

Enclosed information material is submitted by the Human Rights Platform "Uspishna Varta"

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HUMAN DIMENSION MEETING 2019

WORKING SESSION 1. Fundamental freedoms, including: Freedom of expression, free media and information

Name of organization: Human rights platform "Uspishna Varta"

ABOUT ONLINE FREEDOM OF EXPRESSION AND MEDIA PLURALISM IN UKRAINE 2017-2019

Recommendations to the state of Ukraine

To ensure the right to freedom of speech and opinion enshrined in *Article 34 of the Constitution of Ukraine*, as well as *Article 19 of the International Covenant on Civil and Political Rights*, the following measures should be taken by the state of Ukraine

- Remove from the agenda of the parliament a number of legislative acts that, if adopted, could become a governmental instrument for putting additional pressure on independent media (draft laws No. 6688, No. 9725, and other similar ones).
- Oblige law enforcement bodies to apply anti-separatism legislation strictly in accordance with the obligations of states under article 19, paragraph 1, of the ICCPR and not use opposition opinions or criticism to stifle or prosecute.
- In order to restore freedom of speech and information exchange on the Internet, the prohibitions on access to social networks and online resources that were introduced in May 2017 and May 2018 should also be lifted.
- Provide an immediate, effective, and impartial investigation into the activities of the "Mirotvorets" website and its leaders.

About online freedom of expression and media pluralism in Ukraine 2017-2019

1. During 2018, a number of draft laws were introduced into the Ukrainian parliament, which, if adopted, could create additional restrictions on the work of independent media and journalists. These draft laws were introduced by deputies from pro-government factions ("Bloc of Petro Poroshenko", "People's Front") under the guise of combating separatism and were justified by the need to protect the information space in light of the armed conflict in the East of the state. In particular, these legislative initiatives stipulated the possibility of: **extrajudicially blocking online information resources** (draft law No. 6688)¹; **the collection of fines, the**

¹ Draft Law No. 6688 "On Amending Certain Legislative Acts of Ukraine Regarding Countering Threats to National Security in the Information Sphere". Deputies of "People's Front" and "Bloc of Petro Poroshenko" developed the draft law. It was entered in the agenda of the parliament on June 21st 2018. Already on July 4th the draft law was

cancellation of licenses of TV channels and radio for “voicing appeals to violently change the constitutional system of Ukraine, the outbreak of an aggressive war or its propaganda, and/or inciting ethnic, racial, and religious hatred and enmity” (Draft law No. 9068)²; **extrajudicial blocking of the Ukrainian media suspected by law enforcement agencies of promoting “terrorist activities”** (draft law 9725)³. The very fact that these draft laws are put on the agenda of the parliament is an extremely negative signal for freedom of speech and opinion in Ukraine. **The new composition of the Ukrainian parliament, which was elected on July 21st 2019, needs to remove these draft laws from consideration.**

2. **During 2014-2019, the state of Ukraine consistently implemented a policy of restricting freedom of information exchange on the Internet, justifying such measures by referring to the ongoing conflict in the East of the state.** Thus, on May 16th 2017, by the decree of President Poroshenko, access to the **popular Russian social networks “VKontakte” and “Odnoklassniki”**, as well as the “Yandex” search engine, email service, and a number of other online services were blocked. On May 14th 2018, a decree issued by President Poroshenko enacted a decision of the National Security and Defence Council from May 2nd **on sanctions for 3 years** against 1748 individuals and 756 legal entities, including a number of media outlets. The list of resources whose activities were blocked in Ukraine included **a number of popular Russian information sites** (broadcasting of Russian TV channels was blocked back in 2014) and the “WebMoney” payment system, which was used by 4 million⁴ Ukrainians. In 2018, the SBU blocked access to more than 300 Internet resources, citing the fact that “Russia used them to conduct a hybrid war against Ukraine”. The practice of blocking sites continued in 2019.

3. Human rights defenders are also concerned about the so-called **“measures of preventive influence” in relation to users of social networks and administrators of online communities** who, according to security agencies, allegedly distribute anti-Ukrainian materials on the Internet. According to the SBU, such “measures” were taken in 2018 against **220 administrators of online communities** with an audience of more than 10 million Internet users. The SBU reported that 49 administrators of social networks were brought to justice for so-called “anti-Ukrainian propaganda”, 29 of which were handed a notice of suspicion, and 20 court sentences had already entered into force⁵. Detainees, as a rule, are charged with intentionally, for political and

approved by the Verkhovna Rada Committee on National Security and Defence (headed by a deputy from the “People’s Front” faction). http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=6688&skl=9

² Draft Law No. 9068 “On Amending the Law of Ukraine ‘On Television and Radio Broadcasting’ for Strengthening Information Security and Counteracting the Aggressor State in the Information Sphere”, registered in the parliament on 07/07/2018. The authors of the draft law are deputies from the “People’s Front” faction, “Bloc of Petro Poroshenko”, and “Self-Help” http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64570

³ Deputies from the factions “Bloc of Petro Poroshenko” and “People’s Front” submitted draft law No. 9275 “On amending some laws regarding the protection of the information space” on November 7th 2018. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64909

⁴ Presidential Decree No. 126/2018 <http://www.president.gov.ua/documents/1262018-24150>

⁵ <https://uspishna-varta.com/ru/novyny/v-2018-godu-sbu-zaderzhali-49-polzovateley-sotsialnykh-setey>

ideological reasons, disseminating materials that call for deliberate acts to change the territorial boundaries and state border of Ukraine (part 1 of article 110 of the CCU) or deliberate actions aimed at changing the territorial boundaries and state border of Ukraine (Article 109 of the CCU). Neither the names nor the place of residence of the detainees are reported by the SBU, thus human rights activists and lawyers cannot quickly respond to such cases.

