

MONITORING THE RIGHT TO FREE ASSEMBLY

Center for Civil Liberties

2017
2018

UKRAINE

 **#right2freeassembly**

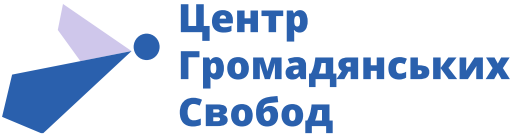
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I. EXECUTIVE SUMMARY

Within the framework of the Project, the Center for Civil Liberties, with support from the European Center for Not-for-Profit Law, conducted research and monitoring of the observance of the right to freedom of peaceful assembly in Ukraine in the period 2017-2018. Thus, an analysis of current legislation was carried out, requests for access to public information were submitted, interviews with stakeholders were held and observation of peaceful assemblies was performed. Among the respondents for the interviews there were experts in the area of observing freedom of assembly, organizers of assemblies on various matters, staff of the Ministry of Justice (Director-General of the Directorate of Human Rights, Access to Justice and Legal Awareness), an MP, a village mayor, an employee of the city administration in Kyiv, and police officers (representatives of the Department of Human Rights in Lviv and Vinnytsya, a member of the Prevention Division of the Main Department of the National Police in the Sumy oblast, members of the tactical operative response squads of the Patrol Police and the officers of the „Police of Dialogue“).

The following key trends were identified in the process of research and monitoring of freedom of assembly in Ukraine. Despite

the fact that the situation with freedom of assembly in Ukraine has improved since the Revolution of Dignity in 2013-2014, there still remains a need for significant improvements and reforms in the sphere of facilitation and protection of assemblies.

There is no special law on peaceful assemblies in Ukraine. Numerous attempts at adopting such a law are being attacked by the serious opposition of the opposition, experts and civil activists who fear that the adoption of such a law and additional regulation will result in restrictions on freedom of assembly. Nevertheless, in 2016 there was a corresponding legislative initiative. Two submitted bills are still pending before the relevant parliamentary committee. Nevertheless, in 2017, attempts were made to legislatively extend the powers of military formations on peaceful gatherings, despite the unconstitutionality of such powers.

Local governments – civilian authorities – can hardly be called an effective actor in promoting and facilitating peaceful assemblies so far. The large number of functions that, for example, should be vested with the civilian administration authorities in Ukraine according to the OSCE/ODIHR Guidelines, are in practice assigned to the police forces.


Moreover, there are still cases of creating extra burden the organizers and participants in the assemblies due to the existence of acts of local self-government bodies, which establish the procedure for organization and holding of assemblies, determine the deadline for submitting a notice, introduce additional restrictions, etc., contrary to Art. 39 of the Constitution of Ukraine and the decision of the judicial authorities.

The establishment of special units for mediation and negotiation are a positive development in policing assemblies. However, there is still no consistent vision or approach to safeguarding public order during the assemblies. The guidelines on peaceful assemblies policing which would have facilitated the work of the police during public gatherings are still not developed with the participation of the civil society and not adopted. The lack of consistent training for various units and approved training plans for special training on policing of peaceful assemblies are yet another problem.

Despite the need to demilitarize law enforcement bodies, which became evident after the events of the 2013-2014 Revolution of Dignity, we are still observing attempts to introduce legislative initiatives to expand the powers of the military units (The National Guard) to limit the freedom of peaceful assembly.

The failure to fulfill the police's positive duty to protect assemblies, the incidents of disproportionate use of force and the violation of the Law of Ukraine "On the National Police of Ukraine" to the extent of personnel identification, use of physical force, special equipment still pose challenges for the

freedom of peaceful assemblies.



II. BACKGROUND AND CONTEXT

There is still no reliable official statistics on the number of peaceful assemblies held in Ukraine. As experts have repeatedly pointed out, official data from the State Statistics Service of Ukraine on the number of peaceful assemblies held by public associations never be considered a coherent data source, as these were based on the reports submitted to the statistical authorities by the public associations themselves¹. At present, the State Statistics Service do not provide information on peaceful assemblies.

Nevertheless, we have sent requests for access to public information to the National Police of Ukraine and local self-government bodies regarding the number of assemblies that were reported and conducted. It is worth emphasizing that the figures are rather conventional, because we can assume that these data are approximated or less than reliable. As requests and phone calls with the addressee agencies have shown, often police officers and local government officials do not distinguish peaceful assemblies from other

¹ <https://helsinki.org.ua/svoboda-zibran/>

types of gatherings and report them as a bulk figure without breakdown by the assembly type. We tried to make a series of refinement requests for access to public information, with the request to name just a fraction of the peaceful gatherings of mass events that came in response to the first queries. The table below lists the names of the oblasts and the number of assemblies that were reported by the National Police in 2017-2018, according to the response to these specific requests.

As indicated in the response to the request of the Center for Civil Liberties, the National Police of Ukraine does not keep official statistics on peaceful assemblies by type of event (assemblies, processions, demonstrations). Nevertheless, the response indicated that in 2017 there were "768 public events" (public assemblies), in connection with which "928 incidents" were recorded. It is difficult to build a correlation between number of assemblies in the table and statistics on because of the very approximate value of the numbers in the table. In the course of 2017, during the peaceful assemblies involving "incidents", the

OBLAST	HELD		
	2017	1st quarter	1st semester 2018
Ternopil	345	107	
Zaporizhzhva	2561	839	
Odesa	464	-	274
Chernivitsi	406	94	
Donetsk	708	535	
Ivano-Frankivsk	392	102	
Kyiv (as city)	3000	700	
Kyiv	368	58	
Zhytomyr	76	21	

protocols on administrative offenses were issued for actions envisaged by the Code of Ukraine on Administrative Offense under the following articles: art. 173 (Petty hooliganism), art. 185 (Malicious disobedience to the lawful order or demand of a police officer, a member of a voluntary unit on public order or the state border protection, a serviceman), art. 195-4 (Violation of the procedure for the production, acquisition, storage or sale of electric shock equipment and special means used by law enforcement agencies) and art. 195-6 (Violations of the procedure of production, storage, transportation, sale and use of pyrotechnic means). According to the Prevention Department of the National Police in 2017, criminal proceedings have been initiated for offenses envisaged by art. 125 (Intentional minor bodily harm), art. 279 (Blocking of transport communications, seizure of a transportation company), art. 296 (Hooliganism), art. 345 (Threat or violence

against a law enforcement officer), and art. 436-1 (Production, distribution of Communist, Nazi symbols and propaganda of the Communist and National-Socialist totalitarian regimes) of the Criminal Code of Ukraine. In practice, criminal sanctions against organizers or participants in peaceful assemblies are applied rarely. In general, the police attract organizers and participants for committing administrative offenses. Most often people are simply "invited" to police stations and after release, without any form of detention and without bringing to justice. Also, the organizers of assemblies are not responsible for the material damage caused during peaceful assembly.

Due to the lack of official statistics, it is not possible to specify the exact venue and theme of assemblies. According to the data of the Uniform Register of Court Resolutions, in 2017 courts banned holding three peaceful

assemblies.²

According to the results of observations, after the events of EuroMaydan, the dispersal of peaceful assembly has ceased to be the usual practice of police. Nevertheless, in 2018, the illegal dispersal (without court decision) of a tent camp under the building of the Verkhovna Rada of Ukraine took place, during which there were significant violations of the proportionality of the use of force by police.

During 2013-2014, a lot of peaceful assemblies ended up banned by court. Since March 2014, the number of bans has decreased from several hundreds per year to units, and most of them were related to restricting the assemblies on the grounds of the threat for territorial integrity. The failure of law enforcement agencies to fulfill their positive obligations towards protesters rather than prohibition by courts is the main challenge in ensuring the freedom of peaceful assembly. Despite some steps in reforming the public order sector, public activists and human rights defenders highlight the tendency towards non-fulfilment or deterioration of the police's function of protecting peaceful assemblies³. In assessing the freedom of peaceful assembly, it should

² Expert Mykhailo Kameniev in his comments to the authors of this report noted that it is worth talking about a certain failure in judicial statistics. In his opinion, for some reason, in 2017, official judicial statistics crashed in this category of cases. There were dozens of lawsuits, and in statistics only 3 cases were indicated and the results of their consideration were not indicated: "More precisely, in statistics the figure 6 is worth all. No data on the results of the review. I was alert and I decided to check the registry, and there were dozens of cases. The restrictions were not found at first glance. But the trend for the fall in the number of claims ceased and went up."

³ <http://amnesty.org.ua/nws/derzhava-vtrachaye-kontrol-nad-radikalnimi-ugrupuvannyami-shho-aktivizualisya-u-niztsi-mist-ukrayini/>

be emphasized that the legislation does not contain any prohibitions on the exercise of this right by any groups of citizens⁴. Nevertheless, due to National Police's default of its positive obligations to protect participants of peaceful assemblies, the possibility of exercising this right for groups that are going to express unpopular views or slogans, gets undermined⁵.

In keeping with the foregoing, the right to peaceful assembly is largely enabled but could be improved. Comparing with five years ago the situation in relation to the right to peaceful assembly is improving.

⁴ According to the Law of Ukraine "On the Judiciary and the Status of Judges", a judge may not participate in political events, rallies, strikes.

