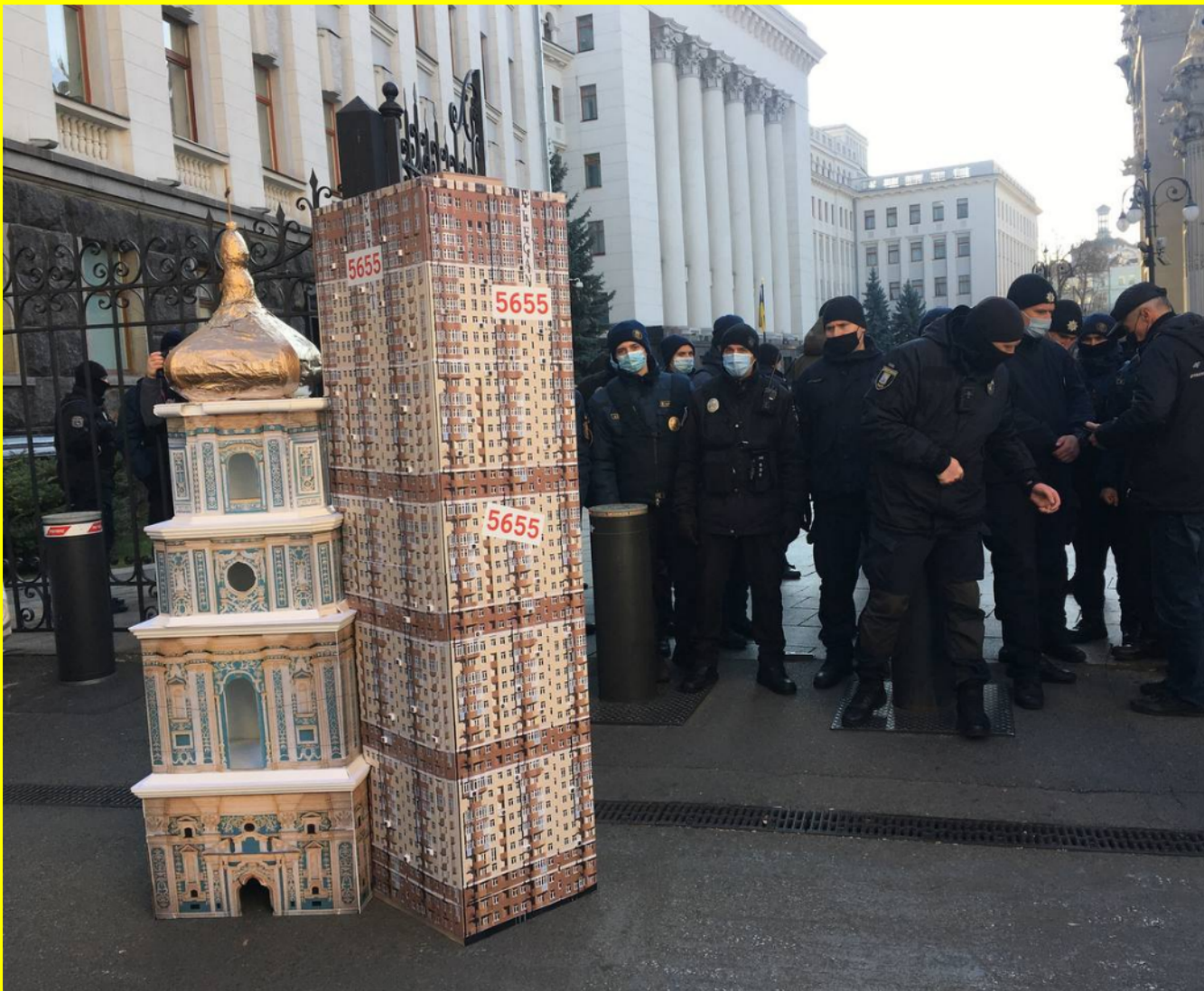


Architects for Actual Reform in Urban Planning



Kyiv, 2021



The Center for Civil Liberties is a human rights organization that works to support human rights, democracy and solidarity in Ukraine and the OSCE region for the purpose of strengthening human dignity.

