FREEDOM OF PEACEFUL ASSEMBLIES AND FREEDOM OF ASSOCIATIONS IN UKRAINE

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COMMON

LAW COMMENTARY OF THE KHARKIV GROUP FOR HUMAN RIGHTS PROTECTION ON THE CURRENT POLITICAL EVENTS IN UKRAINE

Recently political actions and events in Ukraine are characterized with unusual intensity, greater diversity and various degree of conformity with the national and international laws. The events directly and essentially concern constitutional rights and freedoms of man and citizen in Ukraine. All this makes the Kharkiv Group for human rights protection (KhG, in what follows) to give its commentary.

It should be noted that the level of observance of legal norms in a society never is the same for all subjects of the constitutional (political in its essence) right. It is well known that average citizens have in the sphere of politics a wide choice of behavior patterns. The volume of their political freedom is regulated by common guarantees of the national sovereignty, by all the set of political constitutional rights and by the organic principle of the activities of all elements of the civil society: everything is permitted, which is not prohibited by law.

So, it is not surprising that the public in its political revelations may spontaneous, often not motivated, at a first glance «irresponsible». Sometimes the high political activity of the masses in transitive societies is explained by the back swing of political pendulum, when the depressed during the years of totalitarianism political emotions explode with a noticeable passion and the personal coloring too. Anyway, separate individuals and their social unions act on the basis of the political freedom, universal constitutional guarantees of the realization predominantly popular and not state sovereignty.

In harmonious juridical systems quite other constitutional demands are applied to the political activity of the state and its ruling branches, organs and officers. Here the sphere of politically minded activity is also present, but it is well-structured, well-ordered and is works as formal procedures. All state subjects act not on the basis of political freedom and broad political rights, but on the basis of distinctly determined competence and rights. All that makes a right for a state is, at the same time, its duty. That is why the rights of state agents in the developed democratic countries are defined in the exhausting manner. Another substantial principle works here as well: the higher is the organ or an officer in the state hierarchy, the more limited is the range of its behavior, so, the necessary political procedures are restricted in greater details with special norms. Thus, the demands to political actions of the state and its authorities are strictly determined in legislation both in from and in meaning.

Clearly understanding all of this, KhG is made to notice the substantial deviation of state organs and officers in Ukraine from the above-mentioned legal principles. The violation of the principle of the limited rule, separation of different powers, organizational autonomy and political neutrality of separate branches of the state power and, as a consequence, disbalance of the mechanism of mutual restrictions often happen now in Ukraine, and lately they have begun to assemble into dangerous precedents. The actions of the authorities listed below present especially significant deviations from the principles and norms of law and right, in particular the constitutions right.

Ungrounded acknowledgement in 2000 of the legitimacy of actions and decisions of the «parliamentary majority», physically (geographically) separated from the Supreme Rada of Ukraine. The sitting of the «parliamentary majority» was held in the «Ukrainian House» under the conditions of the current crisis of the national parliamentarism, which was provoked by a number of unsuccessful attempts of reelection of the Parliament speaker. This substantially abused the universal international standards of parliament democracy, the rights of the political minority of in the Supreme Rada, which is backed by a significant proportion of Ukrainian voters. It is quite clear that the decisions

adopted by the majority in the regime of the organizational could be quite different, if the parliament minority participated in the discussion.

As is well known, the principles of liberal democracy, acknowledged and described in a number of modern international juridical and political documents, mainly stress not the rights of the political majority, but the guarantees of the rights of the political minority. The sense of the modern liberalism just lies in the protection of the political minority rights. So, decisions taken under the conditions, when the political minority is forcibly devoid of the right to influence the decision of the majority, may not be quite legitimate, according with the modern ideas on political fair play. In spite of its external efficiency, the coercive (forcible) political split of the Parliament in the course of time encouraged the return to the public consciousness of the traditional totalitarian concepts not only about «correct» and «incorrect» deputies, but also that the truth and good in politics bring only those, who were upper dogs and won. In his time V. I. Lenin wrote proudly about the invincible force of bolsheviks. We all know very well what was the cost of this democracy simplified to the vulgarity to Slavonic peoples.

Another non-legitimate step of the official power was the recent «referendum after the people's initiative» concerning changes and additions to the Ukrainian Constitution. As is well known to practically all social-political forces of Ukraine, this initiative was people's but formally. The uncouth results of the referendum proved the post-totalitarian syndrome in the mentality of the Ukrainian population and, at the same time, the administrative arbitrariness in the central and in the provinces. As a result, the European country got a number of decisions dubious not only from the point of view of their legitimacy and political fairness, but also doubtful as to their practical applicability. One way or another, the referendum appeared to be a project that nearly quarreled voters with their elected representatives. So it became a naive, but at the same time brutal action of the power that essentially damaged the political stability in Ukraine. Today the President of Ukraine speaks about the deficit of the well-balanced political relations on the democratic field. Yet it was his activities about the referendum,

which provoked the current aggravation of the political dialogue in the country.

Unmotivated by any real public needs of the top power structures generated, it its turn, «the legal instrumentalism» – the practice of manipulating the legal norms in the interests of the current moment, and sometimes merely in the interests of the Strongest. The right in Ukraine was turning from the universal rules and procedures, which are accessible and transparent to all political subjects, to an administrative club. The nihilistic practice of the power generated, in its turn, the corresponding cynicism of the official mass media. Even a mere taking of the foreign citizenship by former Prime-Minister P. Lazarenko was named a criminal act by a state TV channel, although such an action is not qualified as a crime by law. It is not surprising that after similar «disguising» the Ukrainian public firmly believes that P. Lazarenko is a hardened criminal. This is understood as an axiom. Meanwhile, no court has found him guilty of committing a single crime listed in the Ukrainian Criminal Code.

Official information sources, especially the TV channel «UT-1» described «Lazarenko's case» as an obvious one, that is found him guilty of the actions incriminated to him by the law-enforcing bodies. All the events around this person were officially elucidated so, as if Lazarenko was condemned in the USA for the violation of Ukrainian laws. But an action regarded as a crime in Ukraine must not be such in the USA of Switzerland. Besides, opening of the bank account in a foreign bank is regarded as a crime according to the draft of the new Criminal Code of Ukraine, whereas in, say, Latvia or in the UK such a step is regarded as an elementary right of a citizen. As is known, the great part of accusations of Lazarenko concerns his actions, which are regarded as crimes in Switzerland and, on the contrary, are not regarded as such in the USA. As to his legal state in Ukraine, Lazarenko's position is covered by Article 62 part 1 of the Ukrainian Constitution that reads: «A person is regarded as non-guilty in committing a crime and may not be persecuted criminally until his guilt is proved in court and acknowledged in the court verdict». The Ukrainian public under the

propaganda pressure organized by the power forgot long ago that there was no trial of Lazarenko in any Ukrainian court.

Similar argument may refer the juridical status of former vice-Prime-Minister of Ukraine Yu. Timoshenko. Now, speaking about her, the prosecutor's office of Ukraine permits itself to use such formulas, which, according to the operating laws, may be used only after the court indictment. So, a prosecutor's office may not publicly affirm that someone has committed a crime. It may only suspect and accuse, since any accusation is not a verdict yet, but only an assumption. It is only a necessary base for the criminal investigation and court verdict. The latter, according to the law, may find the accused non-guilty.

Recently high officers from the prosecutor's office of Ukraine demonstrated on TV throughout the country the schemes of financial transaction, with which Yu. Timoshenko allegedly bribed P. Lazarenko. In the process the said high officers never recollected that what they said was only an assumption of the investigation. They affirmed this quite shamelessly and categorically. Meanwhile, it is obvious even from the TV feature that the case cannot be so elementary, since a bribe, as any other crime in Ukraine, may be done only by a physical person. In this case the money was transacted by juridical persons. Besides, giving a bribe must be motivated, i.e. an activity (passivity), which serves in the favor of person giving the bribe. To prove such an accusation in the absence of Lazarenko can be done only by a Stalin's *troika*. Besides, in case of Yu. Timoshenko there is a large possibility to collide with Article 62 (presumption of innocence). It is improper to prompt this to the General Prosecutor of Ukraine.

The so-named «cassette case» has acquired recently very great political importance. Making account of the above-mentioned principles and behavior norms of the subjects of the right, it is necessary to acknowledge that while in the case of individuals and separate links of the civil society there may exist a large spectrum of assessments and hypotheses, in the case of state organs and officers such a freedom does not exist and may not exist. Nonetheless, some statements and opinions of state officers, in particular, from the prosecutor's office, about the case are too hurried, and others are too slow. Besides the statements are

biased and political arguments overrule juridical and technical ones. It does not encourage stability in the society, to say nothing about the transparency of the actions of the power structures, but also result in the deep public mistrust.

If the hurried investigation experiment resulted in the conclusion that it is technically impossible to eavesdrop the President's office, and in several days it became clear that the conclusion was false, then it is reasonable to suspect that all other similar conclusions of the prosecutor's office are also politically engaged, with the planned predetermined result. Certainly, we do not speak about the true solution of the case. Even if the prosecutor's office made an honest mistake, and its technical experts had no necessary equipment and experience, then all the same the question arises about the measure of political responsibility of the General Prosecutor, who made public unreliable and unchecked results and «facts». Just similar hurry and irresponsible attitude to the professional ethics after all destabilize society. A prosecutor, even the General one, unlike a sapper, has the right for a mistake. Yet, in a case of such great importance even one mistake can disturb the political equilibrium for half a year at least.

The prosecutor's office stated, according to the genetic expertise, that the body from the Tarashchansk forest is that of journalist G. Gongadze (with probability 99.6%). However the prosecutor's office has other proofs to this fact. Taken separately, they are not absolutely reliable, but in combination with other proofs, in particular with the genetic expertise, they noticeably increase the probability of the conclusion. All this is well known to professional investigators, and now it is clear even to a man in the street. Certainly, the investigators from the prosecutor's office may have their own opinions, which may differ from the above-given. But it is noticeable that directly or indirectly their actions and words are of the sort that professionals describe as follows: no dead body means no murder.

It is quite possible that the public looks for a culprit in the wrong place. Nonetheless, all this neglect of the juridical and technical norms of the investigation, the multiplicity of different juridical roles in one person, the hurried and unproved character of opinions, which the offi-

cers from the prosecutor's office spread about, make the hot temper of the public still hotter. In this way it is easier to come not the truth, but to the discredit of well-known political authorities. At the same time such methods increase pain and desperateness of the private persons close to the victim.

A joint statement of the President, Prime-Minister and the Speaker of the Parliament also looks rather weird in the juridical sense. And the matter is not only in its juridically dubious stock of words. In general, it is not clear, on which legal grounds the speaker I. Pliushch became an author of this statement. If he signed this document as a mere citizen, it would be not surprising. If there were a consensus or merely a political majority in the Parliament concerning the main problems of the political crisis, than Pliushch's signature would also look proper. However, no one observes even the hints of the consensus in the Parliament. Then one may ask on which grounds the speaker signed this statement? Signing of the document my Prime-Minister V. Yushchenko also looks ill-grounded juridically. According to the Constitution he is subordinate to the President. He is an *administrative*, not a *political* Prime-Minister. This means that his signature under such documents must be not more than a visa. So, after all we observe a consolidation of top state officers not on the juridical base, but rather on a personal one. But what is the worth of such a base in a law-abiding democratic country?

Summing up, KhG finds it necessary to warn the power structures, separate state organs and officers against the instrumental use of the right, against exceeding their authorities stipulated by law. KhG also warns structures of one power against using the rights given by law to others. Besides the state organs and officers must bear on mind the benefit of the doubt. KhG would like everyone to focus attention on the policy of state-owned mass media. It especially concerns the official TV-channel «UT-1», that too often gives the assessments and opinions of the state representatives as confirmed facts, thus ignoring benefit of the doubt and general guarantees of human rights and freedoms.

KhG supports exact and unflinching execution of the constitutional norms and demand of the national and international laws by the state

and all its officers. A power, which uses illegal forcible methods and distortion of the truth, never achieves the strategic victory, but only compromises itself in the final count. The chance of the Ukrainian government to dodge the full political discredit is not completely lost, in our opinion. To this end, the top authorities must timely keep in check their aggressive ambitions concerning the political freedom of the civil society and act strictly within the restraints stipulated by law.

15 February 2001

«Prava Ludyny», No. 2, February, 2000

FREEDOM OF PEACEFUL ASSEMBLIES

PRO-KUCHMA MEETINGS: IN THE CRIMEA

Roman Romanov, Sevastopol

The meetings were organized by the Sevastopol organization of the all-Ukrainian union «Zlagoda». The social-democratic party (united), party «Democratic Union» and People-Democratic party supported the initiative. About 10 000 people took part in the meeting. Being asked by a «Prava ludyny» correspondent, many participants said that they were workers of state communal services. They got oral orders of their bosses to finish the working day at 15:30 to be present at the meeting at 16:00. The bosses threatened to those, who would not come to the meeting, with various punishments, including dismissal. A worker of the Sevastopol communal enterprise «Gorvodkanal», who asked not to mention her name, told our correspondent the above-mentioned details. Heads of the state city administration were present at the meeting and vigilantly surveyed how their subordinates came to the meeting. Representatives of labor collectives and political parties declared in speeches about how good the life in the country became, about their support of President Kuchma's course, they also disrobed «the destructive forces» in the Parliament. In spite of the fact that the meeting was officially called «In defense of the Constitution», the participants in their speeches and resolutions demanded from the President and people's deputies to implement as soon as possible the results of the April referendum, that is the radical change of the existing Constitution in favor of increasing the President's power. Leonid Zhunko, the head of the state city administration, finished the meeting.

On 10 January in Simferopol, on Lenin Square, a meeting in defense of the Ukrainian Constitution was held in the framework of the all-Ukrainian action. About 8 000 people participated in the meeting. The participants in their speeches declared their support of President Kuchma. The meeting was organized by People-Democratic party, party «Democratic Union», Agrarian party and Social-Democratic party (united). A. Korneychuk, the President's representative in the Crimea, who heads the Crimean branch of the Agrarian party, and S. Kunitsyn, the heads of the People-Democratic party in the Crimea, made speeches at the meeting. The told about the improvement of the living standard in the country, about the growth of the GNP and appealed to support President Kuchma. Similar meetings were held in Yalta and other Crimean towns.

...IN THE LUGANSK OBLAST

About 20 thousand people were gathered by the local authorities for the participation in the meeting in defense of Kuchma held in Lugansk on 10 January. All enterprises, organizations and education establishments received telephone messages with the demand «to participate and support». A head of every organization had to be followed by 250 participants, whose presence was checked by call-up.

Most people were sure that they went to the meeting in support of reforms, or raise of their wages and against pay arrears. Having heard speeches about the positive results of the President's actions and about «the attempts of some political forces to blacken his image in the eyes of his native people», many participants were disappointed. Nonetheless, they did not join the Rukh's slogan «Down with Kuchma!»

Similar meetings were held in other towns and districts of the Lugansk oblast. Yet, not all the meetings were successful. So, in the town of Stakhanov the participants turned the meeting to an anti-Kuchma one, while in Krasnodon the participants just dispersed.

«Rukhinform»

...IN TERNOPIL

Innovators is Ternopil administration

Anton Gritsyshin, Ternopil

It looks that in our country, which has been proclaimed free and democratic ten years ago, old winds have started to blow. «Competent» people tell us more and more frequently that lately we have too much anarchy, which seems to impede us to live and work normally. They tell us that it is necessary to introduce the order with an «iron fist». They express their discontent that some people «permit themselves too much». In the opinion of supporters of stern discipline, that it is time to put an end to the anarchy and to establish order.

It goes without saying that people must be made to observe laws and public order. The more so in a democratic society, where such norms are distinctly formulated by the customs and laws. The other aspect is in which way the observance of the laws must be achieved without abusing the rights and dignity of citizens.

In Ternopil the authorities practice some new means. The order of the local directorate of education sent down orders to bring 20 persons from each school to the notorious meeting of 10 January in defense of either the presidential power of the implementation of the referendum results. This caused a quite natural protest of teachers. They asked on which grounds the teachers must in their working time to participate in political shows, that have nothing in common with the pedagogical process.

This new initiative of the directorate of education, frankly speaking, is not quite new, since it is shared by similar-minded colleagues from other towns. However, in Ternopil a quite original idea was born too. We describe this invention following the article in the newspaper «Ukrainska pravda» of 6 January 2001.

The administrative idea is that soon in each school of Ternopil a person will be appointed by the administration. This person will have to provide every day the town department of education reports about some events of political importance. This information will be further passed

to the oblast state administration, and then to the presidential administration and government.

To this end, Ternopil teachers are obliged of inform the authorities about «the most prominent social-political events». Tatiana Dovbush, a teacher from school No. 19, who did not like turning into a stool-pigeon, told about the order of the department of education of Ternopil town council «On the system of daily informing of the department of education».

The way of gathering and passing information is described in the order «Procedure of gathering, processing and passing the daily information».

The administration is mostly interested in such events as «organizational measures of educational establishments» (seminars, conferences, etc.), actions with the participation of MPs, «characteristics of the public organizations activities» (rallies, meetings, demonstrations, etc.), emergency situations and natural disasters, «popular criminal cases» and «other important events».

The text of the message to the department of education must contain the date and time of happening the event, number of participants, goal, demands, theses of speeches, possible consequences, public resonance.

The order was issued «on the base of order of the President of Ukraine of 16 September 1998 No. 492/98-rp «On improving activities of local organs of the executive power in realizing internal policy», the President’s decree of 12 July 2000 No. 887/2000 «On improving information-analytical provision of the President of Ukraine and state power organs» and the order of the oblast state administration «On the system of daily informing of the President’s administration and the Cabinet of Ministers of Ukraine»».

This unexpected information was distributed by the UNIAN agency. This happened in Ternopil, but few doubt that it concerns the entire Ukraine.

Oleksandr Stepanenko, Chortkiv

On 10 January a meeting was held in Ternopil. Next day it was described in details in the local press. The delegation sent to the meeting

from the town of Chortkiv consisted of students and teachers of the local medical and pedagogical schools. The meeting was chaired by L. Kovalchuk, rector of the medical academy, the head of the newly created «Committee of defense of the Constitution», who was Kuchma's trusted representative at the last election. Political parties were represented poorly: the People-Democratic party (PDP), party «Democratic Union» and Ukrainian Christian-Republican party. The bulk of the audience were civilian servants (it was impossible to telephone to the local directorate of ecology and health protection during the meeting – «all went to the front»). Not everybody, who wanted to make a speech, could do it: some were refused. There were no attempts to organize a tent camp either in Ternopil or in Chortkiv. According to not-confirmed data, one of Ternopil school principals, who did not lead his detachment to the square, is threatened with sacking.

...IN ODESSA

In Odessa the much-advertised meeting «In defense of the Constitution» failed. Heads of Odessa district administrations got strict orders to provide the population at the meeting, more 50 buses were taken off the routes to be used for transporting the participants. In spite of all these tricks less than 5 thousand participants, instead of the promised 50 thousand, were driven to the Kulikovo pole. Representatives of various political parties also came to the meeting, but they carried their own slogans: «Ukraine without Kuchma», «Down with Grinevetsky», «Down with law-enforcing ministers», «Investigate Gongadze's case!», «We pay taxes to be protected».

Very soon participants gathered by the authorities left the slogans and dispersed. Meanwhile the power-engaged speakers expressed their love to the President, the crowd shouted: «Shame to Kuchma», «Down with oligarchic parties», «We are not obedient domestic brutes». The official speakers defending the Constitution even declared that operation of the Ukrainian Constitution must be suspended (Mykola Tiukhtiy, PDP), the prosecutor's office and the Ministry of Interior must be given extraordinary rights by introducing the state of emergency.

«Rukhinform»

THE VOLUNTEERS DRIVEN BY FORCE

Yesterday a meeting of some political forces was held in defense of the President. Similar meetings are held now in most towns of Ukraine. The meeting in Nikopol was initiated by the People-democratic party represented by Sergey Timoshenko, the head of the local party organization and the charge d'affairs of the town executive committee. Since the meeting was organized by the supporters of stability, i.e. the current authorities, that was why they had to provide the audience. Young robust people came and left in their work collectives during the work-time. The opposition timidly distributed leaflets.

Newspaper «Reporter», 11 January 2001, Nikopol

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On 10 January on the insistent recommendation of the local power workers of communal services and budget organization were voluntarily driven to the meeting organized by town executive committee officials in order to demonstrate their faithfulness to and solidarity with their «favorite President» L. Kuchma for all the good, which he had made to the Ukrainian people (including inhabitants of Nikopol) and will make. Every boss was given the exact number of people that he had to bring to the meeting during the working hours. Imagine, for example, a head of the department of blood transfusion on the day of gathering blood from donors! Or a maternity hospital, where the patients are asked to postpone the act until doctors and nurses finish to express their political loyalty! As a result, about 400 of the obedient citizens gathered at the entrance to the Victory Park, where about fifty more active figures did their best to express the «people's love» to the President. The speakers hysterically appealed «to disband the Supreme Rada», while the audience lazily applauded. The majority of the audience did not listen to the speeches read from sheets of paper and demonstrated the tendency to disappear, which was not so easy under stern glances of their bosses of bosses of their bosses. That is why people scratched, yawned and to

shifted from one foot to the other. They showed their love to the President and their hate to the Supreme Rada in a rather lazy way.

