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Human rights situations that require the Council's attention

Written statement* submitted by Public Organization "Public Advocacy", a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 May 2019]

* Issued as received, in the language(s) of submission only.



On the victimization law on forcible renaming of 12 000 communities of the Ukrainian Orthodox Church

NGO Public Advocacy on behalf of believers and religious organizations draws the attention of the UN Human Rights Council to the fact that the Verkhovna Rada of Ukraine has approved a law establishing the obligation of all religious organizations of the Ukrainian Orthodox Church to forcibly change their names.

Obviously, this law has no practical meaning, but rather serves to intensify aggression against the believers of the Ukrainian Orthodox Church.

The requirement to forcefully change the names of religious organizations of the UOC is enacted by amending Article 12 of the Law of Ukraine “On Freedom of Conscience and Religious Organizations” in accordance with Draft Law No. 2662-VIII.

Article 12 of the Law states that “a religious organization (association), which directly or as part of another religious organization (association), is included in the structure (form part) of a religious organization (association) whose lead center (administration) is located outside Ukraine in the state recognized by law as having committed military aggression against Ukraine and temporarily occupied the territory of Ukraine, shall be obliged in its full name, specified in its statute (regulation), to reflect jurisdictional affiliation with a religious organization (association) outside Ukraine which it is included in (forms part of) by obligatory reproduction of the full statute name of such a religious organization (association) with the possible addition of the words “in Ukraine” and/or designating its place in the structure of a foreign religious organization.”

The above wording allows us to conclude that by adopting this law, the State of Ukraine violated the provisions of international law in several important areas which are set forth at length in the Legal Opinion at: <https://www.protiktor.com/eng/opinion2662>

The proof of violations of human rights by the law under consideration is most clearly illustrated on the basis of the practice of the European Court of Human Rights. In this connection, the rationale below contains the ECtHR judgements on some cases that can be applied to the situation in question.

Paragraph 3 of Section II of the Law contains the obligation of religious organizations to make in changes in their full name and submit their statutes for registration in the prescribed manner. In addition, paragraph 2, Section II of the Law entitles the central executive body, which implements the state policy in the sphere of religion to conduct expert examination of the registered statutes of religious organizations.

These provisions of the Law demonstrate that, at the legislative level, state bodies are unable to maintain neutrality while discharging their duties, testifies to undue interference with the freedom of believers to profess their religion under Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is supported by numerous judgements of the ECHR: “Svyato-Mykhaylivska Parafiya v. Ukraine” No. 77703/01 dated June 14, 2007; “Manoussakis and others v. Greece” dated September 26, 1996; “Svyato-Mykhaylivska Parafiya v Ukraine” No. 77703/01 dated June 14, 2007.

We draw attention to the fact that the legislation of Ukraine does not oblige any other legal entities registered on the territory of Ukraine, except for religious organizations of a particular denomination, to change their names due to the fact that such legal entities “belong” to other legal entities outside Ukraine. This fact testifies to religion-based discrimination against believers of the Ukrainian Orthodox Church alone.

Moreover, changes in the names of churches belonging to the Ukrainian Orthodox Church, in their essence, will not stop any offenses to which the Ukrainian Orthodox Church could hypothetically be related. The purpose of this Law, among other things, is to pin a label on believers and clergymen of the Ukrainian Orthodox Church and their property to make them clearly visible as the group of persons to be discriminated on religious grounds.

In addition, it should be noted that state authorities are squarely exerting pressure on believers of the Ukrainian Orthodox Church, thus forcing them to transfer to the newly

established local church (the Orthodox Church of Ukraine). Against this background, the Law in question is one of the tools of the pressure (“Hasan and Chaush v. Bulgaria” No. 30985/96, dated October 26, 2000; “Metropolitan Church of Bessarabia and others v. Moldova” No. 45701/99 dated December 13, 2001)

Therefore, Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms prohibits public authorities from taking any measures of pressure, including at the legislative level, aimed at forcing believers against their will to move from one confession to another, or change one leadership to the other (“Hasan and Chaush v. Bulgaria” No. 30985/96, dated October 26, 2000).