The organization's key **objectives** include facilitating the implementation of reforms related to observance of human rights; introducing civic control over actions of law enforcement agencies, judges, and local self-government authorities; documenting instances of political persecution in Crimea and international crimes committed in Donbas; educational activities aimed at promoting the human rights values; participating in international solidarity programs.

OZON Civic Monitoring Group was set up in January 2013 by the Center for Civil Liberties to institutionalize the system of civic control in Ukraine. A specific feature of its functioning is a wide involvement of ordinary citizens in civic control on a volunteer basis, regardless of their specialization or previous experience.

OZON intends to improve the work of government authorities in the field of observance of human rights and freedoms by organizing a system to monitor their activities as well as by popularizing in Ukrainian society the ideas of civic control over authorities. Through their efforts, OZON volunteers uproot a paternalistic approach to the authorities and educate both society and law enforcement representatives to the concept of **“authorities as hired managers”**, which is widespread in democracies, and where the effectiveness of authorities is evaluated by the public directly.

Introduction

Ensuring the freedom of assembly is quite an uphill task for the authorities. This is a particularly difficult challenge for the police who are primarily responsible for ensuring that assemblies can be held, while simultaneously maintaining public order.

Sometimes this task is complicated by the necessity to ensure the exercise of freedom of peaceful assembly for all protest life actors who have expressed a desire to gather in a specific public place, and today — also by the challenges of the pandemic. In a situation like this, the police should make every effort to assess risks and effectively facilitate all processes in a way that would provide people with opportunities to exercise their freedom in full.

The Report follows the monitoring performed by OZON Civic Monitoring Group, based on Ukrainian laws and regulations and best practices detailed in the “Guidelines on Freedom of Peaceful Assembly” and ODIHR/OSCE’s “Human Rights Handbook on Policing Assemblies”.

On November 16, 2021, the “Architects for Actual Reform in Urban Planning” rally and a number of assemblies held in parallel were monitored by three OZON observers. Each assembly was faced with reluctance on the part of the police to let protesters into the site (the territory around the Office of the President of Ukraine) and, as a result, only one rally was allowed to the venue.

You can find a description of the events, a detailed analysis and assessment of the police actions in this Report.

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Chapter I. Account of the events

Name of the assembly: Architects for Actual Reform in Urban Planning (Kyiv)

Protesters: ~60

Duration of the rally: 12:20 — 12:50

Duration of monitoring: 11:55 — 13:00

Date: 11/16/2021

Venue/route: Bankova St. (Office of the President of Ukraine)

Agenda of the assembly: As mentioned in the announcement¹ posted on the rally's Facebook page, *"we believe that the proposed reform (draft Law 5655 on Amendments to Certain Legislative Acts of Ukraine Concerning Reforms in the Field of Urban Planning) primarily serves the interests of developers, and the largest ones at that, ignoring the rest. We demand that the Verkhovna Rada rephrase the text of the draft Law to remove from it those provisions that destroy our profession, and give due regard on a fair basis to all stakeholders' interests. We also call upon other stakeholders, including local self-government authorities, to demand a fair balance of interests in urban planning."*

