



Higher Administrative Court of Ukraine cannot establish any period of notice for peaceful assemblies

*Statement of the All-Ukrainian Initiative "For Peaceful Protest!"
(including All-Ukrainian Youth NGO "Foundation of Regional Initiatives")*

On January 23, 2013, a panel of judges of the Higher Administrative Court of Ukraine issued a ruling eliminating a Separate Decision of the Kyiv Appellate administrative court of May 16, 2012, which indicated that Kyiv city council's ordinance of 24.06.1999 # 317/418 establishing a 10-day period of notice for peaceful assemblies does not correspond to the Constitution of Ukraine.

In addition, Kyiv Appellate administrative court ruled a Separate Decision that the Decree of the Presidium of the Supreme Soviet of the USSR of 28.07.1988 which also established a 10-day period of notice, is not valid in Ukraine.

After promulgation of a ruling of a panel of judges, there were rumors that *"the Higher Administrative Court obliged Kyiv citizens to notify on peaceful assemblies 10 days prior"*. As a result, we state:

The ruling of the higher Administrative court of Ukraine of 23.01.2013 did not oblige Kyiv citizens to notify about peaceful assemblies 10 days prior to the event and did not establish a 10-day period of notice for peaceful assemblies in Kyiv.

Because:

1. Any court, not even the Higher Administrative court of Ukraine, has no constitutional rights to establish concrete period of notice for peaceful assemblies. According to the decision of the Constitutional court of Ukraine of 19.04.2001, establishment of period of notice for peaceful assemblies is a subject of legislative regulation. The Higher Administrative Court is not a legislative body and its ruling is not a law. So, ruling of the Higher Administrative Court of Ukraine cannot establish any concrete period of notice, neither 10 days, nor 2 days, nor any other number of days.

2. The ruling of the Higher administrative court of Ukraine of 23.01.2013 does not state anything about obligations of Kyiv citizens to notice on assemblies 10 days prior to events and it does not state anything about concrete period of notice.

Basically, the ruling of the higher Administrative Court of Ukraine brings us to the existing legal regulation of freedom of assembly issue that is based on the Constitution of Ukraine and Convention for the Protection of Human Rights and Fundamental Freedoms. Such regulation means that:

1. Determination of concrete period of notice for peaceful assemblies is “*a subject of legal regulation*” (decision of the Constitutional Court of Ukraine of 19.04.2001).
2. There is no special law on FoA, thus there cannot be any concrete period of notice and notification can be done any time before holding such an assembly.

Decision of the panel of judges of the Higher Administrative Court of Ukraine as of January 23, 2012, which canceled a Separate Decision of the Kyiv Appellate Administrative Court as of May 16, 2012, contradicts the Constitution of Ukraine, the Decision of the Constitutional Court of Ukraine as of April 19, 2001, and any logic.

3. Kyiv city council's ordinance of 24.06.1999 # 317/418 contradicts part 1, Article 92 of the Constitution of Ukraine that states “*the Laws of Ukraine only can define the rights and freedoms of people and citizens and guarantees of such rights and freedoms; main obligations of citizens*”. So, any decisions of local governments cannot define rights and obligations of citizens on the right to freedom of assembly, including period of notice. The All-Ukrainian Initiative “For Peaceful Protest!” canceled in courts unconstitutional ordinances of Dnipropetrovsk, Chernivtsi, Simferopol, Uzhgorod, and other cities councils of Ukraine.

In particular, having correctly referred to the Decision of the Constitutional Court of Ukraine and by mentioning that there was no special law on assembly in Ukraine, the panel of judges of the Higher Administrative Court of Ukraine did no

make logic conclusion, that there were no concrete period of notice for peaceful assemblies in Ukraine and in Kyiv.

The panel made an absolutely different conclusion, which is that Kyiv authorities may refer to Kyiv city council's ordinance of 24.06.1999 # 317/418 which is not "*legislative regulation*". Since the Decision of the panel of judges of the Higher Administrative Court of Ukraine has violated the freedom of peaceful assembly, which is guaranteed by the Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the All-Ukrainian Initiative "For a Peaceful Protest!" states that it will apply to the European Court of Human Rights on this issue.

The All-Ukrainian Initiative "For Peaceful Protest!" address the Kyiv city council's with a demand to cancel its unconstitutional ordinance of 24.06.1999 # 317/418.

We also pay attention to the necessity to adopt changes by the Verkhovna Rada of Ukraine to the law "On local self governance in Ukraine", the Code of Administrative Justice of Ukraine, the Code of Administrative Offences of Ukraine and a number of other legislative acts which would make impossible adoption of unconstitutional ordinances in future. Appropriate bill has been prepared by the Ukrainian civil society.

We also pay attention to the threat of adoption of a special law on assembly which will determine a period of notice which will hamper citizens from realizing their right, make the situation with freedom of assembly worse and factually validate ordinances similar to the Kyiv city council's ordinance of 24.06.1999 # 317/418. The Ukrainian civil society ruined the plans of different governments to adopt such law many times.

The Ukrainian civil society is strong enough as to not let adopt such law in the future.