

## IAP Information Note No. 11

### RIGHT TO PEACEFUL ASSEMBLY

The primary legal source regulating exercise of the right to peaceful assembly is the Constitution of Ukraine (“the Constitution”). There is no law, in the form of a separate legislative act, addressing specifically the exercise of the right to peaceful assembly. Two draft laws on peaceful assembly appear to be under consideration in the Parliament.

Certain aspects, related to court proceedings regarding the exercise of the right, and administrative and criminal responsibility for breach of the procedure for holding peaceful demonstration, are governed by the Code of Administrative Proceedings, Code of Administrative Offences and Criminal Code respectively. Separate legal acts regulate questions of involvement of the State Enforcement Service and law enforcement agencies in the exercise by citizens of their right to peaceful assembly.

It is also noted that international treaties duly ratified by the Parliament constitute a part of Ukrainian legislation.<sup>1</sup> Thus, Article 21 of the International Covenant on Civil and Political Rights, as well as Article 11 of the European Convention on Human Rights (“the Convention”), form a part of the national legislation. The Ukrainian courts shall also apply the Convention and case law of the European Court of Human Rights as a source of law.<sup>2</sup>

In the cases of *Vyerentsov v. Ukraine* and *Shmushkovych v. Ukraine*, the European Court of Human Rights (“ECHR”) examined the Ukrainian legislation concerning the right to freedom of assembly and found a breach of Article 11 on account of the lack of foreseeability of the law in question, in particular the absence of clear and foreseeable procedures for organising and holding peaceful demonstrations. In view of the existence of such legislative lacunae, in *Vyerentsov v. Ukraine* the ECHR ordered general measures under Article 46 of the Convention for the purpose of bringing the legislation into compliance with the Convention standards. The part of the judgment concerning general measures is pending execution.<sup>3</sup>

#### *Constitution of Ukraine*

Article 39 of the Constitution reads as follows:

“Citizens have the right to assemble peacefully without arms and to hold meetings, rallies, marches and demonstrations, after notifying the executive authorities and bodies of local self-government beforehand.

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

#### *Notification procedure and time-limit for notification*

In its (binding) decision of 19 April 2001<sup>4</sup> on the interpretation of paragraph one of Article 39 of the Constitution, the Constitutional Court stated that citizens may exercise the right to peaceful assembly subject to prior notification of the executive authorities or bodies of local self-governance, thus confirming that the holding of peaceful demonstrations is

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<sup>1</sup> Article 9 of the Constitution and Article 19 of the Law on International Agreements of Ukraine provide that international treaties assented to by the parliament of Ukraine constitute a part of domestic law of Ukraine.

<sup>2</sup> Article 17 of the Law on the Execution of judgments and the Application of Case Law of the European Court of Human Rights, Article 8(2) of the Code of Administrative Proceedings.

<sup>3</sup> [Information](#) on state of execution of the *Vyerentsov v. Ukraine* judgment.

<sup>4</sup> <http://zakon2.rada.gov.ua/laws/show/v004p710-01/paran54#n54> (in Ukrainian).

subject to a notification procedure rather than an authorisation procedure. Persons wishing to hold a demonstration are obliged to notify the relevant authorities; they are not under an obligation to seek authorisation to hold a gathering from local authorities or other state bodies. It further follows from Article 39 of the Constitution of Ukraine that only courts may restrict the exercise of the right and that such restrictions should be prescribed by law.

In its decision the Constitutional Court also addressed the meaning of the term ‘prior notification’ which was, and remains, undefined in any legislative act. The Constitutional Court concluded that the time-limit for such prior notification should be reasonable and should not limit the exercise of the right of peaceful assembly but, at the same time, that it should allow the relevant authorities to take measures ensuring the exercise of the right by citizens. Interpreting the relevant provisions of the Constitution, the Constitutional Court found that the question of time-limits for notification was subject to legislative regulation, meaning that it was to be settled by a law adopted by the parliament. In particular, the Court found as follows:

“The provisions of the first part of Article 39 of the Constitution of Ukraine on timely notification to the executive authorities or bodies of local self-government about planned meetings, rallies, marches or demonstrations relevant to this constitutional application shall be understood to mean that, where the organisers of such peaceful gatherings are planning to hold such an event, they must inform the above-mentioned authorities in advance, that is, within a reasonable time prior to the date of the planned event. These time-limits should not restrict the right of citizens under Article 39 of the Constitution of Ukraine, but should serve as a guarantee of this right and at the same time should provide the relevant executive authorities or bodies of local self-government with an opportunity to take measures to ensure that citizens may freely hold meetings, rallies, marches and demonstrations and to protect public order and the rights and freedoms of others.