Policemen and national guardsmen present (excl. standby teams): ~100

Main Directorate of National Police: ~14

Dialogue police: ~7

Riot police: 18

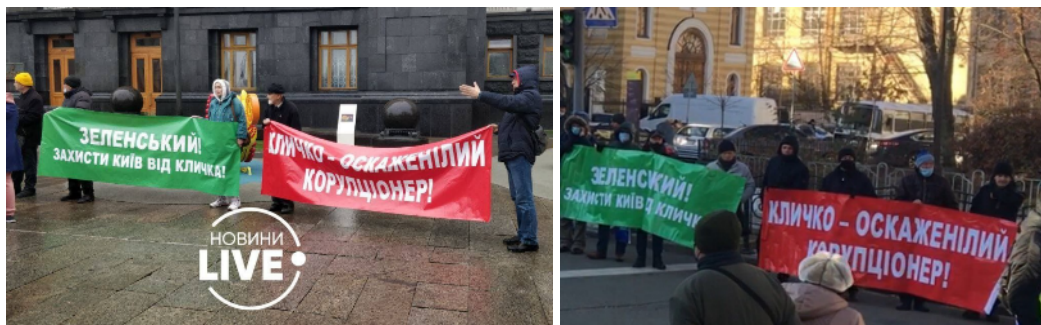
National guardsmen: ~58

A few other gatherings were held in parallel near the OPU (however, no mention of them could be found in public sources)

- 1) A rally against Vitalii Klychko with slogans and calls for the resignation of the Mayor of Kyiv.
Protesters: ca. 120

Venue: near the OPU in the direction of Liuteranska St. (the rally was not allowed beyond the police cordon into the OPU territory)

Agenda of the assembly: The rally was likely held by the same organizers who protested on Bankova St. on November 5 (the "Free Kyiv from Klychko!" rally²), since the same posters were used (photos of the rallies taken on November 5 and 16)



- 2) An assembly with unspecified agenda. Three protesters carrying flags of Italy and the United States, one of whom was making speeches in Italian and English through a megaphone (a portion of the speech was dedicated to restrictions on the right to a fair trial)

Venue: near the OPU in the direction of Instytutska St. (while being monitored, the protesters expressed no intention to go past the police cordon into the OPU territory; therefore, only the two previously mentioned rallies would be considered in the analysis of access to the OPU territory)

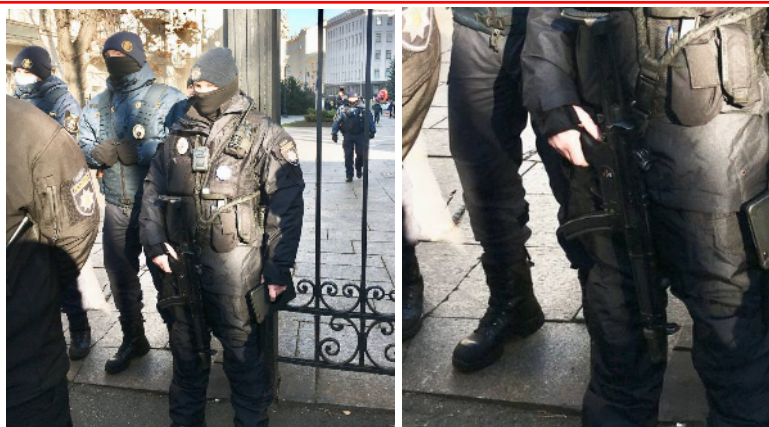
¹ <https://fb.me/e/1fwD39XYI>

² <https://novyny.live/kyiv/v-kieve-voze-op-nachalsia-miting-za-otstavku-klichko-chego-khotiat-liudi-foto-21539.html>

Summary of the events:

As early as 11:55, observers were already present near the OPU in the direction of Liuteranska St. where another rally began under the slogans directed against the activities of Vitalii Klychko. Protesters were standing scattered; a large crowd had concentrated close to the police and National Guard cordon that blocked the entrance to the territory in front of the OPU. The cordon comprised about 20 national guardsmen and 8 MDNP officers, with riot police standing behind them. Some police officers had no badges or number tags on their uniforms. Four dialogue policemen were standing in the cordon and around the rally perimeter. Some people voiced their dissatisfaction with the fact that they were not allowed to walk past the cordon. Throughout the monitoring time, the dynamics of this rally did not change — people would shout slogans, a speaker would speak through a megaphone, sometimes referring to general dissatisfaction with the denial of passage to the announced rally site. A performance was also given after the shouts “Winter is near!” and “Go away, Klychko!” were heard, during which two protesters imitated a sword fight (the swords seemed to be toys).