The day before the meeting some offended teachers phoned to our newspaper. They complained that they forced to go to the meeting to support the implementation of the referendum results. That is one of the complaints verbatim: «We were told that our presence at the meeting was compulsory. They threatened to count us. Who will not come, will be separately questioned».

Newspaper «Nikopolskiye izvestiya»,
11 January 2001, Nikopol

NOT ALL THE PRESENT AT THE MEETING HELD IN KHARKIV UNDERSTOOD WHETHER THEY CAME TO DEFEND KUCHMA OR TO DEMAND HIS RETIREMENT...

Ludmila Klochko, Kharkiv

On 10 January a meeting in support of the President was held in Kharkiv. According to some data, it was the largest in Ukraine (from 50 to 80 thousand participants according to various estimates).

On the day before the meeting some people phoned to us and informed us in which way the preparation to the action was going. Some street sweepers called to us and said that they are forced to be present at the meeting, otherwise they must hand in explanatory papers. We proposed to write a complaint to human rights protection organization, but they answered that they were afraid to loose their jobs. They gave other reasons: for example, one said that he was the first in the line for living accommodation and could not risk. The local conference of teachers that had to begin in the morning was quickly postponed to the afternoon in order to give the teachers the opportunity «to defend our beloved President». Rector of the National juridical academy ordered all the post-graduates to take part in the meeting by all means. We got the information from other higher and high schools about the insistent piece of advice to take part in this action. Several students were promised to give credits for coming to the meeting. Medical establishments were not forgotten either. A doctor told us that his hospital got the order fir 120 persons. In some hospitals the participants were given money

for transportation. The obedient military were recommended to come to the meeting in the civilian clothes. Another story was told to us by a representative of a commercial firm: in a trembling voice he informed his relative, our colleague, that their firm also got an order for several people. One must be objective, the administration was reticent. When one of our acquaintances, a teacher in a higher school, declared that he could not come to the meeting because of his ideological convictions, nobody pressed upon him and even did not show any interest to his convictions. All this paragraph is written by rumors – we have not received any complaint in writing.

The meeting was appointed at 10 a.m. at Nezalezhnist Square. Just at this time I and my colleague were going out of the metro station at the square. We saw a large stream of people walking from the square. We decided that we mixed up the time, and the meeting already ended. But soon we came to the square and found out that the meeting was just beginning. The stream of the people consisted of those citizens, who had already marked their presence, thus proving their loyalty, and now went whither they wanted with the feeling of completed duty. But even without them there were many people on the square. Most of the participants separated into groups and communicated with each other. I got an impression that they were indifferent as to the reason of their being driven top the square. Many participants did not know at all what was going on: some said that it was the meeting against Kuchma, some – against the Supreme Rada, but the majority did not know the reason and stared at us as at Hamlet's father's ghost. As if they wanted to ask: who are you fidgeting? The live is improving, the pay arrears almost disappeared, this year electricity was not switched off yet, hot water is given to all the city for more than ten days on end…

The square, being decorated to the New Year, looked well, and the brought bright posters and yellow-blue state flags made the square even smarter. We seemed to return to holidays of the far away seventies. Either the rain, or the spirit of the gathered, or our own nostalgia transferred us to the happy childhood. But we did not feel happy. My colleague, who had marched on this square under the yellow-blue flag in the early 90s almost wept: «Look, what they have done with our banner!» Posters with inscriptions «For stability» acutely contrasted with

some speakers' demands to disband the Supreme Rada. Perhaps, these people never read the Constitution, otherwise they would know that there was no reason to do so. Nobody was surprised that the parties, which belong to the parliamentary majority and had organized the meeting, proposed to press on the Supreme Rada at meetings. The speakers used the terms democracy, stability, constitution and fooled indifferent participants to such a degree, that many, having stayed at the meeting to the very end, did not understand what it was about. Certainly not all willing to speak had the access to the tribune. When O. Kopeliovich, the head of the Kharkiv branch of the liberal-democratic party, turned to the chairman with the request to give him the floor, he was refused and explained that the list of the speakers was approved five days before, and it was impossible to introduce any changes. That is a usual «vox populi».

The buses that were waiting for the participants on the same place as in «old merry years» transported away flags, posters, Kuchma's portraits and other paraphernalia of the trade to the proper places dropping on the way the most patient backers of the President.

THEY DID NOT PERMIT TO BUILD A TENT CAMP IN KHARKIV

Yevgeniy Zakharov, KhG

On 11 January at 13:00 representatives of the UNA-UNSO, Socialist party and party «Sobor» put up three tents on the Nezalezhnist Square in the framework of the campaign «Ukraine without Kuchma». Yet, after one hour the decision of the Dzerzinski district court was issued that prohibited to the UNA-UNSO the picketing and meeting. The UNA-UNSO members obeyed the order and put down their tent. But Volodymir Mukhin, an MP from the Socialist party, joined the action. He put up his tent, declaring that he, in the capacity of a deputy, opened a permanent post for agitation and that the needed the tent to keep documents. The Dzerzinski district court, considering the application of the city executive committee, postponed the sitting to 12 January. Yet, in the evening, at 23:45, several militiamen put down the tents and detained three members of the UNA-UNSO, who were in that place. The picketers did not resist. Next day the judge was at difficulty, since it

was impossible to ban what already did not exist. Besides, he had to response to the complaints of the Socialist party members at illegal actions of law-enforcers. The decision was not reached, the trial was postponed to Monday. The socialists and the city department of the Ministry of Interior held separate press conferences on 12 January, where they explained their actions to journalists. The Kharkiv Group for human rights protection reacted to the events with the declaration, whose text is given below.

DECLARATION OF THE KHARKIV GROUP FOR HUMAN RIGHTS PROTECTION

During last 12 years the social-political situation in Kharkiv was comparatively stable and quiet: conflicts were solved through negotiations. Either in the most strenuous periods of the late 80s – early 90s, or during the first meetings of national-democratic forces or at the most acute time in August 1991 there were no brutal actions on the side of militia in Kharkiv. The public order, stability and civil agreement in our city was held mainly owing to the reticent behavior of the city authorities and law-enforcing bodies. Yesterday they behaved unreasonably.

On 11 January at 23:45 the militia officers literally smashed down three tents, put up on the Nezalezhnist Square in Kharkiv by regional branches of the Socialist party, party «Sobor» and MP V. Mukhin in the framework of the action «Ukraine without Kuchma». Konstantin Masliy, the head of the city directorate of the Ministry of Interior, motivated his decision to remove the tents by the request of the city authorities and the necessity to support public order. In the process of dispersal of the tent camp two socialists got injuries, and three representatives of the UNA-UNSO were detained by militia, although they, having obeyed the order of the court to stop the action, took down their tent as early as in the afternoon and were outside the tent camp, that is they were mere observers. The court that supported the decision of the city authorities to prohibit the picketing and UNA-UNSO meeting took, in our opinion, an juridically incorrect decision, disregarding Articles

34 and 39 and thus brutally violation the freedom of expression and meetings of citizens. At the same time the court violated Articles 10 and 11 of the European Convention on protection of human rights and basic freedoms. It seems obvious that this picket did not violate or limited rights of other citizens, did not block the traffic of transport and pedestrians and did not violation the public order. This means that there were no legal grounds for the prohibition of the action. The reference of the court and the city authorities to the Decree of the Presidium of the Supreme Soviet of the USSR of 28 July 1988 «On the order of organizing and holding meetings, street marches or demonstrations in the USSR» is illegal, since in this case the Decree contradicts in letter and spirit to Article 39 of the Ukrainian Constitution.

The actions of militiamen were also illegal and violating the citizens' rights, because they put down the tents at night, without warning and presenting themselves, and before the court decision was issued, although it was know that the trial had to begin next morning.

During recent three years in Ukraine the wish «to press and prohibit» – the most disgusting feature of the Soviet system based on coercion and fear – is demonstrated more and more intensively, the threat to the freedom of expression is felt more and more painfully. The events of 10 January 2001, when in Kharkiv and other regions of Ukraine the authorities, like in the Soviet times, forced budget-paid workers and students to come to the meeting in support of L. Kuchma, demonstrates the same tendency. Unfortunately, this general tendency of strengthening the administrative dictate did not skip our city.

We appeal to the city authorities and law-enforcing bodies to obey the Constitution and not to trample the human rights. It is necessary to take a civilized decision about holding public political actions on the local level. This will prevent new conflicts and political scandals in the future, and to preserve civil peace and political stability.

12 January 2001

KHARKIV GROUP FOR HUMAN RIGHTS PROTECTION COMMENTARY

to the decision of the Dzerzinski district court of Kharkiv of 11 January 2001 concerning the civil case started at the application of the city executive committee on prohibiting the meeting and the picket of indefinite duration of the Kharkiv branch of all-Ukrainian political party Ukrainian National Assembly (UNA-UNSO).

Vsevolod Rechitskiy, Cand. of Sci. (Law),
constitutional expert of the Kharkiv Human Rights Protection Group

The analysis of the motivation of the prohibition of holding the meeting and the picket of indefinite duration (tent camp) organized by the Kharkiv branch of UNA-UNSO on 11 January 2001 at 13:00 on the Nezalezhnist Square in Kharkiv given by the court enables us to draw the following conclusions:

The legal source, i.e. the normative juridical base of the Decision is open to criticism. So, the court in the Decision refers to Article 39 of the Constitution of Ukraine, Article 2 of the Decree of the Presidium of the Supreme Soviet of the USSR of 28 July 1988 «On the order of organizing and holding meetings, street marches or demonstrations in the USSR» and to the Resolution of the Supreme Rada of Ukraine «On the procedure of the temporary validity of some USSR laws on the territory of Ukraine» of 12 September 1991.

It should be stressed that legal acts and laws of the USSR concerning the realization of political rights of citizens contradict in spirit and letter to the Constitution of Ukraine of 1996[i]. This note also refers to the above-mentioned Decree of the Supreme Soviet of the USSR of 1988, which was adopted under the conditions of the existing at that time monopoly of the Communist party. This Decree stipulated a *permissive* (typical of totalitarian regimes) and not *informative* (typical of liberal-democratic systems) procedure of holding meetings, street marches and demonstrations. This Decree conformed to the then non-democratic Soviet Constitution of 1977, that is why it may not be re-

garded as conforming with the operating *democratic* Ukrainian Constitution of 1996.

It should be noted that the two Constitutions (of the USSR – 1977 and Ukraine – 1996) belong to quite different constitutional types according to their political and juridical directions. That is why the constitutions imply quite different types of legislation on the realization of political rights. The Decree of the Supreme Soviet of 1998 was created for use under the conditions of a totalitarian political regime (with some weaker spots due to liberal leadership, although this regime did not exclude bloody skirmishes of law-enforcing bodies with people like in Vilnius in 1991). On the contrary, the Constitution of Ukraine adopted eight years later is based on the idea of the complete aversion to the totalitarianism, clearly refuses from the domination of the state over the society and a party monopoly. So, the principles and norms of the operating Ukrainian Constitution logically imply a fundamentally different attitude to procedures of realization of the political rights of citizens.

Taking into account that the Resolution of the Supreme Rada of Ukraine «On the procedure of the temporary validity of some USSR laws on the territory of Ukraine» of 12 September 1991, which permits to apply in Ukraine separate norms of the Soviet legislation «under the condition that they do not contradict to the Constitution and laws of Ukraine» does not permit, as the judge thinks, but forbids the action of the Decree of the Supreme Soviet of 1988. That is why the reference to the Decree under existing conditions is incorrect.

If one considers the court Decision separately from the Decree of the Supreme Soviet of the USSR of 28 July 1988, then one must admit that even in this case it contradicts the operating Constitution of Ukraine. Article 39 of the Ukrainian Constitution reads: «Citizens have the right to gather in a peaceful manner, without weapons and to conduct meetings, marches and demonstrations, about which they had to *inform* (italics by the author) the executive power bodies or organs of local self-rule». This means that the Constitution of Ukraine in its letter and spirit stipulates the *informative,* not the *permissive* approach to the realization of this right. It should be noted, that the Constitutional norms usually act not separately, but totally, by all constitutional legal

ensemble. That is why the action of Article 39 of the Ukrainian Constitution is realized simultaneously with the action of other norms of the Basic Law, which make the autonomous legal institute.

Thus, Article 3 of the Constitution reads that «confirmation and guarantees of human rights and freedoms of a citizen is the main duty of the state». This means that before restricting some constitutional rights of citizens the state shall at first do everything which is possible in order to guarantee the rights to be maximally realized. In other words, the state may not forbid a priori the realization of the constitutional right for meetings, marches and demonstrations, unless it becomes clear that this realization actually endangers the national security and public order, and the own resources of the state are insufficient for the protection. Besides, in order to delimit a too broad understanding of such restrictions, Part 2 Article 39 of the Constitution reads that the right of citizens for meetings, marches and demonstrations may be limited exclusively «with the purpose of preventing disorder or crimes, for health protection of the population, or for the protection of rights and freedoms of other people».

It is clear that the court had no reason to prohibit the meeting and pickets of the UNA-UNSO because they violate public order, provoke crimes or threaten to the health of the population. The court did not refer to the *facts* of disorder of crimes, but just presumes their abstract possibility. The latter is inadmissible according to the Constitution, because it stipulates the informative and not the permissive approach to holding meetings, marches and demonstrations.

In its decision the court refers to the request of an officer of the Kharkiv city directorate of the Ministry of Interior to prohibit the pickets and meeting «because of the inability (of militia – Author's note) to guarantee the public order» in the given place at the given time. However, this request was made before, not after, the attempts of militia to preserve order on the Nezalezhnist Square. The fact that militia cannot be able to preserve public order was not stated, but presumed, in the court decision and in the request of militia. This means that by its decision the court in fact sanctioned the right of militia to decide the question about the permitting of forbidding the political constitutional rights

of citizens in Kharkiv. This obviously concords with the traditions of a police state.

The militia arguments could be partly admissible in the case of some local conflict (for example, between street gangs, ethnic minorities, etc.). Yet, in this case the matter was the demonstration of attitude to the central authorities, about which the citizens rather have a consensus.

One should bear in mind that Article 39 of the Constitution mentions the possibility to limit namely the right for meetings, marches and demonstrations. The article does not mention about not so large, local forms of expressing political convictions like pickets. It should be noted that the scientific doctrine of the modern constitutional right does not identify pickets with meetings, marches and demonstrations, regarding them as a specific form of political self-expression. As constitutionalists consider, «*simple pickets*, i.e. not numerous manifestations (groups of people) near governmental buildings that do not hinder the movement of transport and pedestrians may be conducted without preliminary informing the authorities»[ii]. As to meetings, the constitutionalists recommend to apply for their control a soft informative order. The Dzerzinski district court equated without much ground the juridical regime of a picket and of a meeting.

Their reference to the unrealized by the picketers opportunity to set their camp not on the central square of the city, but in some other place does not look successful. Usually pickets (according to the international practice) are conducted in front of the buildings, where the corresponding authorities are housed. It is logical that for the action «Ukraine without Kuchma» the most natural place was the Nezalezhnist Square, which is faced by the building of the state city administration.

Assessing the arguments of militia quoted in the court decision that the planned meeting and pickets of the UNA-UNSO «endanger the health and life of citizens», who are going to spend their free time near the New Year tree, one should analyze physical parameters of the compared actions. As is known, the area of the Nezalezhnist Square is larger than a score of hectares. Only the frontal part of it can accom-

modate 80 thousand people. The approximate area of the spot for the meeting and pickets of UNA-UNSO is 10-30 square meters when the number of participants is 10-15. So, the comparison of the scales does not need comments.

If one admits that in the decision taken by the court a competition of rights of citizens was present, and the court just protected the rights of one group of people for recreation near the New Year tree thus constraining the rights of the demonstrators and picketers, then the decision is all the same not just. As it follows from the supreme juridical force of the Constitution, the rights stipulated by it are *basic*, and thus they must be provided (guaranteed) with higher priority than other rights. This position was repeatedly expressed in the juridical comments and analyses, it is present in the decisions of the European court on human rights.

That is why the realization of constitutional political right of the Ukrainian citizen meetings, marches and demonstrations is more important in the rights hierarchy than the right for recreations on the square and adjoining territories. The latter right, although is natural, is not formulated in the capacity (rank) of a subjective constitutional right. The meeting and pickets of the UNA-UNSO were planned to be conducted not on the transportation pavement to sidewalk, but on the grass loan. Thus, the physical obstacles for them did not obviously exist. There were political obstacles, but such obstacles must be ignored by courts in a law-obedient and democratic state.

«Prava Ludyny», No. 1, January, 2001

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[i] As well as to the European Convention on protecting human rights and basic freedoms of 1950, which is the base of many Ukrainian constitutional rights.

[ii] See the Constitution of Russian Federation. Problem comment. – Moscow 1997, – 225.

UKRAINE MINUS KUCHMA PLUS RATS

Roman Romanov, Sevastopol

«Protest actions cause epidemics, multiplication of rodents and decrease in immunity of the human population». This was the conclusion of the specialists of the Dnepropetrovsk city directorate of health protection. Deputies of the city council, caring about the health of the local population and about cleanness of the city, prohibit people to hold meetings in especially dangerous places. One of such places is the downtown of Dnepropetrovsk. The directorate of health protection answered the requests from two district courts, which are preparing the arguments for the court session planned on 26 January and devoted to protest actions. The doctors persuade the judges that the actions are badly planned. First, the nasty weather may lead to the decrease of the participants' immunity. Secondly, on the central street of the city, where it is planned to hold the meeting, there are no WCs, washrooms and rubbish bins. And if the action were not cancelled, that would, as medics think, lead to dissemination of influenza and multiplication of rats. The first attempt to hold a picket the initiative group made on 14 January. The group's representatives declare that recent recommendations of the health protection directorate testify of the lack of political arguments. Disregarding the medical forecasts, 20 oppositional parties, cherish the hope to hold the demonstration. But it is unlikely. On the square, where the demonstration was planned to be held, heavy machinery was driven. Now the initiative group's difficulties have doubled: they must look for WCs and for the new place near them.

CRITICIZE, BUT NOT FROM TENTS

On 30 January the Dzerzinski district court of Kharkiv took a «Solomon decision» in the case of the oblast organization of the Socialist party handed in be Kharkiv executive committee. The executive committee asked the court to prohibit the action «Tent camp «Ukraine without Kuchma»», referring to the fact that putting up a tent camp requires a land site.

The claim was partly satisfied by the court: it permitted to hold the action, but prohibited to put up tents, because «tents are not mentioned either in the operating laws or in the Ukrainian Constitution».

On the same day representatives of Socialist party, Liberal-Democratic party and party «Batkivshchina» («Motherland») started the action. The tents were spread on the ground…

Our informant

AT THAT TIME IN KYIV…

On 30 January at 11:30 a great host of militia detained about 10 members of the organization «Shchit Batkivshchiny» («Shield of the Fatherland»), participants of the picket «Ukraine without Kuchma», who put up a tent near the main postal office in order to protest against the erecting fence on the Nezalezhnist Square, between the tent camp and the public. The place, where the detained are kept, is unknown.

Among the detained there were two girls, who militiamen treated with especial cruelty, and V. Chechilo, the head of the national union of servicemen «Viyskova ednist».

The information passed by Dmytro Korchynskiy

BRIEF COMMENTARY

Yevgeniy Zakharov, KhG

The political crisis is aggravated. Violent actions of law-enforcers, uncouth attempts to conceal information about the investigation of Gongadze's disappearance, the brutal pressure to drive people to the meetings in President's support – all this encourages the opposition to more resolute actions. Attempts to hold the action «Ukraine without Kuchma» is blocked by local authorities, try, by hook or crook, to forbid the pickets in the form of tent camps, this commonly known action against the authorities. It looks like the President promised to sack the governors, if they admit tent camps on their territories. So they invent absurd arguments about rats, WCs, renting land and not mentioning tent

camps in the Constitution or operating laws. Although the main principle declared in the Constitution is: what is not explicitly prohibited, is permitted. To guarantee the right for peaceful gatherings, the authorities are obliged to provide to picketers convenient places, WCs and the like.

What should be done by human rights protection organizations in this situation? As to me, now we must execute not only «the routine human rights protection work», which, undoubtedly must be continued. We must also try to organize negotiations between the authorities and the opposition, to criticize the erroneous decisions of local authorities and courts and, to decrease the strain of the encounter, to transfer it to the legal plane. In my opinion, now it is necessary to make the Supreme Court survey the decisions of local courts about the prohibition of tent camps. At the same time it is reasonable to hand in the proper case to the European court of human rights about the violation of Articles 6, 10 and 11 of the Convention of the protection of human rights and basic freedoms. This may be done by individual picketers to the organizations, which held the pickets. That will be a practical realization of the slogan: «Let us counteract immoral authorities by the honest position» formulated above in the appeal to the Ukrainian intelligentsia.

On 29 January 2001 the Dzerzinski district court of Kharkiv took the decision on the civil case following the claim of the Kharkiv city executive committee on the prohibition to set an agitation post of the Kharkiv oblast organization of the Socialist party of Ukraine.

