

Note for the Report of the UN Special Rapporteur (rights to freedom of assembly)

About us

The Center for Civil Liberties was established in 2007 in **Kyiv (Ukraine)** with the aim of promoting human rights, democracy and solidarity in Ukraine and the OSCE region to restore human dignity.

The organization is known in Ukraine and abroad due to its active work in the following areas: - protection of fundamental rights and freedoms through the consolidation of the efforts of the human rights community to change the legislation and practice, development of public control; - documentation of violations in the course of the international armed conflict and protection of human rights in the occupied territories of Crimea and Donbas; implementation of programs of international solidarity for the joint work of human rights organizations at the level of the OSCE region; support and development of civil society through the construction of a holistic ecosystem and new channels of communication.

The organization considers it an important strategic task to go beyond the boundaries of narrow corporate expertise and assert a proactive position based on the support of numerous volunteers and civic initiatives for effective communication with the society and joint pressure on the political class for the swift transformation of Ukraine on the principles of an open society.

Details: <http://ccl.org.ua/>

The OZON Public Monitoring Initiative is a voluntary association of active citizens who are aware of the importance of quality public control over the actions of the authorities, as well as of the key processes that take place at the interface between society or the individual and the state. The work of the initiative is coordinated by the human rights organization Center for Civil Liberties.

Public observers are an independent party, they always remain ABOVE the process. The purpose of the activity is to improve the work of the authorities in the field of human rights through an organized system of independent control over them. In their work, the monitors of the initiative promote the concept of the government as a hired manager, where the performance of government bodies is evaluated directly by the people themselves.

A feature of the group's activities is the widespread involvement in the public scrutiny by "ordinary" citizens, regardless of their prior specialization and experience.

Training. The Center for Civil Liberties is constantly organizing various types of training to deepen the knowledge and skills of the members of the OZON community. There are different forms of training – seminars, lectures, workshops, webinars, individual consultations, and more. Considerable attention is paid to the rules of work of the OZON, in particular, the psychological and individual safety of its observers. A volunteer of OZON, presented with a choice between recording information and jeopardizing personal safety in the face of a direct threat must give absolute priority to personal safety.

Monitoring. Volunteers of OZON monitor peaceful rallies, police action on the streets, court proceedings in matters of public concern, accountability and transparency in local government activities. To investigate the systemic problems that exist in each region, OZON organizes nationwide campaigns. After each monitoring, OZON volunteers complete the questionnaire and forward it to the Center for Civil Liberties.

Generalized materials on a particular peaceful assembly, a resonant event, an all-Ukrainian campaign, ongoing court cases are published in public reports alongside recommendations.

Information policy. The group maintains a page on social networks (Facebook, Twitter) for immediate updates on the activities of the OZON and news in the field of public control. Press releases, public reports, and recommendations are sent to the authorities, international intergovernmental organizations, and the media. OZON's position is made public after examining all material received. When prompted by the press, OZON volunteers present to journalists only the facts

that have occurred and, in the case of a visible violation of human rights, their assessment of the incidents.

Advocacy. Monitoring results are published in various forms including reports, presentations, videos, etc.; and continue to be used to strategically change the situation and resolve identified systemic issues. Based on the specific circumstances, OZON undertakes legal and informational actions, plans and conducts advocacy campaigns. In order to organize pressure on the authorities, OZON constantly informs such international intergovernmental organizations as the UN, EU, CoE, OSCE.

In addition, OZON practices joint international action to protect international standards of human rights and freedoms, together with partners from other countries.

Over the course of the 2019, more than 70 new volunteers from Kyiv and the regions joined the UNDP. In total, more than 100 volunteers participated in public monitoring and public control actions in 2019, and 34 monitorings of assemblies were conducted.