While monitoring the police cordon in the direction of Liuteranska St., a law enforcement officer was noticed who was probably carrying a pump shotgun. In theory, a unit commander is allowed to issue orders authorizing carrying of automatic firearms in order to protect public order. To do this, however, serious grounds must exist first, such as a genuine threat to human life, and, secondly, a police officer must be trained and have skills of using such weapons in the urban environment. Given the peaceful nature of all rallies and the absence of visual risks (even, for example, when operational information is received), putting a law enforcement officer with a firearm in the police cordon close to the protesters is disproportionate and unmotivated. This situation may also result in conflict situations, escalation of violence, or deteriorated confidence in the police among protesters.



When communicating with the civic observer and ordinary citizens, the dialogue police would politely and promptly clarify the **reasons for the non-admission; however, multiple reasons were sometimes given, with varying versions provided by different officers:**

1) the organizers rejected the terms of vaccination certificate validation at the entrance to the OPU territory

2) admission was not allowed because of “unapproved” props (that looked like plastic swords) brought for the performance (*according to one of the dialogue policemen, the organizers were requested to enter the OPU territory only after the performance has been held*)

3) the rally was not “OK’d” by the state security service at administrative buildings

4) admission was not allowed because of a playground being dismantled (*one of the reasons given*)

As became known later from public sources, the police were also reluctant to let through the cordon the participants of the “Architects for Actual Reform in Urban Planning” rally coming from Instytutska St. According to some media reports³, a “minor scuffle” occurred; police officers refused to let through the protesters holding posters on wooden boards, although later they were allowed to pass together with the props. The only prop that was not allowed past the cordon was an art object (a large-scale mock-up of a high-rise extension to St. Sophia Cathedral in Kyiv). A record was made of the police officers expressing their intention to check the mock-up for the presence of prohibited or dangerous items inside it, but choosing not to do so.

According to the organizer of the Kyiv architects’ rally, preliminary communication with the police was successful, they “OK’d” the venue and all the props (microphones, speakers, posters and the art object). However, two hours before the rally was supposed to start, a police representative called and warned that holding the rally would be “inconvenient” because of the children’s playground being dismantled, but the organizer refused to change the venue on such a short notice. Between 11:30 and 12:20, they were also not allowed from both Liuteranska St. (where the protesters originally gathered) and Instytutska St. where they gathered after numerous attempts to communicate with the police in order not to mix with other rallies.

“It should be noted that many of the protesters were generally unaware that it was possible to approach Bankovaya Street through the crowd and a dense police cordon. Some used alternative roads, some got scared and went home. A ‘scuffle’ with the police occurred at the Instytutska Street entrance. Once again, they wouldn’t allow us to bring props, arguing that we have posters attached to vertical sticks and will use them to fight. However, the posters, the art object, and other props were the same as during the March for Kyiv, and had been approved by the police. We were stopped for another 15 minutes at the Instytutska Street entrance, and at some point, the protesters just started pushing posters through the fence bars, while our representative actually used force to sneak in a loudspeaker with a microphone and a banner. They wouldn’t let us bring the art object, so we had to leave it by the fence [...] The police argued that our art object was not admissible because it would interfere with the dismantling of the playground.” Anna Kyrii, organizer of the “Architects for Actual Reform in Urban Planning, Kyiv” rally.

Eventually, the protesters were able to enter the OPU territory despite numerous obstacles and problems in communicating with the police. Despite starting with a delay, the rally was a success. Next to the protesters, one dialogue policeman and a few national guardsmen kept standing behind the fence that separated the free space from the dismantled playground. It is important to note that the playground itself was being dismantled locally, on a point-by-point basis, by a few (2 or 3) workers, while the process itself did not take up much space and was not potentially dangerous for the protesters.

The organizer specifically noted that no issues related to quarantine restrictions were discussed during the previous communication with the police, and no clarifications were given about the need for organizers to present vaccination certificates in advance or for the protesters — when passing through the police cordon.

By the end of the monitoring, the architects’ rally ended, almost all protesters dispersed, while the (anti-Klychko) rally, the name of which remained unavailable, continued in the same place. Throughout the monitoring, individual and collective shouts of indignation were heard because of the denial of passage to the OPU territory itself.

