



**All-Ukrainian initiative
"For a Peaceful Protest!"**
(zmina.org.ua)

**All-Ukrainian Youth NGO
"Foundation of Regional
Initiatives"**
(fri.com.ua)

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Ladies and Gentlemen!

The Constitution of Ukraine guarantees the right to assemble peacefully without arms and to hold meetings, rallies, processions and demonstrations, upon notifying in advance the bodies of executive power or bodies of local self-government. 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 persons.

In Ukraine, the national level documents, which regulate organization and conducting of peaceful assembly and responsibility for violation, are the Constitution, the Code on Administrative Offenses, the Criminal Code, a separate section of the Code on Administrative Legal Proceedings and the above-mentioned decree of the Constitutional Court. Ukraine still has not adopted a specific law that would regulate organization and conducting of peaceful assembly, although both the Council of Europe and the European Union have been long recommending its adoption. Because of absence of such a law, administrative courts groundlessly prohibit peaceful assemblies, their participants are brought to administrative responsibility, law-enforcement agencies are violating human rights in various ways, bodies of local self-government establish various constraints on peaceful assembly concerning the site of conducting or terms of preliminary notification etc.

All-Ukrainian initiative "For Peaceful Protest!" representatives were made members of the Verkhovna Rada working group which was formed under the auspices of the VR committee on human rights aimed to develop the amendments to the bill which will correspond to the international obligations and standards. **In sum, we have been engaging constructively and at multiple levels to ensure the rights of peaceful assembly are protected in Ukraine.**

In July, more than 160 civic organizations addressed the Head of the Verkhovna Rada of Ukraine and heads of deputy factions with the request not to put the bill "On organization and conduct of peaceful assemblies" (reg. # 2450 of 06.05.2008) to vote before its new wording is revised by the expertise of the Venice Commission and ODIHR OSCE. Civic groups such as Institute Republic, Foundation of Regional Initiatives, Center for Society Research, Vidshich united to lead a process aimed at providing feedback to the bill, offering alternative approaches, introducing amendments, as well as appealing to the Venice Commission to consider the draft that is now registered in the Parliament.

Committee of Verkhovna Rada of Ukraine on Legislative Support of Law Enforcement had sent the text for the second reading of 03.07.2012 of the draft Law # 2450 for the Venice Commission and ODIHR OSCE expertise on August 31, 2012. A copy of the submission to the expertise and analytical reference of the Ukrainian human rights defenders is attached.

However, this was ignored during the coordination meeting of heads of the committees and deputy factions of the Verkhovna Rada of Ukraine on September 3, 2012 and September 17, 2012, as it was decided to include the bill #2450 into the agenda of the session week of September 4-7, 2012 and September 18-21, 2012.

MP Lesya Orobets and MP Andriy Parubiy were particularly active within the Verkhovna Rada of Ukraine to slow down a vote on September 4-7, 2012 and September 18-21, 2012, but there are no assurances that this is not on a fast track for passage at this point. The Foundation of Regional Initiatives with other NGOs has prepared a nationwide action in 17 cities to draw attention to this urgent issue, inter alia Vidshich has prepared an overnight stay at the Verkhovna Rada of Ukraine last night.

The position of our coalition is **that #2450 in its current form does not correspond with the Guidelines on Freedom of Peaceful Assembly of OSCE and Council of Europe, Venice Commission and ODIHR/OSCE joint opinions and ECtHR decisions. It creates restrictions on place, replaces the notion of a spontaneous peaceful assembly, transfers general obligations of the state to organizers and participants of peaceful assemblies.**

The bill establishes an unusually long, as for Ukraine, notification period to hold a peaceful assembly, which is 2 business days. While the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association recommends a no more than 48 hour notification period, and an obligatory notification should be applied only to large scale events and protests which might obstruct the traffic movement.

The address to the Venice Commission was sent with the aim to ensure that Ukrainian legislation corresponds to the political part of the Copenhagen criteria for membership in the European Union pursuant to requirements of Resolution of the Parliamentary Assembly of the Council of Europe (PACE) # 1755 "The functioning of democratic institutions in Ukraine" of October 4, 2010, and to requirements of Resolution of the European Parliament on Ukraine of November 25, 2010. The address to expertize the bills should be accepted because it meets the requirements of p. 2 of the Article 3 of the Revised Statute of the European Commission for Democracy through Law.

The situation that Members of Parliament of Ukraine may possibly ignore the fact that the bill was sent to the Venice Commission raises serious concerns as it is an expression of disrespect to the European institutions and a violation of positive obligations of Ukraine in the framework of the Council of Europe and OSCE. It is important to note that Ukraine, which will chair the OSCE in 2013, should become a model for other countries, or at least set its own standard which is close to European standards.