ON THE DECISION OF THE DZERZINSKI DISTRICT COURT OF KHARKIV: ANOTHER JURIDICAL COMMENTARY

Vsevolod Rechitskiy, Cand. of Sci. (Law),
constitutional expert of the Kharkiv Human Rights Protection Group

In the motivating part of its decision the Dzerzinski district court used as an argument the proof that «in the process of realizing their constitutional rights mentioned in Articles 34 and 39 by Ukrainian citizens and political parties neither the Constitution itself nor other legal acts stipulate the opportunity of erecting tents in public places and

other places, where people gather». This argument the court regarded as convincing to serve basic for the prohibition of setting tents on the Svoboda Square in Kharkiv (on the tarmac covered ground near Lenin's monument).

As to this argument and the court decision as a whole, KhG finds it necessary to note the following.

1. The representatives of the Socialist party and some other public organizations, who intended to take part in the tent agitation post, are subjects of the civil society and not representatives of the state (state officers) with distinctly delineated competence. That is why in the legal sense their actions are less limited than those of the representatives of the state. Namely such are (must be) actions of other private citizens. In the given civil case the actions of Kharkivites, who, from the constitutional viewpoint, enjoy freedoms of citizens. That is why the principle «Only that is permitted, what is explicitly stipulated by law» is not applicable to them, This principle may be properly implied to determine the only the freedom of actions of state representatives.

2. If to apply the principle «Only that is permitted, what is explicitly stipulated by law» to the decision of the Dzerzinski district court, then one must conclude that the court may not prohibit the erection of tents, since neither in the Constitution of Ukraine nor in any operating laws there indications about such measures. Indeed, neither in the Ukrainian legislation, nor in Ukrainian sublegal acts, not in the legislation of the former USSR there are no indications which equipment may be used in public meetings, rallies, marches, demonstrations or pickets with agitation posts. This thesis has a practical confirmation. For example, in the Ukrainian legislation there is no special permission to take the armored cars and tanks to the central street of Kyiv during holidays. As well, there are no norms permitting to create special mechanical stands, pyramids, platforms and even tribunes for participants and spectators of rallies, marches, etc. In other words, all the technical equipment of various public actions in Ukraine is based on political traditions and common sense of the organizers and participants.

3. The court decision juridically presupposes that the tents and the agitation post were intended to erect in a «crowded place». That was the thesis, which was later used by the court to prove the collision of

the intentions of the organizers of the agitation post with the interests of supporting public order, which must be protected by the local executive power. However the court did not take into account that the Svoboda Square by the reason of its tremendous size, by its common arrangement and name is not so much a crossroads as the place specially designed for political and other public (for example, cultural) gatherings. This is confirmed, for example, by recent holding there political meetings organized by the authorities in protection of President Kuchma. In other words the Svoboda Square is the city area, which can and must be a place of great gatherings of people. The square plays its role, in particular, because of the meetings and agitation posts – natural legal forms of the realization of political constitutional rights.

4. To sum up, one must admit that in its decision the Dzerzinski district court again obeyed the wishes of the city executive power. In every law-abiding and democratic state the juridical and executive power are separated from each other by their functions, although the executive power naturally fulfils the decisions of courts. In the given situation, however, one can see the reverse order. At first the executive power presses on the juridical power making it take the decisions profitable for the former and then energetically fulfils the decisions.

5. In the motivating part of its decision the Dzerzinski court refers to the Decree of the Presidium of the Supreme Soviet of the USSR «On the procedure of organizing meetings, rallies, street marches and demonstrations in the USSR» of 28 July 1998. The court considers this document as an operating law referring to the resolution of the Supreme Soviet of Ukraine «On the procedure of temporary application of separate acts of the Soviet le on the territory of Ukraine» of 12 September 1991.

The Kharkiv Group for human rights protection has already commented similar, not very convincing, court arguments. In the given case we would like to point out that the Resolution of 12 September 1991 does not contain a concrete list of the Soviet legal acts, which can be applied in Ukraine. Instead, the Resolution reads: «Stipulate that until the adoption of the suitable legal acts by the independent Ukraine, the

corresponding Soviet legal acts may be applied in Ukraine, unless they contradict the Ukrainian Constitution and laws».

Commenting the given norm, KhG pays a special attention to the fact that in the above-mentioned Resolution of 1991 the Ukrainian Constitution of 1978 is meant, and not the Ukrainian Constitution of 1991. If the Decree of the Presidium of the Supreme Soviet of the USSR may be admitted to agree with the letter and spirit of the Soviet Constitution of 1977 and the Ukrainian Constitution of 1978 following from the former, then it is obviously wrong about the Ukrainian Constitution of 1996.

Thus, in it decision the Dzerzinski district court still ignores the fact that the Resolution «On the procedure of temporary application of separate acts of the Soviet le on the territory of Ukraine» includes as a basic one the juridical reference to the Basic Law, which, in fact, is not operable for a long time. As well comrade Dzerzinski is long dead, but the Dzerzinski district court is alive and kicking.

«Prava Ludyny», No. 2, February, 2001

PROTEST ACTIONS OF THE OPPOSITION AND REACTION OF THE AUTHORITIES

President Leonid Kuchma approved the destruction of the tent camp on 1 March by saying that the militia acted according to the law. Ivan Pliushch, the speaker of the Parliament, and Viktor Yushchenko, the Prime-Minister, in fact expressed disagreement. Pliushch declared that ‘not all opportunities to negotiate have been used’ and that he did not approve of the forcible methods on any side. Yushchenko was in London at that time; he pointed out that ‘until all peaceful methods were used, the application of force was inadmissible.

Our informant

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Sergiy Buravliov, a judge from the Starokyivskiy district court, considered an administrative case concerning 14 out of 40 activists of the action 'Ukraine without Kuchma' detained on 1 March (Article 185 Part 2 of the Administrative Code of Ukraine). The court session was held in the building of the Pechorskiy district precinct, where the culprits were held in the isolation block. Having considered the materials given by militia and having heard to the testimony of eye-witnesses, the judge closed the case since he did not see any violations of the Administrative Code in the actions of the accused.

It should be mentioned that the legal aid to the accused was given, without any preparation, by a people's deputy Yuri Karmazin, who accidentally happened to be at hand. The other detained were not so lucky: their cases were considered without legal aid, and the majority of the accused were condemned to fines.

Oleksandr Rozhko, Kyiv

* * *

After the clash between the militia and the participants of the action 'Ukraine without Kuchma' on 9 March in Bankovaya Street the law-enforcers detained several persons suspected in the participation in the clash. It happened in the evening of the same day. Servicemen of the elite militia unit 'Berkut' broke into the office of the UKRP party, as it rumors, without search and arrest warrants. They broke some property of the party, detained all, who were in the office, brutally beating many of the detained (information by 'Helsinki-90' committee).

According to various data 60-70 persons were detained.

At the same time the militia started raids at the railway and bus stations in Kyiv, detaining young people, mostly students. Only at the main railway station about 100 of suspects were detained.

According to 'Helsinki-90' committee, in the evening, after 8 p.m., militiamen began to detain students in hostels of State University, Polytechnic institute and Economic University; in the process they made searches without search warrants.

The total number of the detained is not exactly known. The militia acknowledged that they detained not less than 203 persons, but 'Hel-

sinki-90' committee asserts that this number is about 250. Moreover, the relatives of the detained were not informed about the event.

Some activists, as eyewitnesses told, were dragged from the crowd by some plain-clothed agents. The activists were taken to a place unknown with their eyes tied closed; in several hours they returned home, so nobody knows where they had been taken to.

On 10 March judges of district courts were summoned to precincts. Directly in the cooler they announced the verdicts about committing violation of the administrative law (Article 173 of the Administrative Code) and about the administrative arrest for the term of 3-15 days. But later the head of the Kyiv city court cancelled all the decisions by procedural reasons.

Yet, several criminal cases according to Article 71 of the Criminal Code of Ukraine ('Mass clashes') were started.

Our informant

LETTER OF ANDREY ISHCHENKO

I, Andrey A. Ishchenko, a coordinator of the Odessa group of the Ukrainian Association 'Amnesty International', arrived in Kyiv on 9 March 2001 about 9 a.m. with the purpose to lay flowers at the Monument of Taras Shevchenko on the anniversary of his birthday. At 17:40 hours, after the official ceremonies, meeting and manifestation, I appeared near a block of flats at 6 Dimitrova St., where the office of the Ukrainian Conservative Republican Party is placed. In about 5-10 minutes I saw a host of uniformed men with the labels of the crack militia unit 'Berkut'. They attacked the participants of the manifestation 'Ukraine without Kuchma', who were standing peacefully at about 30-40 meters from me, and began to beat them with rubber clubs, sticks, hands and feet. Other militiamen in the 'Berkut' and in uniforms moved towards me. People near me panicked. I managed to run into the UCRP office and hid in the farthest room with some other people. On the outer side of the door 'Berkut' was fighting: I heard cries and moans, people begged militiamen not to beat them on the head, etc. Then I opened a little window, with great efforts bent the window bars, squeezed though the hole and appeared in the inner guard. There I found a line of

‘Berkut’ servicemen, who were descending down the yard, some of them with service dogs. I hurried to one door and began to go upstairs. On one landing I rang to a flat and asked to help me. I asked to let me in, since I was followed by gangsters in militia uniform, who beat and maimed people. The flat owner shut the door to my face. I continued to walk upstairs, until I got to the attic and then to the roof of the house. Having regained my breath, I set down and waited – there was nowhere to run. Soon a plain-clothed man appeared on the roof. Having shown no documents, he twisted my arms and lay me on the roof face down, after this he struck me several times with his fist on the back of my head. I came to my senses in several seconds, when I attacker summoned help on the walky-talky. After this he passed me to four servicemen from ‘Berkut’. On the attic they searched me and then beat me. The blows were directed on my head, back and legs; they beat me with their clubs and boots. Several times a got up and again fell down senseless. After this, on the staircase they passed me to other three ‘Berkut’ men, who beat me several times on the head with some metallic object. The beating was done in the elevator; I was sitting on the floor and one of them was beating me from above. We went out to the yard, they pushed me on the ground and searched me thoroughly. They took all my money, valuables and documents: my Ukrainian passport, service ID, 70 USD, pager ‘HEK-26’ (operator /0482/ 66-00-01, subscriber 99-99), a bunch of keys, documents, metro tokens, a tube of shoe polish (of German make) and other personal things.

When I was lying on the ground among other bodies I got some other blows with a rubber club on my head and back. That happened when I moved. Later I, together with other detained, was brought to the Dniprovskiy district precinct of Kyiv, where they took what remained after other searches: a golden cross, a wrist watch and Hr 12.

No protocols on my detainment and arrest were compiled and signed by me. No receipt was given about the confiscated things. I was not tried by any Ukrainian court either.

In the precinct my photo was taken by a photo and video cameras, my fingerprints were taken. I also wrote an explanation, in which I demanded to call a motor ambulance for me. After this an motor ambulance came and took me, accompanied by militiamen, to the hospital of

urgent aid (3 Bratislavskaya St., Kyiv). I was placed to the toxic ward, which is permanently guarded by militia. I handcuffed to my bad post. Doctors found cerebral concussion, bruises of soft tissues on the occiput, haematomas on my head and bruises on my back and legs. From 9 to 13 March I was staying in the toxic ward under round-the-clock guard. Nobody explained to me the reasons of my detainment and arrest, I do not know these reasons even now. Only late in the evening of 13 March the ombudsperson Nina Karpacheva managed to squeeze into our ward. She told me that I was free to go. But my detainment was prolonged by one day by the militia even after my transfer from room No. 212 of the toxic ward to room No. 14 of the neuro-surgical ward No. 2.

In the Dneprovskiy precinct they returned to me a part of the confiscated things. Yet, until now they have not returned to me several things: 70 USD, the pager, keys and others.

I regard the actions against me personally as a crime, in the result of which I was illegally detained, then arrested with the brutal violation of all proper procedures. I demand to start a criminal case against officers, who persecute me for my civil position and political convictions, who detained me illegally and kept me five days in captivity. They beat me brutally, bruised me and tortured me. The misuses their power and robbed me. I demand them to return my things and money that were illegally confiscated.

I declare that on 9 March 2001 in Kyiv during the action ‘Ukraine without Kuchma’ I did not participate in anything illegal or conflict situations, did not call to violence to any law abuses.

20 March 2001

INFORMATION FROM THE PUBLIC COMMITTEE ‘FOR TRUTH!’

The students of Kyiv Polytechnic Institute, suffering from the pressure connected with their activities in the public committee ‘For truth!’, turned to rector. The reason of this appeal was the actions of militia and rector’s office, who demanded from a group of students to leave the territory of the institute and not to spread the informative materials pre-

pared by the committee. They explained their demand referring to the statute of the institute. Yet, the statute prohibits only organizing political parties and their representations on the territory of the institute. In this way the activists of the committee (which is legally defined as a non-party union) expressed their protests against the activities of the law-enforcers and the institute administration.

In what follows we quote the complete text of the appeal:

To Dr Mykhaylo Zgurovskiy
Rector of the National Technical University
of Ukraine (NTUU) 'Kyiv Polytechnic Institute'

Respected Mykhaylo Zakharovich!

We must express our protest against the pressure, which is exerted upon us in the connection with our civil position and realizing our rights guaranteed by the Constitution.

On 23 March 2001 some militiamen and clerks from rector's office demanded from a group of students of the institute – members of the public committee 'For truth!' – to leave the territory of the institute and not to spread the informative materials prepared by the committee. The militia and rector's office did not stop their illegal demands even after we showed them the corresponding text of the Ukrainian Constitution.

In the connection with this incident we declare that the Constitution and legislation guarantee us, as citizens, the right for the free expression of our opinions. Article 34 of the Constitution unambiguously reads: 'Everybody is guaranteed the freedom of thought and speech, for free expression of opinions and views. Everybody has the right to gather, store, use and spread freely information in the oral, written and any other forms'.

Articles 21 and 22 of the Constitution indicate that 'rights and freedoms of citizens are inalienable and inviolable', 'are guaranteed' and 'may not be cancelled'. The only restriction of rights, which the Constitution does for students and teachers of higher schools is the pro-

hibition of creating organizational structures of political parties in higher schools.

The public committee ‘For truth!’ is not a political party, and we, as law-abiding citizens, do not create any party structures in the university. So, any restrictions of our constitutional rights with the reference to sublegal acts and especially on the oral orders are illegal.

We hope that the events of 23 March were an irritating misunderstanding, and we shall not need to protect our rights by way of adequate actions of students solidarity.

Respectfully yours,
NTUU students

«Prava Ludyny», No.3, March, 2001

WEEK IN MEMORIAM OF GEORGIY GONGADZE

Aleksey Svetikov, Lugansk

The action under this motto devoted to the birthday of Gongadze is conducted by some Lugansk journalists and politicians. They put up six tents in front of the building of Lugansk executive committee. The newspaper «XXI vek», «The independent order of journalists», parties UNR, PRP, «Young Rukh», public committee «For truth», Public committee for protecting local self-rule and Communist union of youth take part in the action. The executive committee turned to the Leninskiy district court with the claim to prohibit the action, demanding to conduct it in the stadium «Avangard». On 15 may the court decided that the action was illegal and that the tent camp had to be removed. Yet, on the same day the organizers of the action handed the second request to have the same action on the same place. They consider that this is another action, and it should be prohibited by another court decision. They plan to hand such requests everyday, if needed. It is noteworthy that the majority of Lugansk newspapers describe these events in the tone offensive for the participants of the action, asserting that it was organized to support town mayor Anatoliy Yagoferov, whose power was suspended by the town council.

Our commentary: we are sure that a number of court decisions prohibiting peaceful gatherings of citizen that were taken in the Lugansk oblast (we have information about five such decisions) testify that the Ukrainian court system violates universally acknowledged human rights. We appeal to human rights protection activists of Ukraine with the proposition to consider the expediency of turning to the Council of Europe with the joint suggestion to exclude Ukraine from this organization as a state that does not fulfil its obligations concerning human rights protection. At the same time we must confess that the participants of the Lugansk actions did not fulfil the court decision, thus ignoring the law like the town council. This is a dangerous situation, gentlemen, when the both sides ignore the law.

«Prava Ludyny», No. 5, May, 2001

LUGANSK COURT AGAIN PROHIBITED THE PUBLIC ACTION

Aleksey Svetikov, Lugansk

Responding to the request of the Lugansk town executive committee the Leninskiy district court of Lugansk prohibited conducting the hunger-strike and erecting tents in front of the town council building organized by the public committee for protecting local self-rule. This decision was based on the supposition of the executive committee that such action may lead to public disorder. The decision was also based on the still operating decision of the executive committee that all protest actions must be held at a large distance from the organs, against which the action is directed, for example, in the stadium «Avangard». Three of the participants obeyed the court decision and stopped the hunger-strike. But they warned that on 14 May they would resume the action on the same place, near the executive committee building. Besides they handed a cassation to the oblast court.

The Lugansk branch of the all-Ukrainian voters' committee points out that Lugansk courts systematically take decisions restricting the citizens' right for the freedom of gatherings. We are sure that having such justice Ukraine violates Article 11 of the Convention on protecting human rights and basic freedoms, and that the Council of Europe must

take into account these facts while assessing the execution of the obligations by Ukraine.

«Prava Ludyny», No. 5, May, 2001

KHARKIV AUTHORITIES CANNOT MASTER ARTICLE 39 OF THE CONSTITUTION

Inna Sukhorukova, KhG

On 14 December 2001 the Kharkiv youth headquarters of the party «Batkivshchina» («Fatherland») headed by Yulia Timoshenko and the Kharkiv region organization of the committee «Za pravdu» («For truth») planned to hold an action against President Kuchma. The main motto of the action was the appeal to Russian President Putin (who had a meeting with Kuchma in Kharkiv): «Vladimir! Take him with you!». About two dozens persons distributed leaflets with this appeal and intended to meet the motorcades of the two Presidents holding these and similar mottoes. Alas, the Presidents had no opportunity to see either the placards or the picketers.

Plain-clothed law-enforcers detained the young activists from Timoshenko's block, took them to the city park, which is situated not far away, and advised to express their protests on the park alleys.

At the same time the motorcade of the Presidents, like in the good old times, was met by flag-waving schoolchildren and students, which were lined up along the route. The meeting crowd was handpicked by the administration, taken into the streets and forced to stand in the frost for about an hour.

As to the members of the organization «For truth», they decided to protest against the illegal actions of law-enforcing organs, which impeded them to greet the Russian President. They decided to picket the Kharkiv oblast militia directorate. To this end, they handed an application to the executive committee of the Kharkiv city council. The picket had to be conducted on 20 December from 14:00 to 16:00. Yet, the Kharkiv city executive committee handed the claim to the Dzerzinski district court with the demand to prohibit the picket. Their motivation

was that the organization «For truth» was not registered in the proper way, that holding the picket on the Day of militia may provoke the clashes with supporters of militia and that the territory chosen by picketers is not large enough.

On 19 December D. Loseva, a judge of the district court, considered the claim of the executive committee and issued the resolution: «Taking into account that the mentioned organization plan to hold the action… on 20 December 2001, whereas the court prepare to the consideration the case somewhat later, …it is necessary to prohibit the picketing of the building of the oblast militia directorate… until the case were considered in essence».

Representatives of the Kharkiv committee of the movement «For truth» and representatives of the youth headquarters of Yu. Timoshenko's block reckon that the authorities brutally violated Article 39 of the Ukrainian Constitution, since the first picket did not require any permission at all, and the second picket had to be permitted by the court, if it appeared impossible to consider the case in time.

And certainly, there are no legal reasons according to which leaflets and slogans were confiscated from the picketers.

Kharkiv authorities, in spite of the scandal connected with ruining the tent camp on the Svoboda Square in January 2001, cannot master the Basic Law of Ukraine.

«Prava Ludyny», No. 12, December, 2001

THE LUGANSK OBLAST BEFORE THE PROTEST CAMPAIGN

The record step in opposing the protest action one may consider the actions of the Severodonetsk militia, which proposed to the leader of the local socialists to hand the obligation in writing not to participate in the non-sanctioned meetings.

He wrote the obligation, since, by his words, he did not intend to abuse the law. This proposition makes one to believe that the any meeting in Severodonetsk will be not sanctioned. The local authorities have the great experience to ban such meetings by using the obedient town

court. There have been already three such prohibitions, the last being based on the pretext that «the organizers did not conclude the agreement with militia about protecting the public order during the meeting». One can easily predict that something similar will be done again, in spite the application about holding the meeting on 16 September on the town central square has been already handed to the executive committee.

For about a month all the local newspapers almost every issue have published the «revelatory» information about the planned action of public protest. The sense of all such materials, even the materials printed by the most critical newspapers, is the same: beware of the «bad» opposition wants to grab the President's position not in the Constitutional way.

The next stage of the «counter-preparation» has happened today. The address of the deputies of the Lugansk oblast council has been published with the appeal «not to permit the opposition to drag the country into the abyss of chaos and violence». The address reads: «The mentioned forces, using the natural hardships of building the new state of the European type, initiate the action of public protest». Further it says that the goal of the organizers of the protest action of 16 September «is not to improve the living standard of the people, but to remove the legally elected President of Ukraine».

According to the objective situation in the Lugansk oblast, one may expect that next week similar appeals will be approved by the deputies of district and town councils. Although, even without such appeals, the population, it seems, does not demonstrate the great desire to participate in the events of 14-16 September.

Our informant

«Prava Ludyny», No. 8, August, 2002

APPEAL OF THE LUGANSK VOTERS' COMMITTEE TO THE PROSECUTOR OF SEVERODONETSK

To prosecutor of Severodonetsk V. A. Glagovskiy.