³ <https://bykvu.com/ua/pictures/znishhuetsja-profesija-u-kiievi-pid-opu-na-miting-viishli-arhitektori/>

Chapter II. Analysis of the grounds for preventing the protesters from entering the OPU territory

The situation that developed at the OPU building on November 16 is quite indicative and represents an interesting case study in the context of the proportionality of restrictions imposed on freedom of peaceful assembly from the standpoint of both ensuring the principle of the assembly's "visibility and audibility" and responding adequately to the pandemic challenges or other security risks in the matters of allowing or prohibiting passage to administrative buildings.

In this chapter, we will deal with all the controversial matters that arose during simultaneous peaceful assemblies, as only one of them was eventually allowed beyond the police cordon into the OPU territory. Moreover, those lucky protesters who finally entered the territory had to face resistance, unwillingness to allow passage, and numerous problems both before and during the rally.

Indeed, as stipulated by Article 36 of the Law of Ukraine on the National Police, "*a police officer is authorized to ask a person or persons to leave a specific place for a certain period of time, or prohibit or restrict access to a specific territory or sites, as may be necessary to ensure public safety and order, protect human life and health, preserve and record traces of an offense.*" At the same time, any restrictions should not be groundless, since unlawful obstruction to organizing or holding of a peaceful assembly constitutes a criminal offense (Article 340 of the Criminal Code). We will thus attempt to analyze the reasons for denying admission — given by the police to various peaceful assembly actors — for their legality, proportionality, adequacy for actual threats, and assessment of the reality of the said threats.

“(Un)approved” props

On November 16, both gatherings faced the same problem: the police would not allow the protesters to cross the cordon into the OPU territory because of certain props held by them, such as posters on wooden sticks, a 1×2m mock-up of a building, and 2 toy swords.

Generally speaking, police officers are allowed⁴ to take preventive measures by conducting a cursory check, i.e., to screen protesters at the entrance to the peaceful assembly venue for items that may pose a threat to the life and health of other people (*such as explosives, firearms, bladed weapons, etc.*). Another important point is that police officers must immediately refrain from restrictive measures in the absence of any threat. Guided by the law, law enforcement officers may even temporarily restrict holding a certain item or accessing a certain territory. The main thing is that such a restriction should comply with the provisions of the law.

Objectively speaking, neither plastic swords nor posters on wooden sticks posed any specific threat to the lives and health of other persons. Assessing the risks, we can say that the same threat may be posed by anybody who, in theory, is capable of committing violent acts without using any props.

One of the dialogue policemen even commented that *there's no way for them to know if the prop swords are real or toy ones, and therefore they would let the assembly past the police cordon, because swords may be real weapons.* This in fact may be regarded as ignoring by the police of their direct duties of taking preventive measures, and violation of the differentiated approach principle. Police officers standing in the cordon had special detectors for cursory checks, which respond to metal items, and could easily verify whether this was a real weapon or just a mock weapon to be used in a performance. Furthermore, even if a few protesters had real weapons on them, restrictions on movement or possession of an item may only be applied to those people who have such

⁴ <https://zakon.rada.gov.ua/laws/show/580-19#Text> (Articles 31, 36, 37)

weapons, and never — to the entire assembly (*this would be a violation of the differentiated approach principle*).

As regards the mock-up of a high-rise extension to St. Sophia Cathedral, the police, in theory, could have reasons to believe that the mock-up may contain things that would pose a threat to life and health, and are allowed to check such items. However, first of all, appropriate threat assessment measures should have been taken (such as engagement of EOD units, which were not seen at the site of the assembly) prior to denying admission. Second, the police and the organizers had previously “OK’d” the presence of these props at the rally, which the protesters also used during the March for Kyiv in early October and freely moved them close to administrative buildings (VR, KCSA, OPU). This suggests inconsistency in risk assessment by the police as well as insufficient level of communication with the organizers.

