



**JUBILEE CAMPAIGN
ECOSOC Special Consultative Status (2003)**

**Submission to the United Nations Human Rights Committee regarding
Ukraine
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STATES PARTIES REPORTS**

**Submission by
Jubilee Campaign**

Jubilee Campaign is a non-governmental organization in consultative status with the Economic and Social Council since 2003. Our work focuses on promoting the rights of religious and ethnic minorities and raising the status of vulnerable women and children – to protect them from bodily harm and sexual exploitation.

I. Introduction

Jubilee Campaign, in special consultative status with ECOSOC, submits this analysis of religious freedom and human rights in Ukraine as a contribution to the Consideration of State Reports in advance of the Human Rights Committee's 133rd Session in October and November 2021.

II. International Covenant on Civil and Political Rights

Article 6(2, 4)

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement by a competent court.

Anyone sentenced to death shall have the right to seek pardon or communication of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9(1, 3)

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be denied in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

Article 14(1, 3a, 3b, 3c)

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law,

everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay

Article 18

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.

No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

III. *Arbitrary Detention, Prolonged Imprisonment, Torture, and Lack of Due Process*

A. *The Case of Yaroslav Mysyak*

In contravention of Articles 9 and 14 of the ICCPR, Ukrainian authorities have continued to detain Christian pastor Yaroslav Mysyak for 22 years despite the questionable nature by which he was accused and swiftly convicted of a crime he did not commit. In 1998, Mysyak awoke from a nightmare in which his parents passed away. After waking up, however, Ukrainian police visited Mysyak's home to inform him that in fact his grandparents and uncle had been killed that same night. Prior to the incident, Mysyak's uncle had been engaged in some business with and owed large sums of money to members of a Yugoslavian criminal group, and at the time of the murder the uncle was staying in his parents' (Mysyak's grandparents) attic to avoid being located by the Yugoslavian criminals.¹

Following the murder, Mysyak was summoned to the police station for questioning as a witness; however, he swiftly became the primary suspect. Authorities searched Mysyak's

¹ Stories of Convicts, *Yaroslav Mysiak*.

home twice and found no evidence connecting him to the brutal crime, such as blood, DNA samples, or a weapon. Simultaneously, investigators were attempting to extract a confession from Mysyak; he did eventually sign a record of his guilt after authorities warned him that if he refused to cooperate, his wife and daughter would be held for interrogation. In 1998, Amnesty International published a report highlighting that Uzhgorod authorities had likely used physical and electric torture to extract a false confession from Mysyak, and that during a visit by his father, Mysyak appeared to be physically frail.²

Following Mysyak's confession, authorities searched his home for a third time and found a pair of pants with blood on them – which was not forensically analyzed – as well as a knife in the sewer of a nearby road. Suspiciously, both items had only been 'discovered' after three in-depth searches and an extracted confession by Mysyak. Despite the dubious nature of the evidence found regarding Mysyak's alleged involvement in the crime, and despite that a neighbor had witnessed an unfamiliar man entering the family's home likely to extort money from the uncle, the Transcarpathian Regional Court charged Mysyak with murder and sentenced him to death by firing squad in 1999.

The death penalty had since been overturned in Ukraine, yet Pastor Mysyak remains in detention a whole 22 years after his initial arrest, in Ujgorod Prison. While on death row, Mysyak has suffered from a total lack of human rights; "in the morning and in the evening they were beat, in the afternoon they are herded through the corridor while soldiers from all sides beat them with mallets and rubber truncheons and they let out the dogs on them. Showers were cold water from a fire hose at random times. They killed those who complained about illegal sentences."³

Fortunately, recent judicial decisions have presented an opportunity for Mysyak's case and the dubious evidentiary details to be re-examined. The court of cassation recently stated that Mysyak's charges do not present undisputable evidence of his guilt, and that "the evidence on which the prosecution is based can be interpreted in two completely different ways".⁴ In May 2020, the Mysyak's lawyers were granted permission to seize the documents that forensic experts had prepared 23 years ago in 1998 with regards to Mysyak's case, and the Transcarpathian Oblast Forensic Investigation Bureau is tasked with launching an inquiry into the credibility of the data. The data itself has presented numerous inconsistencies which suggest that there may have occurred some tampering or manipulation.⁵ The Parliament of Ukraine has now registered Law draft No. 5747 which, if adopted, will provide an opportunity for the reviewal of judicial decisions to prisoners who have been sentenced to life imprisonment on questionable grounds.

Regarding the recent updates, Mysyak stated the following:

² Amnesty International, *Concerns in Europe: July – December 1998, 1999*.

³ *Supra* note 1.