Current Publications

Research “Monitoring the Right to Freedom of Assembly. 2017-2018 (Ukraine)”¹ :
http://ecnl.org/wp-content/uploads/2019/01/Ukraine_Monitoring-report-2017-2018.pdf

Results of monitoring by public observers are set out in the reports:

Equality March 2019 -

<http://ccl.org.ua/en/reports/equality-march-kyiv-pride-2019/> (eng)

KharkivPride March - <http://ozon.monitoring.tilda.ws/hrkvprd19>

May 9 in Kyiv - <http://ccl.org.ua/reports/monitorynh-9-travnia-2019-u-kyievi/>

Results of stock monitoring March 8, 2019 -
<http://ccl.org.ua/reports/ozon-rezul-taty-monitorynhiv-aktsiy-8-bereznia-2019/>

Odessa Pride Equality March 2019 -
<http://ozon.monitoring.tilda.ws/page7216527.html>

TRANS MARCH 2019 - <http://ozon.monitoring.tilda.ws/page8401235.html>

¹ Within the framework of the Project, the Center for Civil Liberties, with support from the European Center for Not-for-Profit Law, we have conducted research and monitoring of the observance of the right to freedom of peaceful assembly in Ukraine in the period 2017-2018. Thus, an analysis of the current legislation was carried out, requests for access to public information were submitted, interviews with stakeholders were held and observation of peaceful assemblies was performed. Among the respondents for the interviews were experts in the area of observing freedom of assembly, organizers of assemblies on various matters, staff of the Ministry of Justice (Director-General of the Directorate of Human Rights, Access to Justice and Legal Awareness), an MP, a village mayor, an employee of the city administration in Kyiv, and police officers (representatives of the Department of Human Rights in Lviv and Vinnytsia, a member of the Prevention Division of the Main Department of the National Police in the Sumy Oblast, members of the tactical operative response squads of the Patrol Police)

Brief Note: Freedom of Assembly - Ukraine (2018-2019)

Despite the fact that the situation with freedom of assembly in Ukraine has improved since the Revolution of Dignity in 2013-2014, there still remains a need for significant improvements and reforms in the sphere of facilitation and protection of assemblies.

Investigation of killings during protests

1. The ineffective investigation of the killings during the Maidan protests and the prosecution of perpetrators are still relevant. Eighty-three protesters, a journalist, a bystander, and 13 law enforcement officers lost their lives between 21 January and 20 February 2014. According to UN HRMMU, investigations into 55 killings have identified direct perpetrators. Despite being transferred to courts, these cases have since been protracted. Investigations into the deaths of 42 men and one woman have seen little progress. While in some of these cases the investigations established at least the organizers of the killings, it did not identify any direct perpetrators. The investigation into the deaths of 21 of them, including 13 law enforcement officers, failed to establish any perpetrators.²

Detailed Paper “How Zelenskyi and his team deliver on their promise “not to soft-pedal the Maidan cases”:
<http://ccl.org.ua/en/position/how-zelenskyi-and-his-team-deliver-on-their-promise-not-to-soft-pedal-the-maidan-cases/>

Reform of the police

2. One of the most significant challenges to freedom of peaceful assembly in Ukraine remains the failure of law enforcement reform, namely the National Police of Ukraine. The lack of real depoliticisation and the influence of the political figure on key decisions, recruitment in police activity is a real threat and a factor that affects the ineffectiveness or political motivation of police activity in Ukraine.
3. The guidelines on peaceful assemblies policing which would have facilitated the work of the police during public gatherings are still not developed with the participation of the civil society and not adopted. The lack of consistent training for various units and approved training plans for special training on policing of peaceful assemblies are yet another problem. The low level of social and professional protection of police officers within the structure is also alarming.
4. The failure to fulfill the police’s positive duty to protect assemblies, the incidents of disproportionate use of force and the violation of the Law of Ukraine “On the National Police of Ukraine” to the extent of personnel identification, use of physical force, special equipment still pose challenges for the freedom of peaceful assemblies.
5. According to the results of observations, after the events of EuroMaydan, the dispersal of peaceful assembly has ceased to be the usual practice of police. Nevertheless, in 2018, the illegal dispersal (without court decision) of a tent camp under the building of the Verkhovna

² <http://www.un.org.ua/images/documents/4813/Maidan%20ENG%2020.02.20.pdf>

Rada of Ukraine took place, during which there were significant violations of the proportionality of the use of force by police.