In fact, none of the mentioned props should have triggered restrictions on access to the OPU territory, both for the owners of these items and, even more so, for all the protesters. Therefore, we regard this reasoning as inconsistent with actual threats (disproportionate) and unlawful

Dismantling of the playground

The police would repeatedly point out that one rally was not allowed to get through, one of the reasons being that the playground on the OPU territory was in the process of dismantling. Changing the venue because of the dismantling was suggested to an organizer of another rally two hours before its start, but she declined the offer.

In view of various circumstances, the police or municipal administration may ask the organizers, for example, to change the venue of the gathering, if objective legitimate reasons for this exist and a viable alternative has been suggested, satisfying the principle of “visibility and audibility”⁵ (*i.e., an assembly can convey information to the primary recipient with the same efficiency*).

In this case, we will first assess the need to restrict freedom of peaceful assembly because of the dismantled playground. Civic observers registered up to 3 workers engaged in dismantling on the territory near the OPU — they stayed behind the fence and worked locally, without using any special large-size devices to disassemble elements of sculptures. Visually, this process posed no threat and was physically separated from the rest of the OPU territory. Besides, all the rallies that were held/should have been held that day on Bankova Street had a direct message to the President and thus had to take place close the Office of the President in order to be in the zone of audibility and visibility for the key recipient of information. The task of the State is to provide an opportunity to hold peaceful assemblies where necessary (for example, to fence off a construction site).

Denying the protesters, the admission to the announced venue because of the dismantling work carried out nearby is essentially an abuse of powers and/or abuse of office (Articles 364, 365, 340 of the Criminal Code). Therefore, we regard such restrictions as unlawful and disproportionate in this context.

No “permit” granted by the Department of the State Protection of Ukraine

Indeed, the Law on State Protection of Public Authorities of Ukraine and Officials states⁶ that the Department of the State Protection may establish a special mode of public access to facilities. However, security officers are not allowed to regulate the adjacent area in the same way. **Furthermore, the Department of the State Protection of Ukraine has no powers to restrict the freedom of peaceful assembly (even in a lawful and proportionate way).** Article 39.2 of the Constitution of Ukraine stipulates the following in respect of the freedom of

⁵ <https://www.osce.org/files/f/documents/d/6/83237.pdf> (p.19)

⁶ <https://zakon.rada.gov.ua/laws/show/160/98-%D0%B2%D1%80#Text> (Article 15)

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

Similarly, to local self-government authorities and the police, the state protection service is not authorized to prohibit the holding of a peaceful assembly or, even more so, to grant its “approval” or “permission”. Under certain circumstances, these bodies may impose restrictions on the freedom of movement, but it may be interpreted as an illegal restriction on holding of peaceful assemblies whenever it comes into conflict with the freedom of peaceful assembly. Therefore, making reference to the decision adopted by the State Department of the State Protection, which denies access to the OPU territory, is not lawful.

Besides, making reference by the police to the non-existent powers of the Department of the State Protection contradicts Articles 19.1 and 19.2 of the Constitution. The police must act according to the law and are not allowed to force anybody to do something that is not enshrined by law.

Quarantine restrictions during peaceful assemblies

If quarantine restrictions were to be analyzed in the context of the exercise of freedom of peaceful assembly, by extrapolating to gatherings the general rules for staying in public places⁷, then the only requirement imposed on the public, even in the red zone, would be to observe a 1m distance (and if this requirement is impracticable, masks must be worn even outdoors). It is important to note that at both crowded rallies held near the OPU on November 16 the protesters did not keep the distance and not all of them were wearing masks. However, only one rally was denied entrance, which is a **discriminatory act on the part of the police**



One assumption is that the police were guided by the purely physical impossibility to accommodate rallies on the territory adjacent to the OPU, where all protesters, in theory, could have maintained a distance of 1.5m between each other. However, upon calculating via Google Earth the approximate size of the territory cordoned by the police, we got a minimum area of 618.16 square meters, which allowed all protest life actors (about 200 persons) present on Bankova Street on November 16 to keep distance behind the police cordon near the OPU. This fact merely underlines the lack of reasonable grounds for denying admission to protesters (against Klychko).