Re: a disagreement between the Constitution of Ukraine and items 1 and 2 of the draft decision of the 6th session of the town council «On the procedure of organizing and conducting meetings, rallies, street marches and demonstrations in Severodonetsk».

Item 1 of the mentioned draft decision establishes the term of handing the application on holding meetings, rallies, street marches and demonstrations not later than ten days before the event.

This norm contradicts the Ukrainian Constitution. The official interpretation of part 1 Article 30 of Resolution of the Constitutional Court of Ukraine No. 4-rp/2001 of 19 April 2001 reads that «Basing on item 1 part 1 Article 92 of the Ukrainian Constitution stating that rights and freedoms of citizens and the guarantees of these rights and freedoms are determined by laws only and only a court, according to the law, may restrict the realization of citizen right for mass gatherings (part 2 Article 39), the Constitutional Court of Ukraine drew the conclusion that the determination of the term of informing the organs of the executive power or local self-rule with the account taken of the peculiarities of peaceful gatherings, their form, mass character, place and time of holding is a subject of legislative regulation». Thus, item 1 of the discussed draft decision contradicts part 1 Article 39 and part 1 Article 982 of the Constitution of Ukraine.

Item 2 of this draft decision states that executive committees have the right, if needed, to propose to those, who turned to them with the application, another time and place for conducting the action. Thus, the information principle stipulated by the Constitution is replaced with the permission one. This contradicts the Ukrainian Constitution, since, according to Resolution of the Constitutional Court of Ukraine No. 4-rp/2001 of 19 April 2001, «organs of the executive power or local self-rule may, if needed, may agree with organizers of mass gatherings the date, time, place, route, conditions, lasting, etc.» So, the subject of the

discussion may be only the agreement, and not the opportunity to offer another time and place for the action.

We ask you to inform the deputies of the town council about the discussed disagreement, and, if the draft is adopted, to introduce a protest against the decision of the town council, according to Article 9 of the Transitory rulings of the Constitution of Ukraine, as well as part 1 Article 19, item 2 part 2 Article 20 and Article 21 of the Law «On prosecutor's office».

«Prava Ludyny», No. 9, September, 2002

LEGISLATIVE REGULATION OF THE FREEDOM OF GATHERINGS IN THE SYSTEM OF THE UKRAINIAN LEGAL SOURCES: A COLLISION, A MISUNDERSTANDING OR A JOKE?

R. Topolevskyy, The National University of Internal Affairs (Kharkiv)

The time that passed since the independence of Ukraine was declared (11 years) and since the new Constitution was adopted (6 years) allows to put the question about the effectiveness of the system of the Ukrainian legal sources. The subscription and ratification of international agreements, adoption (frequently very urgent) of laws, sublegal documents, introducing changes and additions to them resulted, unfortunately, in forming the clumsy and inefficient legal system. The existence of the normative legal acts, which regulate the same sphere of social relations and could be combined into one, the unknown quantity of operating legal acts of the former USSR[iii] and their vague status in the hierarchy of the Ukrainian legal sources, the principle «only what is envisaged by laws is permitted» that in a law-abiding state may be applied only to state organs and officers, and, most of all, the absence of a number of normative acts (laws, first of all) aimed to guarantee the normal functioning of the Constitutional norms lead to numerous collisions and gaps in the legal system of Ukraine. A graphic example of this is the legislative regulation of the freedom of gatherings in Ukraine.

Article 39 of the Constitution of Ukraine of 1996 reads: «Citizens have the right to gather peacefully and without weapons and to conduct meetings, rallies, marches and demonstrations, about which the executive organs or organs of local self-rule must be informed beforehand. This right may be restricted only by court, aqcording to the law, and only in the interests of national security and public order: for preventing clashes or crimes, for protecting health of population or for protecting rights and freedoms of other people».

Answering the request of the Ministry of Interior of Ukraine concerning the official interpretation of the provisions of part 1 Article 39 of the Constitution of Ukraine, the Constitutional Court of Ukraine issued Resolution No. 4-rp/2001 of 19 April 2001, which reads:

«The citizens' right to gather peacefully and without weapons and to conduct meetings, rallies, marches and demonstrations stipulated by Article 39 of the Constitution of Ukraine is their inalienable and inviolable right guaranteed by the Basic Law of Ukraine».

«Basing on the provisions of item 1 part 1 Article 92 of the Constitution of Ukraine stating that citizens' and human rights and freedoms, as well as the guarantees of these rights and freedoms may be determined by laws only and that only a court, according to the law, may restrict the realization of citizens' right for mass gatherings (part 2 Article 39), the Constitutional Court of Ukraine drew the conclusion that determination of the terms of informing the organs of the executive power or local self-rule with the account taken of the peculiarities of peaceful gatherings, their form, mass character, place and time of holding is a subject of legislative regulation» *(Highlighted by the author. – Editor's note).*

«...The organizers of such peaceful gatherings must inform the mentioned organs about these actions beforehand in the established term. This term must not restrict the citizens' right stipulated by Article 39 of the Ukrainian Constitution, but must guarantee this right and, at the same time, enable the organs of executive power or local self-rule to take the needed measures for the conduction of the meetings, rallies, marches and demonstrations, as well as for protecting public order and rights and freedoms of other people.

The determination of the concrete terms of informing with the account taken of the peculiarities of peaceful gatherings, their form, mass character, place and time of holding is a subject of legislative regulation».

Besides, the Constitutional Court pointed out in the motivational part of its decision: «According to part 3 Article 8 of the Ukrainian Constitution, the norms of the Constitution of Ukraine are the norms of direct action. They are applied as they are, independently of the fact whether some laws or other normative legal acts concerning them were adopted». *(Highlighted by the author. – Editor's note).*

In other words, although the peculiarities of conducting meetings, peaceful marches and demonstrations must be regulated by laws, the absence of such laws must not and may not be the obstacle for realizing the right of a person for the freedom of gatherings. So, what must regulate this right?

The search for the legal sources regulating this sphere brings one to the question about the validity or invalidity of the Decree of the Presidium of the Supreme Soviet of the USSR of 28 July 1988, on which the Dzerzinski district court of Kharkiv based its decisions concerning the restriction of the right for gatherings.[iv] Although the Resolution of the Supreme Rada of Ukraine «On the procedure of the temporary operation of some legal acts of the USSR on the territory of Ukraine» of 12 September 1991 envisages that «the legal acts of the USSR concerning the questions, which are not regulated by the Ukrainian laws, may be used on the territory of the republic before the adoption of the corresponding domestic laws, if it does not contradict the Constitution and operable laws of Ukraine», it does not mention that the above-mentioned resolution is valid. Even without taking into consideration the very contents of the resolution, which is typical namely for non-democratic and non-law-abiding state and provides the necessity of the permission on the side of the state organs to realize the unalienable and inviolable citizens' Constitutional right for conducting meetings and demonstrations, one must acknowledge the inadmissibility of regulating such relations in this way in modern Ukrainian legal system. The matter is that the regulation of the social relations with a resolution is

not a legislative regulation, as it is stated by the Constitutional Court. From this point of view it would be reasonable to discuss if the Ukrainian Constitution of 28 June 1998 is «a proper legal act», since the principles of regulating this problem stated by the Constitution not only fundamentally differ, but even contradict this resolution. Moreover, it is also noteworthy that the Constitution of the USSR of 7 October 1977, which, by the way, stipulated the right for peaceful gatherings without the restrictions introduced in the new Ukrainian Constitution (of 1996)[v], was not officially revoked[vi].

One more «filter» that could help to single out the invalid normative legal acts, including those in the sphere of peaceful gatherings, is the Constitution itself, in particular item 1 of the Transitive provisions: «Laws and other normative acts adopted before this Constitution came into effect are valid in the parts, which do not contradict the Constitution of Ukraine».

It is also interesting that Article 11 of the Convention on the protection of human rights and fundamental freedoms (the Convention, in what follows) provides the freedom for peaceful gatherings for everybody, and Article 39 of the Constitution of Ukraine provides this right only for Ukrainian citizens. It seems that the authors of the both law drafts concerning the conduction of peaceful mass actions that were considered by the Supreme Rada,[vii] do not notice this fact and, preferring the text of the Convention, state that this right must be extended on citizens, foreigners and apatrides[viii].

The main problem in this sphere is the search of the balance between guaranteeing the freedom and the public order. The restrictions of this freedom stipulated by law must be reflected in the law. Even a court may not impose such restrictions[ix] before such law is adopted, since the great probability exists of violating the Constitutional right of a person[x] because there are no legislatively determined criteria of court definition of the interests of national safety and public order.

Considering this question one must take into account the viewpoint of the European Court of human rights (the Court, in what follows) concerning the restrictions of this freedom. So, according to part 2 of

Article 11 of the Convention: «No restrictions shall be placed on the exercise of these rights other than such as are prescribed by laws and are necessary in a democratic society…» In the practices of the Court the solution of the question whether the restriction is prescribed by law, has some peculiarities. The Court analyzes not only the concrete law, but also the entire legislation, the legal framing as a whole[xi]. In the case *Tammer v. Estonia* the Court stated that one of the demands following from the concept «prescribed by law» is the predictability of consequences. Thus, to restrict the right for peaceful gatherings, which is protected not only by the Ukrainian Constitution, but also by the Convention, it is needed to define, precisely and unanimously, using the corresponding laws and obeying the Constitution, the criteria of such restriction that enable a person to regulate his behavior and to predict the consequences of a concrete action.[xii] It is evident that the above-mentioned resolution does not meet the principle of the legal confidence and, according to the Court practices, may not be regarded as a law, which defines the restrictions of this right.

Unfortunately, we must admit that, in fact, the procedure of conducting peaceful mass actions in Ukraine is regulated nowadays only by such legal sources as the Convention on the protection of human rights and fundamental freedoms (1950), the Constitution of Ukraine (Article 39), Resolution of the Plenum of the Supreme Court No. 9 of 1 November 1996 «On applying the Constitution of Ukraine for administration of justice» (item 13) and Resolution No. 4-rp/2001 of 19 April 2001 of the Constitutional Court of Ukraine (the case concerning the beforehand informing about peaceful gatherings).

Basing on the above-mentioned arguments one may draw the following conclusions:

1. It is necessary to organize the work of experts for compiling the list of the legal acts of the USSR that are still valid in Ukraine in accordance with the Resolution of the Supreme Rada of Ukraine «On the procedure of the temporary operation of some legal acts of the USSR on the territory of Ukraine» of 12 September 1991 and to approve this list officially; or to terminate completely the operation of all such acts as those, which contain the legal norms for

regulating the relations in the social and political system incompatible with the principle of the superiority of the right.[xiii] The same procedure must be used to the laws and sublegal acts adopted before the Constitution of Ukraine (1996) became operable.

2. The normative and legal acts of the USSR and UkrSSR with the restricted access must be either declared invalid a priori or the classification of these documents as secret must be cancelled to determine whether they contradict the operating Constitution or not.

3. The absence of the normative acts intended for guaranteeing the norms of the Constitution is not a justification of the inactivity of these norms and does not implicate the impossibility of applying these norms by individuals;

4. The illegality of applying such norms of the Constitution, which are not worked out in details in laws and sublegal acts, may be considered only by courts.[xiv]

5. The absence of the laws, which would regulate the provided (by the Ukrainian Constitution and the Convention) restrictions of human rights and fundamental freedoms, provokes the violations of these rights and freedoms on the side of state organs, in particular, unfortunately, on the side of courts. This problem must be solved as soon as possible.

[iii] According to the Resolution of the Supreme Rada of Ukraine «On the procedure of the temporary operation of some legal acts of the USSR on the territory of Ukraine» of 12 September 1991

[iv] See: V. Rechitskiy. The spirit of the law and the letter of the right// The freedom of expression and privacy. 2001.–No. 1 pp. 10-13

[v] Article 50 of the Constitution of the USSR (of 1977): «According to the interests of the people and with the purpose of strengthening and developing the socialist system, the following freedoms are guaranteed to the citizens of the USSR: the freedom of expression, of the press; for meetings, rallies, street marches and demonstrations.

The realization of these political freedoms is guaranteed by rendering to citizens and their organizations buildings, streets and squares, by wide spreading of information, by giving the opportunity to use the press, TV and radio».

Naturally, it should be noted that the realization of these freedoms was possible only «with the purpose of strengthening and developing the socialist system»; the people, who wanted to realize other goals were persecuted as political criminals. So, this article was a fiction, since it served not to the people, but to the state.

[vi] It is obvious that the Constitution of the USSR became invalid because of the objective reason – the USSR itself was annihilated. We are sure that this also was one of the reasons why the abovementioned resolution lost its validity.

[vii] The draft of Law of Ukraine No. 3004 of 16 October 2000 «On peaceful gatherings» (handed by G. Udovenko) and the draft of Law of Ukraine No. 3004-2 of 10 August 2000 «On the procedure of conducting peaceful mass actions in Ukraine» (handed by V. Pustovoytov).

[viii] In its turn, Article 26 of the Ukrainian Constitution states that the foreigners and apatrides residing in Ukraine legally have the same rights, freedoms and duties as Ukrainian citizens with the exception of the cases envisaged by the Constitution, laws or international agreements of Ukraine.

[ix] We want to draw the readers' attention to item 13 of Resolution of the Plenum of the Supreme Court No. 9 of 1 November 1996 «On applying the Constitution of Ukraine for administration of justice», which reads: «In agreement with Article 39 of the Constitution, citizens have the right to gather peacefully and without weapons for conducting meetings, rallies, marches and demonstrations; the organs of executive power or local self-rule must be informed about such actions in the proper term. The claims on the restrictions of this right are considered by courts according to the procedure established for the cases concerning administrative and legal relations», and part 4 item 2: «If the contents of the Constitutional norm is a reason for the additional regulation of its provisions by law, the court considering the case must apply only those laws, which are based on the Constitution and do not contradict it». By the way, there are still no laws legally approving this procedure.

[x] In our opinion, it was the absence of such law that caused the situations when courts impeded citizens to realize this right, in particular, on the side of the Dzerzinski district court of Kharkiv (see http://www.khpg.org/index_uk.html)

[xi] See the case *Rekvŭnyi v. Hungary*

[xii] More details on the principle of legal confidence see: Yu. Zaytsev. Concepts of law and legality: opinion of the European court of human rights// Practices of the European court of human rights. Decisions. Comments, 2(14), 2002. – p. 9-14.

[xiii] So, for example, it is not understandable whether Decree of the Presidium of the Supreme Soviet of the USSR of 26 March 1988 No. 6613-XI classified as «not for publishing» became invalid, whether it agrees with the Constitution of Ukraine of 1996 and operating international agreements.

[xiv] In accordance with part 3 Article 1 of the Ukrainian Law «On the judicial system of Ukraine», «the jurisdiction of courts is spread to all legal relations in the country».

THE LAW OF UKRAINE

«On the procedure of organizing and conducting peaceful mass actions in Ukraine»

(A draft)

Suggested by MP of Ukraine V. S. Pustovoytov

The Law determined the procedure of organizing and conducting meetings, demonstrations, rallies, pickets, marches including street ones, other peaceful mass actions in Ukraine, which are the inalienable right of Ukrainian citizens, as well as foreigners and apatrides, who reside on the Ukrainian territory legally; this right is confirmed by the Universal Declaration of human rights and is guaranteed by the Constitution of Ukraine.

CHAPTER I. GENERAL PROVISIONS

Article 1. The area of validity of the Law

The validity of the Law covers citizens of Ukraine, as well as foreigners and apatrides, who reside on the Ukrainian territory legally, within their rights and freedoms stipulated by the Constitution of Ukraine and her operating laws.

The procedure of organizing and conducting meetings, demonstrations, rallies, pickets, marches including street ones, other peaceful mass actions in Ukraine determined by this Law does not spread on meetings of labor collectives, political parties, trade unions, public and other organizations, which are held indoors according to the operating laws of Ukraine, statutes and rules of these organizations, as well as on

peaceful mass actions conducted on the initiative of the organs of state power and local self-rule.

Article 2. Definition of basic terms

The basic terms used in this Law:

MEETINGS – a common presence of a group of citizens of Ukraine, foreigners or apatrides, who reside on the Ukrainian territory legally, who gathered in the place appointed by the organizers and agreed with the executive organs of local state power or local self-rule, for a public discussion and expressing their attitude to the actions of all branches of state power, organs of local self-rule and self-organization, their officers, heads of enterprises, organizations and establishments of all forms of property, events in social, political and economic life of the country, society and in the whole world, as well as for solving other problems.

DEMONSTRATION – an organized peaceful march of citizens of Ukraine, foreigners or apatrides, who reside on the Ukrainian territory legally, with the use of state or other not prohibited by operating laws symbols, slogans, posters and portraits along the sidewalk, pavement of streets (roads), boulevards, avenues and squares along the route appointed beforehand by the organizers and agreed with the executive organs of local state power or local self-rule with the aim to attract the attention of top and local power structures, their officers and public to urgent social, political, economic and other problems, as well as problems of the state, society, local territorial community, or with the aim of public protest against the decisions or measures taken by the state, organs of local self-rule, their officers, or against separate events in the life of the state or the whole world, or on the contrary – for their support.

RALLY – an organized peaceful gathering of citizens of Ukraine, foreigners or apatrides, who reside on the Ukrainian territory legally, with the use of state or other not prohibited by operating laws symbols, slogans, posters, portraits and sound recording equipment in the place appointed by the organizers and agreed with the executive organs of local state power or local self-rule, for a public discussion of the events and questions concerning social, political and economic life of the country, society and in the whole world, as well as for expressing protest against or support of the actions of the state power structures. Of all levels, organs of local self-rule, political, public and other organiza-

tions, trade unions, separate state officers, as well as for solving questions and problems concerning social, political, economic, party, religious, national and other interests of the participants of the peaceful meetings and actions.

PICKETING – public expression by citizens of Ukraine, foreigners or apatrides, who reside on the Ukrainian territory legally, of personal, group or other social, political, economic, party, religious, national and other interests or protest (without demonstrations, meetings and marches), including hunger-strikes, near or around administrative buildings of state or law-enforcing organs, courts, organs of local self-rule, enterprises and establishments of all forms of property, organizations and educational establishments with or without the use of appeal, mottoes, posters, portraits and other permitted visual means.

MARCH – an organized, long-lasting, with breaks for passage by transport, holding rallies, pickets, and for rests, peaceful mass movement of citizens of Ukraine, foreigners or apatrides, who reside on the Ukrainian territory legally, along the all-Ukrainian, Crimean, oblast or district route appointed beforehand by the organizers and agreed with the executive organs of local state power or local self-rule with the aim to attract the attention of top and local power structures, state officers and public to the marchers and their problems, as well as with the aim of public expression of their social, political, economic, party, religious, national and other opinions or protests.

STREET MARCH – an organized, with breaks for holding rallies and pickets, peaceful mass movement of citizens of Ukraine, foreigners or apatrides, who reside on the Ukrainian territory legally, along the all-Ukrainian, Crimean, oblast, district (in towns), settlement or village route appointed beforehand by the organizers and agreed with the executive organs of local state power or local self-rule with the aim to attract attention of top and local power structures, state officers and public to the marchers and their problems, as well as with the aim of public expression of their social, political, economic, party, religious, national and other opinions or protests.

ACTION – an organized mass peaceful measure of protest type (hunger-strike, tent camp, street march with torches, etc.) or without protest (motor, bicycle or motorcycle race, charity cultural action, exhi-

bition, etc.) of a group of people united by one common purpose aimed at attracting attention of top and local power structures, state officers and public to solving social, political, economic, party, religious, national and other problems, which represent private, collective, social or state interests.

PEACEFUL MASS ACTION AND ACTION OF COMMERCIAL TYPE – an organized peaceful mass action of a group of people united by common commercial purpose.

Article 3. Laws on the procedure of organizing and conducting peaceful mass actions in Ukraine

The procedure of organizing and conducting peaceful mass actions in Ukraine is regulated by the Constitution of Ukraine, by this Law and by legal acts of Ukraine adopted according to them.

CHAPTER II. ORGANIZATION OF PEACEFUL MASS ACTIONS IN UKRAINE

Article 4. Organizers of peaceful mass actions

The peaceful mass actions may be organized by Ukrainian citizens, not less than three in number, who reached 18 years of age and have the right to vote, as well as foreigners or apatrides, who reside on the Ukrainian territory legally, not younger than 21 years of age, under the condition that these persons took the obligation in writing to fulfil organizers' functions in preparing and conducting meetings, demonstrations, rallies, pickets, marches including street ones, other peaceful mass actions according to this Law.

The peaceful mass actions may not be organized by the persons, who are under arrest or detention, are staying in penitentiaries or recognized as fully or partly incapable by law, as well as by other people, who are prohibited to do this by the operating laws of Ukraine.

Political parties, trade unions, public and other organizations, which were registered in Ukraine according to the procedure stipulated by the operating laws, may also initiate peaceful mass actions, for which they must appoint their representatives (according to the decision

of the given citizens' union), who fulfil the function of responsible organizers.

Peaceful mass actions on the side of children public organizations, collectives and groups may be organized only by their parents or appointed by the parents citizens, who reached 21 years of age and have the right to vote according to the operating laws of Ukraine.

Organization of religious peaceful mass actions is determined by this Law and other legislative acts of Ukraine.