However, the Law does not provide for legal protection against the intervention of public authorities in the exercise of the rights guaranteed by the Convention (“Svyato-Mykhaylivska Parafiya v. Ukraine” No. 77703/01 dated June 14, 2007).

The Ukrainian Orthodox Church, its canons and religious observations provide for the respect of public order and the morality of the individual, therefore the intervention of the authorities takes place in case of deviation from the canons and observations.

We draw attention to the fact that all actions that are being taken in relation to the Ukrainian Orthodox Church may testify to the intention of the authorities to completely destroy this religious group, as such. This conclusion can be reached on the basis of the following.

Based on the Convention on the Prevention and Punishment of the Crime of Genocide as of December 9, 1948, the Framework of Analysis for Atrocity Crimes was developed by the Special Adviser to the UN Secretary-General on the Prevention of Genocide to prevent the possibility of mass atrocities (hereinafter referred to as “Framework of Analysis”). The Framework of Analysis is recommended for use by UN member states as a tool for preventing, monitoring and evaluating possible mistakes in a strategy to prevent the destruction of groups of people at the national level.

The Framework of Analysis enumerate the main risk factors, the presence of which reveals the intentions of a state to completely or partially destroy a certain group.

Analysis of the above provisions allows us to conclude that at present Ukrainian society is characterized by most of the signs that, in their entirety, indicate that the government has a certain plan/policy regarding the destruction of the group of people united by their affiliation with the Ukrainian Orthodox Church.

According to the Resolution adopted by the Human Rights Council on the prevention of genocide on March 23, 2018, each state is obliged to protect its population from genocide, which entails the need to prevent such a crime, including incitement to it, by taking appropriate and necessary measures.

It should be noted that the Law in question together with continuing violations of human rights on religious grounds, such as seizures of churches, battering of believers by police officers (in the village of Katerinovka of Ternopil Region and in the village of Pticha of Rivne Region), repeated calls by government officials to seize the Kyiv-Caves Monastery or other religious shrines, public accusations of the UOC of “anti-Ukrainian activities”, impunity of crimes against the UOC, non-investigation of criminal proceedings, banning of the registration of 13 monasteries and dioceses of the UOC, adoption of anti-church draft laws by the Parliament of Ukraine (Nos. 4128, 4128Д, 5309, 4511) – all of these instances form sufficient evidence to support the fact of the state has embarked on a systematic policy to destruct the denomination of the UOC.

In this regard, the transition of the state and state-driven radical structures to more extremist actions has already manifested itself as the volitional intent of the political elite to prepare by means of propaganda a part of society that will accept such violations. The future degree of intensity and severity of such offenses will depend solely on the combination of external and internal factors, but the important thing is that certain political forces have already started to prepare the society for mass violations.

Currently, such violations take the form of violent transfers of UOC communities to another denomination by drawing up fake protocols of community meetings to disguise

them as voluntary transitions. The offences are committed against the background of pressure on clerics and believers of the UOC from the state administrative and law enforcement agencies. With the adoption of the Law in question, a new element of pressure was added – the legislative marker of UOC believers as a potential group of victims. Thus, according to international frameworks used to assess the signals of imminent atrocities, Ukraine is preparing to commit massive crimes on religious grounds.

Thus, Ukraine not only fails to fulfil its international obligations, including in the framework of cooperation with the UN, but also endangers the believers of the Ukrainian Orthodox Church by adopting the Law under consideration.

Based on the above, the further protection of the interests of the UOC should be based on the recognition of the fact of the state of Ukraine has been violating its international commitments and responsibility to protect. Thus, it is the international community and the UN human rights mechanisms and bodies that should take up the issue and take concrete measures to protect the targeted group of victims in view of the fact that such protection is not actually provided by the state of Ukraine.

The full version of the Legal Opinion is available at:
<https://www.protiktor.com/eng/opinion2662>