Specific mention should be made of the fact that the reasons for denying the anti-Klychko rally access to the territory near the President’s office was the organizers’ refusal to undergo check for availability of vaccination certificates. At the same time, the matter of quarantine restrictions and vaccination certificates was not raised for another rally, “Architects for Actual Reform in Urban Planning”, during the previous communication, and no checks were

⁷ <https://zakon.rada.gov.ua/laws/show/1236-2020-%D0%BF#n5> (para 3)

performed. **In other words, the lack of vaccination certificates as the reason to deny one of the rallies access to the OPU territory is an example of selective application of restrictions.**

Generally speaking, doubts exist as to the legality of certificate checking by the police as part of filtration measures at peaceful assemblies. Although, under the Resolution of the Cabinet of Ministers “On the imposition of quarantine [...]” (paragraph 18), the police are allowed to conduct identity checks and to temporarily restrict movement in public space according to this criterion (presence/absence of certificates). The lack of vaccination certificate **should never be a reason for complete restriction** on the exercise of freedom of peaceful assembly. Where such restrictions are applied to peaceful assemblies locally (e.g., denial of access to a specific site), they must be motivated, proportionate, justified, and lawful. Where these restrictions lack any support in law, or reasonable goals and logic, such actions by the police should be qualified as unlawful.

In this case, peaceful assemblies (involving about 200 persons) held in the open air, where at least a 1.5m distance may be maintained, should not be denied access to the OPU territory. Such restrictions look illogical at the very least (since the theoretical risk of getting sick cannot be reasonably predicted; nevertheless, the protesters were unable to reach the intended location). At most, severe violations of the guidelines on freedom of peaceful assembly (proportionality and legality of any restrictions, non-discrimination) occurred.

Section III. Conclusions and recommendations.

The diligent work carried out by the dialogue police at the peaceful assembly itself should be singled out. Police officers quickly responded to any manifestations of aggression, communicated clearly and politely with the protesters and ordinary citizens. However, the work of law enforcement officers near the OPU building on November 16 cannot be regarded as entirely successful because of multiple problems and serious violations of freedom of peaceful assembly:

1. Violation of the principle of application of lawful and proportional restrictions (unwillingness, without any legal or reasonable grounds, to let both rallies into the OPU territory)
2. Violation of the non-discrimination principle (in fact, only one rally was granted access to the OPU territory)
3. Inability of police officers to provide coordinated explanations of their actions and refer to lawful and proportionate grounds stipulated by laws and regulations
4. Insufficient and inconsistent communication with the organizers of the announced gathering before and during the rally (which, by the way, discouraged certain protesters from attending the rally; the occurrence of conflict situations; the inability to bring in the props and delayed start of the gathering)
5. Improper state of compliance by the majority of police officers with the rules for wearing uniform as well as with those provisions of the Law of Ukraine on the National Police that concern wearing of insignia and special badges

Recommendations to the National Police of Ukraine:

1. Put every effort to respect freedom of peaceful assembly by preventing excessive unmotivated police interference in the exercise of this freedom
2. Facilitate the holding of peaceful assemblies within the “visibility and audibility” of their target audience and refrain from denying access to participants of peaceful assemblies to any public place (including the territory of the President’s office) without any lawful and reasonable grounds
3. Support subsequent preparations for operations aimed to protect public order at peaceful assemblies through proper and consistent communication with the organizers before and during the event, thereby contributing to the holding of assemblies and de-escalation of potential conflicts between protesters and law enforcement officers.
4. Support further training of police officers for subsequent assignments to preventive communication teams
5. Refrain from involving police officers with firearms (other than those assigned to backup teams) in the protection of public order without reasonable grounds.
6. Ensure adequate monitoring over compliance by officers of the National Police of Ukraine, who are involved in the protection of public order during peaceful assemblies, with the rules for wearing uniform and the Law on the National Police of Ukraine to the extent associated with wearing of insignia and special badges.