⁵ <http://ccl.org.ua/news/tysk-na-hromadyanske-suspilstvo-formy-ta-metody/>



III. LEGAL FRAMEWORK

LEGAL REGULATION OF THE FREEDOM OF PEACEFUL ASSEMBLY IN UKRAINE

Freedom of peaceful assembly is enshrined in Art. 11 of the European Convention on Human Rights, according to which “No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State”. Moreover, Art. 21 of the International Covenant on Civil and Political Rights, ratified by the Decree of the Presidium of the Supreme Council of the Ukrainian SSR of October 19, 1973, guarantees everyone the right to freedom of peaceful assembly.

The right of citizens of Ukraine to peaceful assembly is guaranteed, in particular, by Art. 39 of the Constitution of Ukraine:

Citizens have the right to assemble peacefully without arms and to hold assemblies, rallies,

processions and demonstrations, upon notifying in advance the bodies of executive power or bodies of local self-government. 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 without constraint religious rites and ceremonial rituals, and to conduct religious activity.

Restrictions on the exercise of this right may be established by a court in accordance with the law and only in the interests of national security and public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons⁶.

Art. 39 of the Constitution of Ukraine defines peaceful assemblies as, rallies, processions and demonstrations. The Code of Administrative Procedure of Ukraine defines peaceful assemblies as assemblies, rallies, processions, demonstrations, etc., that is, it provides for the

⁶ In 2017 one person was held liable for violating the procedure of holding assemblies, rallies, processions and demonstrations “The administrative offense protocol testifies that on June 08, 2017, at 6.30 p.m. PERSON_2 at Tsentralna Street, Vilshany settlement of Derhachi district of Kharkiv oblast, breached the established procedure of a rally organization and holding, specifically, failed to submit an application on holding a rally to the authorities”. See.: <http://www.reyestr.court.gov.ua/Review/68526373>

possibility of organizing peaceful assemblies in other forms. There is no special regulation for holding spontaneous peaceful assemblies and, like other forms of assembly, they are safeguarded by Art. 39 of the Constitution of Ukraine. Also, Ukrainian legislation does not include separate regulation for counter-assemblies.

NOTIFICATION OF AUTHORITIES ABOUT A PEACEFUL ASSEMBLY

The Constitution stipulates that the announcement of the assembly should be made by notification rather than obtaining a permission. The Resolution of the Constitutional Court of Ukraine in the case of the constitutional submission of the Ministry of Internal Affairs of Ukraine regarding the official interpretation of the provision of Art. 39.1 of the Constitution of Ukraine on the early notification of executive bodies or local self-government bodies on forthcoming assemblies, rallies, processions and demonstrations (the case on early notification on peaceful assemblies) states the following:

The provisions of Art. 39 of the Constitution of Ukraine on early notification of authorities or local governments on forthcoming assemblies, rallies, processions and demonstrations in the aspect of the constitutional submission should be interpreted to mean that the organizers of peaceful assembly must inform these authorities about these events in advance, i.e. within a reasonable time before the expected date of their holding. These terms should not be prejudicial to the right of citizens envisaged in Article 39 of the Constitution of Ukraine, but should safeguard it and at the same time enable the relevant

executive authority or local government to take actions to ensure the uninterrupted holding of assemblies, processions, assemblies and demonstrations, protect public order, rights and the freedoms of other people. Determination of specific deadlines of advance notice taking into account the peculiarities of the forms of peaceful gatherings, their scale, place, time, etc. are subject to legislative regulation.

Thus, the Ukrainian legislation does not determine the form and content of the announcement of the holding of a peaceful assembly. Besides the Law "On the Procedure for Resolving Collective Labor Disputes" have provisions that limit freedom of assembly during a strike: Art. 19: "In case of assemblies, rallies, pickets outside the enterprise body (person) who is in charge of the strike must inform the local executive body or local government body about the planned measure not later than in three days. "

In addition, in 2016, the Constitutional Court of Ukraine determined the unconstitutionality of provisions of Part 5 of Art. 21 of the Law "On Freedom of Conscience and Religious Organizations". It stipulates that public worship, religious rite, ceremony and procession in places other than those established by law shall be carried out if authorized by the relevant local authority, in the case upon the constitutional submission of the Commissioner of the Verkhovna Rada of Ukraine on Human Rights regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Part 5 of Art. 21 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" (case of advance notice about public sermons, religious rites, ceremonies and processions).

OBLIGATIONS OF THE LOCAL GOVERNMENT BODIES

State agencies that somehow deal with freedom of assembly.

- The Verkhovna Rada - within the framework of the adoption of laws relating to the right to a peaceful assembly.
- Government - as the body that builds the "policy" of the state in this area. (Here we also include the Ministry of Internal Affairs, as part of the government).
- National Police;
- The judicial branch
- Ombudsperson: The role of the Ombudsperson in matters of peaceful assembly. Article 3. The Law on the Ombudsperson of the Verkhovna Rada of Ukraine. And it consists in the fact that she\ he must protect, prevent the violation and prevention of any form of discrimination against the realization of a person's right to a peaceful assembly as one of the proclaimed by the Constitution of Ukraine, the laws of Ukraine and international treaties of Ukraine

In accordance with the requirements of Art. 38 of the Law "On Local Self-Government in Ukraine" and Art. 25 of the Law "On Local State Administrations", the competences of executive bodies of village, settlement, city councils and local state administrations includes deciding on matters related to holding assemblies, rallies, processions and demonstrations, sports, entertainment and other mass events; control over ensuring the public order during these events. Thus, self-government bodies can only decide on the procedure and scope of the municipal

utility services or law enforcement officers' involvement, and they have no authority to impose additional restrictions on the procedure of holding peaceful gatherings. Nevertheless, the law does not specify or define the procedure for the response of the authorities to the notice, or any other good governance principles.

Despite the fact that the law does not establish an official procedure for notifying, we noticed the existence of the practice of the next submission of a message by citizens. The organizer of the peaceful assembly or his authorized representative usually notify the peaceful assembly personally or by sending a letter (if there is enough time for posting), a telegram or in any other way. Currently, there is no valid normative legal act that would establish a specific timeline for early notification of a peaceful assembly. Also, there are unofficial recommendations for providing the following information in the message:

- Who is the organizer of the action;
- Date and time of the event;
- Purpose of the event;
- A form of peaceful assembly;
- Number of participants;
- In the case of the use of tents, sound equipment or the need to overcome traffic.

The National Police of Ukraine is also the executive body that can be notified of the holding of peaceful assemblies. In practice, in response to the announcement of the meeting, telephone communication is being conducted in order to coordinate all additional questions.

RESTRICTIONS OF PEACEFUL ASSEMBLIES

Part 2 of Art. 39 of the Constitution of Ukraine states that restrictions on the exercise of the right to freedom of peaceful assembly may be imposed by a court in accordance with the law and only in the interests of national security and public order, that is to prevent disturbances or crimes, to protect public health or to safeguard the rights and freedoms of others people

The restrictions on the timing of the peaceful assembly are stipulated by the laws of Ukraine "On Elections of Members of Parliament of Ukraine", "On Local Elections", which prohibit the holding of peaceful assemblies for the purpose of campaigning on issues subject to people's voting on elections or referendums on the day before voting and on the voting day (election silence). The Law of Ukraine "On the Use of Nuclear Energy and Radiation Safety" establishes restrictions on the place of assembly, in particular, prohibits assemblies on the territory of a nuclear unit or facility intended for radioactive waste management and within the sanitary protection zone.

There are no restrictions on the forms of assembly. Also, there are no restrictions on noise caused by the assemblies even at night. Regular rules on the noise level in public places do not apply to peaceful assemblies. During the peaceful assembly, temporary installations may be mounted. However, local authorities often provide for a separate procedure for obtaining permits for the installation of temporary architectural forms. It is worth noting that there are no fees/costs related to organizing public assemblies.

IMPOSING A LIABILITY

The current legislation of Ukraine, in particular the Code of Ukraine on Administrative Offenses, as well as the Criminal Code of Ukraine, contain provisions for offenses which may entail legal liability of organizers and participants of mass events.

Art. 185-1 of the Code of Administrative Offenses envisages the liability for violation of the established procedure for the organization or holding of assemblies, rallies, processions and demonstrations for organizers and participants of the assemblies. Art. 185-2 of the same Code establishes liability for officials who facilitate assemblies that are being held "in violation of established procedure of assemblies, rallies, processions or demonstrations". It should be emphasized that the "order", violation of which are subject to legal liability, is actually nonexistent. The ECHR, in its judgments in *Vyerentsov v. Ukraine* and *Shmushkovych v. Ukraine*, stated that the application of Art. 185-1 violated Art. 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as the legally established procedures for the organization and holding of assemblies are lacking⁷.

Nevertheless, the Criminal Code provides for the liability of individuals for actions that lead to an assembly ceasing to be "peaceful", namely actions aimed at forced "overthrow of the constitutional system", "taking over the state power by force" or public appeals to such actions; for "blocking

⁷ The Uniform Register contains a court resolution on holding a person liable for being in breach of Art. 185-1 of the Code of Administrative Offenses of Ukraine, that is, violation of the established procedure of holding assemblies, rallies, street processions and demonstrations. <http://www.reyestr.court.gov.ua/Review/68526373>

transport communications", "mass violations of public order", "mass riots", "calls for actions that lead to the cessation of peaceful nature of assemblies", "hooliganism", "vandalism", "seizure of public or governmental buildings". The law also establishes criminal liability for the illegal interference with the organization and holding of peaceful assemblies.