Article 5. Participants of peaceful mass actions

Citizens of Ukraine, members of political parties, trade unions, public and other organizations including children ones, which were registered in Ukraine according to the operating laws, as well as foreigners or apatrides, who reside on the Ukrainian territory legally, are regarded to be participants of peaceful mass actions if the above-mentioned persons realize practical steps for preparing and conducting peaceful mass actions on the commission of the organizers and are present there, except the persons, who are prohibited to do this by the operating laws of Ukraine.

Article 6. Notification on the time of conducting peaceful mass actions, its content and form

The notification on conducting meetings, demonstrations, rallies, pickets, marches including street ones and other mass actions must be handed by the organizers in writing beforehand to the executive organs of local state power or local self-rule, on whose territory the action is planned to be conducted.

The organizers have the right not to hand the written notification on conducting picket by the group, which size is less than 50 persons, to the executive organs of local state power or local self-rule. They may inform on this action the day before orally personally or through telephone.

The written notification must not be handed, if the picket is held by a citizen of Ukraine, foreigner or apatride, who reside on the Ukrainian territory legally, by his own initiative.

If the organizers of the peaceful mass marches, races or other similar actions plan the all-Ukrainian route on the territory of several oblasts, they must present beforehand a written notification about this route to state administration of each oblast; in the Autonomous Republic of the Crimea – to the Cabinet of Ministers of the Crimea.

The realization of the right for such actions before their beginning may be restricted only by the Supreme Court of Ukraine that must consider the application of the Cabinet of Ministers of the Crimea or oblast state administrations within three days; the oblast court after the application of the oblast administration may interrupt such actions, if an emergency state was introduced on the territory of the oblast.

The Crimean, oblast or district routs of peaceful mass marches, races and other similar actions are agreed by their organizers beforehand with executive organs of the Crimean Republic and local organs of executive power on the basis of written notifications.

The realization of the right for such actions before their beginning in the Crimean Republic may be restricted only by the Supreme Court of the Crimean Republic after the application of the Cabinet of Ministers of the Crimea within three days; in oblasts and districts – the oblast court that must consider the application of the oblast and district state administrations within three days.

If the peaceful mass actions are planned to be conducted on the territory of several countryside councils, administrative-territorial units, the organizers must hand a written notification to the district state administration.

The realization of the right for such actions before their beginning may be restricted only by the district court that must consider the application of the district state administration on the same day.

Conducting town, district (in towns), settlement or village street marches is agreed on the basis of a written notification from their organizers to the corresponding executive organs of the local self-rule.

The realization of the right for such actions before their beginning may be restricted only by the town court that must consider the application of the town state administration on the same day.

In the cities Kyiv and Sevastopol the written notifications on conducting peaceful mass actions except pickets must be handed by their organizers to the city state administration.

The realization of the right for such actions before their beginning may be restricted only by the city court that must consider the application of the city state administration on the same day.

The organizers of peaceful mass actions must send beforehand the written notifications about the actions to the local executive organs of state power or local self-rule; these notifications must contain: 1. Aim, form and place of holding the peaceful mass action. 2. The time of beginning and finishing the action. 3. The rout of movement, if necessary. 4. The expected number of the participants of the action. 5. Surnames, names and patronymics of the organizers of the peaceful mass action, their home addresses, home or contact telephone numbers, cell telephone numbers, fax numbers (if any). 6. The measures on guaranteeing public order and safety during the peaceful mass action; the necessity (or its absence) of the presence of law-enforcers (their number) is mentioned, as well as the presence of motor ambulances, presence (or absence) of loud-speaking equipment. 7. The date of handing the written notification.

A notification must be signed by the organizers of the peaceful mass action. If the action is initiated by a political party, trade union, public or other organization, including children ones, legally registered in Ukraine, they must authorize the signatures of the organizers with the seal.

The term of handing the written notification on holding peaceful mass actions by the organizers is counted from the day of registering the notification in the local executive organs of state power or local self-rule.

The organizers of peaceful mass actions may not be refused to accept the written or oral notifications on holding peaceful mass actions, if the notification is presented according to this Law.

Article 7. The procedure of accepting and considering the notifications on holding peaceful mass actions

The state officer representing the executive organ of local state power or local self-rule accepts the notification on holding peaceful mass actions from the organizers, writes on the copy of notification the date and time of the acceptance, his/her surname, name and patronymic, position, office telephone number, and confirms all that with his/her signature and the seal of the corresponding organ. The copies of the notifications on holding peaceful mass actions are handed to the organizers.

The executive organs of local state power or local self-rule must take the notification into account within two days except official days-off.

If the executive organs of local state power or local self-rule see a violation of Article 39 of the Constitution of Ukraine or of the operating laws of Ukraine in the planned peaceful mass actions, they must turn to the corresponding court for obtaining its decision concerning the legality of holding the action; at the same time the organizers of the peaceful mass action must be informed about this.

In cases, where the organizers of the peaceful mass action do not get the court decision on restricting the right for holding the action within three-day term (after handing the notification), the planned peaceful mass action is regarded as legal.

Article 8. The place and time of holding peaceful mass actions and the reasons for their holding

Peaceful mass actions in Ukraine may be conducted in any suitable places, if this is not constrained or prohibited by this Law or other laws of Ukraine, resolutions of the Cabinet of Ministers, decisions of the organs of local state power or local self-rule.

Meetings, demonstrations, rallies, pickets, street marches and other peaceful mass actions may be conducted at the distance not smaller than 150 meters from the buildings of the Administration of the President of Ukraine, the Supreme Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Supreme Rada of the Crimean Republic, the Council of

Ministers of the Crimean Republic, diplomatic representations and consulates of foreign states, and at the distance not smaller than 25 meters from the buildings of the republican organs of state power, local representative and executive organs, courts, prosecutor's office, administrative buildings, privately owned enterprises, establishments and organizations; individual pickets may be conducted directly near the mentioned buildings.

Holding peaceful mass actions is limited on the objects of subway, railway, water and air transport; peaceful mass actions may be held not nearer than 50 meters from the objects or territory of the enterprises, establishments and organizations, which guarantee security and defense of the state, as well as the objects connected with public life (public transport, water, energy, heat supply, other energy carriers, hospitals, polyclinics, kindergartens, schools, military units, etc).

Holding peaceful mass actions is limited on the territory, where the safety of people may not be guaranteed, where the objects dangerous or harmful for health are situated: railways, freeways, highways, pipelines, high-voltage electric lines, atomic energy stations, fire or explosion dangerous objects and objects or constructions, which have cultural value, if holding such actions on the territories, where the latter objects are situated, may result in their damage.

The admitted distances for holding peaceful mass actions near the objects dangerous for health are determined according to the operating common rules.

Peaceful mass actions may be conducted, as a rule, in any time of day and night, if this does not violate rights and freedoms of other people, especially in the period from 11 p.m. to 6 a.m. it is prohibited to use the loud-speaking equipment at this time.

It the organizers planned to conduct a peaceful mass action in the place and time, which were already permitted for conducting another peaceful mass action, or if this action in the chosen place may insult public morals or religious feelings, the local executive organ of state power or local self-rule must propose the organizers to conduct this action in another place, time or form.

The proposition must be concrete and include several variants. In the case, where one of the variants was accepted, the organizers must confirm their consent with new notification, which must be compiled according to Article 6, paragraph 8 of the present Law; the claim to court must not be handed in such cases.

Article 9. Appealing against court decision on holding peaceful mass actions

Court decisions restricting the right of citizens of Ukraine, foreigners or apatrides, who reside on the Ukrainian territory legally, to gather peacefully and without weapons and to conduct meetings, demonstrations, rallies, marches including street ones and other peaceful mass actions may be appealed by the organizers according to the operating laws of Ukraine.

Article 10. Material and technical provision of peaceful mass actions

Material and technical provision of peaceful mass actions is done for the account of their organizers and participants, as well as donations of other Ukrainian citizens.

CHAPTER III. THE PROCEDURE OF HOLDING PEACEFUL MASS ACTIONS

Article 11. Obligations of organizers and participants of peaceful mass actions

Organizers of peaceful mass actions are obliged:

1. To be present all the time at the peaceful mass actions, which are held by their initiative. 2. Obey the place, time, aim and form of peaceful mass action mentioned in the notification, as well as to declare about them beforehand and in the beginning of the action. 3. To inform the participants of peaceful mass actions about the permission or prohibition to hold the action before its beginning. 4. To guarantee the obedience of conditions and procedure of holding peaceful mass actions; if some transport, pyrotechnics, tall constructions, animals, etc. Are used during the action, the organizers must apply measures for as to the safety of participants, buildings, plants and other objects. 5. In the case, where the participants of peaceful mass action commit unlawful acts terminate the action after the demand of militia or other state officers, who, according to this Law, control the public order during

peaceful mass actions. 6. When the peaceful mass action is finished, the participants must be informed about this. 7. To have the emblem of organizers of peaceful mass actions.

Participants of peaceful mass actions are obliged:

1. Not to mask their faces, to carry firearms, cold steel, gas pistols and sprays, specially made weapons, whose use may threaten life and health of people, as well as explosive, poisonous, radioactive, inflammable and other dangerous substances, not to permit the presence of animals, if it does not contradict the scenario of the action agreed by organizers. 2. Not to permit clashes or other events that threaten health of other people, their Constitutional rights and freedoms, that impede them to freely demonstrate and widen their outlook, opinions and convictions. 3. To disperse after the end of peaceful mass actions or if the organizers or the state officer, who has the duty to observe public order, inform about the prohibition to hold the peaceful mass action based on the court decision or about the termination of the action according to Article 13 paragraph 2, items 1, 3, 4 of this Law.

Article 12. Duties of the executive organs of state power and local self-rule

The executive organs of state power and local self-rule must:

Guarantee the necessary conditions for holding peaceful mass actions, obey the proper sanitary and hygienic demands, render the participants of peaceful mass actions necessary medical aid.

In the cases envisaged by Article 8 of this Law to offer (if possible) another place and time for holding the action.

Article 13. Rights and duties of law-enforcing organs

During peaceful mass actions militiamen must guarantee the public order according to Ukrainian laws, which regulate their activities.

Law-enforcers have the right to terminate a peaceful mass action if:

Its organizers did not inform executive organs of state power and local self-rule about the action.

There is the corresponding court decision.

During the peaceful mass action the premeditated acts were committed directed at violating sovereignty and territorial integrity of

Ukraine, change or downfall of the constitutional order by force, usurpation of state power, fanning of race, national, religious enmity, propaganda of violence and war.

There are other bases stipulated by Article 11 of this Law.

Before terminating the peaceful mass actions law-enforcers shall demand from the organizers to stop the violations mentioned above. If this is not done, law-enforcers must terminate the action and to inform the participants about this.

Law-enforcers, who give orders to and formulate the demands before the organizers and participants of peaceful mass actions must wear uniforms or have identification signs. Law-enforcers may not mask their faces in the fulfilling their duties as to keeping the public order.

Law-enforcers use forceful methods, special equipment and firearms for keeping public order during peaceful mass actions in the cases and according to the procedure stipulated by the Ukrainian laws regulating their activities.

Article 14. Resolutions and appeals of the participants of peaceful mass actions

The participants of peaceful mass actions may adopt resolutions and appeals to the organs of state power, local self-rule, unions of citizens, enterprises, establishments and organizations of any form of property, mass media, state officials depending on their functional duties according to Ukrainian Law «On appeals of citizens».

CHAPTER IV. GUARANTEES OF THE RIGHT OF CITIZENS AND THEIR UNIONS, FOREIGNERS AND APATRIDES RESIDING IN UKRAINE LEGALLY FOR PEACEFUL GATHERINGS WITHOUT WEAPONS

Article 15. Guaranteeing the conditions for holding peaceful mass actions

The state guarantees citizens and their unions, foreigners and apatrides residing in Ukraine legally the conditions for conducting peaceful mass actions by way of offering gratis streets, squares, parks and other open territories and constructions of common use, with the

limitations established by this Law and except the cases, when the actions is held with commercial aims.

Material and technical provisions (pay for labor, fuel, transport, if necessary, etc.) of law-enforcing organs appointed to protect the public order during peaceful mass actions and actions of commercial type are done for the account of organizers and participants of the actions.

The executive organs of state power and local self-rule, their officers, political parties, trade unions, public and other organizations, their leaders, as well as Ukrainian citizens, foreigners and apatrides residing in Ukraine legally have no right to intrude into and interrupt peaceful mass actions conducted according to this Law.

Article 16. Voluntary participation in peaceful mass actions

Ukrainian citizens, unions of citizens, foreigners and apatrides residing in Ukraine legally participate in peaceful mass actions voluntarily. Access to such actions is free. No one shall not be forced to participate or not participate in peaceful mass actions in Ukraine.

It is forbidden to take pay from Ukrainian citizens, foreigners and apatrides residing in Ukraine legally for the access to peaceful mass actions and for presence there, or to pay them for participation in such actions as spectators, or to encourage them in other ways. Yet, this does not exclude the right to give voluntary donations.

Article 17. The right for free reception and distribution of information about peaceful mass actions

Ukrainian citizens, unions of citizens, foreigners and apatrides residing in Ukraine legally, representatives of mass media have the right for free collection, storage, use and distribution of information about peaceful mass actions orally, in writing or in other way (on their own choice) in the framework of operating laws of Ukraine.

Article 18. Responsibility for violating the procedure of organizing and conducting peaceful mass actions in Ukraine

State officials, Ukrainian citizens, unions of citizens, foreigners and apatrides residing in Ukraine legally, who are guilty of violating this Law, bear responsibility according to operating laws of Ukraine.

Article 19. Recompensing material damage

The material damage inflicted to citizens, enterprises, establishments and organizations of all forms of property by peaceful mass actions must be recompensed by the guilty according to operating laws of Ukraine.

CHAPTER V. FINAL PROVISIONS

This Law comes into effect from the day of its publication.

The Cabinet of Ministers of Ukraine is obliged within six months from the day this Law comes into effect to:

1. To present the propositions as to the agreeing the legal acts of Ukraine with the Law «On the procedure of organizing and conducting peaceful mass actions in Ukraine» for considering by the Supreme Rada.

2. To adopt normative legal acts needed for realizing this Law, providing consideration and cancellation of normative legal acts contradicting to this Law by ministries, other central and local executive organs of state power and local self-rule.

FREEDOM OF ASSOCIATIONS. HUMAN RIGHTS MOVEMENT (SOME ASPECTS)

THE LAW OF UKRAINE 'ON THE STATUS OF PEOPLE'S RIGHTS PROTECTOR'

A draft

CHAPTER 1. GENERAL

Article 1. People's Rights Protector is the superior independent public officer whose activity is directed to the confirmation and protection of human rights and liberties, as well as the public control of implementation of the latter and their guarantee by state agencies and officials of Ukraine.

Article 2. The powers of People's Rights Protector and organizational principle of his activity are determined by the Constitution of Ukraine and by the present law, besides they are guaranteed by other normative acts of Ukraine.

In the proper order and in the framework of his competence People's Rights Protector's activity is governed by principles and norms of the international right and by international agreements concerning human rights and liberties which are operable in Ukraine.

Article 3. In his activity People's Rights Protector guarantees human rights and liberties independent of a person's race, sex, citizenship,

ethnic or social origin, estate or other status, position, occupation, living place, language, religion, political and other views.

Article 4. People's Rights Protector is an independent institution, hence any illegal intrusion of agencies of state or self-administration, state officials, mass media, public and political organizations (movements) or their representatives into his activity with the aim to influence his resolutions are prohibited.

Article 5. People's Rights Protector's activity is open for public inspection.

Article 6. People's Rights Protector organizes and heads the autonomous system of nongovernmental bodies for the control of guarantees of human rights and liberties, which includes the National Bureau for human rights and liberties, People's Rights Protector's representatives in the autonomous republic of Crimea, in regions, in the cities of Kyiv and Sebastopol.

CHAPTER 2. ELECTION OF PEOPLE'S RIGHTS PROTECTOR

Article 7. People's Rights Protector is elected from one or several candidates with the previous recommendation of the Association of national human rights protecting organizations of Ukraine; the candidate must be a citizen of Ukraine, fully competent, not younger than 30, possessing high morals, experienced in the protection of human rights and liberties.

Article 8. People's Rights Protector is elected for the term of six years. No one shall be selected for more than two terms.

Article 9. On the basis of the recommendations mentioned in Article 8 People's Rights Protector is elected by the Supreme Soviet of Ukraine, after putting out his candidature by the majority of deputies'

fractions by simple majority of votes (from the number of deputies determined by the Constitution) by secret voting.

A deputies' fraction may put out one or several candidatures to this post.

Article 10. In case of non-election of People's Rights Protector, the majority of deputies' fractions during a month from the previous election repeatedly puts out a candidature to the post of People's Rights Protector.

The repeated voting is done according to the procedure determined by Article 9 of this law.

Article 11. People's Rights Protector while entering his position takes an oath of such a sense: 'Entering the position of People's Rights Protector, I swear before the people of Ukraine to fulfill my duties honestly and industriously for in man, his rights and liberties, I esteem the greatest public value, and I promise by using all my powers in the framework of the Constitution and laws of Ukraine and following my own consciousness to intrepidly stand on guard of human rights and liberties'.

The oath shall be taken by the speaker of the Parliament at the plenary conference of the latter.

Article 12. The powers of People's Rights Protector start on the day of taking the oath and end at the moment of taking the oath by his successor.

Article 13. People's Rights Protector has the right to be a member of the Parliament of Ukraine and teach or do scientific research in the time free of his principal duties.

Article 14. People's Rights Protector has the right of inviolability of person to the same extent as a member of the Parliament.

Article 15. The powers of People's Rights Protector may be stopped before the appointed time in the following cases:

1) People's Rights Protector's voluntary resignation;

2) People's Rights Protector's death;

3) when People's Rights Protector for a considerable time (six months on end) was unable to fulfill his duties owing to ill health or disability or exhaustion;

4) after a court's verdict against People's Rights Protector came into a fact.

Article 16. On having completed his duties, People's Rights Protector has the right to return to the position which he had occupied before his election or, if it is impossible, to an equivalent position which suits him.

CHAPTER 3. PEOPLE'S RIGHTS PROTECTOR'S POWERS

Article 17. People's Rights Protector considers complaints of physical and juridical persons concerning the violation or insufficient observation of human rights and liberties caused by activity (or inactivity) of any state agencies and officers.

People's Rights Protector considers complaints concerning the violation of human rights and liberties which are guaranteed by the Constitution of Ukraine, legal acts of Ukraine and international agreements operable in Ukraine.

Article 18. Forms and methods of considering complaints are determined by People's Rights Protector himself. He has powers:

a) to start a public investigation according to the complaint;

b) to direct the complaint to a competent state agency or officer for its solution;

c) to start other actions permitted by this law.

People's Rights Protector has the duty to start the public investigation of the complaint if the handler of the complaint has no other legal mechanisms to protect his rights and liberties.

Article 19. People's Rights Protector does not start the public investigation and does not consider complaints about actions and resolutions lying in the competence of the Parliament of Ukraine, President of Ukraine, Constitutional Court of Ukraine and acts already decided upon by the Supreme Court of Ukraine except the cases when it is legally permissible to turn to international (European) agencies for the protection of human rights and liberties.

Article 20. People's Rights Protector shall consider the complaints within his competence handed by members of the Parliament, the President of Ukraine, All-Ukrainian human rights protecting organizations and People's Rights Protector's representatives in the regions and the cities of Kyiv and Sebastopol.

Article 21. A complaint to People's Rights Protector is handed in writing, in an arbitrary form and must include the data on the person who hands the complaint, the subject of the complaint, the name of the state agency or officer whose activity (or inactivity) is complained about.

Article 22. The complaint is handed to People's Rights Protector not later than one year after the moment when the complainer learned about the abuse and not later than three years since the day of violation of rights and liberties. If a complaint is handed later, then People's Rights Protector may consider it if he himself finds it necessary.

Article 23. People's Rights Protector accepts complaints for consideration if he believes that his personal efforts will lead to restore the abused human rights and liberties, will help to prevent illegal activity of state bodies and officers or put a stop to such activity.

Article 24. No tax is imposed for handing a complaint to People's Rights Protector.

Article 25. People's Rights Protector may start a public investigation by his own initiative, having learned from mass media or other sources about the cases of substantial abuse of human rights and liberties as well as for protecting rights and liberties of the mentally retarded, old, handicapped, adolescents, and other persons who are unable themselves to use the legal ways for protecting their rights and liberties.

Article 26. People's Rights Protector may start a public investigation for checking legality, as well as objectivity and justice in activity (or inactivity) of state agencies, self-administrating bodies and officials of the both as to observing by them human rights and liberties.

Article 27. While considering handed in complaints or starting a public investigation by his own initiative People's Rights Protector has the following powers:

a) require from state agencies, self-administrating organizations, establishments, enterprises, organizations, citizens' unions, and their officials any documents or information needed for finding the truth concerning the investigation, as well as to interrogate responsible officials about the questions within the investigation; unclosing to People's Rights Protector any information containing state secrets or other secrets guarded by the law is done in the order determined by the respective law;

b) to visit any state agencies, self-administrating organizations and establishments without any restrictions, having the aim of checking necessary data, meetings with needed people or perusing service files and other documentation;

c) to visit court conferences and other meetings of any state agencies and self-administrating organizations and have access to the memos of meetings including the right to copy necessary documents;

d) to summon or visit officials of state agencies and self-administrating bodies, as well as other citizens and to take from them oral or written explanations which are needed for the investigation connected with the guarantee of human rights and liberties;

e) to send, if necessary, needed officials and specialists on errands for taking revisions of financial and economic activities, as well as conducting needed expertise within the proper part of the budget of the National Bureau;

f) to start a public investigation in cases of abusing human rights and liberties, as well as send requests for the fulfillment of separate tasks by Procurator's office, Ministry of Internal Affairs and Security Service of Ukraine.