⁴ Andrey Didenko, "Prison problems. Old cases of people sentenced to life imprisonment is the legacy of the past – of the Soviet Union", *Kharkiv Human Rights Protection Group*, 15 June 2020.

⁵ Journal Chretien, "Rays of hope for Ukrainian pastor Yaroslav Misiak jailed for 22 years", 14 September 2020.

“...In our country, there is no procedure for correcting miscarriages of justice. It is therefore extremely difficult to convince a current judicial body that, twenty-two years ago, fellow judges made a miscarriage of justice on the basis of a falsified expert opinion presented to them. With God’s help, however, I believe it will be possible. I am fully aware that it is unrealistic to believe that without the Lord’s support it will be possible to win this trial, which has now lasted for twenty-two years. Nevertheless, with the Lord it is possible, for the Lord makes the impossible possible. Praise him for another small victory. The next hearing is scheduled in two months. So I ask you once again for your support in prayer.”

B. Volodymyr Panasenko

In October 2006, a 14-year-old girl by the name of Marika Kutsinda died of severe bodily injuries when a nearby vehicle owned by Lviv City Counsellor and owner of Shuvar market, Roman Fedyshyn, detonated as the result of a planted car bomb. In November, police had caught one suspect as well as one other individual, Oleksandr Rudyi, who was believed to be the mediator between the direct perpetrators and the person who commissioned the crime. Rudyi, who was undergoing treatment and rehabilitation for alcoholism in a medical facility, was forced by investigators to sign numerous confessions and testimonies naming the individuals allegedly responsible for the car bomb. Initially, Rudyi revealed that the blast was commissioned by the car owner Fedyshyn himself in an attempt to “improve his political rating”; however, Lviv Regional Prosecutor’s Office’s Senior Investigator Roman Sharko informed Rudyi that he would not approve of this testimony and forced Rudyi to name other individuals. His second confession named Myroslav Bokalo, the person tasked with operating the Shuvar market; his third confession added Volodymyr Panasenko who, with Fedyshyn, had created the company responsible for the Shuvar market. Rudyi’s fourth and final confession, however, only listed Panasenko as the culprit.⁶

During Panasenko’s trial, Rudyi redacted his testimony and emphasized that not only was Panasenko not involved in the incident whatsoever, but also that Lviv investigator Roman Sharko pressured Rudyi with threats of physical assault and life imprisonment if he did not identify Panasenko as the perpetrator and testify against him in court. Rudyi “was beaten, subjected to physical and psychological pressure, [and] injected [with] psychotropic substances”. The judges presiding over the case, including Stanislav Holubytsky, despite Rudyi’s insistence of Panasenko’s innocence, sentenced Panasenko to life imprisonment, which he is still serving in prison fourteen years later. Former Ukrainian Parliament Commissioner for Human Rights Nina Karpachova as well as numerous other human rights organizations have highlighted that Panasenko’s continued detention violates relevant international humanitarian law.⁷

⁶ Halya Coynash, “[Ukrainian life sentence – because they needed to arrest somebody](#)”, Kharkiv Human Rights Protection Group, 26 October 2020.

⁷ Stories of Convicts, [Volodymyr Panasenko](#).

Roman Sharko, despite his direct involvement in the physical beating and torture of Rudyi in custody, the coercion and extraction of false confessions and testimonies, and the “falsif[ication of] the protocols of interrogations at pre-trial investigation stage and prevent[ion of] Rudyi from having access to an independent lawyer”,⁸ has since been appointed the head of a department within the Prosecutor General’s Office.⁹

C. Oleksandr Rafalsky

In October 2016, fifteen years after his original sentencing, Oleksandr Rafalsky died in prison at just 46 years old. In 2001, while he was working on business with his parents Rafalsky started receiving threatening phone calls by individuals warning him to leave his city, and his car tires had been slashed and vehicle stolen. Months later, four deceased individuals were found in a field with their hands severed; authorities arrested four individuals without grounds and claimed that they had killed and dismembered the deceased individuals in the construction location where Rafalsky’s and his parents’ shopping centre was being built. Suspicion regarding the details of the case initially mounted when authorities falsely claimed that one of the victims, a 38-year-old man, was a young boy, and when they claimed that two of the female victims had their appendix removed in the incident, despite that neither of the bodies exhibited such removal.¹⁰

Without a warrant, officials arrested Rafalsky on 13 June 2001 and detained him for twelve days without formal charges; finally, on 25 June they informed him he was suspected of murder and only five days later without legal counsel or due process, a court convicted Rafalsky and sentenced him to life in prison.¹¹ In July 2001, a forensic report could not excuse the possibility that torture was used on Rafalsky during his time in pre-trial detention; Rafalsky himself has since told of being subjected to physical assault, electroshock torture, firing with blank bullets, and mock executions.