6. In assessing the freedom of peaceful assembly, it should be emphasized that the legislation does not contain any prohibitions on the exercise of this right by any groups of citizens³. Nevertheless, due to National Police's default of its positive obligations to protect participants of peaceful assemblies, the possibility of exercising this right for groups that are going to express unpopular views or slogans, gets undermined .
7. The failure of law enforcement agencies to fulfill their positive obligations towards protesters rather than prohibition by courts is the main challenge in ensuring the freedom of peaceful assembly. Despite some steps in reforming the public order sector, public activists and human rights defenders highlight the tendency towards non-fulfilment or deterioration of the police's function of protecting peaceful assemblies⁴ .

Demilitarization

8. Despite the need to demilitarize law enforcement bodies, which became evident after the events of the 2013-2014 Revolution of Dignity, we are still observing attempts to introduce legislative initiatives to expand the powers of the military units (The National Guard) to limit the freedom of peaceful assembly.

Judicial practice

9. During 2013-2014, a lot of peaceful assemblies ended up banned by court. Since March 2014, the number of bans has decreased from several hundreds per year to units, and most of them were related to restricting the assemblies on the grounds of the threat for territorial integrity. However, lack of the judicial reform and political influence on court decisions create a high probability of making deliberately unjust decisions in the future.

Responsibility of participants and organisers

10. The current legislation of Ukraine, in particular the Code of Ukraine on Administrative Offenses, as well as the Criminal Code of Ukraine, contain provisions for offenses which may entail legal liability of organizers and participants of mass events. Art. 185-1 of the Code of Administrative Offenses envisages the liability for violation of the established procedure for the organization or holding of assemblies, rallies, processions and demonstrations for organizers and participants of the assemblies. Art. 185- 2 of the same Code establishes liability for officials who facilitate assemblies that are being held "in violation of established procedure of assemblies, rallies, processions or demonstrations". It should be emphasized that the "order", violation of which are subject to legal liability, is actually nonexistent. The ECHR, in its judgments in *Vyerentsov v. Ukraine* and

³ According to the Law of Ukraine "On the Judiciary and the Status of Judges", a judge may not participate in political events, rallies, strikes.

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<https://www.amnesty.org.ua/nws/derzhava-vtrachaye-kontrol-nad-radikalnimi-ugrupuvannyami-shho-aktivizu-valisya-u-niztsi-mist-ukrayini/>

Shmushkovych v. Ukraine, stated that the application of Art. 185-1 violated Art. 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as the legally established procedures for the organization and holding of assemblies are lacking.

Local authorities

11. Local governments – civilian authorities – can hardly be called an effective actor in promoting and facilitating peaceful assemblies so far. The large number of functions that, for example, should be vested with the civilian administration authorities in Ukraine according to the OSCE/ODIHR Guidelines, are in practice assigned to the police forces.
12. Moreover, there are still cases of creating extra burden the organizers and participants in the assemblies due to the existence of acts of local self-government bodies, which establish the procedure for organization and holding of assemblies, determine the deadline for submitting a notice, introduce additional restrictions, etc., contrary to Art. 39 of the Constitution of Ukraine and the decision of the judicial authorities. The establishment of special units for mediation and negotiation are a positive development in policing assemblies. However, there is still no consistent vision or approach to safeguarding public order during the assemblies.

