



## Statement of the All-Ukrainian Initiative “For Peaceful Protest!” regarding the decision of the European Court of Human Rights in case of “Vyerentsov v. Ukraine”

European Court: Ukrainian police violated the freedom of peaceful assembly and the court violated the right to a fair trial

*April 12, 2013*

On April 11, 2013, the European Court of Human Rights in its Judgment in case of “Vyerentsov v. Ukraine” held that Ukraine violated the right of a citizen of Ukraine, Oleksiy Vyerentsov, guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (further — Convention), namely:

- violated Article 11 of the Convention (freedom of assembly and association);
- violated Article 7 of the Convention (no punishment without law);
- violated Article 6 of the Convention (right to a fair trial).

### THE RECORD

On behalf of an NGO “Vartovi zakonu” (Watchdogs of the law), Mr. Vyerentsov notified the Lviv City Mayor that he would hold a series of demonstrations over several months to raise awareness about corruption in the prosecution service. On October 12, 2010, he organized a peaceful demonstration during which he was called aside by police officers who demanded to stop it.

On October 13, following a complaint that had been previously lodged by the local council, the Lviv Administrative Court issued a decision prohibiting the holding of the pre-announced further demonstrations. The same day, Mr. Vyerentsov was invited to the Galytskyy District Police Station, where he was accused in particular of breaching the procedure for organizing and holding a demonstration (Article 185-1 of the Code of Administrative Offences of Ukraine).

He was subsequently taken to the Galytskyy District Court, which found him guilty of the charges against him and sentenced him to three days of administrative detention. Once he had served his sentence, Mr. Vyerentsov appealed against the court’s decision before the Lviv Region’s Court of Appeal, which rejected his appeal.

### IMPORTANCE OF THE DECISION OF THE EUROPEAN COURT

Decision of the European Court in case of “Vyerentsov v. Ukraine” is of great importance to freedom of assembly in Ukraine, as it is the **first** case of the European Court regarding violations of the right to freedom of peaceful assembly in Ukraine.

Moreover, according to the Ukrainian legislation, European Court decisions are the source of law in Ukraine (Article 17 of the Law of Ukraine “On execution of decisions and application of the European Court of Human Rights practice”), and Ukrainian courts have to take into account practices of the European Court during court hearings (Article 8 of the Code of Administrative Procedure of Ukraine).

Thus, the Judgment of the European Court is a precedent which can be used in the courts of Ukraine, as well as during communication with state officials and police while exercising the right to freedom of peaceful assembly.

The All-Ukrainian Initiative “For Peaceful Protest!” is confident that the Judgment of the European Court in this case will decrease the number of court prohibitions of the meetings, demonstrations, as well as crackdown of peaceful assembly and detention of citizens during rallies and pickets in Ukraine.

The following conclusions are derived from the decision of the European Court in case of “Vyerentsov v. Ukraine”.

### 1. DETENTION AND CONVICTION OF CITIZENS FOR « VIOLATION OF PROCEDURE FOR ORGANIZING AND HOLDING OF MEETINGS AND DEMONSTRATIONS» ARE NOT PRESCRIBED BY LAW

The European Court has no power to determine what legislative acts are in effect in Ukraine, or check whether these acts correspond to the national legal framework, but in its decision, the European Court:

- states that there is no united opinion on application of The Decree of the Presidium of the Supreme Council of the USSR of July 28, 1988 (that established the permissive nature of peaceful assembly and obliges to notice about them 10 days prior) and quotes the Information note by the Higher Administrative Court of Ukraine on a study and summary of the jurisprudence concerning the freedom of assembly, namely that application of that Decree “*is wrong*”;
- refers to the Judgment of the Babushkinsky District Court of Dnipropetrovsk of March 30, 2007, in the case filed by representatives of the Institute Republic (which held the Dnipropetrovsk city council ordinance on procedures for organizing and holding of demonstrations and meetings as unconstitutional) and acknowledges that according to the Article 39 and Article 92 of the Constitution of Ukraine, the procedures for organizing peaceful assembly “*are determined by the law, namely, the law the Parliament of Ukraine*”;
- states that the Parliament of Ukraine did not adopt any legislation that would determine procedures for organizing and holding of peaceful assembly.