For those of you engaged in helping ensure that Ukraine adopts legislation to protect the right of peaceful assembly, **we encourage you to contact representatives of the Government of Ukraine to express your support for a Venice commission review and that the opinions of civic groups who are active in defending peaceful assembly rights be taken into great consideration.**

We are interested in establishing a permanent dialogue with the foreign diplomatic community and OSCE institutions in order to inform about the current state of freedoms in Ukraine. For further information, please contact Mykhailo Kameniev (+380674042646, kameniev@gmail.com)

A scanned copy of the address to the Venice Commission is in the Appendix.

Warsaw, September 25, 2012



ВЕРХОВНА РАДА УКРАЇНИ

Комітет з питань законодавчого забезпечення правоохоронної діяльності

01008, м. Київ-8, вул. М. Грушевського, 5, тел.: 255-35-06

№ 04-19/3-1823

„31” серпня 2012р.

To the Chairman of the Venice Commission
Of the Council of Europe
Mr. Janny Bukikkio

Dear Mr. Chairman,
having this opportunity, I would like to express my deep respect to you.

Pursuant to the requirements of the PACE Resolutions # 1755 of 04.10.2010 and #1862 of 26.01.2012 "Operating of the democratic institutions in Ukraine", and to the order of Volodymyr Lytvun, the Chairman of the Verkhovna Rada of Ukraine, of 15.03.2012, the Committee of the Verkhovna Rada of Ukraine on Legislative Support of Law Enforcement would kindly ask you to examine the Draft Law On the order of organising and conducting peaceful events (registration # 2450 of 06.05.2008, text to repeated second reading of 03.07.2012) and the Draft Law on Amendments to certain Legislative Acts of Ukraine regarding freedom of peaceful assembly (registration # 10569 of 06.06.2012).

Both Draft Laws concern implementation of the right to freedom of peaceful assembly. These Draft Laws intended to regulate legal framework and change the practice of violating the freedom of peaceful assembly by the Ukrainian authorities. Serious problems with freedom of peaceful assembly can be proved by the reports of the NGOs on rights protection and the annual report of the U.S. State Department for 2011 stating that the second most salient human rights problem in Ukraine was the government's measures to limit freedom of peaceful assembly.

It should be taken into account that both Draft Laws mentioned above cannot be considered separately from each other, as the Draft Law # 2450 is a special law and the Draft Law # 10569 makes the necessary amendments to the legislation of Ukraine.

Realizing that the Draft Law # 2450 has got two joint opinions by the Venice Commission and ODIHR/OSCE, it should be emphasized on the impossibility of changing the practice of law implementation only by adopting the special law. The amendments to the legislation have to necessarily be made that is why the Draft Law # 10569 was created.

Actually, the Draft Law # 10569 is one of the decisions made by the working group of the Verkhovna Rada of Ukraine while revising the Draft Law # 2450. The working group consisting of government and public representatives was established by the order of Volodymyr Lytvyn, the Chairman of the Verkhovna Rada of Ukraine, on March 15, 2012. In the course of work, the Draft Law # 2450 was considerably improved on the basis of joint opinions made by the Venice Commission and ODIHR/OSCE.

However, according to Ukrainian human rights activists and members of the working groups, these Draft Laws have provisions that do not meet European standards and obligations of Ukraine. It is worth mentioning that the **Draft Laws should be considered not only in terms of international standards, but also taking into account the Ukrainian practice.**

In particular, human rights activists emphasize on problematic aspects of the Draft Law # 2450 relating to the list of places prohibited for conducting peaceful assembly, regulation of spontaneous assemblies, period of notice, obligations of the organizers and participants of peaceful assemblies, and grounds for restrictions on freedom of assembly. Expanded analysis of these problems along with a letter from members of the working group is sent with this letter.

The translations of the Draft Laws # 2450 and # 10569 will be sent later.

**Best regards and my deepest respect,
The Chairman of the Committee,
Viktor Shvets**

A handwritten signature in black ink, appearing to be 'V. Shvets', written over a horizontal line. The signature is stylized and somewhat cursive.

To the Head of the Committee
of the Verkhovna Rada of Ukraine
on Legislative Support of Law Enforcement

Viktor Shvets

Dear Mr. Chairman,
having this opportunity, I would like to express my respect to you.

We would kindly ask you to send the Draft Law On the order of organising and conducting peaceful events (registration # 2450 of 06.05.2008, text to repeated second reading of 03.07.2012) and the Draft Law on Amendments to certain Legislative Acts of Ukraine regarding freedom of peaceful assembly (registration number 10569 of 06.06.2012) to the Venice Commission for examination. Both Draft Laws concern implementation of the right to freedom of peaceful assembly and they cannot be considered separately from each other. The Draft Law # 10569 is one of the results of the activity of the working group of the Verkhovna Rada on revision of the Draft Law # 2450, to which we belong.