Usually the police prosecutes the assembly organizers and participants for committing administrative offenses. Most often the participants in the meeting get liable for "malicious disobedience to the lawful order or demand of a police officer" (Art. 185 of the Code of Administrative Offenses), which entails a fine of 8 to 15 non-taxable minimum income amounts (5 to 9 EUR), or 40 to 60 hours of public works, or corrective labor duty for one to two months, with the deduction of 20% of the salary, or an administrative arrest of up to 15 days. Rarely, the liability is imposed for violating the order of organizing and holding of assemblies, processions and demonstrations, which entails punishment in the form of a reprimand or a monetary penalty of 10 to 25 non-taxable minimum income amounts (6 - 14 EUR). If such an offense is repeated during the year (and for organizers gatherings even for the first time), penalty is imposed in the form of an administrative arrest of up to 15 days or a fine of 20 to 100 non-taxable minimum income amounts (11 to 57 EUR)⁸. As noted above, two judgments of the European Court of Human Rights have found such punishment to be in violation of Art. 7 of the European Convention on Human Rights, which further reduced the scope of its application.

⁸ <http://ihahr.org/sites/default/files/files/sv-sobraniy-postsov-pr.pdf>

The organizers of the meeting are not responsible for the pecuniary damage inflicted during the peaceful assembly (except in cases when they personally caused damage).

LEGISLATIVE ACTIVITY ON PEACEFUL ASSEMBLIES DURING 2017

As already mentioned above, there is no special law on peaceful assemblies in Ukraine. The ECHR in its resolutions recommended that Ukraine should adopt the law. In the case *Vyerentsov v. Ukraine*, the Court, referring to the Constitution of Ukraine, highlights the necessity of a law to regulate the issues of holding assemblies: "The Parliament of Ukraine failed to enforce any law regulating the holding of peaceful demonstrations, although Art. 39 and 92 of the Constitution clearly require that such an order be established by law, that is, by the act of the Parliament of Ukraine". In the opinion of the ECHR, Ukraine had to pass a law on peaceful assemblies long ago: "Although the Court agrees that the state may need some time for legislative acts during the transition period, it cannot agree that a delay of more than twenty years is justified, especially when it comes to such a fundamental right as freedom of peaceful assembly". Nevertheless, there is no consensus among the public and the expert community on whether such law is necessary, in view of the concerns about the dangers of adopting such a law, that will impose additional regulatory burden and restrictions on the freedom of peaceful assembly in Ukraine. Repeated attempts to adopt such a law were unsuccessful.

During reported period, no law was passed that would have affected the exercise of the

freedom of assembly. However, there are two bills for a special law that are included in the agenda by the resolution No. 2351-viii dated March 20, 2018. Draft Law No. 3587 "On Guarantees of Freedom of Peaceful Assembly" was registered on December 7, 2015 in the Verkhovna Rada and Draft Law No. 3587-1 was introduced on December 11, 2015. The Venice Commission, together with OSCE experts, passed an opinion⁹ upon consideration of bills on guarantees of freedom of peaceful assembly no. 3587 and 3587-1. The opinion of the Venice Commission confirms the need to substantially reconsider both draft laws¹⁰. At the same time, the Office of the United Nations High Commissioner for Human Rights, in a report on the situation of human rights in Ukraine from November 16, 2015 to February 15, 2016, harshly criticized the draft special law No. 3587. These two bills are still returned on discussion in special Committees of Parliament.

Also, in November 2016, draft laws developed by the members of Parliament of Ukraine Ihor Lutsenko and others with the involvement of human rights activists were registered on amendments to the Laws of Ukraine "On the National Police" and "On the National Guard

⁹ <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282016%29030-e>

¹⁰ in Joint Opinion on two special draft laws N3587 and N3587-1 of the Venice Commission, the Directorate of Human Rights of the Directorate General of Human Rights and Rule of Law of the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights, which was adopted in October, 2016: "It is up to the Ukrainian authorities to choose the appropriate way to satisfy the requirements of this judgment, either by enacting a specific law on freedom of assembly or by introducing amendments to the existing legislation in order to regulate this field" (Art. 12 of the Joint Opinion).

of Ukraine" regarding the freedom of peaceful assembly (No. 5455 and No. 5456 respectively), which propose to determine the procedure of police and the National Guard actions during peaceful assemblies, mass riots and mass disturbances of public order. At the moment, the bills are in the agenda by the resolution No. 2351-viii dated March 20, 2018.

In June 2017, the bill No. 6556 "On Amendments to Certain Legislative Acts of Ukraine on Improving the Legal Framework of the Operations of the National Guard of Ukraine" was registered and is in the agenda by the resolution No. 2351-viii dated March 20, 2018. The bill was drafted with the purpose of harmonizing a number of laws of Ukraine on the National Guard activities with the requirements of the Law of Ukraine "On the National Guard of Ukraine" of 13.03.2014. The human rights community came forth with the criticism of this bill, considering that the bill No. 6556 contradicts the Constitution of Ukraine and the principle of demilitarization of the internal affairs forces, and, moreover, creates ample opportunities for applying disproportionate and undifferentiated violence during peaceful assemblies and empowers the National Guard of Ukraine to perform a number of functions which are out of the scope of its competences¹¹.

The bill on Additions to the Criminal Code of Ukraine regarding the bribery of a participant in the mass meeting, submitted by the MPs A. Herashchenko and I. Vinnyk, was registered on April 16, 2015 under No. 2651, and included in the agenda No. 2351-VIII from 20.03.2018. The opinion of the Supreme Court of Ukraine, in

¹¹ <http://ccl.org.ua/statements/schodo-proektu-zakonu-ukrajiny-6556-v-konteksti-svobody/>

particular, indicates significant shortcomings of this draft law and the need for its revision¹².

The draft law "On Amendments to the Code of Ukraine on Administrative Offenses" (regarding the prevention of unjustified prosecution of citizens for participation in peaceful assemblies) is also included in Agenda 2351-VIII. The purpose of this bill is to prevent abuses and misinterpretation of the current legislation on peaceful assemblies by law enforcement officials who impose administrative liability on citizens.

Moreover, the National Human Rights Strategy, approved by the Decree of the President of Ukraine of August 25, 2015, No. 501/2015, establishes ensuring the freedom of peaceful assembly and association as one of the key strategic areas, while lack of quality legislation regulating peaceful assemblies is one of the 26 systemic deficiencies.

In Ukraine, the possibility of public participation in discussions of any legislative changes and registered bills is supported by relevant regulations. Nevertheless, the active involvement of the public in this practice by the authorities is rather an exception than a rule. The community independently monitors any initiatives on legislative changes and initiates a public discussion, analysis of the proposed amendments. Parliamentarians do not initiate debates on bills on their own. Nevertheless, an NGO independently becomes an actor in these debates, recommends changes to special committees and holds presentations. The change in the political context, the democratic nature of political power directly correlates with the efficiency of public engagement

¹² [http://www.scourt.gov.ua/clients/vsu/vsu.nsf/\(print\)/42AD11B11D9649A0C2257E82004C1284](http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(print)/42AD11B11D9649A0C2257E82004C1284)

in discussions and accountability of the authorities in matters of legislative activity.

POSITIVE DEVELOPMENTS

On December 15, 2017, amendments to the Code of Administrative Procedure, which can be characterized as positive, were enacted (the amendments were developed jointly by judges and experts from the public). In particular, the changes introduced new rules of case consideration by the courts with regard to imposing restrictions on the right to freedom of assembly. Plaintiffs (public authorities and local governments) are now obliged to disclose a statement of claim on their official website. Prior to the events of the Revolution of Dignity the defendant often used to find out about the grounds of claim and its very existence only during the court proceedings. Some trials took place in the absence of the defendant, and the organizers of a meeting would become aware of the claim and the prohibition post factum. The authorities may require to restrict the assembly only in specific cases and not later than 24 hours before it begins. The court will consider the case within two days or immediately, if the lawsuit is filed less than two days prior to the beginning of the assembly. A short review period will discipline judges and prevent considering cases as late as on the night before the meeting. An appeal may be filed within 24 hours from the day after the day it was announced. In this case, the court of appeal shall consider the appeal also within two calendar days after the expiration of the term of challenging the court resolution in appeal.