Only on 27 May 2021 did Rafalsky receive posthumous justice when the European Court of Human Rights concluded in *Case of Debelyy and Others v. Ukraine* that the Ukrainian government had violated Article 3 of the European Convention prohibiting torture. The ECHR in its decision focused on the cases of three individuals, including Oleksandr Rafalsky, Andrey Debelyy, and Roman Korolev; while the Ukrainian government has denied the findings with regards to Korolev and Debelyy, it has not denied the ECHR’s findings on the treatment of Rafalsky. Below is a summary of the ECHR’s judgement:

“The State provided no plausible satisfactory and convincing explanation as to the origin of [Rafalsky’s] injuries and did not disprove that they had been inflicted by police officers. <> For over twelve years there was no full-scale investigation, only

⁸ *Supra* note 6.

⁹ Halya Coynash, “Investigator involved in Ukraine’s most notorious miscarriage of justice appointed to top prosecutor post”, *Kharkiv Human Rights Protection Group*, 31 December 2019.

¹⁰ Halya Coynash, “Tortured & Almost Certainly Innocent Ukrainian Life Prisoner Dies Without Justice”, *Kharkiv Human Rights Protection Group*, 21 October 2016.

¹¹ Zmina, “Arbitrarily life-imprisoned Oleksandr Rafalsky dies in remand prison”, 20 October 2016.

repeated rounds of pre-investigation inquiry. <> The overall length of investigation and repeated remittals for reinvestigation in view of shortcomings recognized by domestic authorities. <> The initial inquiry lacked independence. <> Delays in apprising Rafalsky of procedural developments. <> No attempt was made to assess proportionality of force used to restrain applicant during arrest, or the probability of his allegation that he had been ill-treated after arrest to extort confession. <> Delay in according him victim status.”¹²

IV. Freedom of Thought, Conscience, and Religion

Article 35 of the Constitution of Ukraine states that “everyone has the right to freedom of personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and unimpededly religious rites and ceremonial rituals, and to conduct religious activity.”¹³ While the Ukrainian government generally respects freedom of religion or belief, Jehovah’s Witnesses have continued to report acts of persecution including 54 “religiously motivated attacks” between 2016 and 2019. Persecution includes physical assault, derogatory and defamatory remarks regarding the faith of Jehovah’s Witnesses, death threats towards Jehovah’s Witnesses who share their religion, denial of conscientious objection, accusations of draft evasion, rejection of applications for alternative civilian service, arbitrary detention by authorities, etc.¹⁴

While for the most part Ukrainian Jews do not often face overt or persistent acts of antisemitism – in fact the president, Volodymyr Zelensky is himself openly Jewish – there are concerns that some false and harmful stereotypes continue to exist, including that Jews are financially greedy, or that they hold too much power in the media and government. Meanwhile, Ukraine has rejected joining the International Holocaust Remembrance Alliance and has not adopted the IHRA Working Definition of Antisemitism.¹⁵

In early September 2020, several residents of a town in Uman physically assaulted an Israeli Hasidic Jewish man who was participating in an annual Rosh Hashanah pilgrimage. This attack came not long after Israel’s Coronavirus Czar, Dr. Ronni Gamzu, sent a letter to Ukrainian President Zelensky urging him to prohibit Jews from pilgriming to Uman due to concerns that they may spread COVID-19 upon their return to Israel; Zelensky announced days later that foreigners would not be permitted to enter the country.¹⁶ In response to the September 2020 violent attack of the Jewish pilgrim, President Zelensky stated:

¹² Halya Coynash, “Posthumous justice for Ukraine’s most famous victim of police torture”, *Stories of Convicts*, 27 May 2021.

¹³ *Constitution of Ukraine* [Ukraine], 28 June 1996.

¹⁴ United States Department of State, *2020 Report on International Religious Freedom: Ukraine*, 12 May 2021.

¹⁵ American Jewish Community, “The State of Antisemitism in Eastern Europe”, 17 December 2020.

¹⁶ The Times of Israel, “Ukrainian police probe assault of Jewish pilgrim in Uman”, 2 September 2020.