Specifying the exact deadlines for timely notification with regard to the particularities of [different] forms of peaceful assembly, the number of participants, the venue, at what time the event is to be held, and so on, is a matter for legislative regulation ...”

It should be noted that under legislation that was in force before the Constitution was adopted and before the notification procedure for exercise of the right to peaceful assembly was introduced, the holding of demonstrations was subject to authorisation by bodies of local self-governance. In particular, according to the Decree of the Presidium of the Supreme Soviet of the USSR of 28 July 1988 on the procedure for organising and holding meetings, rallies, street marches and demonstrations in the USSR (Decree of 1988), an application to hold a meeting was required to be submitted in writing to the executive committee of a local council of people’s deputies no later than ten days before the planned date of the event. The executive committee examined the application and notified the applicant of its decision. It also possessed the power to ban the gathering under certain circumstances.

By virtue of the Resolution of the Verkhovna Rada of 12 September 1991 on the temporary application of certain legislative acts of the Soviet Union, “before the relevant legislation of Ukraine is enacted, the legislation of the USSR shall be applicable within the territory of the Republic in respect of issues that have not been regulated by the legislation of Ukraine and in so far as they do not contravene the Constitution and legislation of Ukraine”. Furthermore, according to the Transitional Provisions of the Constitution of Ukraine (Chapter XV), “Laws and other normative acts enacted prior to the entry into force of this Constitution shall apply in so far as they do not conflict with the Constitution of Ukraine...”

Since the Decree of 1998, which envisaged the need to obtain authorisation for the holding of a peaceful demonstration and empowered authorities other than courts to ban a gathering, is in contradiction with the provisions of Article 39 of the Constitution, the former had no application. In any event, under Article 39 of the Constitution, any restrictions on the right to peaceful assembly are required to be determined by a legislative act of the Parliament.

Furthermore, Article 92 provides that human and citizen's rights and freedoms are to be governed by the laws of Ukraine only.

### **Draft Laws concerning the right to peaceful assembly and CoE/OSCE/UN position**

In 2008 the Draft Law on Peaceful Assembly (No. 2450) was registered with the Parliament.<sup>5</sup> The draft law underwent certain changes in response to the opinion delivered with respect to the draft law by the Venice Commission. In its Joint Opinion on this draft delivered in October 2010, the Venice Commission and the Office for the Democratic Institutions and Human Rights of the Organisation for the Security and Co-operation in Europe ("OSCE/ODIHR") welcomed changes introduced in response to the comments. However, the Joint Opinion also outlined further provisions of the draft law which needed to be revised, in particular provisions concerning the differentiation of types and categories of peaceful assemblies, the right of non-nationals and stateless persons to peaceful assembly, the lack of provision for confirmation of receipt of notification by the authorities, the funding of assemblies and the place of holding assemblies, and the need to provide clear regulation of the liability and penalties for a failure to adhere to the law.<sup>6</sup> The draft law No. 2450 was approved by the Parliament on the first reading, however, the examination of the draft law was subsequently postponed.

In 2013 two other draft laws concerning the right to freedom of assembly were registered with the Parliament – Draft Law No. 2508a<sup>7</sup> and Draft Law No. 2508a-1<sup>8</sup>. Neither of the drafts was laid before the Parliament for adoption.

The lack of proper legislative regulation of the right to peaceful assembly in Ukraine remains a matter of concern for international human rights bodies. The UN Human Rights Council, as a result of its universal periodic review in 2012, recommended Ukraine to implement a law on freedom of assembly in accordance with international human rights standards.<sup>9</sup> Furthermore, as noted above, the issue was under consideration in the judgments of the ECHR in the cases of *Vyerentsov* and *Shmushkovych* delivered in 2013. Ukraine has currently failed to comply with either the UN recommendation or the ECHR judgments, in part concerning implementation of general measures.

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<sup>5</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=32431](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=32431) (in Ukrainian).

<sup>6</sup> [Joint Opinion](#) on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, adopted by the Venice Commission on 15-16 October 2010.

<sup>7</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=47751](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47751) (in Ukrainian).

<sup>8</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=47925](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47925) (in Ukrainian).

<sup>9</sup> UN Human Rights Council, [Report](#) of the Working Group on the Universal Periodic Review: Ukraine.