More than 150 civic organizations, movements and trade unions¹ insist on conducting such examination. The necessity to examine certain norms of Draft Laws is seen also by the Ukrainian Helsinki Human Rights Union².

The Draft Laws contain provisions that contradict the standards of human rights. It is worth mentioning that the **Draft Laws should be considered not only in terms of international standards, but also taking into account the Ukrainian practice.**

We would also like to ask you to take into account reports written by the human rights activist on freedom of peaceful assembly in Ukraine³.

We are open for discussions with the experts of the Committee, Venice Commission and ODIHR\OSCE.

We are sending an expanded analysis of the problems in the mentioned above Draft Laws along with this letter and kindly ask to take it into account.

**Best regards,
members of the working group of the Verkhovna Rada
on revision of the Draft Law # 2450**

member of the Advisory Council of the
Ukrainian Parliament Commissioner for Human Rights

Mykhailo Kameniev

Chairman of the Commission on Freedom of Assembly
of the Civic Council at the
Ministry of Internal Affairs of Ukraine

Volodymyr Chemerys

Deputy chairman of the Foundation of Regional Initiatives

Mykhailo Lebed

August 3, 2012

1 <http://www.zmina.org.ua/2012/06/2931>

2 <http://helsinki.org.ua/en/index.php?id=1338983627>

3 <http://helsinki.org.ua/en/index.php?id=1332399751> (2011)
<http://helsinki.org.ua/en/index.php?id=1298443055> (2009-2010)

Comments on the Draft Law # 2450 (text to repeated second reading of 03.07.2012)

List of places prohibited for conducting peaceful assemblies

A. Problem

It has been developed a non-exhaustive list of places where conducting peaceful assemblies is forbidden (Paragraph 4, Part 2 of Art. 9), including the phrase "in other places specified by law". Thus, it becomes possible to determine places where it is prohibited to conduct peaceful assemblies, in any law, and not only in the core one. The list of places where it is prohibited to conduct peaceful assemblies also includes places with free access, but with limitation of certain activities (deforestation, economic activities etc.). These innovation contradict the joint opinions of the Venice Commission and ODIHR / OSCE.⁴

B. Solution

The list must be clearly limited by this law and it should include only territories which is already restricted for free access according the existing laws. The recommended amendment is elaborated by representatives of the human rights community and members of the working group and was made by the People's Deputies of Ukraine L.Orobets and R.Kniazevych. A second part of the Article 9 shall read as follows:

"It is prohibited to conduct peaceful assemblies in the areas banned from free access:

- 1) hazardous objects;
- 2) bandgap and controlled area of hydropower electric facilities (except for small hydropower) according to the procedure established by the owner of hydropower electric facilities or the authorized body;
- 3) nuclear installations and facilities for radioactive waste management and their sanitary protection zones;
- 4) permanent takeoff and landing areas, heliports, runways and takeoff and landing lines of continuously operating airports (airfields);
- 5) areas of restricted access established by the Law of Ukraine "On Nuclear Energy and Radiation Safety".

Spontaneous assemblies

A. Problem

The Draft Law replaces the notion of a spontaneous peaceful assembly, as imperatively establishes the obligation for a member (not an organizer) of a peaceful assembly to "immediately notify the police or the appropriate local authority about the date, time, location, purpose of a spontaneous peaceful assembly, as well as measures to be taken to ensure a conduct of a spontaneous peaceful assembly" (Part 1 of Art. 14). This obligation contradicts the essence of a spontaneous peaceful assembly and basically turns it into ordinary peaceful assembly, conduct of which requires filing notification reports.⁵

B. Solution

This obligation to notice about a spontaneous assembly must be explicitly excluded. It should be stated that it is possible to send a non-obligatory (optional) notice to the authorities in any form and in any manner about a spontaneous peaceful assembly.

4 P. 7 e, 34 CDL-AD(2010)033 Opinion no. 592/2010 ODIHR Opinion Nr.: FOA-UKR/168/2010 (MA)

5 The constitutional right to conduct assemblies in a peaceful way, without weapons, informing the executive authorities or local governments in advance, does not mean that peaceful assemblies conducted without notification contradicts the Constitution of Ukraine which stipulates that "*the rights and freedoms of a person and a citizen, enshrined in this Constitution, are not exhaustive*" (art. 22). In general, it is clear that the Constitution of Ukraine does not violate ECHR.