Article 28. The term of resolving of complaints received from physical persons by People's Rights Protector shall not exceed three months.

Article 29. Having finished considering a complaint, People's Rights Protector takes a decision which is sent to the person (agency) which handed in the complaint, to the person whose rights or liberties were abused, to the official who is responsible for the violation of human rights and liberties and to the head of the latter for taking up necessary measures.

Article 30. If a violation of human rights and liberties occurred, People's Rights Protector has the following rights:

1) to point at errors made by officials, to warn them, to propose to remove the violations, to pass the materials concerning the guilty to superior agencies for taking up necessary measures;

2) to suggest to the heads of the Ministries, agencies, state bodies, law enforcing bodies, self-administrating bodies, enterprises and organizations, independent of the form of property, that the acts (or activities) of the officials that violate human rights and liberties should be cancelled (or stopped);

3) to suspend up to ten days obviously illegal actions of officials (except those mentioned in Article 19), in case if these actions may substantially harm human rights and liberties, immediately informing their superiors about the taken measures;

4) to request the superiors to punish the officials guilty of abusing human rights and liberties according to the operable laws on labor and similar acts (People's Rights Protector's resolution in this case demands that the above-mentioned superiors reacted and informed People's Rights Protector about the measures taken within ten days);

5) to put a request on disemployment of the officials who are guilty of repeated or rude violation of human rights and liberties;

6) to denounce publicly (using the mass-media) the officials who are guilty of abusing human rights and liberties, as well as to their superiors who disregarded People's Rights Protector's appeal and did not apply proper measures relative to the guilty;

7) to direct, if necessary, the request to the Procurator, in which after having described the fact of disregarding People's Rights Protector's recommendations or repeated violations of human rights and liberties, to request application of the measures listed in the Ukrainian law 'On Procurator's office';

8) to prosecute in court the cases of abusing human rights and liberties, when they are violated by activity of state agencies, self-administrating bodies and their officials, as well as to participate in the trial;

9) to send to Procurator's offices and other law enforcing bodies any materials found during the investigation, which impose criminal, administrative and other juridical responsibility, for taking up measures stipulated by Ukrainian laws;

10) to turn to the instances stipulated by this law with recommendations about reconsidering court decisions, if there are data that during the trial substantial violations of human rights and liberties occurred, which affected the court's ruling that came already to the legal effect.

Article 31. A body or an official after having received the People's Rights Protector ruling based on the result of the public investigation shall consider People's Rights Protector's recommendations within a month and inform him about the measures against the violation of human rights and liberties or explain why his recommendations were not accepted.

Article 32. People's Rights Protector's recommendations taken by him after considering a complaint and conducting the public investigation cannot be appealed against in the framework of the national legal system, though they may be considered at the plenary meeting of the Parliament and in Parliamentary Commissions.

Article 33. According to the results of investigating complaints or conducting investigations by his own initiative or analyzing other sources dealing with the abuse of human rights and liberties, People's Rights Protector has the right:

1) to direct to state agencies, self-administrating bodies and their officials his estimations and conclusions of general kind intended at supporting real protection of human rights and liberties and perfecting the procedures for their support;

2) to hand requests to the Constitutional Court of Ukraine to initiate checking how separate legal acts of Ukraine correspond to the Constitution and to international agreement on human rights and liberties officially recognized by Ukraine; 3) to direct requests to the Ukrainian Parliament as to the authentic interpretation by laws or their separate clauses;

4) to hand to the Supreme Court of Ukraine well-grounded propositions on the adoption of rulings and resolutions intended at the interpretation of juridical clauses which raise doubts or substantial differences in verdicts and rulings of courts;

5) to direct to state agencies, self-administrating bodies and their officials appeals as to the status and proper implementations of their powers with respect to human rights and liberties, as well as propositions to take proper measures in this connection;

6) to direct to state agencies, self-administrating bodies and their officials on the state and local levels his propositions about some changes of conventional criteria that are implemented in the fulfillment of separate legal acts and their clauses.

Article 34. People's Rights Protector has the right of the legislative initiative, he can suggest for consideration of the Parliament drafts of legal acts for the replacement or completion of laws in the interests of supporting human rights and liberties.

Article 35. People's Rights Protector not less frequently than once a year and not later that one month before the end of the calendar year hands the Parliament the report on his activity, in which he gives general evaluations, conclusions and recommendations, concerning guarantees of human rights and liberties in Ukraine, together with his propositions aimed at the improvement of the existing situation. People's Rights Protector's report must be distributed by audio and visual means throughout Ukraine. The part of the report, which contains state secrets and other information, the secret character of which is protected by law, shall be delivered at a closed plenary meeting.

People's Rights Protector has the right to direct to the Parliament special reports devoted to separate questions of supporting human rights and liberties. These reports shall be widely published in national mass media.

Article 36. State officials of all levels, as well as of self-administrating bodies, enterprises, establishments, organizations of all kinds of properties, law enforcing bodies and courts shall cooperate with People's Rights Protector in the field of supporting human rights and liberties.

Article 37. By People's Rights Protector's request all officials shall give him needed materials, documents, information, as well as explanations about their juridical and other motives of their actions and decisions for all-sided, full and objective investigation.

The materials, documents, information and explanations, requested by People's Rights Protector, shall be given to him not later than two weeks after the moment of mailing the request. In separate cases, with People's Rights Protector's agreement, this term may be doubled.

Article 38. Ignoring by officials People's Rights Protector's requests as to handing him materials, documents, information and explanations is considered as an administrative felony or, if stipulated by the criminal code, as a crime.

CHAPTER 4. NATIONAL BUREAU FOR PROTECTION OF HUMAN RIGHTS AND LIBERTIES, PEOPLE'S RIGHTS PROTECTOR'S LOCAL REPRESENTATIVES

Article 39. In order to implement his rights People's Rights Protector organizes a National Bureau for protection of human rights and liberties, which is headed by People's Rights Protector and is an autonomous structure of the civil society in Ukraine. He also appoints his representatives in the regions, the cities of Kyiv and Sebastopol, in the autonomous republic of the Crimea (the latter must be confirmed by the Crimean Parliament).

Article 40. People's Rights Protector appoints his deputy to whom he may delegate all his powers except the right to take a final decision in a case and to direct the annual report to the Parliament.

Article 41. As the Head of the National Bureau, People's Rights Protector does the following:

– within the framework of the budget he determines the structure and the staff of the Bureau;

– resolves the questions of employment, transfers and disemployment of the Bureau agents according to the respective laws of Ukraine;

– develops the statute of the National Bureau;

– resolves other questions related to the Bureau's work.

People's Rights Protector issues orders as to the questions concerning the work of the Bureau.

Article 42. People's Rights Protector's local representatives are appointed from the people who live in the appropriate place, have experience in human rights protecting activity and possess a high public authority.

Article 43. People's Rights Protector's representatives work on the full-time basis. They execute his orders and are responsible to him. People's Rights Protector's representatives cooperate with human rights protecting organizations, evaluate the state of human rights and liberties on their territory, find out abuses of human rights and liberties and report about them to People's Rights Protector; sometimes they pass to him complaints of physical and juridical persons about violations of human rights and liberties.

Article 44. The work of local representatives does not end automatically when People's Rights Protector is replaced by his successor, but they can be dismissed by him.

Article 45. People's Rights Protector's salary is paid as that for Parliament Members. The expenditures for the National Bureau for protection of human rights and liberties in Ukraine and for People's Rights Protectors local representatives are determined by a separate line in the state budget of Ukraine, and they may not be changed during the budget year, except in the cases when this is done owing to inflation of the national money unit.

Article 46. Agents of the National Bureau and People's Rights Protector's local representatives must have IDs.

Article 47. An expert council made of persons that possess professional knowledge in the branch of the protection of human rights and liberties is organized under People's Rights Protector for giving him consultations. The expert council works voluntarily and free of charge. The personnel of the expert council is determined by People's Rights Protector.

Article 48. While carrying out special investigations People's Rights Protector may invite separate specialists on the contractual basis.

CHAPTER 5. FINAL CLAUSES

Article 49. The National Bureau for protection of human rights and liberties in Ukraine is a juridical person that has its own accountant balance, bank account (including that for foreign currencies), the seal and blanks.

Article 50. Financial reports of the National Bureau are given according to the legal procedure for non-governmental nonprofit organizations.

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A MODEL DRAFT OF THE UKRAINIAN LAW

«ON PUBLIC OVERSIGHT OF THE STATE ACTIVITIES»

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COMMENTARIES ON A MODEL DRAFT

1. The Ukrainian Law «On Public Oversight of the State Activities» is a characteristic consequence of the political situation in the post-totalitarian Ukraine; it reflects the people's conviction that the greatest political threat for humanity in the 20-century has been the uncontrolled power of the superstates, who, in the first half of the century, managed to grab most intellectual, energetic and material resources of the civil society in the Central and Eastern Europe.

It is the experience and lessons of the authoritarism that stimulated the modern post-totalitarian countries to adopt essentially reformed constitutions, to reform their election laws, to introduce multiparty systems and so forth. Nonetheless, the key element and guarantor of democracy, even in the modern Western countries, remains the capability of citizens to obtain information and control their state activities.

Only a well-informed public can consciously fulfill the duty to shape political movements and to control the work of the authorities. If the activity of the government is covered with a veil of mystery, the above-indicated goals cannot be achieved.

The peculiarity of the situation in the sense considered is the fact that in Ukraine no essential change of the political elites occurred, no lustration was introduced, the values of the bureaucratic apparatus in a variety of political situations remained too significant, so the public activity appeared, correspondingly, too weak.

The stake on a strong executive (presidential) power did not win, the governmental structures appeared too slow to catch up with the fast development of events. Paternalism was accompanied by the information crisis, the domination of the executive power over the society, financing and economic chiselling on the side of bureaucracy.

All this has made it necessary to include into the agenda a reevaluation of the democratic potential of the legislation system of Ukraine, since it has become obvious that the constitutional reform was only a beginning of more fundamental political and legislative changes.

Such are the general political factors that caused the appearance of the suggested law. However, there exist more concrete stimuli for the suggested changes. First of all, we mean, the situation in Ukraine when the executive power is controlled by the public but formally, when the administration's actions are quite arbitrary, when the state dominates the society and massively misuses its power.

It is obvious that a law as such is unable to stop misuse and corruption. Nonetheless, the law on the public oversight of the state executive power is necessary. The law's target is to distinctly outline the progressive ideas of the Ukrainian political resurrection and to trace the strategy for legal and organizational measures within the policy of recognition of values of an autonomous personality, self-rule, local initiatives and democracy in action.

2. The model draft of the law is constructed as a multilayered complex document. It consists of six chapters and about 60 articles, kept together by the general idea of the priority of the people's sovereignty over the state sovereignty.

The first chapter of the law outlines the fundamentals of the public oversight of the state. The chapter gives a definition of the public oversight, indicating its object, subject and main principles. The law points out that all members of the civil society in Ukraine are free in their political choice; hence it follows that every citizen should respect the freedom of others and have the free access to the oversight of the policy of the Ukrainian state, President, Cabinet of Ministers and all other state agencies and officers both in the center and in the provinces.

3.The second chapter of the law is devoted to the principles of information relations between the public and various structures of the state executive power. Here the law is based on the presumption that free and fast development of a society occurs only under the condition of unlimited public discourse of main current problems. This discourse, first of all, may be critical with respect to the executive power, so it needs guarantees that the state or its agents shall not meddle. It is the society only that has the right to decide which problems and when should be set before the state and its agencies, not contrariwise.

The law is also based on the idea that it is the state executive structures that represent the most eminent danger for the freedom of information exchange and citizens' access to information on the state activity in general. The law defines the cases when the information may be declared secret by the state, bans arbitrary coercive confiscation or prohibition of information resources of the civil society and private citizens by the state agencies. The law contains an article on the prohibition of arbitrary destroying information by executive power agencies and an article on guarantees that enable publishing information which is critical relative to the executive power and its officers.

4. Since the public oversight of the state activities is divided in the law into the in-parliament oversight and the out-parliament one, the third chapter of the law is devoted solely to the parliamentary forms of oversight of the activities of the executive power agencies. The subjects of the oversight are the Supreme Rada of Ukraine as a whole, as well as

its committees and commissions, deputy groups and fractions, its Ombudsman and separate MPs.

In the cases when the operating laws of Ukraine already contain special normative and legal instruments on the status and competence of the above-listed subjects, the law is confined to the listing of the necessary blanket norms (on the committees, on the Ombudsman, on MPs). But if the needed concrete legal instruments are absent, the third chapter of the law contains the needed enumeration of the rights of control for the subjects of the parliamentary oversight. The specific feature of this part of the law is the listing of guarantees of the rights of control of the Supreme Rada as a whole and special rights of provisional investigating (control) commissions, deputy groups or fractions accompanied with necessary legal guarantees.

Separate articles of the law determine that the parliamentary oversight covers not only the executive power structures, force ministries and agencies, but also the activities of the President of Ukraine both in the peaceful time and in the time of war or in the extraordinary situation. The law does not permit to grant any discretional powers to any executive power officers; besides, the law establishes additional guarantees of the freedom of speech in the course of controlling the executive power by the Ukrainian parliament. In actual fact the law is based on the principle that the freedom of speech within the parliament must be unlimited.

5. The fourth chapter of the law is devoted to basic forms of the out-parliament oversight of the activities of the state executive power. Among subjects of this form of control the law names political parties, social and political movements, public human rights protection organizations, other public unions, as well as separate citizens and other individuals living in Ukraine.

The fourth chapter points out the essence and the main features of the party control over activities of the state executive power, its agen-

cies and officers; peculiarities of the control over activities of the state executive structures by social and political movements are indicated. The core of this chapter is made by the articles on the main features, objects, rights and procedures of the oversight of activities of the state executive power agencies and officers by public human rights protection organizations.

It should be noted that this part of the law is quite novel in the Ukrainian legislation. Human rights protection organizations in Ukraine exist since long ago, they have accumulated noticeable experience, they have established plenty of internal and international ties. However, their status and rights of control over activities of the state executive power has not been fixed, up to now, in any legal acts or official documents. If not to count a cursory remark of these organizations in the Ukrainian law «On Appeals of Citizens», there exists no legal provision of controlling or any other activity on the side of human rights protection organizations in Ukraine.

This is an inadmissible situation, since human rights protection organizations are a unique product of post-totalitarian countries, an embodiment of their lively civic spirit. Not only in Ukraine, but in the countries of the Western and Central Europe these organizations have won a leading position in holding back the state bureaucratic expansion and in providing the regime of observing civil rights and freedoms by the state executive power agencies and officers; in general, these organizations do much for preserving civil peace and concord.

The law treats human rights protection organizations as unions of citizens that «professionally» possess general competence for better oversight. That is why the general rights of control of human rights protection organizations are defined and guaranteed by the law. As to more concrete special rights of these organizations and their relations with the procurator's office of Ukraine, the Ministry of Interior agencies, the security service, the armed forces and the penitentiary system, all this

must be developed and stipulated in special laws which should be incorporated to the Penal-Procedural and other Codes of Ukraine.

6. The fourth chapter of the law introduces such procedures like the «public investigation» held by human rights protection organizations; the general content of their conclusions and public appeals is depicted. Chapters five and six complete the law. These chapters outline how to unite the separate fragments, scattered in various laws and documents, about the oversight rights of the state executive power by local self-rule bodies.

The concluding articles of the law are devoted to the oversight of the executive power and its officers by separate Ukrainian citizens and other individuals residing in Ukraine. Here the law points at the most significant in Ukraine forms of the direct oversight of the activity of the state on the side of its citizens and contains procedural guarantees of such oversight.

A MODEL DRAFT OF THE UKRAINIAN LAW

«ON PUBLIC OVERSIGHT OF THE STATE ACTIVITIES»

The goal of the present law is to support inalienable human rights and freedoms, both constitutional and others, stipulated by international instruments, which were confirmed by the Supreme Rada of Ukraine; the goal is also to subordinate the policy of the Ukrainian state, the activities of its agencies and officers to interests of the civil society; at last, the goal is to establish an efficient public oversight of the way the state fulfills its constitutional functions.

CHAPTER 1

FUNDAMENTALS OF THE PUBLIC OVERSIGHT
OF THE STATE ACTIVITIES

Article 1. The concept of the public oversight of the state activities

According to this law, the public oversight of the state activities is control and supervision which is carried out to check various actions of the state, its agencies and officers by the Supreme Rada of Ukraine and its bodies, by individual MPs, unions of citizens and individual persons with the purpose of protection of human rights and freedoms, with the purpose of subordinating the state policy and activities of state agencies and officers to the interests of society in Ukraine.

Article 2. The concept of the state activities

According to this law, the state activities is the realization of the internal and external policy of the Ukrainian state as a whole, activities

of every branch of the state power, as well as of all state agencies and officers.

On the contrary, any productive activity or that oriented at earning profit of an organization or enterprise or establishment owned by a state completely or partially is not regarded as the state activities.

Article 3. The concept of the civil society

According to this law, the civil society is the structured self-ruled non-government subset of the Ukrainian people. The civil society is a dominant factor of the social progress, it is superior to the state in principle.

The civil society is not an association based on a collective interest. All its members are free in their choice of the way of living, which implies respect of one member to all others and equal access of everyone to the oversight of the policy of the Ukrainian state, its agencies and officers.

Article 4. Principles of mutual relations of the civil society and the state

Interests of the civil societies are superior to those of the Ukrainian state.

The policy of the Ukrainian state, its agencies and officers must be opened to the public oversight.

The life of the civil society is based on the priority of freedom.

The policy of the Ukrainian state is based on the priority of the civil peace, security and stability.

The free choice of the way of living is the main principle of life and activity of the civil society in Ukraine. To this end, every individual must obtain with guaranties all proper rights and freedoms.

As a consequence of the political freedom of the people, the state agencies and officers are obliged to act solely within their duties.

The social progress in Ukraine is based on the principles of political, economic and ideological pluralism. State officers cannot act as umpires for social intellectual projects and ideas. Any imperative interference of the state into science, culture, religion or art is forbidden.

The right to determine and change the character and principles of political relations between the state and the civil society belongs to the people and may not be usurped by the state, its agencies and officers.

Article 5. Legal guarantees of the public oversight of the state activities

The right of the oversight of the state activities by the top representative power, political parties, human rights protection organizations, local self-rule bodies and other unions of citizens are stipulated and guaranteed by the Constitution of Ukraine and by Ukrainian laws.

Citizens of Ukraine shall oversight the state activities by using all their political rights and freedoms.

The guarantees of the oversight of the state activities by Ukrainian citizens are stipulated by the Constitution of Ukraine. by the law «On appeals of citizens», by the present law, by other laws of Ukraine and by the international instruments which the Supreme Rada agreed to obey.

Foreign citizens and apatrides perform the oversight of the state activities on the basis of the Constitution of Ukraine, the Ukrainian law «On the legal status of foreigners», on the Ukrainian law «On refugees», the present law and the international instruments which the Supreme Rada agreed to obey.

Article 6. Prohibition of political dictatorship

Decisions of the society taken at a referendum or in some other democratic constitutional way shall not be abolished by the state, its agencies and officers.

The dictatorship of the state, its agencies and officers over the civil society and its members is illegal.

A temporary military or extraordinary regime introduced on a legal basis by the proper subjects within their rights is not considered an act of political dictatorship.

On the contrary, introduction of a military or extraordinary regime without a legal basis or by improper subjects or with a misuse of their rights or with the violation of the prescribed terms is considered an act of political dictatorship.

Article 7. Forms of the public oversight of the state activities

The public oversight of the state activities is carried out in the in-parliament and out-parliament forms on the basis of the Constitution and laws of Ukraine.

The in-parliament oversight of the state activities is performed by the Supreme Rada of Ukraine, its committees and commissions, by the Ombudsman, by deputies' groups and fractions and by individual MPs.

The out-parliament oversight is performed by unions of citizens, by individual citizens of Ukraine, by foreigners and apatrides residing in Ukraine.

CHAPTER 2

MUTUAL RELATIONS OF THE CIVIL SOCIETY AND THE STATE CONCERNING INFORMATION

Article 8. The concept of information and new information

According to this law, information is knowledge of events and phenomena occurring or existent in the society, state or natural environment.

According to this law, new information is knowledge on events and phenomena occurring or existent in the society, state or natural environment that cannot be anticipated or predicted by the subjects of information relations.

Article 9. Information regarded as exclusive for the state

According to this law, the exclusive state information is that whose retrieval, use and storage is carried out by the state only. It is the information which is passed to the President of Ukraine and to the agencies of the executive power by the Security Service of Ukraine, by the Ministry of Interior and Ministry of Foreign Affairs, by the Military Intelligence and Counter-intelligence and by some other special state agencies.

