

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Clare Ovey
Tel: 03 88 41 36 45

Date: 15/11/2016

DH-DD(2016)1241

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1273 meeting (6-8 December 2016) (DH)

Communication from a NGO (Ukrainian Center for Independent Political Research) (02/11/2016) in the cases of Vyerentsov and Shmushkovych against Ukraine (Applications No. 20372/11, 3276/10).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1273 réunion (6-8 décembre 2016) (DH)

Communication d'une ONG (Ukrainian Center for Independent Political Research) (02/11/2016) dans les affaires Vyerentsov et Shmushkovych contre Ukraine (Requêtes n° 20372/11, 3276/10)

[anglais uniquement]

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

УКРАЇНСЬКИЙ НЕЗАЛЕЖНИЙ ЦЕНТР
ПОЛІТИЧНИХ ДОСЛІДЖЕНЬ

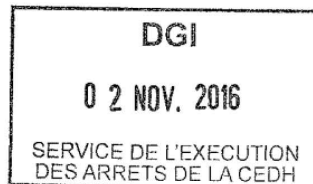
Україна, 01004, м. Київ, вул. Антоновича, 10А оф.3
ucipr@ucipr.org.ua, www.ucipr.org.ua



UKRAINIAN CENTER FOR INDEPENDENT
POLITICAL RESEARCH

Ukraine, Kyiv 01004, 10A Antonovycha Str. Office 3
Tel: +380445994251, 5929823

No. 77(16) of 19 October 2016



**Committee of Ministers
of the Council of Europe**

F-67075 Strasbourg Cedex, France

**Submission of the Ukrainian Center for Independent Political Research
as to the execution of the European Court of Human Rights judgments
in the cases of *Vyerentsov v Ukraine* and *Shmushkovych v Ukraine***

Introduction

The Ukrainian Center for Independent Political Research (the UCIPR) is one of the oldest Ukrainian non-governmental organizations, a non-partisan analytical center that develops democratic procedures in public policies and strives for the irrevocability of democratic changes. The UCIPR is currently implementing an USAID-financed project “Citizens in Action” aimed at the development and promotion of the policies for better civil society enabling environment. The improvement of the legislative framework for the exercise of the freedom of assembly in Ukraine is one of the elements of the above project. In this context, the UCIPR engages in the monitoring and reporting activities as regards this freedom, participates in the legislative drafting process by preparing its own proposals.

According to Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of the friendly settlements the UCIPR would like to draw the Committee’s attention to the state of execution of the European Court of Human Rights judgments in the cases of *Vyerentsov v Ukraine* and *Shmushkovych v Ukraine*.

Cases description

The abovementioned cases relate to the violations of Article 11 of the European Convention on Human Rights that guarantees freedom of assembly. In the *Vyerentsov* case the Court also established violations of Article 7 (“no punishment without law”) and Article 6 (right to a fair trial) of the Convention. In the context of the violation of Article 7 the Court noted that the applicant’s punishment for holding an assembly envisaged by the Code of Administrative Offenses was in breach of the Convention as there was no clear and foreseeable law regulating the procedure for organizing and holding assemblies.

The Court stated that the violations under Articles 7 and 11 “stem from a legislative lacuna concerning freedom of assembly which remain in the Ukrainian legal system for more than two decades”. The Court further stressed that “specific reforms in Ukraine’s legislation and administrative practice should be urgently implemented in order to bring such legislation and practice in 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”.

Current situation and state of execution

The year of 2016 marks 25 years since independent Ukraine has been living without a law on the freedom of assembly and 20 years since the adoption of the Constitution of Ukraine, where this right – and the need for such law – is clearly envisaged. Previous attempts to adopt the respective legislation were unsuccessful. The absence of the proper legislative framework prevents individuals from effectively exercising their right to assemble peacefully. It also leads to arbitrariness in the actions of the authorities, central as well as local, while dealing with the assemblies.

In particular, in the absence of the general law on the freedom of assembly, the local authorities adopt their own regulations establishing the procedure of notification about a planned assembly, designating certain places for the assemblies and put other limitations on this right. According to the monitoring conducted by the UCIPR in 2015-2016, at least 30 cities in Ukraine have special local regulations as to assemblies. These regulations are mostly based on the Soviet time legislation (i.e. the Resolution of the Presidium of the Supreme Council of the USSR of 1988) and their provisions do not comply with the Constitution of Ukraine. In particular, the local regulations require notification of the local authorities of an assembly several days in advance (the periods range from 24 hours to 30 days) and receiving a permission. They also contain a number of other limiting provisions, e.g. as to the place and time for holding assemblies.

The case law of the domestic courts is incoherent and does not help resolving the problem. The analysis of the court decisions evidences that although the number of freedom of assembly related cases has decreased within the last 2 years (from around 110 per year to around 40 per year), the courts still remain inclined to take the side of the authorities, banning the assemblies. The reasoning of the courts' decisions upholding the bans leaves much to be desired.

There are, however, some positive developments in this field. The State's obligation to adopt a law on the freedom of assembly as well as a number of by-laws (e.g. for policing assemblies) was acknowledged in the National Human Rights Strategy adopted by the Order of the President of Ukraine of 25 August 2015. Also, on 8 September 2016 the Constitutional Court of Ukraine adopted a decision regarding the unconstitutionality of Article 21 (5) of the Law of Ukraine "On the Freedom of Thought and Religious Organizations" and the Resolution of the Presidium of the Supreme Council of the USSR of 1988 as these legal acts envisage a permit system for holding assemblies.

Even with these positive developments, there is still a legislative chaos that endangers free and unrestricted exercise by the individuals of their freedom to assemble peacefully. In our view, only the adoption of a comprehensive law on the freedom of assembly can settle the issue.

In this context, it should be mentioned that in December 2015 two draft laws on the guarantees of the freedom of assembly were registered in the Parliament of Ukraine (nos. 3587 and 3587-1). In particular, the draft law no. 3587 envisages clear rules as to preparing and holding assemblies both for the organizers and for the authorities, provides for a clear list of the grounds for limitation of this the right to assemble. This draft law was prepared by a working group that ensured wide representation of both the authorities and civil society organizations.

However, since that time, no further developments occurred, the drafts have not been considered yet. In the view of the previous unsuccessful history of the draft laws on

the freedom of assembly, there is a reasonable fear that the current drafts will have the same fate.

The Court's position in the *Vyerentsov* case clearly points out to the need for the implementation of legislative measures. In its decision adopted at the 1243rd meeting (08-09 December 2015) the Committee welcomed the information provided by the Government that the draft law "On Guarantees of the Right to Freedom of Peaceful Assembly" (no. 3587) was submitted to the Parliament and called upon the Government to provide information on the progress achieved with respect to general measures by 1 February 2016 at the latest. Notwithstanding this, the last available submission by the Government dates back to October 2015 and it notes that the Government will inform the Committee of further developments by the end of 2016.

With this in mind, and in the view of the recent opinion by the Venice Commission regarding the draft laws on freedom of assembly, the UCIPR calls upon the Committee of Ministers to include the *Vyerentsov* and *Shmushkovych* cases into the agenda of its December meeting. Additionally, the UCIPR would like to ask the Committee to request from the Government the updated Action plan/Action report as to the measures taken and planned as regards the execution the above judgments with indicative time-table for their implementation.

Yours sincerely



Maksym Latsyba
Head of Civil Society Development Program
Ukrainian Center for Independent Political Research