Recommendations

To the Verkhovna Rada of Ukraine

1. Develop with the participation of public human rights expert organizations and adopt a law on depoliticisation of the Head of the National Police of Ukraine. First of all, the removal of provisions on the need to “agree with the Minister” on key management issues, such as personnel (appointment of Deputy Chairmen, heads of territorial bodies and their deputies).
2. To remove Article 185-1 of the Code of Ukraine on Administrative Offenses.
2. To amend the Law of Ukraine on the “National Police of Ukraine” in parts concerning the wearing of a special token and the identification of personal protective equipment for a policeman (adopt bills №5700 and 5701). The individual number should be indicated on the token in such a way as to allow the possibility of recognizing the number at a distance as well as in the service certificate. And in the case of the use of body armor - token should be fixed to it in the breast, and if the means of protection - the stripe should be attached.
3. To amend the law “On the Procedure for Resolving Collective Labor Disputes”, as there are provisions that restrict freedom of assembly during a strike. Namely, to cancel the request to the organizer of assemblies, rallies, pickets outside the enterprise who is in charge of the strike, to inform the local executive body or local self-government body about the planned measure within three days at the latest.

To the Government of Ukraine

1. To ensure independent and impartial investigation into killings perpetrated during the Maidan protests.
2. To allocate necessary resources to the forensic examination bureaus.
3. Ensure that trials in the cases of killings perpetrated in the context of the Maidan protests are not unnecessarily and unreasonably delayed.
4. Amend the procedure of in absentia prosecution to allow a full retrial after the perpetrator has been located.

To the National Police of Ukraine

1. To renew the conduct of differentiated statistics on the number of held peaceful gatherings and their participants. To maintain statistics, develop an effective and uniform methodology for collecting information and its generalization. To maintain separate statistics for mass events (concerts, festivals, promotions, sports competitions, etc.) and assemblies guaranteed by Article 39 of the Constitution of Ukraine.
2. Facilitate the right of citizens to freedom of peaceful assembly. In the case of limiting this right, to provide participants/ members of the assembly or its organizers with substantiated explanations

of the reasons for such a restriction. Any excessive interference with the freedom of peaceful assembly should be properly articulated by law enforcement officers.

3. Develop with the participation of a wide range of civil society representatives the Guidelines on the maintenance of law and order during peaceful assemblies and mass events and approve them by the Order of the Ministry of Internal Affairs of Ukraine with the subsequent registration in the Ministry of Justice of Ukraine. The Guidelines should take into account the resolutions of the European Court of Human Rights and the OSCE/ODIHR Guidelines on Freedom of Assembly.
4. Ensure further training of police officers in the field of the freedom of peaceful assembly. The trainings on safeguarding freedom of peaceful assembly should be included in curricula approved by the National Police management, which regulate the process of professional training of special units for the protection of public order.
5. Ensure further training of police officers in conflict prevention groups, as well as the presence of the required number of such police officers during peaceful assemblies and mass events.
6. Ensure and maintain the appropriate level of communication between police forces involved in safeguarding the public order and the organizers of assemblies, in order to respond effectively to unforeseen situations and illegal actions that endanger the security of the event participants.
7. Make efforts to promptly ensure marking of elements of the police's protection equipment that would identify each particular policeman involved in the protection of public order in accordance with the OSCE Guidelines on Freedom of Peaceful Assembly and the legislation of Ukraine.
8. Exercise proper control over the compliance of the employees of the National Police of Ukraine involved in the protection of public order during peaceful assemblies with the rules of wearing uniforms and the Law of Ukraine "On the National Police" to the extent of wearing of identification signs and a special token.
9. To provide uniform clothes, footwear and equipment of the police officers involved in the protection of public order, in accordance with the functions assigned to them and in view of possible aggravations of the tactical situation.
10. Gradually reduce the presence of military units during the protection of public order in peaceful assemblies.
11. Taking into account the request of the participants of the peaceful assembly, to coordinate joint actions to ensure public safety. After the meeting, a joint analysis of the actions of law enforcement bodies and participants of the assembly should be held to improve the observance of freedom of peaceful assembly in Ukraine.
12. Guarantee the safety of the organizers and participants of any assembly, including counter-demonstrations and spontaneous assemblies, regardless of their political position. Particular attention should be paid to the security of peaceful assemblies, which stirred acute negative response from the majority of the population.



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