Dependent on its content the exclusive state information can be regarded as open or secret (included into the List Of State Secrets of Ukraine (LOSS).

The information passed to the President of Ukraine and the agencies of the executive power from public (domestic and foreign) or private sources may not be included to LOSS.

Article 10. Fundamental principles of information relations of the civil society and the state

The information on activities of the Ukrainian state, its agencies and officers shall be open to the public.

The information relations of the civil society and the state shall be based on the following principles:

1) the civil society has a higher priority than the state in obtaining any new information except the exclusive state one;

2) any restraints on the new non-exclusive state information, imposed by the state, are forbidden;

3) any restraints on the non-exclusive state information, imposed by the state, are admissible only if the information is not new (is already known or easily predictable);

4) the restraints mentioned in (3) must be introduced through the procedures stipulated by law;

5) the state shall not restrict the retrieval, distribution, use and storage of the information pertaining to outlook, religion, philosophy, science or art;

6) licensing of citizen unions and individuals with respect to the access to common national or international computer, cable, satellite and other information systems (networks) on the side of the state, its agencies and officers is forbidden;

7) the LOSS shall be exhaustively defined and made public;

8) the general rules of access to information related to the LOSS shall be exhaustively defined and made public;

9) the general list of the data which, according to the wish of the owner, must be treated as confidential information, shall be defined by law and made public;

10) the protection of state secrets is a prerogative of the state, its agencies and officers. Private persons and unions of citizens, except those officially permitted to know some state secrets, are not responsible for divulging state secrets;

11) any orders issued by the state agencies which forbid to pass open information to mass media are forbidden;

12) any letters of private individuals obtained by mass media may not, without the owner's permission, be passed to third persons;

13) journalists and publishers who work as agents for the Secret Services of Ukraine discredit the reputation of mass media and undermine the trust of the civil society to the freedom of speech in Ukraine;

14) if a journalist changes his job and becomes a state officer, without terminating his professional relations with mass media, then, during entering the state service or at signing contract, he must avoid to take duties concerning his two-sided loyalty; the separation of these two professions supports the reputation of the freedom of speech and other priorities of the civil society in Ukraine.

The information relations of the civil society and the state in Ukraine are determined by the Ukrainian law «On information» by the Ukrainian law «On printed mass media (press) in Ukraine», the Ukrainian law «On television and radio broadcasting», the Ukrainian law «On information agencies», the Ukrainian law «On the order of describing

the activities of the state power and self –ruled bodies in Ukraine by mass media», the Ukrainian law «On the National archives fund and archive establishments», the Ukrainian law «On state secrets», the present and other laws of Ukraine.

Article 11. Publishing critical information

Publishing true information criticizing the policy of the Ukrainian state, the activities of its agencies and officers may not be a reason for accusation.

Publishing true information criticizing the activities of the President of Ukraine does not fall under part 2 of Article 105 of the Constitution of Ukraine, which treats impingement on the honor and dignity of the President.

The public criticism of an activity (passivity) and decisions taken by the President of Ukraine, the Prime-Minister of Ukraine, the Cabinet of Ministers of Ukraine and other top executives of Ukraine may not be a reason for accusation.

Article 12. Publishing information on elected executives

The information about the personality of a citizen who pretends to be elected to a position in the state administration, as well as the one who occupies or occupied such a position, shall not be regarded as secret or confidential and may be made public.

Article 13. Restrictions on the regime of secrecy of information

The regime of secrecy for information contained in the LOSS or for the exclusive state information must not last more than 30 years.

Secret information carriers whose regime of secrecy expired shall be made open for public. After the expiration date no one needs a special permission for the access to and publication of the corresponding information.

Article 14. Prohibition of arbitrary destruction of information

The exclusive state information may not be destroyed by the decision of state agencies and their officers. The destruction of such information must be performed under the public control, basing on the law or a resolution of the Supreme Rada of Ukraine.

Information on genocide, political, ethnic, religious and other massive repressions conducted on behalf of the state by its agencies and officers, as well as information on corruption, bribe taking and other crimes contained in the Penal Code of Ukraine shall not be included into state or other secrets. Destruction of such information by the state, its agencies and officers is forbidden.

Information resources owned by the Ukrainian state shall not be destroyed by ideological and political reasons.

Article 15. Prohibition of destruction of information on the civil society

Information owned by private individuals and unions of citizens shall not be destroyed by the decision of the state agencies and its officers.

The solution to destroy such information is a prerogative of the court and must be based on law.

The coercive purchase or any other way of withdrawal of information resources of the civil society into the state ownership is forbidden.

CHAPTER 3

PARLIAMENTARY OVERSIGHT OF STATE ACTIVITIES

Article 16. Subjects of parliamentary oversight of state activities

The parliamentary oversight of state activities is performed by the Supreme Rada of Ukraine, its committees and commissions, its deputy groups (fractions), by the Ombudsman and individual MPs.

Article 17. Legal basis of the rights of the subjects of parliamentary oversight

The legal basis of the rights of the subjects of the parliamentary oversight is laid in the Constitution of Ukraine, in the Ukrainian law «On committees of the Supreme Rada of Ukraine», in the Ukrainian law «On the Ombudsman of Ukraine», in the Ukrainian law «On the dismissal of the President of Ukraine by way of impeachment», in the Ukrainian law «On the status of people's deputies of Ukraine», in the Regulations of the Supreme Rada of Ukraine, the present law and others laws of Ukraine.

Article 18. Fundamentals of the oversight activity of the Supreme Rada of Ukraine

According to the Constitution of Ukraine, the Supreme Rada, directly or through its bodies, performs the oversight of observance of rights and liberties of man and citizen in Ukraine, as well as observance of laws and other legal acts, state programs and the state budget, activities of the President of Ukraine, state agencies and state officers.

Article 19. Rights of the Supreme Rada of Ukraine for the oversight of state activities

The parliamentary oversight of state activities by the Supreme Rada of Ukraine is performed in the following aspects:

1) control of the correspondence of the rights of the President of Ukraine and agencies of the state executive power and court to their constitutional functions;

2) control of observance of rights and liberties of man and citizen in Ukraine through the Ombudsman;

3) oversight of the proper actions of the state executive power concerning the rights of the owner of land and other natural resources that are regarded by the Constitution of Ukraine as the property of the Ukrainian people;

4) control of the state budget of Ukraine including the control of spending the budget money through the Accounting Chamber;

5) control of the state agencies and officers' spending of financial loans which are not contained in the state budget and which are obtained from foreign states, banks and international financial organizations;

6) estimation of annual and unscheduled messages of the President of Ukraine about the internal and international situation in Ukraine;

7) control of how well-grounded are the President's decisions to start a war and conclude peace;

8) control of the President's use of the Armed Forces of Ukraine and other military units of Ukraine under his command;

9) checking reasons for declaring extraordinary situation in a region of Ukraine or entire Ukraine by the President;

10) checking reasons for President's decisions to carry out complete or partial mobilization or to declare some region a zone of extraordinary situation;

11) estimating the program of the Cabinet of Ministers;

12) checking if the activities of the Cabinet of Ministers correspond to the Constitution of Ukraine; hearing reports of the Cabinet of Ministers in this question;

13) hearing reports of individual members of the Cabinet of Ministers on their activities;

14) analysis and estimation of annual written reports of the General Procurator of Ukraine, Chairman of the National Bank of Ukraine, Editor-in-Chief of the Supreme Rada's newspaper and other top officers who are appointed, or elected, or selected by the Supreme Rada (except court officials and judges); if necessary, such reports are delivered at common sessions of the Supreme Rada;

15) checking if candidates suggested by the President for some positions satisfy the demands of the Constitution and other laws of Ukraine;

16) checking how reasonable is the aid granted by Ukraine to other states, or sending Ukrainian troops to other states, or permission to introduce to the Ukrainian territory troops of other states or international organizations;

17) control of the structure, quantity and functions of the Armed Forces of Ukraine, Security Service of Ukraine, National Guard of Ukraine, Ministry of Interior of Ukraine, Internal Troops of Ukraine, Frontier Guard of Ukraine, Military Units of the Ministry of Extraordinary Situations of Ukraine, other paramilitary units organized according to the Constitution of Ukraine;

18) control of the movement within Ukraine and, according to the special scheme, within 200 km around Kyiv, of military units of the Ukrainian army, Security Services, Ministry of Interior of Ukraine, National Guard of Ukraine and other paramilitary units organized according to the Constitution of Ukraine;

19) control of holding scheduled and extraordinary elections to the Supreme Rada of Ukraine, to the Supreme Soviet of the Autonomous Republic of the Crimea and the bodies of local self-rule;

20) checking sufficiency of reasons for stripping an MP from the parliamentary immunity;

21) performing other kinds of parliamentary control within the framework of the Constitution of Ukraine.

Article 20. Guarantees of the oversight rights of the Supreme Rada of Ukraine

The Supreme Rada's rights for the oversight is ensured by establishing the parliamentary responsibility and other means of the parliamentary control that envisage the following measures:

1) introducing changes to the Constitution of Ukraine and laws of Ukraine, including changes concerning the competence and rights of the President of Ukraine, of the state agencies and officers;

2) dismissal of the President of Ukraine by way of impeachment;

3) holding the all-Ukrainian referendum on the people's initiative on every question, including the termination of the President's rights;

4) taking a decision on addressing a query to the President of Ukraine, based on a demand of a people's deputy, or a group of MPs, or a committee after voting for it by one third or more of the constitutional composition of the Supreme Rada;

5) taking a decision on the assessment of the activities of the Cabinet of Ministers of Ukraine;

6) taking a decision on mistrust in the Prime-Minister of Ukraine or individual members of the Cabinet or in the Cabinet of Ministers as a whole, which implies their retirement;

7) expressing mistrust in the General Procurator, which implies the retirement of the General Procurator;

8) refusal to approve top officers of the executive power who should be approved by the Supreme Rada according to the Constitution of Ukraine;

9) agreement to lay the criminal responsibility at or arrest MPs and other top officers who, according to the laws and Constitution of Ukraine have legal immunity;

10) refusal to elect to state executive positions of those persons who, according to the Constitution of Ukraine, shall be elected to their positions by the Supreme Rada of Ukraine, provided that the candidates do not conform to the demands worded in the Constitution or the laws of Ukraine;

11) refusal to adopt the state budget of Ukraine or introduce changes to the budget;

12) refusal to adopt state programs of economic, scientific, technical, social, national-cultural development, as well as state programs of protection of the environment;

13) creation of provisional commissions for the parliamentary investigation of questions of public interest;

14) creation of provisional special commissions for preparation and preliminary consideration of questions within the competence of the Supreme Rada;

15) creation, if necessary, of provisional control and revision commissions;

16) other acts concerning state agencies and officers within the framework of the Constitution, laws of Ukraine and the Regulations of the Supreme Rada.

Article 21. Committees of the Supreme Rada of Ukraine

The Supreme Rada of Ukraine adopts the list of the needed committees and elects their chairpersons. The committees serve for carrying out legislative work, for preparation and preliminary consideration of questions, for controlling how laws and other decisions taken by the Supreme Rada of Ukraine are being implemented and for the oversight of the state activities.

The rights and the rules of the Supreme Rada committees are determined by the Constitution of Ukraine, by the Ukrainian law «On committees of the Supreme Rada of Ukraine», by the Regulations of the Supreme Rada of Ukraine, by the present law and other laws of Ukraine.

Candidates for chairpersons of the committees of the Supreme Rada of Ukraine are put out in correspondence with the Regulations of the Supreme Rada of Ukraine at the meetings of deputy groups (fractions) with the consent of the candidates.

Article 22. Rights of the committees of the Supreme Rada of Ukraine for the oversight of state activities

For carrying out the oversight of state activities the committees of the Supreme Rada of Ukraine do the following:

1) discuss drafts of laws and other decisions of the Supreme Rada of Ukraine before their adoption;

2) prepare parallel reports to the annual and extraordinary reports of the Cabinet of Ministers to the Supreme Rada;

3) discuss candidates to the position of the Prime-Minister and members of the Cabinet of Ministers before suggesting them for the consideration by the supreme Rada of Ukraine;

4) discuss and confirm on a preliminary basis candidates who are elected or appointed by the Supreme Rada of Ukraine to the positions of the Chairman of the Constitutional Court of Ukraine, the Chairman of the Supreme Court of Ukraine, the Chairman of the Supreme Arbitration Court of Ukraine, General Procurator of Ukraine, the Chairman of the National Bank of Ukraine, the Editor-in-Chief of the newspaper of the Supreme Rada of Ukraine, members of the Constitutional Court of Ukraine, members of the Supreme Court of Ukraine, judges of the Kyivan, Sevastopol and regional courts, arbiters of the Supreme Arbitration Court of Ukraine and arbitration courts of Kyivan, Sevastopol and regional arbitration courts;

5) discuss and confirm on a preliminary basis candidates who are to be confirmed by the Supreme Rada of Ukraine to the positions of members of the Presidium of the Arbitration Court of Ukraine and the Collegium of the Procurator's Office of Ukraine.

For giving conclusions on the candidates, whom the Supreme Rada of Ukraine must elect, appoint or confirm, the Committees must receive from the Secretariat of the Supreme Rada not later than three days before taking the decision the information about the candidates, that includes:

1) the data on education and profession;

2) the extract from the Labor book about the history of employment or other work;

3) autobiography;

4) declaration of income, the data on financial obligations, information on real estate owned by the candidate, as well as on other valuable property, bank accounts and securities, according to the requirements from a state officer of the 1-st category;

5) data (undersigned by the candidate personally) on his direct (or indirect, via a representative) participation in the administration of enterprises, companies, organizations, unions, cooperatives and other subjects of the business activity;

6) other data and documents presented to the committees according to the Ukrainian law «On Committees of the Supreme Rada of Ukraine».

Article 23. Guarantees of the oversight rights of Committees of the Supreme Rada of Ukraine

All state agencies and organizations, as well as their officers and executives are obliged to fulfill demands of the committees of the Supreme Rada of Ukraine and present to them all needed materials and documents.

Recommendations of the committees of the Supreme Rada of Ukraine shall be obligatorily considered by all state agencies and officers concerned. The results of the consideration of these recommendations shall be directed to the proper committee at the appointed time.

Article 24. Provisional investigation, control and revision commissions of the Supreme Rada of Ukraine

In order to carry out parliamentary investigations of public interest the Supreme Rada of Ukraine creates provisional investigation commissions out of MPs. The tasks of such commissions are determined at the time of their creation.

The Supreme Rada of Ukraine may also create provisional control and revision commissions on every question within its competence. The tasks of such commissions are determined at the time of their creation.

Article 25. Rights of provisional investigation, control and revision commissions

In order to carry out parliamentary investigations the provisional investigation, control and revision commissions of the Supreme Rada of Ukraine have the following rights:

1) to investigate activities of state agencies and officers controllable by the Supreme Rada of Ukraine regardless of the fact whether this activity was or was not mentioned in the Constitution of Ukraine and other Ukrainian laws;

2) to hear top state officers and obtain from them all the needed materials and documents necessary for the assessment of the situation under investigation;

3) to address the society through mass media and directly for obtaining the needed data, as well as for informing public about the results of the investigation;

4) to hold regularly open (or, if necessary, closed) conferences, where the majority of the commission should be present;

5) to create auxiliary working groups, to attract, if necessary, experts and professionals;

6) to agree their activity, if needed, with other parliamentary committees, fractions, the Ombudsman, state law-enforcing agencies, local self-rule bodies, public human rights protection organizations;

7) to implement other rights granted to the parliamentary commission in the time of its creation.

Provisional investigation commissions also have other rights formulated in Articles 9.5.8 and 9.5.10 of the Regulations of the Supreme Rada of Ukraine.

The rights of provisional investigation, control and revision commissions of the Supreme Rada of Ukraine are terminated automatically

after the Supreme Rada of Ukraine takes a final decision on the results of the work of the commission, as well as in the case of termination of the rights of the Supreme Rada of Ukraine.

Article 26. Guarantees of the control rights of provisional investigation, control and revision commissions of the Supreme Rada of Ukraine

If the procedure of the parliamentary investigation has been officially started, then illegal are any references of heads and members of the agency under investigation that some information pertain to state secrets.

The martial law or the law of emergency may not serve as an obstacle for carrying out a parliamentary investigation and the work of provisional investigation, control and revision commissions of the Supreme Rada of Ukraine.

Article 27. Ombudsman of the Supreme Rada of Ukraine

The parliamentary control of the observance of the constitutional human rights and liberties is performed by the Ombudsman of the Supreme Rada of Ukraine.

The Ombudsman is the highest civil officer whose duty is to oversight the protection of human rights and liberties in Ukraine from everyone, including the state, its agencies and officers, as well as of the public control over the protection of human rights

The rights of the Ombudsman of the Supreme Rada of Ukraine are defined in the Constitution of Ukraine and in the law «On the Ombudsman of the Supreme Rada of Ukraine».

Article 28. Oversight of the state activities by deputy groups (fractions) of the Supreme Rada of Ukraine

The oversight of the state activities is also put on deputy groups (fractions) of the Supreme Rada of Ukraine. To this end, every registered deputy group (fraction) has the rights: 1) to formulate and declare in the Supreme Rada of Ukraine its opinion on every item of the agenda;

2) its representative may take the floor and tell the group's opinion concerning any item of the agenda of the Supreme Rada of Ukraine;

3) to suggest any question to the agenda of the Supreme Rada of Ukraine;

4) its representative may take the floor after the discussion in the Supreme Rada of Ukraine of the question included by the group initiative;

5) to make its position, as well as speeches of its representative, known to public via the newspaper of the Supreme Rada of Ukraine and mass media;

6) to participate in the assessment of candidates to the positions of the Chairman of the Supreme Rada of Ukraine and his Deputies, Chairmen of committees and commissions of the Supreme Rada of Ukraine, Heads of other bodies of the Supreme Rada of Ukraine;

7) to discuss the candidates to top officials appointed, affirmed or elected by the Supreme Rada of Ukraine, to inform the Supreme Rada of Ukraine and public about the results of these discussions via mass media.

Article 29. Representatives of deputy groups (fractions) in bodies of the Supreme Rada of Ukraine

In order to perform the efficient parliamentary oversight of state activities, deputy groups (fractions) are given the rights of the proportional representation in all collegial bodies of the Supreme Rada of Ukraine and official parliamentary delegations.

Committees and provisional investigation, control and revision commissions of the Supreme Rada of Ukraine are formed by deputy groups (fractions) on the proportional basis or on some other agreement.

Article 30. Unions of deputy groups (fractions)

In order to perform their oversight functions, deputy groups (fractions) may cooperate, create unions and informal groups.

Deputy groups (fractions), their unions and informal groups hold open (or, if necessary, closed) conferences.

Deputy groups (fractions), their unions and informal groups in their activity base on the rights granted by the Constitution of Ukraine, Ukrainian law «On the status of a people's deputy», Ukrainian law «On organized political opposition in Ukraine», Regulations of the Supreme Rada of Ukraine.

Article 31. Oversight of state activities by individual MPs

Individual MPs perform oversight of state activities on the basis of the rights granted by the Constitution of Ukraine, Ukrainian law «On the status of a people's deputy», Ukrainian law «On organized political opposition in Ukraine», Regulations of the Supreme Rada of Ukraine and other laws of Ukraine.

Article 32. Queries from MPs

According to Article 86 of the Constitution of Ukraine, MPs have the right to address, during a session of the Supreme Rada of Ukraine, a query to various bodies of the Rada, as well as to the Cabinet of Ministers, heads of various bodies of the state power and heads of various establishments, enterprises and organizations situated on the territory of Ukraine, regardless of their subordination and the form of property.

The topics of the queries are listed in Article 12 and Article 19, Section 9 of the Ukrainian law «On the status of a people's deputy».

Article 33.Investigation by MPs

On the initiative of not less than 30 MPs a special investigation may be started within the competence of the Supreme Rada of Ukraine.

Such an investigation is started by a special decision of the Supreme Rada of Ukraine.

These investigations may be started if the following information became known:

1) violations of rights, liberties and legal interests of man and citizen;

2) violation of the Constitution of Ukraine and Ukrainian laws by state agencies and top officials who are appointed, elected or confirmed by the Supreme Rada of Ukraine;

3) a threat to the sovereignty or territorial integrity of Ukraine or its ecological, political, economic and cultural interests;

4) violations of the rights of unions of citizens in Ukraine.

The rights of MPs during these investigations are determined in the Ukrainian law «On the status of a people's deputy».

Article 34. MP's commission for investigation

In order to carry out an investigation of the type mentioned in Article 33 of the present law, the Supreme Rada of Ukraine appoints a commission made of MPs.

This commission has the right to summon any state official for giving explanations.

The work of the commission ends with well-grounded conclusions which is discussed and confirmed by the Supreme Rada of Ukraine.

Article 35. The freedom of speech in the process of parliamentary oversight of state activities

When criticizing the internal and external policy of the Ukrainian state, its agencies and officers at plenary meeting of the Supreme Rada of Ukraine, meetings of its committees, commissions and other provisional or permanent bodies, as well as in MPs' public speeches and in materials published in mass media, MPs have the freedom of speech without limitations.

Article 36. General guarantees of parliamentary oversight of state activities

The parliamentary oversight of state activities is universal and concerns any decisions, activity and passivity of the President of Ukraine, the state, its agencies and officers. Every state agency and every state officer (except courts and judges), whose rights are determined by the Constitution of Ukraine and by Ukrainian laws are controlled by the Supreme Rada of Ukraine.