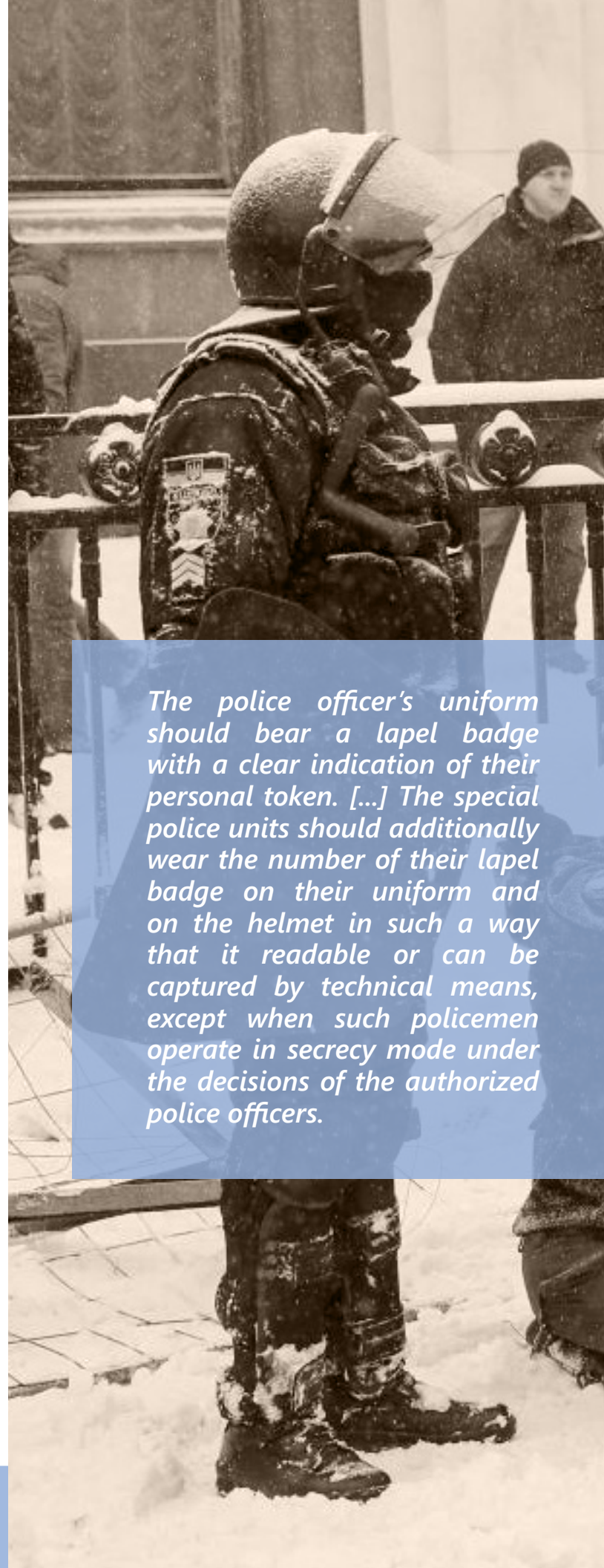
All parties in this category of cases are now

exempted from court fees in all court instances. If the purpose of restriction can be achieved by applying a less burdensome method for the defendant than the one proposed by the plaintiff, the court is obliged to apply the same. If it is possible to use an alternative solution instead of a prohibition to address a threat, for example, change the assembly time or postpone it to another day, and if the defendant does not object to this option, the court will make the appropriate decision¹³.

The creation of preventive communication groups, supported by the EUAM Advisory Mission is one of the new positive practices in policing assemblies. The concept of the “Police of Dialogue” activities has been introduced into Ukrainian police relatively recently and is intended to reduce the risk of violence during various mass events, including peaceful assemblies. It builds on the establishment and maintenance of continuous effective communication and collaboration with organizers and event participants, and teaches how to prevent and relieve tension through the use of de-escalation techniques. Police of Dialogue members also learn to identify and assess the risks before and during mass events and are trained in the crowd psychology¹⁴.

¹³ <https://dt.ua/internal/mirni-zibrannya-vid-zaboroni-do-dialogu-263586.html>

¹⁴ <http://www.euam-ukraine.eu/ua/news/future-of-ukrainian-dialogue-policing-looking-good-as-euam-trained-police-officers-train-colleagues/>



The police officer's uniform should bear a lapel badge with a clear indication of their personal token. [...] The special police units should additionally wear the number of their lapel badge on their uniform and on the helmet in such a way that it readable or can be captured by technical means, except when such policemen operate in secrecy mode under the decisions of the authorized police officers.

ADVERSE DEVELOPMENTS

It should be noted that the absence of decisive reforms in the field of public order protection forms a negative trend in the context of policing assemblies. The lack of proper identification of law enforcement officers in accordance with the Law on the National Police of Ukraine remains a crucial challenge. The reports of the public observation groups for 2017 and 2018 prove that the law enforcement officers are negligent to requirements of Art. 20 of the Law of Ukraine “On National Police”:

The police officer's uniform should bear a lapel badge with a clear indication of their personal token. [...] The special police units should additionally wear the number of their lapel badge on their uniform and on the helmet in such a way that it readable or can be captured by technical means, except when such policemen operate in secrecy mode under the decisions of the authorized police officers.

The presence of police officers on site with hidden faces, without proper badges and the possibility of further identification undermines trust between the police and the assembly participants, and can be a factor escalating the conflict¹⁵.

As noted above, frequent cases of law enforcers' failure to comply with the positive obligations of protecting peaceful meeting are a real menace to the freedom of peaceful assemblies in Ukraine. Observations of the actions of the police during assemblies expressing unpopular ideas confirm the cases of omission of duty and lack of response to

¹⁵ <http://ccl.org.ua/reports/marsh-za-impichment-vysnovky-hrupy-hromadskoho-sposterezhennya-ozon/>

threats or attacks¹⁶.

CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

The Convention on the Protection of Human Rights and Fundamental Freedoms is a component of the national legal framework of Ukraine in accordance with the provisions of Art. 9 of the Constitution of Ukraine.

Part 1 of Art. 17 of the Law of Ukraine of December 22, 1993 “On International Treaties of Ukraine” stipulates that the international treaties ratified as binding by the Verkhovna Rada of Ukraine are a part of the national legal framework and shall be applied in the manner prescribed by the national legislation. According to Art. 17 of the Law of Ukraine “On the Implementation of Decisions and Applying Case Law of the European Court of Human Rights”, national courts apply the Convention and the Court's case law as a source of law in considering the cases.

As of February 2017, 6 cases against Ukraine related to the events of the Revolution of Dignity are communicated to the European Court of Human Rights (ECHR).

- *Sirenko v. Ukraine*;
- *Derevyanko v. Ukraine*;
- *Ihor Lutsenko v. Ukraine*;
- *Rabcheniuk v. Ukraine*;
- *Shmorhunov v. Ukraine*;
- *Lutsenko v. Ukraine*.

During 2016 - 2017 no case against Ukraine under Art. 11 of the Convention was communicated, and none of the previously

¹⁶ <http://ccl.org.ua/reports/marshi-8-berezhnya-kyjiv-lviv-harkiv-rezultaty-hromadskoho-sposterezhennya/>

communicated cases was considered either.

In the case of «Shmushkovich v. Ukraine», the applicant argued that the Ukrainian legislation lacks clear and foreseeable provisions in the area of freedom of assembly. The European Court noted that the fine was imposed on the basis of Art. 185-1 Administrative Code, which provides for punishment for violation of the order of organization and conduct of demonstrations. Thus, the interference was based on national legislation. Although the European Court agreed that the state may need some time to pass legislation during the transition period, it can not accept that a delay of more than twenty years is justified, especially when it comes to such a fundamental right as freedom of peaceful assembly. Thus, the interference with the applicant's right to freedom of peaceful assembly was not established by law. Having come to the conclusion that the interference with the applicant's right to freedom of peaceful assembly was not provided for by law.

On January 26, 2016, Ukraine submitted to the Committee of Ministers of the Council of Europe the action plan on the implementation of ECHR judgment in *Shvydka v. Ukraine* case, which found violations of Art. 10 of the Convention and Art. 2 of Protocol No. 7 thereto. In January 2016 the ECHR judgment in the case *Karpyuk and others v. Ukraine* involving the events of "Ukraine without Kuchma" campaign became final. As of February 2017, the Committee of Ministers of the Council of Europe expects Ukraine to have an action plan for implementing this judgment in place. The judgments of the European Court of Human Rights in *Vyerentsov v. Ukraine* and *Shmushkovych v. Ukraine* case are currently

under implementation.

The European Court of Human Rights, in its decision in the case of "Aleksey Vyerentsov" v. Ukraine, where the applicant complained that his right to freedom of peaceful assembly was restricted, and the court's decision to arrest him for three days, was unfounded. In October 2010, the coordinator of the public organization "Guardians of the law" Alexei Verentsov detained the Lviv law enforcement agencies on charges of carrying out an unauthorized action, with subsequent conviction of up to three days of administrative proceedings. In its decision, the European Court ruled that the applicant's right to freedom of peaceful assembly was still violated, as well as the right to a fair trial. The Strasbourg court ordered Ukraine to pay EUR 6,000 in respect of non-pecuniary damage.

IV. THE ROLE OF CIVIC ADMINISTRATION



In its decision of April 19, 2001, the Constitutional Court of Ukraine ruled that citizens should inform the authorities about the conduct of events in advance, that is, within reasonable period preceding the date of the event holding. These deadlines should not limit the right of citizens stipulated by Art. 39 of the Constitution, but must serve as its safeguard, and at the same time enable the relevant executive authorities or local self-government bodies to take actions to ensure unimpeded conduct of assemblies, rallies, campaigns and demonstrations by citizens, protect public order and uphold rights and freedoms of other people.

According to several experts, neither Constitution nor any other law require notification (except the law „On the resolution of labor disputes”, which was discussed above). Lack of the notice shall not be the grounds for a court prohibition or dispersal of the meeting. The organizers inform the state authorities if they need the latter to fulfill their positive obligations, that is, enabling the exercise of freedom of assembly.

In accordance with the Constitution, the organizer can inform the executive bodies or local government on holding of a peaceful

assembly.