**«Thus, the European Court concludes that the interference with the applicant’s rights to freedom of peaceful assembly was not prescribed by law».**

As of now, in the absence of the law that would lay down the procedures for organizing and holding of peaceful assembly, application of the Article 185-1 of the Code of Administrative Offences of Ukraine, including detention and administrative penalties of organizers and participants of peaceful assembly, **are not prescribed by law** and thus, it violates the Article 11 and Article 7 of the Convention.

### 2. DURING THE HEARING OF CASES ON ADMINISTRATIVE OFFENCES, CITIZENS MUST HAVE THE RIGHT TO STUDY THE CASE RECORD, HAVE A LAWYER AND WITNESSES

In most cases, during the hearing of cases on administrative offences, the courts of Ukraine do not allow defendants to have a lawyer, witnesses or study the case record, which contradicts to the norms of the Code of Administrative Offences of Ukraine. Usually, such hearings do not last longer than few minutes and happen right after detention. The same happened in case of Mr. Vyerentsov. European Court in its Judgment made it clear that such practice of the Ukrainian courts violates the Article 6 of the Convention.

In our opinion, the situation can be changed by reforming the institute of administrative responsibility and by providing the administrative legal proceedings with procedural guarantees similar to those of the criminal proceedings.

### 3. THE EUROPEAN COURT URGES TO REFORM LEGISLATION ON FREEDOM OF PEACEFUL ASSEMBLY IN UKRAINE

European Court stated that “*in theory it is not for the Court to determine what measures of redress may be appropriate for a respondent State to take in accordance with its obligations*” but still the Court stresses that “*specific reforms in Ukraine’s **legislation and administrative practice** should be urgently implemented in order to bring such legislation and practice into line with the Court’s conclusions in the present judgment and to ensure their compliance with the requirements of Articles 7 and 11 of the Convention*”.

Having regard to the abovementioned, the All-Ukrainian Initiative “For Peaceful Protest!”,

**DECLARE:**

The Judgment of the European Court in case of “Vyrentsov v. Ukraine” will expand the practice of exercising the freedom of assembly in Ukraine. And we urge the Ukrainians to use their constitutional right to freedom of peaceful assembly more actively, using arguments set forth in the Judgment of the European Court.

The Court did not hold that The Decree of the Presidium of the Supreme Council of the USSR of 1988 is still valid in Ukraine. Neither it stated that ordinances on prohibiting the peaceful assembly are legal. But instead, the European Court states that there are no legal grounds in Ukraine to convict citizens for “violation of procedures for organizing and holding” of peaceful assembly.

The European Court urges Ukraine to reform its legal framework on freedom of assembly. The All-Ukrainian Initiative “For Peaceful Protest!” fully supports this call and suggests the Parliament of Ukraine to amend the following laws that make up the current legal framework regarding peaceful assembly in Ukraine:

- the Code of Administrative Offences of Ukraine – cancel the Article 185-1 (violation of the procedure for organizing and holding meetings, assemblies and demonstrations);
- the Code of Administrative Procedure of Ukraine – provide citizens with the right to appeal against court decisions prohibiting assembly;
- the Law of Ukraine «On local self-governance in Ukraine» – make it impossible for the local self-governance bodies to take ordinances that would restrict freedom of assembly in regions of Ukraine;
- other legislative acts of Ukraine.

When holding to reform the legal framework, the European Court warns “*whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances*”.

In addition, in introduction to the OSCE and Council of Europe Guidelines on Freedom of Peaceful Assembly the Director of OSCE/ODIHR Ambassador Lenarcic and the President of the Venice Commission Buquicchio write that “*good law, by themselves, cannot mechanically generate improvements in practice*”.

These improvements can be done only by us, citizens of Ukraine, in everyday fight for the right to freedom of assembly in Ukraine.