriment of the sovereignty, territorial integrity and inviolability, defense capability, and state, economic or information security of Ukraine:

1. joining the enemy under martial law or armed conflict
2. espionage
3. assistance in subversive activities against Ukraine provided to a foreign state, a foreign organisation or their representatives."

Based on the principles of criminal law, Article 111 of the Criminal Code of Ukraine is not subject to any broad interpretation.

However, in most cases of persecution for dissent, the prosecution exploits the vague wording of "assistance in subversive activities against Ukraine", unjustifiably embedding freedom of speech, opinions, and expression of beliefs, including lawful criticism of the existing political power in Ukraine, opposition or journalistic activities, as well as criticism of corruption and embezzlement in state bodies in this definition.

A narrow (legally correct) understanding of "subversive activities", which excludes journalism, criticism, including negative criticism, is confirmed by the judicial practice of the highest cassation instance in Ukraine. In its review of case law from 2022-2024 (2), this court

considers "assistance in subversive activities" to be very specific acts, such as collecting and transmitting information about Ukrainian Armed Forces units to the enemy, voting in referendums on occupied territories, or holding positions in the structures of the occupying authorities. There is no indication in this document that "subversive activities" could include publications in the media or the activities of journalists or lawyers.

Unfortunately, despite the contradiction with the review documents of the cassation criminal courts, in the courts of first instance and appellate courts, there is a practice where Ukrainian judges, at the stage of considering detention, preventive measures, or extending such measures, agree with the unfounded and illegal formulations of the prosecution based on an unlawful extension of criminal law norms. According to our observations, courts do not conduct a sufficient legal assessment of the prosecution's arguments. In some cases, they attempt to avoid involvement in such cases (by recusing themselves), but often they place individuals in detention without sufficient grounds.

Furthermore, the situation in these cases worsens as the prosecution delays transferring the case to trial and continues to submit motions to extend preventive measures. As a result, people are held in detention for extended periods and are unable to mount a proper defense, as the court at this stage is only authorized to consider the narrow aspect of the preventive measure's reasonableness.

For example, journalist Dmytro Skvortsov was arrested on charges of high treason on February 20, 2023, and has been deprived of his freedom ever since. He is being held in a pre-trial detention center and cannot get the court to consider his arguments about the illegality of his detention. Every two months, the court extends the preventive measure of detention in his case without moving to the consideration of the case on merits. The charges against him are based on his publications in various media, where he criticizes the government and expresses his political views.

A similar case is the February 2024 detention in the Lviv pre-trial detention center of Kyiv lawyer Svitlana Novytska, who defends clients accused of criminal offenses related to their rhetoric. The charges brought against lawyer S. Novytska are worded as "systematic information and propaganda activities on the Internet and public dissemination of manipulative materials with the aim of destabilizing the socio-political situation in the state."

Similar cases include the charges of high treason against journalists from the Orthodox media outlet "Union of Orthodox Journalists" – Andriy Ovcharenko, Valeriy Stupnitsky, and Volodymyr Bobechko. As in the cases of journalist Dmytro Skvortsov and lawyer Svitlana Novytska, Ukrainian courts regularly extend the preventive measure of detention for these individuals, and the charges against them are based on linguistic analysis of their publications.

Returning to the nature of the charges against the individuals mentioned, as well as many others not named in this statement, it should be emphasized once again that the Prosecutor's Office and the Security Service of Ukraine are establishing a practice of repressive persecution of dissidents in Ukraine, based on an extralegal construct not provided for by criminal law. They subsume lawful criticism of the government, freedom of speech, and the right to express opinions and beliefs under the definition of "subversive activities".

We emphasize once again that freedom of speech and the right to express opinions and beliefs are protected by international law, and any restrictions on these rights must be established in a clear-cut legal form. In the case of Ukraine, such restrictions are imposed only with regard to rhetoric as defined by Articles 110 (trespass against territorial integrity and inviolability of Ukraine), 111-1 (public denial of armed aggression), and 436-2 (justification, recognition as lawful, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants).

Statements by UOC Metropolitan Theodosy (Snigirov) of Cherkasy and Kaniv, a UN human rights defender against whom the Ukrainian authorities have opened a criminal case for expressing his theological beliefs:

Our organisation our organisation is concerned about the case of Metropolitan Theodosy (Snigirov) of Cherkassy and Kaniv, who has been actively advocating for the rights of believers at the UN since 2023¹. He is currently facing criminal charges for expressing his beliefs and for rhetoric during sermons in which he criticised representatives of other denominations, claiming that they violate the canons of the church. The metropolitan is currently under overnight arrest, and hearings of the criminal case are ongoing. Below we give the full text of one of his speeches during the 56th regular session of the UN Human Rights Council²:

«Oral Statement of
VSI "Zmogaus teisiu apsauga"
(Engl.:NGO "For Human Rights")
During 56th UNHRC session

Item 10: Interactive dialogue on the High Commissioner's oral update on the situation of human rights in Ukraine and the interim report of the Secretary-General on the situation in human rights in Crimea

Dear Participants of the Meeting,

¹ <https://www.youtube.com/watch?v=HWMSmD3sgC8>

² <https://hrcmeetings.ohchr.org/HRCSessions/RegularSessions/55/Pages/Statements.aspx?SessionId=74&MeetingDate=20/03/2024%2000:00:00>

I am the Metropolitan of the Ukrainian Orthodox Church, managing the Cherkasy and Kaniv diocese. The Security Service of Ukraine has brought a total of 5 criminal charges against me for expressing my beliefs regarding the non-canoncity of another religious denomination.