In Ukraine there is no formally defined procedure for the notice submission. The deadlines for the submission of the notice are also not regulated by the Ukrainian legislation. These messages should be subject to the general requirements for any application to the official authorities: indicating the addressee – the place and time of the meeting – the signature and contact information of the organizer(s). In practice, some local self-government (LGA) authorities impose additional requirements, such as the number of participants in the meeting and the personal data of the organizers. Such requirements are not prescribed by the laws and sometimes contradict it.

Local governments can report about the assemblies to the relevant institutions that should ensure the implementation of the right to assembly: these are not only the police, but also healthcare and utility facilities, etc. Moreover, they must coordinate the activities of these institutions during the meeting. If necessary, they can hold negotiations with the organizers of the assembly to coordinate actions with them, on the contacts of the organizers with those whom the assembly

presents its requirements to, discuss the change of place or time of the assembly, on counter-assemblies or concurrent events. In practice, LGAs often do nothing else than just forward the assembly notice to the police. Furthermore, the LGAs have the right to apply to the court with a statement of claim on the limitation of freedom of assembly.

In Ukraine, there is no general or unified practice as to which department or counterpart in the LGA is dealing with issues of peaceful assemblies. As a rule, the Internal Policies and Public Relations Department of executive committees (state administrations) deal with the processing of the assembly notices and filing of claims to restrict the right to peaceful assembly. As a rule, special approval commissions are organized in the LGA. According to one of the organizers of assemblies, for example, Internal Policies and Public Relations Department of Kyiv City State Administration is responsible for this.

Example: In Ukraine, the local self-government bodies often actually withdraw from the process of ensuring the process of peaceful assemblies. In the opinion of the „OZON“ public monitors, it is the omissions by representatives of local self-government bodies in working with the organizers of the Kyiv Pride 2018 March of Equality and police officers, that led to disproportionate interference by the national police with the freedom of movement of persons living in the territory near the assembly location. 12 hours before

and 6 hours after the March of Equality, several central quarters of the city were completely blocked for pedestrians and vehicles. Such preventive actions by the police have led to excessive interference with freedom of movement and fueled tensions in society about holding the LGBT community assembly.

LGAs sometimes implement their own procedures for peaceful gatherings, but the public is not bound to adhere to these procedures. According to expert Mykhailo Lebed, not all of the procedures of the LGAs currently in force in Ukraine are clear, accessible or even constitutional at all.

For example, city administration in Chernivtsi on its web-site recommends to write in the notification next information:

- date of assembly, starting time and indicative duration of the event;
- purpose and form of the event;
- venue of the event;
- route of movement of demonstrators or participants of the campaign (for events related to the movement of participants - religious processions, hikes, demonstrations, etc.);
- Estimated number of participants of the event;
- surnames, names and patronymics or the name of the organizers (organizer) of the peaceful event, addresses and their telephone numbers;

- date of submission of the notification.¹⁷

Half of the survey respondents indicate that LGAs do not fully provide information about this process to the assembly organizers. However, you can contact the authorities directly for relevant information, and sometimes such information is posted on their official media resources.

Freedom of peaceful assembly may be limited exclusively by the court in compliance with law. According to the Article 92 of Constitution “the rights and freedoms of man and citizen, the guarantees of these rights and freedoms; main duties of a citizen” are determined exclusively by the laws of Ukraine. Therefore, decisions of local self-government bodies or other legal acts cannot serve as grounds for limiting this freedom. The existence of such local bylaws is contrary to Art. 92 of the Constitution and they can be abolished through administrative legal proceedings. The use of local government regulations to restrict peaceful assembly was in the focus of a persistent struggle of civil society. As Volodymyr Chemerys notes, there are still several dozen settlements where local “Regulations on the procedure for organizing and holding rallies and demonstrations” were approved and not yet canceled. In recent years, the LGAs do not apply these provisions in practice.

There is no formal requirement for representatives of local government bodies to meet with organizers of assemblies. Nevertheless, according to one of the organizers of peaceful assemblies in the city of Lviv, the local police officers hold informal meetings to discuss the details of the events.

¹⁷ <http://chernivtsy.eu/portal/informatsiya-shhodo-organizatsiyi-ta-provedennya-mirnih-zahodiv>


According to Vitaliy Dudin, certain assemblies (demonstrations which involve blocking of traffic or are potentially dangerous for the participants of the meeting) imply an objective need for this.

Vladislav Vlasyuk, on the other hand, considers the instances of introducing the practice of preceding meetings in the regions to be unsuccessful, but often the conduct of such meetings is of interest to the assembly organizers.

No law establishes special obligations for organizers of assemblies so far. According to Part 1 of Art. 92 of the Constitution, only the law can determine the rights and duties of citizens. Consequently, the LGAs do not have the authority to require anything from the organizers of the assembly.

According to Kvitoslava Kosarchin, organizer of the feminist assembly, the LGA cannot introduce specific requirements for the organizers; however, there is a practice of misleading the organizers of the meeting on the provisions of law. Therefore, in practice, there are some instances when the LGAs require, for example, to change the route of the event, thus exerting informal pressure on the organizers.

Moreover, LGAs may apply to court requiring to restrict an assembly. In recent years, the practice of filing claims for restrictions on the right to peaceful assembly has been minimized. While in 2012 there were more than 400 such claims, then in 2017 there were only 6, none of which was upheld by the court.



Quote: Taking into account all of the above, the court concluded that PERSON_1, holding the post of the Mayor Pereyaslav-Khmelnyskyi city, did not have sufficient and legitimate grounds to appeal to a court with a lawsuit on limiting the exercise of the constitutional right of citizens to peaceful assembly, and therefore, being aware of the illegality of his actions and seeking to stop mass events and obstruct free expression of citizens' views and beliefs during assemblies, rallies and demonstrations, not only failed to present the matter of holding these assemblies for consideration at the Executive Committee session, but also organized the forging of evidence of a threat to public order, as well as to the life and health of people, and, using his official authority, signed and secured filing a lawsuit to the Kyiv district administrative court for the prohibition of the respective protest actions, the resolution of which was immediately forwarded to the Enforcement service for enforcement. In this way, PERSON_1, using his official authority and position, has made an unjustified and, therefore, unlawful restriction on the organization and conduct of mass events in the most crowded places of Pereyaslav-Khmelnyskyi city, Kyiv oblast, organized by the Board of the CSO "Maidan".

Referring to the administrative court with a requirement to ban the event, the LGA indicates the grounds provided for by law to restrict the holding of assemblies - in the interests of national security or public order, as well as to prevent disturbances or crimes, to protect public health, to protect the rights and freedoms of others people.

The most widespread grounds were: local "provisions", counter-assemblies, the Decree of the Presidium of the Verkhovna Rada of the USSR, which was recognized as unconstitutional by Constitutional Court of Ukraine in 2016, "inability" of law enforcement agencies to ensure public order during assemblies.

The inability to ensure the safety of the assembly participants, the possible provocations, the interference with other events (public or official), the risk of violations of public order by the assembly participants.

The restriction may be established only by the court according to Art. 39 of the Constitution of Ukraine.

An appeal against the decision of the administrative court to impose a restriction on the exercise of the right to freedom of peaceful assembly shall be filed not later than the day following the day of the decision being announced In accordance with Article 280 of the Code of Administrative Procedure of Ukraine. The Court of Appeal considers the case within two days from the moment of receipt of the appeal and notifies the case participants, and if an appeal is received less than two calendar days prior to the holding of a peaceful meeting, the court shall consider the case immediately and notify the participants

respectively. Until 2017, such decisions were appealed under a general procedure.

Human rights defenders and assembly organizers state that, according to the previous edition of the Code of Administrative Procedure of Ukraine, appeals against prohibitions occurred after the event, when there was no sense to appeal at all. Recent changes to the Code are intended to enable appealing before the assembly. However, there is no information about appeal practice to test these changes so far, as the number of prohibitions is very small.

Any authority and its officers can be held liable for actions or omissions. There is also Art. 340 of the Criminal Code, which establishes the criminal responsibility of officials (and every citizen) for obstruction of a peaceful assembly. However, after the Revolution of Dignity this article was first applied by law enforcement officers only in 2014, and only with respect to the obstruction of the Maidan demonstrations. This article was never applied for many other cases. According to Vladislav Vlasyuk, the existing mechanisms are not effective (It is not used because of the lack of political will in the prosecutor's office). The practice of prosecution for unlawful interference with the organization or holding of assemblies, rallies, street processions and demonstrations is virtually absent. Although there are occasions when officials deserve to be prosecuted. For example, Mayor of Mariupol and mayor of Nikolaev in May 2017, by their illegal decisions banned for several days all assemblies, except for official ceremonies.

After the events during the Revolution of Dignity, human rights defenders were able to cite only one case of holding the authorities

accountable for their actions regarding the peaceful assembly in 2013-2014. It involves the Mayor of Pereyaslav-Khmelnytskyi, who, according to the court decision, “using his official powers and his official position, has managed to impose an unjustified and, therefore, unlawful restriction of the organization and holding of mass events”

In relation to assemblies, civil authorities work most closely with Police, Emergency Services, Utility Services. As Mykhailo Lebed notes, the military staff is also engaged in cooperation with the LGAs in the context of assemblies in Donetsk and Luhansk oblasts of Ukraine.

Experts on the freedom of peaceful assembly in Ukraine note that some civil authorities gather this information on assemblies in non-systemic manner.