Period of notice

A. Problem

The Draft Law sets an unified period of notice no later than 2 business (not calendar) days prior to the holding of peaceful assembly (Part 1 of Art. 7). In practice, this period might be up to 5-7 days if non-working days and holidays are summed up, and for example, it has to be notified 3-4 days prior in order to hold a peaceful assembly on Monday or Tuesday. The Venice Commission and ODIHR / OSCE have already indicated in the joint opinion on the wording of the original Draft Law, that the notification term of 5 days before the event is "unusually long".⁶ In 2011, 89.4% of all court decisions in cases concerning restrictions on freedom of assembly prohibited peaceful assemblies. Meanwhile, only 4% of protests in Ukraine are non-peaceful.⁷

B. Solution

Instead, we offer differentiated notification terms on peaceful assembly. Such innovation was supported by more than 150 NGOs, movements and trade unions.⁸ The minimum notification term should be 12 hours. Some of our colleagues (including Ukrainian Helsinki Human Rights Union) expressed their opinion, with which we agree, that the minimum notification period, taking into account Ukrainian realities, should be no more than one day.⁹ In general, the legislation of Finland on notification terms can be taken as an example.¹⁰

Responsibilities of organizers and participants of peaceful assemblies

A. Problem

Draft Law transfer general obligations of the state to organizers and participants of peaceful assemblies, thus violating the rule of law. The Constitution of Ukraine guarantees the right to freedom of peaceful assembly and does not give people any additional obligations.

B. Solution

The Draft Law (Part 3 of Art. 5) shall not impose on the organizers and participants of peaceful assemblies any additional responsibilities other than those directly stated in Art. 39 of the Constitution of Ukraine and Art. 11 of ECHR.

Grounds for restrictions on freedom of assembly

A. Problem

It is dangerous if "*the decision of the Cabinet of Ministers of Ukraine [Ukrainian Government] to announce certain territories to be under quarantine in accordance with the law on the protection of the population against infectious diseases, if it foresees restricting freedom of assembly by court decision to protect the population against epidemic (outbreak) of particularly dangerous infectious disease*" (Paragraph 6, Part 3, Art.16) is recognized as a ground for prohibiting peaceful assemblies. This legislative innovation can take place only if quarantine restrictions on the rights are confirmed by the relevant decision of the Verkhovna Rada of Ukraine, along with the procedures of public emergency or martial law. Such a rule contradicts Art. 92 of the Constitution of Ukraine which stipulates that only law defines the rights and freedoms of a person and a citizen, and guarantees of these rights and freedoms.

B. Solution

Make necessary changes to the Law of Ukraine On Protection of Population from Infectious Diseases.

6 P. 42 CDL-AD(2009)052 Opinion no. 556/2009 ODIHR Opinion-Nr:FOA-UKR/144/2009

7 According to Ukrainian Protest and Coercion Data

8 <http://www.zmina.org.ua/2012/05/2229>

9 <http://helsinki.org.ua/en/index.php?id=1338983627>

10 <http://legislationline.org/topics/country/32/topic/15>

Comments to the Draft Law # 10569

Liability for violation of procedures

A. Problem

In Ukraine, the current article 185-1 of the Code of Ukraine on Administrative Offences, which effectively imposes liability not for wrongful activities that would violate the rights and freedoms of other people but for not following the procedure of organizing and conducting peaceful assemblies (which is still not developed, as there is no special law). Despite the absence of the procedure that can be violated, the courts regularly use this article and there are many cases when participants and organizers of peaceful assemblies were sentenced to administrative detention, including the maximum term of 15 days.

B. Solution

The Draft Law #10569 is intended to reduce the level of repression of this article, but not to eliminate it. The ECtHR has repeatedly emphasized in its decisions that the participants of peaceful assemblies should not fear persecution by the state only for participating in assemblies, and even the threat of prosecution for participating in an inconsistent rally is a violation of the Article 11 of ECHR.¹¹ Considering this, there is every reason to believe that the existence of Art. 185-1 of the Code on Administrative Offences is a violation of Art. 11 ECHR and Art. 39 of the Constitution of Ukraine. Accordingly, the human rights activists in Ukraine believe that the administrative responsibility for violation of organization and conduct of peaceful assembly should be cancelled.¹²

Judicial procedures

A. Problem

Existing legal provision of Administrative Judiciary Code of Ukraine (Art. 182) prevents the authority's abuses because court recognize claims about restrictions of freedom of assembly non-justified if the court obtained claim on the same day as the beginning of the assembly or later. According to the Draft Law courts recognise justified this type of cases whenever they were obtained provided if the arose of circumstances which determine the necessity of appeal to the court. That innovation provides ample room for abuse by the authorities.

B. Solution

Legal provision must change in order to eliminate possibility of abuse by the authorities. At the same time changes must save the authorities' ability for implementation of the obligations of protect the human rights and freedoms.

11 EZELIN v. FRANCE, ALEKSEYEV v. RUSSIA, BĄCZKOWSKI AND OTHERS v. POLAND etc.

12 <http://helsinki.org.ua/en/index.php?id=1338983627> and <http://www.zmina.org.ua/2012/06/pidtrymajte-zvernennya-proty-uzakonennya-represij-zakonoproektom-2450>