However, according to the Rabat Plan against hatred and as repeatedly emphasized by the United Nations - different forms of criticism and even disrespect towards any religion that do not incite discrimination, hostility, or violence are not prohibited.

International law in the "Six Criteria" of the mentioned plan clearly defines the difference between those statements that constitute incitement to hatred or violence, and those that may be critical, but are not violations and are protected as freedom of speech. So what are we being judged for in Ukraine today? Why do we not have the right to speak about how representatives of another denomination are taking over our churches, while the authorities take away our land, seize our monasteries previously returned to the Church as part of restitution?

As stated in OSCE documents: "Claims to possess the truth are inherent in many religious systems and are protected within the framework of the right to freedom of expression and the right to freedom of religion or beliefs."

However, today Ukrainian courts are basing their decisions on manipulative linguistic expertise and not delving into the aforementioned international legal standards. Today in Ukraine there is a political agenda to destroy our Church.

I urge the world community to influence Ukraine to immediately cease the criminal and other persecutions of the believers in my Church, as we have not violated the law and are defending our rights through legal means.

Thank you for your attention.

Metropolitan of Cherkasy and Kaniv of the
Ukrainian Orthodox Church
Theodosy (Denys Snigirov)»

The case of Metropolitan Theodosy (Snigirov) is illustrative. Since he, being a human rights defender acting in the UN, nevertheless suffered from unfounded criminal charges brought against him. Metropolitan Theodosius is currently under night arrest.

We would like to draw attention to the fact that the only main evidence in his case is the so-called expert examination of rhetoric, performed by a linguistics specialist, who subjectively assessed his theological statements as 'inciting religious hatred', based on the assumption that such statements may be offensive to others. However, such an interpretation is contrary to international law and does not meet the standards of protection of speech and criticism that are essential elements of democracy in modern societies.

Recommendations for the OSCE and Participating States:

1. We urgently request the OSCE and member states **to consider the individual complaints** submitted to them regarding the aforementioned cases and other similar cases.

2. We call on OSCE mandate holders **to facilitate the release** from detention of journalists, lawyers, and other individuals who have been unjustifiably prosecuted for exercising their freedom of speech and expression of opinions and beliefs.

3. We draw the OSCE's attention to the illegality and groundlessness of the criminal charges against the human rights defender acting at the United Nations - Metropolitan Theodosy (Snigirev) of the Ukrainian Orthodox Church. We recommend and urge the OSCE **to monitor this case in order to prevent an unjust verdict and to ensure a truly fair trial** in this case.

4. We draw the OSCE's attention to the lack of a fair trial in the case of journalist Dmitry Skvortsov, who has been held in an investigative detention centre for more than a year without the opportunity to present his defence position. He is being tried for his publications and criticism of State policy. In fact, he is being held criminally liable for his beliefs, which, in our deep conviction, cannot entail criminal liability. We call on the OSCE **to facilitate the speedy release** of this journalist and human rights defender.

5. We call on the OSCE and participating States to **ensure proper monitoring** of the criminal charges against the journalists of the Union of Orthodox Journalists - Andriy Ovcharenko, Valeriy Stupnitsky, and Volodymyr Bobechko. These individuals are also facing controversial criminal charges for their publications.

6. We call on the OSCE and participating States to take measures for **the immediate release** from detention of lawyer Svitlana Novitska, who is being held in an investigative detention centre for legitimate advocacy and statements on social media that comply with the criteria of freedom of speech and expression.

7. **Promote Legal Transparency:** Encourage the Ukrainian government to revise legal standards for treason and related charges, ensuring laws are defined with sufficient clarity to prevent misuse against dissenters.

8. **Facilitate Legal Support and Monitoring:** OSCE and its participating states should offer legal expertise and oversight to ensure fair trial standards for those accused under these statutes, safeguarding their right to due process and expression.

9. **Engage in Dialogue:** Establish an ongoing dialogue between the Ukrainian authorities and international human rights bodies to encourage reforms that align national laws with international human rights standards.

4. **Public Awareness Campaigns:** Launch initiatives aimed at increasing public awareness of the importance of preserving freedom of expression and the rights of journalists and human rights defenders.

5. **Institutional Mechanisms for Redress:** Encourage the establishment of independent mechanisms within Ukraine to review cases of alleged legal overreach and provide mechanisms for redress and rehabilitation for unjustly persecuted individuals.

6. Strengthen International Cooperation: Foster collaboration among international mandate holders to assist in monitoring and reporting instances of human rights violations related to freedom of speech and press freedom in Ukraine.

Through these initiatives, we can strive to protect the essential rights of journalists and human rights defenders in Ukraine, ensuring that their voices contribute to a more democratic and just society.

Thank you for your attention.

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