As for the key challenges for the civil authorities in matters relating to peaceful assemblies, respondents highlight the following: lack of proper sub-legislative regulation; the problem of preventing clashes; communication with regard to traffic blocking; brief timespans between the submission of assembly notice and the date of the meeting.

In order to improve the work of the civil authorities in relation of freedom of assembly:

- the competence of the LGAs with regard to ensuring freedom of peaceful assembly should be clearly defined;
- the responsibility for consideration of issues related to the holding of peaceful assemblies, in particular, facilitating their conduct, or create a relevant department should be assigned to individual officials / departments
- the responsibility of the authorities for

interfering with a peaceful assembly should be strengthened.

One of the experts sees the situation in the following way. According to Mykhailo Lebed, it is necessary to disengage the LGAs as much as possible from the issues of freedom of assembly. In his opinion, LGAs often tend to take excessively politicized approach to the matter of peaceful assemblies because of their political nature (civil authorities are governed by the mayor and the majority party).





V. POLICING OF ASSEMBLIES

Representatives of the police, who were the respondents of our interviews, quoted approximate numbers about the peaceful assemblies that take place annually. Detailed information on the number of peaceful assemblies that occur each year can be obtained upon request for access to public information.

The key responsibilities of the police during peaceful assemblies mentioned by the police officers:

- Prevention of provocations and offenses, ensuring order in peaceful assemblies;
- Ensuring public safety and security of citizens;
- Protection of public order.

According to the officers of the National Police of Ukraine, the organizers usually inform the local self-government bodies. The latter transmit relevant information to the National Police. In some cases, organizers' notices about the assemblies are submitted simultaneously to both the local self-government bodies and the National Police of Ukraine.

The National Police of Ukraine is not entitled to restrict assemblies, but may limit them indirectly according to the applicable laws.

In general, all police units of the conventionally defined „preventive bloc” carry out the function of protecting public order. Nevertheless, at this stage, the special units that act in order to safeguard public order at assemblies are the so-called „police of dialogue” (preventive communication groups), tactical operative response squads of patrol police and special taskforce.

In the opinion of the surveyed officers of the National Police, the law enforcement officers must and do actually ensure safety on all peaceful assemblies without exceptions.

However, interviewed police officers outlined the following range of problems encountered by law enforcement officers while carrying out the function of protecting public order in assemblies:

- Counteracting provocations;
- Prevention of offenses by radically-minded groups;
- Absence of notification of the assembly;
- Psychological pressure due to the low level of trust and respect for the police in Ukraine;
- Politicized tendencies in the police activities;

- Feeling of impunity among offenders at assemblies;
- Absence of clear limits of enforcement in the context of the legal framework;
- Existence of paid participation assemblies, because this undermines mediation. (According to the police, it is impossible to carry out mediation with people who have been paid for fulfilling a specific task.)
- Lack of modern, less traumatic special equipment, as well as the lack of practice of using water jets;
- Absence of the law on peaceful assemblies and impossibility to distinguish peaceful assemblies from non-peaceful ones.

In addition, the police needs to restrict the meeting if certain actions during the meeting endanger the life and health of people, if there are reasonable assumptions that persons who gathered peacefully carry prohibited items, etc. Such a limitation is possible if it is legitimate and necessary in a democratic society.

Furthermore, in the opinion of the surveyed police officers, law enforcement officers always use certain form of dialogue with the organizers while working on peaceful assemblies. In particular, special preventive communication groups were introduced in order to improve the implementation of this function in Ukraine.

Example: During the monitoring of the Equality March Kyiv Pride 2018, the work of police of dialogue groups with counter-assembly participants, mediation and negotiation were recorded.

Appropriate trainings are provided for special units working with peaceful assemblies. To date, trainings are conducted in cooperation with foreign partners (European Union Advisory Mission, Houston PD) and NGOs. Nevertheless, these trainings are not approved in the relevant training curricula of the professional training of the National Police of Ukraine.

Example: NGOs in Ukraine are trying to constantly cooperate with the National Police of Ukraine in the context of improving the skills of staff in the field of human rights protection. In particular, the Center for Civil Liberties regularly conducts training in Kyiv and oblasts for the prevention police on international standards regarding protection of freedom of peaceful assembly¹⁸

Where possible, such trainings are provided for all officers working in the public order protection area. However, Most of the surveyed police officers believe that there is a need for better training. In particular, the issue is the lack of skilled specialists in Ukraine, as well as the lack of unified training for all police officers and police units.

Besides, a policeman shall, for the purposes of public security and order, apply special means specified by this Law of Ukraine "On the National Police". A police officer is authorized to use special equipment only

¹⁸ <http://ccl.org.ua/news/tsentr-hromadyanskyh-svobod-proviv-obhovorenniya-schodo-svobody-myrnyh-zibran-z-politsijeyu-chernihova/>

if he has undergone appropriate special training. In particular, a police officer can use handcuffs, rubber and plastic batons (used to stop group violations of public order or mass disturbances), lachrymatory and irritant substances (used to stop group violations of public order or mass disturbances); special marking and coloring agents (to stop group violations of public order or mass disturbances with the purpose of further detection and detention of the perpetrators, as well as control over the movement of possessions), water jets, armored vehicles and other special vehicles (used to stop group violations of public order or mass disturbances; devices for shooting rubber cartridges or similar non-lethal ammunition).

The use of firearms is the most severe measure of coercion. A police officer may be authorized to store, carry, use and apply firearms only provided that he has undergone appropriate special training. The procedure for storing and carrying firearms issued to the police officer, the list of firearms and ammunition used in the police activities, and their rules of distribution and appurtenance shall be established by the Minister of Internal Affairs of Ukraine. A police officer may use firearms in exceptional cases. A police officer is forbidden to use firearms in places where other persons may be injured, as well as in flammable and explosive areas, except in cases of need to repel an attack or in extreme emergency.

According to the surveyed police officers, law enforcers apply force only when it is necessary to stop the offense or detain offenders.

Moreover, according to the provisions of the Law of Ukraine "On the National Police", a policeman is obliged to warn the person

in advance about the use of physical force, special means and firearms and give enough time to comply with the lawful requirement of the police, except in the case that the delay may cause an attack on the life and health of the person or police officer or others severe consequences, or in the current situation, such a warning is unjustified or impossible. A warning can be made in a voice, and at a considerable distance or appeal to a large group of people - through loudspeakers, amplifiers of sound.

Incidentally, a police officer must always provide first aid, as well as ensure medical assistance – call the medical facility or call qualified medical assistance personnel. This process should be described in the appropriate report.

Undercover police is commonly used at assemblies. Their task is to monitor the crowds and identify offenders. Beyond that, any kind of surveillance and imagery collection is available for monitoring at assemblies, such as hand-held cameras, body cams, CCTV, helicopter cameras, etc.

Regarding data protection, Ukraine has the Law of Ukraine "On Personal Data Protection", which imposes restrictions on the duration of photo-video materials storage. Such materials are stored for 30 days or longer if this takes place within the framework of criminal proceedings. According to Mykhailo Kameniev, there is a problem because there is no regulation in the police that regulates the rules for collecting and storing and using (in the word, processing) of these data.

However, the police cannot prohibit the assembly participants to video, film or

photograph police actions.

Holding the police to account for their actions in peaceful assemblies can be done through the internal process, through the court, the Prosecutor's Office, the Ombudsman.

Article 340 on liability for preventing the holding of peaceful assembly is applicable all officials, including police officers. Therefore, you can use the internal process for this, the court and the ombudsperson. In the latter instances, a police officer becomes subject to disciplinary liability. Nevertheless, according to human rights defenders, organizers and experts, all these mechanisms for prosecution are rarely effective.

According to Yuriy Zozulya (this opinion is not shared by the majority of respondents), the head of the patrol police in Kyiv, for all incidents at peaceful assemblies with his subordinates, all patrols were held to disciplinary account after conducting official investigations.

While protecting public order during peaceful assemblies, the police officers often do not have tokens and ID numbers on personal protective equipment. In addition, in the case of such units as special taskforce police, the number on the helmet does not correspond to the particular person. Available numbers on tokens are hardly readable even from a short distance and during the dark hours.

Unlike to the opinion of the organizers of meetings and experts on freedom of assembly, all surveyed police officers noted, the law enforcement officer can be identified separately through a token number or a helmet number.

Example: An improvement in the problem of the lack of police identification was the experience with tactical operative response groups of the patrol police in Kyiv, which, after a year without identification, indicated appropriated identifications on helmets due to pressure from human rights defenders and public observers (who carried out a continued monitoring of the actions of this unit lacking identification during 2017). Today it is the only subdivision in Ukraine that can report on the real possibility of identifying each officer through individual numbers.

According to journalist Dmytro Replyanchuk, whether mass media is able to report freely at assemblies depends on the nature of the peaceful assembly.

