

ICCPR List of Issues Joint Submission to the UN Human Rights Committee prior to the Adoption of the List of Issues for the review of Ukraine

Illegitimate and disproportionate restrictions on the freedom of expression on the internet under national security arguments

I. Reporting Organization(s)

This submission is made by Freedom House, an organization based in the United States, and the FreeNet Coalition, based in Ukraine, a coalition of several civil society organizations including NGO “Human Rights Platform,” “ZMINA. Human Rights Center,” “Digital Security Lab,” “Crimean Human Rights Group,” “Center for Civil Liberties” and several individual activists.

II. Issue Summary

Since 2014, the Ukrainian government has introduced several restrictions to the right to hold, receive, and impart information and ideas, justified by national security concerns, which interfere in the right to the freedom of expression. In 2017, it imposed a set of allegedly economic sanctions which led to major restrictions on online platforms and content. Measures are discriminatory against those who hold certain opinions, are disproportionate and inconsistent with their stated aims, and violate Ukraine’s obligation to provide for the right to the freedom of expression.

III. Relevant ICCPR Articles and Concluding Observations

- Articles 2, 4, 19
- In its 2013 Concluding Observations, the Committee recommended that the State Party “should ensure that journalists, human rights defenders and individuals are able to freely exercise their right to freedom of expression, in accordance with article 19 of the Covenant and the Committee’s general comment No. 34” (para. 20) and urged that “any restrictions on the exercise of freedom of expression should comply with the strict requirements of article 19, paragraph 3, of the Covenant” (para. 20).
- In its 2006 Concluding Observations, the Committee recommended that the State Party “protect the freedom of opinion and expression, including the right to freedom of the press” (para. 14).

IV. Current Ukraine Government Policy or Practice

In 2017, Ukrainian government adopted an Information Security Doctrine which called for the adoption of legislation on the blocking of online content considered to be threatening to national security. In May 2017, the President of Ukraine, by his Decree No. 133/2017,¹ approved a decision by the National Security and Defense Council (NSDC) on the application of economic sanctions against nearly two thousand Russian individuals and legal entities which led to the blocking of, among others, a number of websites, Russian-owned social networks, email services, search engines, and cybersecurity and anti-virus software. The sanctions and extra-judicial blocking were

¹ Decree of the President of Ukraine No. 133/2017 as of 15 May 2017 on Approval of the Decision of the National Security and Defense Council as of 28 April 2017 on the Application of Personal Special Economic and Other Restrictive Measures (Sanctions), <https://www.president.gov.ua/documents/1332017-21850>

imposed for three years and should last until mid-May 2020. In March 2019, President Poroshenko signed a new decree that imposed additional restrictions through a similar sanctions mechanism.² The President and the Security Service of Ukraine (SSU) publicly justified the decisions by the need to protect national security, restrict “anti-Ukrainian” propaganda, and protect Ukrainians’ data. Both rounds of sanctions were introduced without court orders, without meaningful consultations, and without clearly articulated arguments demonstrating their necessity in a democratic society and proportionality to the threat they addressed.

This is occurring in an environment of aggressive prosecution of online expression. According to the SSU, in 2018 alone it identified and blocked 360 cyber incidents, led to the convictions of 49 administrators of groups in social networks for “anti-Ukrainian propaganda,” and began proceedings against an additional 29 people³. The data also show that “preventive measures” were undertaken against 220 group administrators⁴ who were allegedly disseminating information of a destructive nature to over 10 million Internet users.

V. **Human Rights Committee General Comments**

The Committee has repeatedly reminded States that certain restrictions on the right to freedom of expression are permitted, including in the interest of the protection of national security or of public order, subject to the condition that the restrictions must be “provided by law”; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being “necessary” for that State party for one of those purposes.

VI. **Other UN Body Recommendations**

The necessity and proportionality of the sanctions was also questioned by the international community, namely the Office of the United Nations High Commissioner for Human Rights in Ukraine in their periodic reports on the human rights situation in Ukraine; and the Secretary General of the Council of Europe who voices concern over blocking social networks and website.

VII. **Recommended Questions**

- How do the sanctions meet the tests for proportionality and necessity in a democratic society, necessary for them to be considered legitimate infringements on the freedom of expression under the Convention?
- Given the sanctions’ significant consequences for a majority of Internet users in Ukraine, what efforts were made to conduct meaningful public consultations to evaluate these measures?

VIII. **Suggested Recommendations**

² Decree of the President of Ukraine No. 82/2019 as of 19 March 2019 on Approval of the Decision of the National Security and Defense Council as of 19 March 2019 on the Application, Elimination and Amendment of Personal Special Economic and Other Restrictive Measures (Sanctions), <https://www.president.gov.ua/documents/822019-26290>

³ СБУ розповіла про 360 «кіберінцидентів», 73 зрадника і 8 терактів за один рік, [SSU reports about 360 “cyberincidents,” 71 traitors and 8 acts of terrorism in one year], Pravda.com.ua: <https://www.pravda.com.ua/news/2019/01/9/7203307/>

⁴ СБУ результативно протидіє агресії РФ в інформаційній сфері, [SSU effectively counteracts Russian aggression in the information space], the official website of the SSU: <https://ssu.gov.ua/ua/news/1/category/21/view/5545#.0fOFVqBf.dpbs>

- The State Party should hold multistakeholder consultations and request expert assessments on the viability, effectiveness, and cost-benefit analysis before applying any restrictions or adopting policies regarding information and communication technologies, internet access, or digital rights.
- The State Party should articulate to the public clear justifications for any restrictions and their methods of implementation, including on how they can be reasonably expected to address root causes while maintaining respect for human rights.
- The State Party should strictly comply with international human rights standards and best practices for protecting freedom of expression online developed by international institutions, including by the European Court of Human Rights and the United Nations.
- The State Party should refrain from blanket prohibitions on access to resources and ensure that the only legal ground for removal of content or access is a court decision that follows a thorough and fair investigation of each case, provided that such measure is necessary and proportionate to the pursued aim as required by international law.