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Only in English

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UKRAINE: FREEDOM OF ASSEMBLY¹

In Ukraine there is no legislation which regulates how the right to peaceful gatherings is exercised aside from provisions and restrictions of a general nature.

The state authorities, bodies of local self-government and the courts are to this day using normative acts of the former USSR, such as the Decree of the Presidium of the Supreme Soviet of the USSR from 28 July 1988 «On the procedure for the organization of meetings, political rallies, street events and demonstrations in the USSR» which we consider to be unlawful.

The Decree contravenes the Constitution of Ukraine, Article 39 of which mentions only that the authorities must be notified about plans for mass gatherings and says nothing about permission to hold them. Nor does it stipulate when notification must be given. The Decree also runs counter to other provisions of the Constitution.

Law enforcement agencies apply general legal norms on ensuring public order, yet almost all individuals detained when a mass gathering is dispersed are charged under Articles 185 and 185-1 of the Code of Administrative Offences of Ukraine (these being the often loosely understood failure to obey police instructions and infringement of procedure for organizing such events).

Before 2005 no Draft Law on freedom of assembly had been passed by Ukraine's parliament. In that year the Institute "Respublica", in cooperation with specialists from the Ukrainian Helsinki Human Rights Union, drew up a draft law "On freedom of peaceful assembly" which was tabled in the Verkhovna Rada on 15 July (registration No 7819) by State Deputy, Viktor Musiyaka.

The Draft Law was prepared in compliance with the OSCE/ODIHR Guidelines for drafting laws pertaining to the freedom of assembly" as well as with case law of the European Court of Human Rights, and its key parameters were as follows. Together with the concepts "gathering", "political rally", "march", "demonstration", in accordance with European practice the following concepts were introduced: "spontaneous demonstration" (i.e. gatherings not organized by any individual or legal entity), "counter demonstration" (gatherings which take place at the same time and in the same place with the aim of expressing different or opposing views), as well as, in keeping with the Ukrainian tradition, the concept of "tent cities".

The Draft Law guaranteed the right to peaceful assembly for citizens of Ukraine, foreign nationals and stateless persons, those under 18, people whose civil activities have been restricted by order of the court, as well as those serving a sentence in a penal institution. In compliance with the Constitution of Ukraine the Draft Law did not contain any restrictions on freedom of assembly in terms of time, place, duration and form of the gathering or the number of participants.

The Verkhovna Rada did not manage to review this Draft Law in 2005 and then at the very beginning of 2006, on 10 January, it refused to include the Draft on the agenda, meaning

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that it was effectively rejected. It should also be noted that the Chairperson of the Profile Committee of the Verkhovna Rada of Ukraine on Human Rights, National Minorities and Inter-ethnic Relations, H. Udovenko, registered a Resolution on returning the draft law on freedom of peaceful assembly for revising.

At the same time, another draft law was being prepared by the Ministry of Justice. The Ministry's draft proved, in contrast to the liberal draft law proposed by human rights activists, to be stricter. At the beginning of May this year the Ministry of Justice posted its draft law for public debate. Human rights groups made their comments criticizing it for not complying with international standards.

After discussions, human rights groups and the Ministry of Justice agreed to draw up a joint draft law, combining the positive features of both drafts. Meanwhile the Ministry of Justice sent both draft laws for their assessment to experts from OSCE and the Council of Europe's Venice Commission.

On 19 September the international experts presented their preliminary comments on the draft laws, and the Ministry of Justice presented an updated version of their draft law.²

During 2005, there were wide-scale violations of the right to freedom of peaceful assembly by local state authorities, bodies of local self-government, law enforcement agencies and local courts.

A number of pickets, political rallies and demonstrations (in the majority of cases those of the opposition) were groundlessly prohibited by the courts. Some political rallies and tent cities were broken up without any court warrant. In dispersing political rallies and marches the police used force, as a result of which demonstrators received injuries.

In some cases, participants in peaceful meetings were attacked by unidentified individuals not connected with the police (employees of private security outfits, political opponents). In the majority of such cases law enforcement officers took no action.

A number of organizers and participants in peaceful events faced administrative penalties.

Two criminal investigations were initiated in connection with the blocking of administrative buildings and transport routes by supporters of both main presidential candidates in the 2004 elections. The criminal investigation launched at the end of 2004 over the blocking of Khreshchatyk St, the main street in Kyiv, and administrative buildings by supporters of the current President, Viktor Yushchenko, during the "Orange Revolution" was closed at the beginning of 2005. On the other hand, also at the beginning of 2005 a criminal investigation was launched against supporters of the then leader of the opposition, Viktor Yanukovich, who had blocked a vehicle road near the city of Armyansk during a "car run of friendship" organized by Yushchenko supporters. This case is presently being reviewed by the court.

According to the Department of Civil Defence of the Ministry of Internal Affairs, over the last ten years in Ukraine the number of mass actions has become 16 times higher. Just in the first six months of 2005 almost 89 thousand mass actions were registered, this being 27.5 % more than over the equivalent periods in 2004. Over the second half of 2005 the number of political rallies was much lower than during the same period for 2004 (due to the "Orange Revolution"). In the course of 2005 over 124,4 thousand mass events took place in Ukraine, attended by 63 million people. In order to ensure public order and safety during mass events and other actions, over 1 million law enforcement officers were deployed. For infringements in organizing and holding mass events in 2005, administrative charges were brought against 40 organizers and active participants in such events.

One can conclude that the number of people exercising their right of assembly in Ukraine is increasing from year to year.

² Available at <http://helsinki.org.ua/en/index.php?id=1158752536>.