Quotation: "In my opinion, in comparison with the past years, the situation with regard to the coverage and work of journalists in mass assemblies has improved. For example, instead of thousands of policemen outfitted in special equipment with their faces covered by balaklavas, today you can observe mostly groups of the police of dialogue. This, on one hand, facilitates journalists' work to some extent, and on the other, prevents the conflict escalation. Meanwhile, the situation remains problematic at the direct action events. Dialogue groups do not show much efficiency here, and special taskforces rather let adrenaline and emotions off the leash, instead of prudent assessment of the situation and operating

within the legal boundaries. The most striking example in recent times that I can recall is the assault on a tent camp under the Rada (this is about the dispersal of a tent camp on March 3, 2018 in Kyiv under the parliament – L.G.). The journalist Nuzhnenko suffered from the police's actions, while I was lucky enough to get to the scene before the police encircled the whole territory with ribbons and barred access for my colleagues. There is also a sense of police impunity for breaking the law. The case of me being beaten by the police is becoming likely to get closed because of "the absence of signs of a crime," in the case of Nuzhnenko the police also refuse to admit their guilt."

In general, the practice of imposing any limitations on journalists by law enforcement officers is not common. Nevertheless, human rights defenders point out to the inactivity in the instances of attacks on journalists by radically-minded individuals during journalist coverage of peaceful assemblies.

There is no difference in the ability to work at peaceful assemblies for accredited and non-accredited journalists.

Similarly, there are no restrictions for human rights defenders and monitors to observe assemblies.

Organizers are actively using social networks to organize and coordinate peaceful assemblies. In particular, the organizers of the Kyiv Pride Equality March communicate with the participants of the meeting through the Facebook social media to transfer important messages about the location of the passing frames, blocking of streets, the process of safe leaving the territory of the march, etc.¹⁹

¹⁹ <https://www.facebook.com/kyivpride/>

There are no restrictions on the use of social media for peaceful assemblies in Ukraine. However, there are restrictions on freedom of expression (for example, public promotion of separatism, violent overthrow of the constitutional system, etc.).



VI. CRIMINALIZATION OF PROTESTS

The surveyed respondents indicate that there is no tendency for increase in the scale and extent of punishment available to the authorities for offences committed related to protests in Ukraine today. Nevertheless, according to Volodymyr Chemerys: „The Security Service of Ukraine and the Prosecutor’s Office after 2014 actively use a number of articles of the Criminal Code to prosecute members of peaceful assembly. For example, Eduard Kovalenko is serving a 5 years’ term in the Kryvyi Rih prison for the content of his speech at a rally (this speech was qualified as a counteraction to the armed forces)”.

Moreover, there are examples of being people subject to preventive arrest prior to an assembly. On January 19, 2018, eight members of the meeting devoted to the memory of human rights defenders Markelova and Baburov were ungroundedly detained by the police before the event. After the assembly, they were released without any charges.

Incidentally, protesters are most frequently charged with Refusing to obey police orders, petty hooliganism; and Violence/disturbances.

Offences at assemblies are dealt by the general and the administrative courts within the general jurisdiction system. Cases of administrative

offenses in this area are considered exclusively by courts of general jurisdiction.

Regarding Art. 185-1 of the Code of Ukraine on Administrative Offences (violation of the procedure for organizing and holding rallies), the courts take into account the decision of the European Court of Human Rights dated 2013 that, in the absence of such a procedure, this article is not applicable. The most recent among such cases is the acquittal of Yelena Shevchenko, whom the police charged with violating Art. 185-1 during the assembly on March 8, 2018.

There is no particular tendency regarding the protesters’ full enjoyment of rights during court procedures in accordance with national legislation and international standards. Nevertheless, Vitaliy Dudin said: “The participants are not always informed about the court session in time, which precludes the exercise of the right to a fair trial. However, the courts are ready to accept all kinds of evidence, including video and photo.”

In general, responsibility for violating the order of organizing and holding assemblies, rallies, street processions and demonstrations is set forth in Art. 185 (1) of the Code of Ukraine on Administrative Offences. Expected

forms of sanctions are as follows: a warning, a monetary penalty of ten to one hundred tax-free minimum incomes, correctional labor for a term of one to two months, with deductions of twenty percent of earnings, administrative arrest for up to fifteen days. However, it should be noted that according to individual researchers, the number of events of holding people to administrative liability under this article in recent years is decreasing, and courts close such cases based on the absence of the content of administrative offense.

Moreover, taking into account the possibility that protesters may commit any other acts that may constitute a component of administrative offenses or offenses in connection with participation in assemblies, they may also be prosecuted for such punishable acts. For example, it refers to administrative offenses under Art. 173 (Petty hooliganism), art. 185 (Malicious disobedience to the lawful order or demand of a police officer, a member of a voluntary unit on public order or the state border protection, a serviceman), art. 195-4 (Violation of the procedure for the production, acquisition, storage or sale of electric shock equipment and special means used by law enforcement agencies) and art. 195-6 (Violations of the procedure of production, storage, transportation, sale and use of pyrotechnic means) of the Code of Ukraine on Administrative Offenses. Regarding criminal proceedings, this refers to articles Art. 125 (Intentional minor bodily harm), art. 279 (Blocking of transport communications, seizure of a transportation company), art. 296 (Hooliganism), art. 345 (Threat or violence against a law enforcement officer), art. 436-1 (Production, distribution of Communist, Nazi

symbols and propaganda of the Communist and National-Socialist totalitarian regimes) of the Criminal Code of Ukraine.

Most of the respondents told that they do not see a trend of punishments imposed related becoming more severe in Ukraine.

It is possible to appeal to a higher court, but as a rule, appealing has no sense, because the meetings were to be held on a specific date and the courts work slowly.

The courts are, as a rule, influenced by authorities. According to the sociological survey of Razumkov Center "Attitudes of Ukrainian Citizens to Public Institutions, Electoral Orientation" (April, 2017), in 2017, only 0.5% of people fully trust the courts, in part - 6.5%.²⁰ According to the Results of Chamber Corruption Perception Survey 2017, 71% of respondents believe that the most corrupt government bodies are courts.²¹

The High Council of Justice has the authority to hold the judges to disciplinary liability, including for unlawful actions during the consideration of cases related to peaceful assemblies. This body has superficial indications of independence, but in practice, according to some experts, is susceptible to political influences.

According to experts, the efficiency of the High Council of Justice is questionable in connection with the ineffective use of actions taken against judges who breached the law during the events of the Revolution of Dignity. According to Maksym Sereda, no judge who

²⁰ <http://razumkov.org.ua/uploads/socio/Press0417.pdf>

²¹ http://publications.chamber.ua/2018/Chamber_CPS_2017.pdf

prohibited peaceful assemblies during the Maidan, was ever disciplined. However, the High Council of Justice refused to recommend several judges who used to ban peaceful assemblies for appointment to positions.

High Council of Justice produces reports as to specific aspects of its activities. But none of these reports refer to peaceful assemblies.

The High Council of Justice provides consultative opinions on draft laws and judges' statutes that are developed by the government. Participates in the definition of expenditures of the State Budget of Ukraine, developed by the Government for the maintenance of courts, bodies and institutions of the justice system.



CASE STUDY

POSITIVE PRACTICE: INTRODUCTION OF THE „POLICE OF DIALOGUE” IN UKRAINE

The “Police of Dialogue” within the framework of “Scandinavian Approach” abides by the guiding principle of “facilitation”, that is, the role of the police is to **guarantee the protection of the rights of participants** in the peaceful assembly, and **not to limit their rights**. Usually, most people at any rally want the event to proceed peacefully. However, if the police act inappropriately, if they have an aggressive attitude, then a radical minority can persuade other people to side with them.

In order for the police to work effectively, a continuous dialogue with the organizers of the demonstration or mass event is needed, as it helps to identify and timely tackle the potential sources of threats. It is important to be able to establish whether, for example, a bottle thrown into a crowd is an individual incident, or it is the onset of some more serious, larger-scale provocation.

The focus on “facilitation” also means that members of the mass assembly have to perceive policemen as protectors and not those who infringe their rights. Democratic police activities can only be considered successful if, on the one hand, law enforcement officers are

inconspicuous during the event and do not present “surprises” and, on the other hand, apply the so-called “staged” (proportional) approach.

It assumes that at first the protection of public order is very “unobtrusive”. When at first the protesters see police officers dressed in caps (and not helmets) and special light-reflecting vests, it adds to a more natural atmosphere. Police may act tougher only if there is a serious threat of escalation. If the police embarrass the crowd with helmets and shields from the very start, the effect may be the opposite of the expected one. Therefore, police officers in preventive communication groups (“the police of dialogue”) should wear civilian clothes and a special vest, which indicates that they are the personnel of the communication group.

During the introduction of preventive communication groups in Ukraine, the experience of the Czech police was taken as the basis. The project is being implemented in cooperation with the European Union Advisory Mission for Civil Security Sector Reform in Ukraine, which has been operating since 2014. About 600 police officers were educated and trained to work as the communication

police. Such divisions work on a part-time basis in all oblasts of the state. As separate structural subdivisions, they operate in the city of Kyiv and the largest cities of Ukraine: Lviv, Odesa, Kharkiv, as well as in Cherkasy and Dnipropetrovsk oblast.

The “police of dialogue” group is selected from among those who have undergone appropriate training. This includes psychological training on basic knowledge in psychology. The officers of the police of dialogue should work with the organizers of peaceful assemblies from the beginning through the completion of the event. In particular, during large-scale pickets, they explain citizens the legal consequences of their actions if the law is violated, warn about the intentions and responsibilities of the police if the situation escalates. “Negotiations with the event organizers, relieving tension between people, the role of the active listener and, in some cases, even an experienced psychologist – all of this are components of the service of conflict prevention groups”, the police explains.



