ЦППР

Центр політико-правових
реформ

DEMOCRACY
REPORTING
INTERNATIONAL

FREEDOM OF PEACEFUL ASSEMBLY
THE UKRAINIAN VERSION [1]

EXECUTIVE SUMMARY

Freedom of assembly plays a special role in Ukraine. Since independence, the country has seen massive demonstrations and violent suppression by authorities. The Euromaidan protests, which represent the tragic culmination of this recent history, brought a breakthrough in a citizen's right to assemble freely.

Article 39 of the Ukrainian Constitution provides the legal framework for freedom of assembly. It states that citizens have the right to assemble peacefully and to hold meetings, rallies, and demonstrations upon notifying in advance the respective authorities. Furthermore, it indicates that freedom of assembly can be restricted only by a court order based on the legislation.

So far, no specific law has been enacted to regulate the conduct of assemblies and clarify the allowed limitations. This did not prevent the Ukrainian courts from imposing many limitations that strengthened the executive power, such as a procedure of 'authorising' assemblies instead of merely requiring 'notification,' as established in the Constitution. Questionable arguments were used to achieve this, including unconstitutional Soviet-era documents and local regulations with numerous unreasonable limitations (for example, designating certain streets for demonstrations, obliging organisers to notify authorities unreasonably far in advance, and charging an administration fee for the notification of demonstrations).

Ukrainian courts often quoted decisions of the European Court of Human Rights (ECtHR) in a selective manner to

prohibit meetings and demonstration. Freedom of assembly decisions made by the ECtHR and the Constitutional Court of Ukraine were generally favourable, but domestic legislative, administrative and judicial practices did not follow their lead. The situation changed after Euromaidan. There was much less interference from authorities, indicating that the more democratic the political power, the more assured freedom of assembly becomes.

Despite progress, there remains a gap in terms of a clear legal framework for the conduct of peaceful assemblies. This gap can be filled through the adoption of a specific law or by introducing amendments to existing legislation. Such reforms should not be delayed, as indicated by the ECtHR in its Vyerentsov v. Ukraine judgment. The Ukrainian public should enjoy credible legal guarantees, not rely on goodwill.

Various attempts to adopt a specific law were accompanied by intense public discussion about the necessity of such a law. Many believe that under different political circumstances such a law could be used to subvert the constitutional guarantee. However, constitutional rights are not very specific and need to be accompanied by legislation to provide guidance on the process and lay out narrow limitations to such a right.

The two recent draft laws on "Guarantees for Freedom of Peaceful Assembly" in 2015 are another effort towards a clear framework for the conduct of peaceful assemblies. They form a good basis, but require improvement in accordance with international standards and the Opinion of Venice Commission (Opinion No. 854/2016). For example, the definition of the term 'assembly' should be narrowed; the concept of spontaneous assembly should be introduced; grounds for restriction should be harmonised with Article 39 of the Constitution; and enforcement bodies should have on an exceptional basis the right to impose certain necessary and proportionate restrictions during an assembly without a court order. Both draft laws are being considered in Ukraine's Parliament. Since the release of the Venice Commission's Opinion, no decision has been taken on which draft law will

serve as the basis for future legislation and how the law will
reflect the suggestions of the Commission.