“We strongly condemn anti-Semitic attacks of any kind. Antisemitism is a poison that has no place in Ukraine. And in this case, we have encountered many disinformation campaigns, as our Israeli partners know. We respond to every possible case of aggression on an anti-Semitic background. Meanwhile, according to a survey by the Pew Research Center in 2018, Ukraine is the country in Eastern Europe with the lowest rate of antisemitism. This is encouraging, but obviously we always need to do more, and we must and will remain extremely vigilant.”¹⁷

In May 2020, the Ukrainian Department of Strategic Investigations (DSI) in a letter requested that Yakiv Zalizhchyker, head of Kolomyia’s Orthodox Jewish community, send in a list of all Jewish community members along with their names and addresses, as well as all local Jewish university students with information on their school and area of study. The DSI’s self-proclaimed main goal is to “fight criminal groups that are transnational or specifically ethnic in nature”. It is unclear what caused the DSI to mistakenly and offensively associate Jews with criminal activity.¹⁸ In response to the incident, US Senators Jacky Rosen (D-NV) and James Lankford (R-OK) released a statement stating the following:

“As co-chairs of the Senate Bipartisan Task Force for Combating Anti-Semitism and strong supporters of the U.S.-Ukraine bilateral relationship, we are gravely concerned by reports that a high-ranking Ukrainian police official requested a list of all Jews in the city of Kolomyia as part of an inquiry into organized crime. Targeting an entire Jewish community is an ugly manifestation of anti-Semitism and evokes darker times when European Jews were forced to register their personal information. We urge the Government of Ukraine to investigate this incident, hold those responsible accountable, and recommit to joining us in countering anti-Semitism in all its forms.”¹⁹

In April 2021 in Kyiv, hundreds of Ukrainian citizens participated in a march celebrating SS Galichina, a Ukrainian division of the Nazi Party’s military outfit Waffen-SS directly responsible for crimes against humanity such as the Huta Pieniacka massacre. Moreover, each January, Kyiv residents organize a rally in remembrance of Nazi collaborator Stepan Bandera.²⁰

Moment Magazine’s Anti-Semitism Monitor listed 17 acts of antisemitism in the year 2020, including: vandalism of Jewish individuals’ personal property, houses of worship, and Holocaust monuments; attempted and successful attacks on synagogues; physical assault and bodily harm of Ukrainian Jews; and propagation of Nazi symbolism.²¹ So far in 2021, the Anti-Semitism Monitor has identified 11 antisemitic incidents, including: desecration

¹⁷ Office of the President of Ukraine, “Ukraine is the country with the lowest rate of antisemitism in Eastern Europe – Volodymyr Zelenskyy in an interview with the Jerusalem Post”, 10 September 2020.

¹⁸ Ararat L. Osipian, “Jews and conspiracy theories: Antisemitism enters academia in Ukraine”, *New Eastern Europe*, 16 October 2020.

¹⁹ “Rosen, Lankford Statement Condemning News of Anti-Semitism in Ukraine”, 12 May 2020

²⁰ Lev Golinkin, “Secretary Blinken Faces a Big Test in Ukraine, Where Nazis and Their Sympathizers Are Glorified”, *The Nation*, 6 May 2021.

²¹ Ira N. Forman, *Anti-Semitism Monitor*, Moment Magazine, 2020.

and grave-robbing of Jewish cemeteries; propagation of antisemitic leaflets; marches honoring Nazi collaborators and Ukrainian nationalists; and the murder of non-Jewish scholar of the Holocaust and Jewish history, Vladimir Shchukin.²²

In May 2020, the Ukrainian Council of Churches and Religious Organizations (UCCRO) met with Prime Minister Denys Shmygal to express their concerns about quarantine restrictions on religious gatherings. The Ukrainian government's quarantine regulations, while they provided processes for reopening schools, cultural institutions, and some food establishments, did not provide for easing restrictions on religious worship and gatherings. Moreover, while the capacity for events held in cultural institutions during the pandemic was one person per five meters, the regulations for religious events was one person per ten meters.²³

V. **Conclusion & Recommendations**

Jubilee Campaign urges the Human Rights Committee to make the following recommendations to Ukraine:

1. In accordance with the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, permanently cease all violations of due process, including unwarranted arrests, prolonged detention, extraction of false confessions, psychological or physical torture, fabrication of evidence, and denial of access to legal counsel and a fair trial.
2. Encourage the adoption of Law draft No. 5747 to allow for the review of judicial decisions with regards to prisoners who were sentenced to life imprisonment on questionable grounds.
3. Take observable measures to (1) condemn, (2) prohibit, and (3) prosecute acts of antisemitism; in that same vein, join the International Holocaust Remembrance Alliance and adopt the IHRA Working Definition of Antisemitism.
4. Ensure that COVID-19 mitigation and eradication efforts are undertaken with the possibility of the easing of restrictions on religious gatherings and events contingent upon their adherence to relevant mask, sanitization, and social distancing requirements.

²² Ira N. Forman, *Anti-Semitism Monitor*, Moment Magazine, 2021.

²³ Ukrainian Council of Churches and Religious Organizations [UCCRO], "UCCRO initiates a meeting with the Prime Minister to ensure religious freedom during the COVID-19 pandemic", 26 May 2020.