VII. RECOMMENDATIONS

TO THE VERKHOVNA RADA OF UKRAINE

1. To amend the laws of Ukraine on the freedom of peaceful assembly – remove Article 185-1 of the Code of Ukraine on Administrative Offenses.
2. To amend the Law of Ukraine on the “National Police of Ukraine” in parts concerning the wearing of a special token and the identification of personal protective equipment for a policeman (adopt bills №5700 and 5701). The individual number should be indicated on the token in such a way as to allow the possibility of recognizing the number at a distance as well as in the service certificate. And in the case of the use of body armor - token should be fixed to it in the breast, and if the means of protection - the stripe should be attached.
3. To amend the law “On the Procedure for Resolving Collective Labor Disputes”, as there are provisions that restrict freedom of assembly during a strike. Namely, to cancel the request to the organizer of assemblies, rallies, pickets outside the enterprise who is in charge of the strike, to inform the local executive body or local self-government body about the planned measure within

three days at the latest.

TO LOCAL SELF-GOVERNMENT BODIES

1. To find a balance between the observance of such an important right as freedom of assembly and the rights that conflict with it (for example, with freedom of movement) – especially those who work, live, engage in shopping, trade or business in the assembly location. This balance is aimed to enable the continuation of other activities in the same place simultaneously with the holding of the assembly. As a rule, the realization of basic human rights and freedoms does not require agreement with local residents or entrepreneurs, even if their rights are somewhat affected. Nevertheless, the best practice appropriate for organizers and law enforcement officers is to have preliminary discussion with stakeholders about the method of protecting various conflicting rights for the mutual satisfaction of all parties.
2. Abolish local regulations that limit the right to peaceful assembly.
3. Clearly define the competence of the LGAs in matters of ensuring freedom of peaceful assembly.

4. Appoint separate officials/departments to consider issues related to the holding of peaceful assemblies, in particular, to facilitate their holding.
5. Develop, together with human rights activists and community activists, recommendations, special accessible materials for organizers of assemblies about their rights and about possible cooperation with local self-government bodies in the field of facilitation of their assemblies.

TO THE NATIONAL POLICE OF UKRAINE

1. To renew the conduct of differentiated statistics on the number of held peaceful gatherings and their participants. To maintain statistics, develop an effective and uniform methodology for collecting information and its generalization. To maintain separate statistics for mass events (concerts, festivals, promotions, sports competitions, etc.) and assemblies guaranteed by Article 39 of the Constitution of Ukraine.
2. Facilitate the right of citizens to freedom of peaceful assembly. In the case of limiting this right, to provide participants/ members of the assembly or its organizers with substantiated explanations of the reasons for such a restriction. Any excessive interference with the freedom of peaceful assembly should be properly articulated by law enforcement officers.
3. Develop with the participation of a wide range of civil society representatives the Guidelines on the maintenance of law and order during peaceful assemblies and

mass events and approve them by the Order of the Ministry of Internal Affairs of Ukraine with the subsequent registration in the Ministry of Justice of Ukraine. The Guidelines should take into account the resolutions of the European Court of Human Rights and the OSCE/ODIHR Guidelines on Freedom of Assembly.

4. Ensure further training of police officers in the field of the freedom of peaceful assembly. The trainings on safeguarding freedom of peaceful assembly should be included in curricula approved by the National Police management, which regulate the process of professional training of special units for the protection of public order.
5. Ensure further training of police officers in conflict prevention groups, as well as the presence of the required number of such police officers during peaceful assemblies and mass events.
6. Ensure and maintain the appropriate level of communication between police forces involved in safeguarding the public order and the organizers of assemblies, in order to respond effectively to unforeseen situations and illegal actions that endanger the security of the event participants.
7. Make efforts to promptly ensure marking of elements of the police's protection equipment that would identify each particular policeman involved in the protection of public order in accordance with the OSCE Guidelines on Freedom of Peaceful Assembly and the legislation of Ukraine.
8. Exercise proper control over the compliance

of the employees of the National Police of Ukraine involved in the protection of public order during peaceful assemblies with the rules of wearing uniforms and the Law of Ukraine "On the National Police" to the extent of wearing of identification signs and a special token.

9. To provide uniform clothes, footwear and equipment of the police officers involved in the protection of public order, in accordance with the functions assigned to them and in view of possible aggravations of the tactical situation.
10. Gradually reduce the presence of military units during the protection of public order in peaceful assemblies.
11. Taking into account the request of the participants of the peaceful assembly, to coordinate joint actions to ensure public safety. After the meeting, a joint analysis of the actions of law enforcement bodies and participants of the assembly should be held to improve the observance of freedom of peaceful assembly in Ukraine.
12. Guarantee the safety of the organizers and participants of any assembly, including counter-demonstrations and spontaneous assemblies, regardless of their political position. Particular attention should be paid to the security of peaceful assemblies, which stirred acute negative response from the majority of the population.

ANNEX

Monitored Assemblies

1. March of the Equality Kyiv Pride 2018 (17.06.2018, Kyiv)
2. Protest against force shrink before March of the Equality Kyiv Pride 2018 (20.06.2018, Kyiv).
3. Religious procession of the Ukrainian Orthodox Church (Moscow Patriarchate; 21.07.2018, Kyiv)
4. List of stakeholders
5. Kis Zoryan - Senior Equal Opportunity Program Coordinator for LGBT in the NDI (Ukraine).
6. Chemerys Volodymyr - Head of the NGO "Instytut Respublika".
7. Lebed Mykhailo - expert of the human rights coalition "No - to the police state!".
8. Kryklyvenko Bogdan - Head of the Secretariat of the Ombudsman for Human Rights (till May 2018).
9. Sereda Maxym - expert in "Center for Political and Legal Reforms".
10. Bilyk Iryna - Coordinator of the Ombudsman for Human Rights in the Sumy region.
11. Lutsenko Igor - Member of Ukrainian Parliament.
12. Zamidra Sergiy - Pead of the Nemishaiv village council.
13. Vlasyuk Vladyslav - General-Director of the Directorate for Human Rights, Access to Justice and Legal Awareness in the

Ministry of Justice of Ukraine

14. Dudin Vitaliy - Publishing House "Yuridichna Practyka", editor of the site.
15. Kuyavsky Oleg - Head of the Department at the Kyiv City State Administration.
16. Kosarchin Kvitoslava - NGO "Feminist Workshop", participant.
17. Replyanchuk Dmitro - journalist in "Hromadske Telebachennia"
18. Ustymenko Vitalij - activist, NGO "Avtoomaydan".
19. Pernykoza Sergiy - Coordinator of campaigns in the UMDPL.

Police

1. Zabyaka Olexandr - Police Officer, Prevention Sector, Main Police Department in the Sumy Region.
2. Bychlov Olexandr - lieutenant of police, a group of Tactical Operative Response groups of a patrol police in the city of Kyiv.
3. Zozulia Yurii - sergeant of the police, Chief of the Patrol Police Department in Kyiv.
4. Maevska Zarina - Department of the Human Rights Provision in Vinnytsia.
5. Sanagurska Oksana - Department of the Human Rights Provision in Lviv.
6. Ushakov Vadym - Senior Inspector of the Department of Preventive Communications, Main Police Department in Kyiv.
7. An external reviewer who was not a respondent
8. Mykhailo Kameniev - lawyer, expert of

the Association of the UMDPL. Executive Director of the "Human Rights Initiative".

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8. Law on the National Police of Ukraine.
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9. "March for Impeachment": findings of the OZON Public Watch Group: <http://ccl.org.ua/reports/marsh-za-impichment->

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1. The state loses control over radical groups that have been activated in a number of Ukrainian cities:
2. <http://amnesty.org.ua/nws/derzhava-vtrachaye-kontrol-nad-radikalnimi-ugrupuvannyami-shho-aktivizualisya-u-niztsi-mist-ukrayini/>
3. The Ombudsperson emphasizes: the right to peaceful assembly and freedom of expression are constitutional human rights:
4. <http://www.ombudsman.gov.ua/ua/all-news/pr/24517-wl-upovnovazhenij-nagoloshuye-pravo-na-mirni-zibrannya-ta-svoboda-virazhe/>
5. The Office of the Commissioner drew the attention of the leadership of the National Police to the importance of fulfilling the positive obligations of the state: <http://www.ombudsman.gov.ua/ua/all-news/pr/18118-ve-upovnovazhenij-privernula-uvagu-kerivnitstva-natspolitsiiv-do-vazhlivo/>

6. Appeal of the OZON Public Watch Group on the Draft Law No. 6556: <http://ccl.org.ua/statements/schodo-proektu-zakonu-ukrajiny-6556-v-konteksti-svobody/>
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The right to free assembly is an indispensable element of democracy and a healthy civil society. Recent years have seen a new era of mass protests, but also a significant increase in practical restrictions on the right in Western Balkan and Eastern Partnership countries. The European Center for Not-for-Profit Law (ECNL) supports its network of local partners (in Albania, Armenia, Belarus, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Montenegro, Kosovo, Serbia and Ukraine) to monitor local laws, observe protests, report challenges and engage in the legal reform process to protect and promote this fundamental right.

This year's monitoring reports build on previous efforts and explore issues that are of relevance for all the participating countries. Accordingly, beyond the legal framework, the reports also look at the role of civil administration, policing, criminalization of protesters, as well as the overarching issue of accountability manifesting in all of these aspects.



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