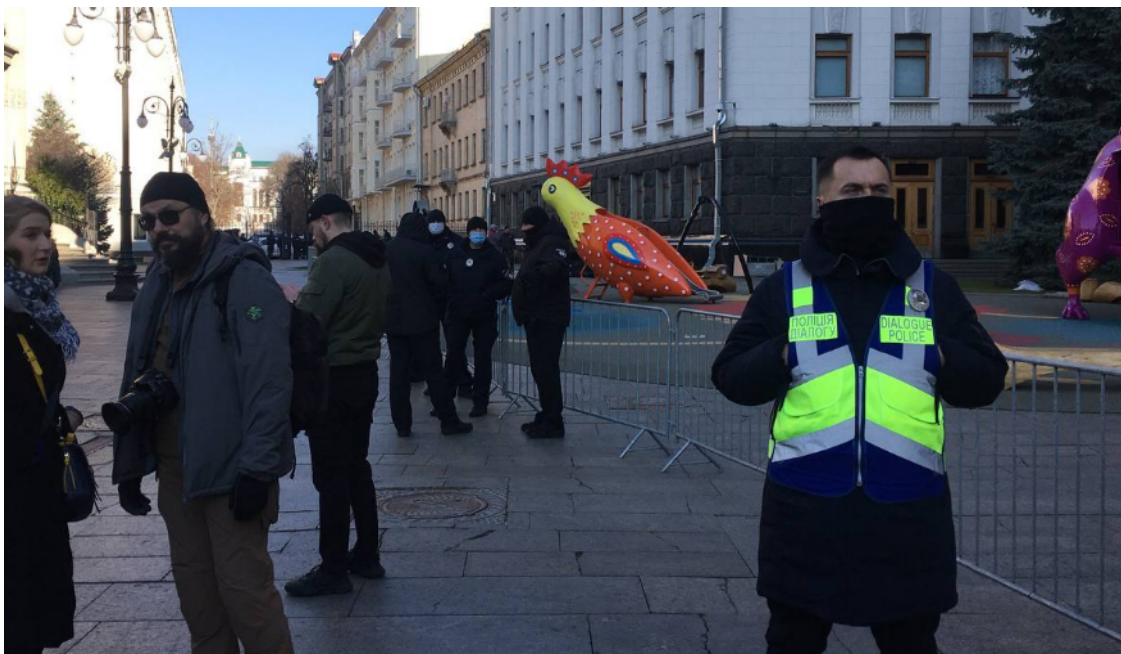
Photo materials



The “Architects for Actual Reform in Urban Planning” rally



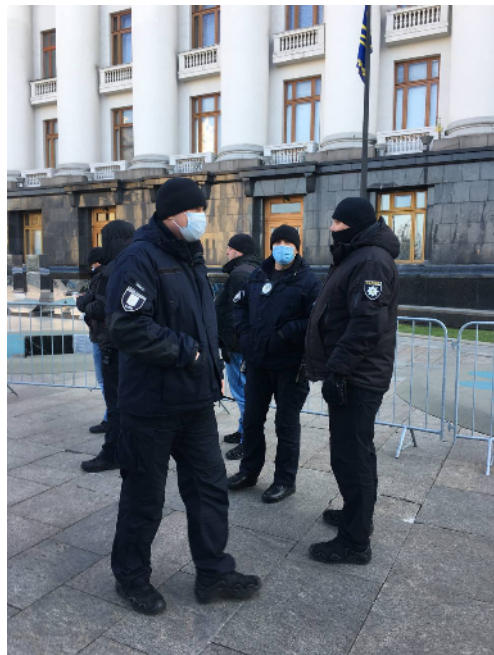
Parallel rally. Untitled rally (with anti-Klychko slogans)



A dialogue policeman (with a playground that is being dismantled in the background)



A cordon of law enforcement officers and servicemen. Props that were not allowed past the cordon





Violation of the rules for wearing uniform (lack of personal identification devices)

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