4. During January-August 2019 alone, the human rights activists of "Uspishna Varta" recorded 16 cases of social networks user being detained on these charges⁶. Most of the detainees agree to reach a deal with the investigation and thus plead guilty in exchange for a suspended sentence. As soon as the plea agreement is submitted to the court, the court terminates the consideration of the case, regardless of the stage of proceedings. It is disturbing that the accused may have entered into such agreements under duress⁷. Cases when users of social networks are sentenced in absentia are also common. **In cases where the accused do not plead guilty and go to court, accusations by the security authorities are deemed to be insufficient⁸.**

5. **The murder of the Ukrainian journalist and writer Oles Buzina** in 2015⁹ happened after his personal information (including the address of his residence) was published on the **"Mirotvorets" website**. This resource positions itself as a "Center for Research of Signs of Crimes against the National Security of Ukraine, Peace, Humanity, and the International Law". Among

⁶ For example, in June 2019 law enforcement officers in Zaporozhye, Odessa, and Kiev started legal proceedings against citizens for expressing their own opinions on their pages on social networks. Criminal proceedings against suspects are conducted under article 110 of the Criminal Code of Ukraine. On June 25th 2019, the SBU announced the detention of a resident of Mariupol (Donetsk region) who allegedly called to change the borders of Ukraine on banned social networks, popularised politicians favourable to Russia, and incited protests. As in most cases related to the prosecution of users of social networks, the SBU did not disclose the identity of the detainee, but only published his video confession. On August 2nd 2019, the SBU reported that an "anti-Ukrainian agitator" had been exposed in Sumy who allegedly received information from representatives of the Russian special services and distributed it on the Internet. The ID of the "agitator" was not disclosed by the SBU, and the face in the video is blurred.

⁷ <https://uspishna-varta.com/ru/opinions/sverzhenie-konstitucionnogo-stroya-pochemu-i-net>

⁸ On May 24th 2019, the Dneprovsky court in Kiev found no reason to detain a volunteer who the SBU suspects of infringing on the territorial integrity of Ukraine for allegedly posting and administering groups on social networks. In 2014, a Kiev resident travelled on a volunteer mission to Donetsk. According to him, the volunteer organization Center for Development of Donbass, on behalf of which he travelled to the non-controlled territories, collaborated with UNICEF Ukraine and People in Need. On May 15th 2019, SBU employees came to the volunteer's apartment to carry out a search. According to their version, after returning from Donetsk, he allegedly posted provocative information from the group "Our Novorossiya" in one of the groups on the social network Facebook, where he was the administrator. For this he was suspected under Article 110 of the Criminal Code of Ukraine. The volunteer denied any involvement in the suspected crime. SBU officers tried to persuade the suspect to reach a deal, but he refused. The court decided to leave the volunteer free, citing the lack of grounds to take him into custody.

⁹ The person accused of killing the Ukrainian journalist and writer Oles Buzina, who was killed on April 16th 2015 in the courtyard of his house in Kiev, was released from custody under a personal obligation in December 2015. The first preparatory hearing on the case began in the Shevchenkovsky court of Kiev only on February 9th 2018. As of August 2019, the courts sessions are continuing, representatives of the right-wing radical group "C14" that is accused of killing Buzina remain at large.

the partners of the website (from the moment of its opening until May 13th 2016) there were the MIA, the SBU, and other law enforcement bodies. **The website publishes the personal data of people who, according to its creators, have committed crimes against the national security of Ukraine. Human rights activists have reason to believe that such data is illegally provided to the administrators of this website by the law enforcement bodies of Ukraine.**

6. Having studied judicial practice, the human rights activists of “Uspishna Varta” found out that the **information on the “Mirotvorets” website was used by the Ukrainian courts as an evidence base for decisions** at all stages, from the start of a pre-trial investigation to the issuance of a guilty verdict¹⁰. After the publication of this study, the personal data of the human rights activists of “Uspishna Varta” was also published on the “Mirotvorets” website. Since September 2018, law enforcement bodies have been ignoring the appeals of human rights defenders to investigate the illegal activities of this website. On March 26th 2019, the Shevchenkivsky District Court satisfied the complaint of “Uspishna Varta” and ordered the authorised representatives of the State Bureau of Investigation to enter information about the offense committed by law enforcement officers in conspiracy with the director of the “Mirotvorets” Center into the URPI and to start a pre-trial investigation¹¹.

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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¹⁰ <https://uspishna-varta.com/ru/novyny/veb-sajt-mirotvorec-i-sudebnaya-praktika-v-ukraine-1>

¹¹ <https://uspishna-varta.com/ru/novyny/uspishna-varta-vyigrala-sud-po-mirotvortsu>