The martial law or the state of emergency shall not terminate the parliamentary oversight of state activities.

The regime of state or some other secrecy shall not terminate the parliamentary oversight of state activities.

The creation of any agencies or positions in the state administration (except courts and judges) which are not controllable by the parliament is forbidden.

Any secret or explicit creation of agencies, their departments and positions, not confirmed by the Supreme Rada of Ukraine and uncontrollable by the Supreme Rada of Ukraine is forbidden.

Any attempts to cancel or weaken the parliamentary oversight of state activities are illegal.

Any corrections or amendments to this law during the martial law or the state of emergency are forbidden.

Article 37. Oversight of the activities of the force ministries, Ministry of Foreign Affairs and Procurator's Office of Ukraine

The Supreme Rada's oversight of the Council of National Security and Defence of Ukraine, Ministry of Defence of Ukraine, the Supreme Rada of Ukraine, Ministry of Interior of Ukraine, Security Service of Ukraine, Ministry of Foreign Affairs of Ukraine, other force ministries and agencies, Procurator's Office of Ukraine and their officials and officers is regulated by special laws.

Temporary absence of such laws shall not prevent the parliamentary oversight.

The activities of these agencies and their officers shall be fully controlled by the parliament.

Article 38. Parliamentary oversight of the President's activity

The President's activity shall be fully controlled by the Parliament.

The President's activity in the capacity of the Commander-in-Chief of the armed forces of Ukraine, as well as during the action of the martial law or in the state of emergency, shall be fully controlled by the parliament.

The object of the parliamentary oversight of the President of Ukraine is all his constitutional functions and rights. If, in fulfilling his rights, the President of Ukraine commits actions not lying within his competence, the latter actions shall be fully controlled by the parliament.

Article 39. Prohibition of discretionary rights

Any discretionary rights of state agencies and their officers established by administration orders or just arbitrary rights of state agencies and their officers, not stipulated by law and not confirmed by the Supreme Rada of Ukraine, are forbidden.

The President of Ukraine does not possess any discretionary rights.

CHAPTER 4

OUT-PARLIAMENT OVERSIGHT OF STATE ACTIVITIES

Article 40. Subjects of out-parliament oversight of state activities

The out-parliament oversight of state activities is performed by political parties, social and political movements, public human rights protection organizations, other unions of citizens, individual citizens and residents of Ukraine.

Article 41. Legal foundations of the out-parliament oversight

The legal foundations of the out-parliament oversight are given by the Ukrainian law «On unions of citizens», Ukrainian law «On political parties in Ukraine», Ukrainian law «On organized political opposition in Ukraine», Ukrainian law «On appeals of citizens», Ukrainian law «On public human rights protection organizations», this law and other laws of Ukraine.

Article 42. Oversight of state activities by political parties and social-political movements

Political parties and social-political movements carry out the oversight of state activities from political positions which may be independent, alternative or oppositional with respect to the policy of the Ukrainian state, its agencies and officers.

The public oversight by parties and social-political movements is an expression of the political will of supporters of some all-national program of development of the Ukrainian state, of an independent public assessment of the internal and external policy of the Ukrainian state, of the contents, directions and forms of activity of its agencies and officers.

Article 43. Rights of the parties and social-political movements in the oversight of state activities

In order to carry out the oversight of state activities parties and social-political movements have the following rights:

1) to criticize publicly the course of the internal and external policy of the Ukrainian state, the activity (or passivity) of the President of Ukraine, as well as the activity (or passivity) of the state, its agencies and officers;

2) to suggest their own version of the course of the political development of Ukraine, to suggest to the public plans which may be alternative or oppositional with respect to the official policy of the Ukrainian state;

3) to agitate for their program of the national development of Ukraine;

4) to criticize publicly in mass media the bodies and agencies of the legislative, executive and judicial power and their officials and officers;

5) to act as a claimant at court vs. the state, its agencies and officers;

6) to take part in elections, agitating «for» or «against» the candidates for the post of the President of Ukraine, for members of parliament, as well as the candidates to other elective posts, according to the procedures stipulated by the Constitution of Ukraine and other Ukrainian laws;

7) to initiate the impeachment of the President of Ukraine;

8) to initiate the all-Ukrainian referendum on ending before the legal term the activities of the President of Ukraine, the Supreme Rada of Ukraine, as well as referendums, both all-Ukrainian and local, devoted to other problems;

9) to establish new mass media for the distribution in the public of independent political views and assessments, including those which are alternative or oppositional to the policy of the state, its agencies and officers.

When criticizing state activities parties and social-political movements are protected by the constitutional guarantees of the freedom of speech.

Article 44. Oversight of state activities by public human rights protection organizations

Public human rights protection organizations are unions of citizens whose activities are directed to rooting and protecting human rights and freedoms in Ukraine, to the efficient control of the observance of such rights by the state, its agencies and officers.

The rights of the public human rights protection organizations are determined by the Constitution of Ukraine, Ukrainian law «On unions of citizens», Ukrainian law «On appeals of citizens», Ukrainian law «On public human rights protection organizations», this law and other laws of Ukraine.

Article 45. Foundations of the oversight activities by public human rights protection organizations

The public human rights protection organizations root and protect human rights and freedoms in Ukraine, regardless of the race, sex, citizenship, ethnic or social origin, property or other status, position, pro-

fession, place of residence, language, religion, political or other convictions.

The activities of human rights protection organizations are open to the public.

In order to make their work more efficient and coordinated, public human rights protection organizations may unite with similar national, foreign and international organizations.

Public human rights protection organizations may freely exchange information within Ukraine or with foreign and international organizations, create local, national or international information networks and systems, control, with their own resources or with the aid of other organizations, how human rights and freedoms are observed by the state, its agencies and officers.

Forms and methods of the work of human rights protection organizations are determined by themselves, according to the statute of these organizations and the laws of Ukraine.

Article 46. Object of the oversight of state activities by public human rights protection organizations

Public human rights protection organizations consider claims and complaints of physical and juridical persons, or their representatives, on violations or incomplete observance of human rights and freedoms caused by activity (passivity) of any state agencies and officers in Ukraine.

Public human rights protection organizations carry out the oversight of the state activities and consider claims and complaints on abusing human rights and freedoms, which are guaranteed by the Constitu-

tion of Ukraine, by the laws of Ukraine and by the international instruments approved by the Supreme Rada of Ukraine.

Decisions, as well as activity (passivity) of state bodies and agencies, officers and officials of the state, which may be complained about by public human rights protection organizations on their own behalf or on behalf of the physical persons, are the decisions, as well as activity (passivity) of the state, its agencies and officers which caused:

1) violation of human rights and freedoms in Ukraine;
2) obstacles to prevent the realization of human rights and freedoms;

3) a situation when man is illegally given some duty to fulfill or is illegally declared guilty of some crime or felony.

Article 47. Rights of public human rights protection organizations for the oversight of state activities

For protecting human rights and freedoms public human rights protection organizations have the following rights:

1) to start a public investigation according to a received claim or complaint;

2) to direct on their own behalf or jointly with physical and juridical persons claims and complaints to state bodies and officers for resolving a problem;

3) to direct claims and complaints on behalf of the victims of arbitrary actions to court and to international organizations;

4) to direct other documents (appeals, demands, requests, remarks, etc.) to state agencies and officers, as well as to international organizations;

5) to carry out an independent expertise of law drafts, laws and other legal documents aimed at rooting and protecting human rights and freedoms in Ukraine;

6) to carry out the monitoring of the legislative, administrative and judicial practices of state bodies and agencies in Ukraine in the field of the observance and protection of human rights and freedoms;

7) to prepare and direct independent reports about the observance and protection of human rights and freedoms to international organizations and courts;

8) to prepare and direct independent comments on the official state reports about the state of the observance and protection of human rights and freedoms; such reports are now systematically sent by official representatives of the Ukrainian state to the UNO, European Council and other international organizations, according to the international duties of Ukraine;

9) to carry out other actions stipulated by this law and the Ukrainian law «On public human rights protection organizations».

Handing claims and complaints by a public human rights protection organization shall be done on the basis of a proxy from the person who suffered from the abuse; the proxy shall be written in the form mentioned by the law.

Article 48. Restrictions on rights of public human rights protection organizations

Public human rights protection organizations do not start a public investigation and do not consider any complaints about decisions and activity (passivity) of the Supreme Rada of Ukraine, President of Ukraine, Cabinet of Ministers of Ukraine, unless such decisions, activity (passivity) may be directed to a court in Ukraine, to an international court on human rights or some other international organizations.

Public human rights protection organizations carry out public investigations and consider claims and complaints about decisions and activity (passivity) of the Constitutional Court of Ukraine, as well as the Supreme Rada of Ukraine, provided the decisions or activity (passivity) of these bodies can be put before international organizations or courts on human rights protection.

Article 49. Handing claims and complaints to public human rights protection organizations

Public human rights protection organizations accept for consideration claims and complaints from physical and juridical persons or from their representatives, if they believe that their efforts will result in the restoration of the abused rights and freedoms, will terminate the illegal activity (or passivity) of the state, its agencies and officers.

Public human rights protection organizations accept for consideration claims and complaints and also carry out public investigations in order to protect human rights and freedoms of the mentally retarded, old people, minors, handicapped, convicts, servicemen and other persons for whom it is impossible or difficult to protect their own rights , freedoms and legal interests stipulated by the Constitution and other laws of Ukraine.

Claims and complaints are handed to public human rights protection organizations in writing, in an arbitrary form, but they must contain the name of the claimant, the essence of the claim, the name of the

agency or officer whose decision or activity (passivity) abused the claimant.

Claims and complaints should be directed to a human rights protection organization, as a rule, not later than one year since the claimant learned about the abuse and not later than three years after the abuse. If these terms have passed, public human rights protection organizations accept the claim if they agree.

Article 50. Public investigations carried out by public human rights protection organizations

To achieve their statutory goals with respect to human rights and freedoms public human rights protection organizations carry out public investigations, following a claim, or complaint, or their own initiative.

Public human rights protection organizations carry out a public investigation on their own initiative on the basis of collected information about brutal, massive or another substantial abuse of human rights and freedoms by the state, its agencies and officers.

In the course of a public investigation, following a claim, or complaint, or their own initiative human rights protection organizations or their representatives have the following rights:

1) to take part in the verification of the complaint by a state official;

2) to communicate to the state official checking the complaint some arguments on behalf of the human rights protection organization;

3) to present needed documents to the state official or to insist on requesting such documents;

4) a representative of the human rights protection organization must be present during the consideration of the complaint by state officials;

5) to receive written answers on the result of checking the claim or complaint directed to an official agency by the human rights protection organization;

6) to receive from state agencies and officers information concerning checking abuses of rights and freedoms described in the claim or complaint;

7) to turn to state agencies and bodies with requests concerning violations of rights and freedoms;

8) to demand secrecy, if needed, while considering a complaint in official instances;

9) to demand from state agencies and officers to recover damages that resulted from the neglect of the standard routine of considering complaints;

10) to be received without obstacles and delay by officials for checking necessary data, studying needed documents and copying them, provided that they do not contain state secrets or some confidential, according to the law, information;

11) to participate in court trials with the purpose of defending and restoring the violated human rights and freedoms, to attend open court trials and other sittings and conferences of state agencies, to have access to and the right to copy minutes or protocols of such conferences;

12) to pass information of the received claims and complaints, as well as the information on the abuses of human rights gathered by the human rights protection organization in any other way, to the President

of Ukraine, to the General Procurator of Ukraine, to agencies of the Ministry of Interior, to the Security Service of Ukraine, as well as to international organizations and mass media, if it does not contain legally secret or confidential information.

Article 51. Conclusions drawn by public human rights protection organizations

On finishing a public investigation concerning some violations of human rights and freedoms a human rights protection organization draws some conclusions.

In these conclusions the public human rights protection organization has the right:

1) to point out concrete violations of human rights and freedoms on the side of state agencies and officers;

2) to issue a public reprimand to state agencies and officers for their activity (passivity) that resulted in abuse of human rights and freedoms;

3) to suggest to the state agencies and officers to correct the abuse of human rights and freedoms detected during the public investigation;

4) to pass the materials needed for the correction of the violation of human rights and freedoms to the superior instance relative to the agency or officer guilty of the abuse;

5) to demand from the state agencies and officers to cancel documents or decisions that caused or may cause a violation of human rights and freedoms;

6) to ask the superiors of the officials who were guilty of abusing human rights and freedoms to issue reprimand or punishment stipulated by the Labor Code;

7) to issue a public reprimand to those state bodies and officers whose decisions or activity (passivity) resulted in violations of human rights and freedoms or who did not react to public appeals concerning such violations;

8) to turn to the Ombudsman of the Supreme Rada of Ukraine reporting him about massive rude or substantial violations of human rights and freedoms by Ukrainian state agencies and officers;

9) to inform the law enforcing agencies about the facts found in the course of public investigations about such actions of state officials that could be crimes or felonies.

Copies of the conclusions of public investigations are directed to:

1) the physical or juridical persons which sent the complaint;

2) the person or persons whose rights were violated;

3) the state agency or/and officer which caused the violation;

4) the law enforcing agencies, if measures against the abusers must be taken.

The conclusions of public human rights protection organizations have the status of recommendations.

Article 52. Public appeals of human rights protection organizations

Having taken account of the results of considering the received claims and complaints, as well as the results of the public investigations undertaken on their own initiative, public human rights protection organizations have the right:

1) to hand to the state agencies and officers general conclusions and evaluations aimed at the efficient guarantees of human rights and freedoms;

2) to direct their recommendations about perfecting legal and organizational procedures of realization of human rights and liberties to the Ombudsman of the Supreme Rada of Ukraine.

3) to turn to the Constitutional Court of Ukraine for official interpretation of the Constitution and laws of Ukraine, if human rights protection organizations believe that incorrect interpretations are used by courts or other state agencies, and that such interpretations can threaten constitutional rights and freedoms;

4) to hand well-grounded suggestions to the Supreme Court of Ukraine on resolutions that would comment or explain some juridical statements which were considered doubtful or whose application caused ambiguity in court verdicts and decisions;

5) to direct to the supreme state bodies and their officials suggestions concerning the general status of embodiment of their rights to observe and protect human rights and freedoms, as well as concerning measures aimed at improving the situation.

Article 53. How the state, its agencies and officers shall consider conclusions and appeals of human rights protection organizations

On receiving a public appeal from a public human rights protection organization, the state agency or the officer shall consider it and take, if necessary, appropriate measures. The authors of the appeal shall be informed about the reaction in writing within a month.

On receiving a conclusion of the public investigation from a public human rights protection organization, the state agency or the officer shall consider it and take or plan, if necessary, appropriate measures or to give grounds for the refusal of taking any measures. The authors of the appeal shall be informed about the reaction in writing within a month.

CHAPTER 5

OVERSIGHT OF STATE ACTIVITIES BY LOCAL SELF-RULE BODIES

Article 54. Oversight of state activities by local self-rule bodies is carried out on the basis of the Constitution of Ukraine, the Ukrainian law «On local self-rule in Ukraine» and on the present law.

The oversight of state activities by the local self-rule is carried out with respect to the local state administrations and their officials, as well as to the state offices, enterprises and organizations situated on the territory ruled by the local bodies.

The oversight of state activities by the local self-rule is founded on the following principles:

1) state administrations situated in the locality shall not interfere into the questions which are the prerogative of self-rule bodies;

2) local self-rule bodies shall not interfere in the questions related to the competence of state administrations;

3) state administrations situated in the locality shall be controlled by the local self-rule in the questions within the competence of the latter;

4) the rights of the local self-rule can be defended in courts.

Article 55. Forms of the oversight of state activity by local self-rule

Forms of the oversight of state activity by local self-rule are as follows:

1) oversight by the local councils, executive committees and permanent commissions;

2) local referendums;

3) general meetings of citizens;

4) local initiatives;

5) public hearings;
6) activities of the mass media founded by the local self-rule bodies.

The oversight of state activities by the local self-rule bodies is carried according to the rights guaranteed to subjects by the Constitution of Ukraine, the Ukrainian law «On the local self-rule in Ukraine» and this law.

Article 56. Control over state administrations situated in the locality by local self-rule bodies

State administrations situated in the locality are controlled by the corresponding district and region councils in fulfilling social and economic programs, as well as those concerning cultural development, filling district and state budgets and fulfilling other duties which are delegated to them by the corresponding district and region councils.

Article 57. Rights of district and region councils for the oversight of state activities

To carry out the oversight of state activities district and region councils have the following rights:

1) to create permanent control commissions and consider their reports;

2) to consider deputies' requests and take decisions on the requests;

3) on decisions of territorial communities to take decisions on holding consultive polls;

4) to exert the rights in organizing all-Ukrainian referendums carried out on the initiative of the Supreme Rada of Ukraine or on the people's initiative;

5) to join associations and other forms of voluntary unions of local self-rule bodies, as well as to leave such associations and other unions;

6) to hear the reports of the local state administrations, their deputies, heads of directorates, departments and other subunits of the administrations on their fulfilling the programs of social-economic and cultural development, on their contribution to the local budgets, on their fulfillment of the proper decisions of the local self-rule bodies and the rights given to them by the local self-rule bodies;

7) to take a decision on expressing distrust to the head of the local state administration;

8) to turn to courts with applications of considering illegal some acts of the local state administrations, enterprises, establishments and organizations, the acts that restrict the rights or damage interests of the

local communities, as well as the rights of the district or region councils and their bodies;

9) to create local mass media, to appoint and to dismiss their heads.

Article 58. Rights of the executive bodies of village, settlement and town councils for the oversight of state activities

In order to exert the oversight of state activities village, settlement and town councils have the following rights:

A) their own rights:

1) to assist in the activities of courts, prosecutor's office, offices of justice, security service, agencies of the Ministry of Interior, advocates' service aimed at the protection of human rights and freedoms and legal interests of the population;

2) to turn to the appropriate agencies with claims to make responsible those state officials who ignore legal decisions and demands of the local councils and their bodies;

3) to turn to courts and demand to consider illegal decisions of local state administrations, as well as locally situated state enterprises, establishments and organizations, if these decisions restrict the rights or damage the interests of the territorial communities, if they restrict the rights of the local self-rule bodies and their officers;

B) delegated rights:

1) to guarantee the fulfillment of the requirements of law concerning the timely consideration of citizens' appeals, to carry the oversight

of this work at enterprises, establishments and organizations, regardless of the form of property;

2) to organize, on demands of the community, gatherings, meetings, manifestations, demonstrations and other similar forms of expressing the opinion of the masses; to control the public order during such gatherings.

Article 59. Permanent control commissions of local councils

In order to monitor the fulfillment of decisions of the local councils and their executive committees, the councils create permanent control commissions, out of their deputies.

By the order of the chairman of the village, settlement or town council, or the deputy-chairman, or some other executive, or by their own initiative, the permanent commissions study the activity of the local state administrations, as well as locally situated enterprises, establishments and organizations, their branches and departments, regardless of the form of property, in the questions controllable by the local self-rule bodies, work out recommendations on the result of their inspection and present these recommendations to heads of the local self-rule bodies, or, if needed, to the councils or their executive committees. The permanent commissions also control the fulfillment of decisions of councils and executive commissions of village, district, town and town-district.

The permanent commissions have the right to receive, within their competence, needed materials and documents from the local state administrations, as well as from the locally situated enterprises, establishments and organizations, their branches and departments, regardless of the form of property.

Recommendations of the permanent commissions must be obligatorily considered by the state administrations, enterprises, establishments, organizations and officials to which the recommendations are addressed. The permanent commissions must be informed on the results of consideration of their recommendations and on the measures taken within the term stated by the commission.

Article 60. Provisional control commissions of the councils

In order to control some concrete problem the local self-rule bodies elect from their deputies provisional control commissions.

Deputies – members of the provisional control commissions, as well as professionals, experts and other persons attracted for the participation in such a commission shall not divulge the information which they learned working in this commission.

Having completed the investigation, the commission must compile a report and make suggestions to be considered by the corresponding council.

Article 61. Expression of mistrust to heads of local state administration

As a result of their oversight functions, the district or town council, by a secret ballot, may express distrust to the head of the local state administration. This act is considered by the President of Ukraine, after which the latter must take a decision and give a well-grounded answer to the local council.

If two thirds or more of the council expressed mistrust to the head of the district or region state administration, the President of Ukraine must dismiss the head of the local state administration.

CHAPTER 6

OVERSIGHT OF STATE ACTIVITIES BY CITIZENS AND OTHER RESIDENTS OF UKRAINE

Article 62. Oversight of state activities by citizens and other residents of Ukraine

Individual citizens of Ukraine and other residents of Ukraine carry out the oversight of state activities on the basis of the Constitution, as well as the international instruments aimed at guaranteeing political rights and freedoms and confirmed by the Supreme Rada of Ukraine.

Guarantees for the oversight by citizens and other residents of Ukraine are stipulated in the Ukrainian law «On appeals of citizens», Ukrainian law «On the juridical status of foreigners», Ukrainian law «On refugees», this law and other laws of Ukraine.

REGISTRATION IN UKRAINE.
THE BIAS AGAINST NON-PROFITS

Alexander Vinnikov

Civil society leaders and legal experts in Ukraine constantly point out the need to simplify the registration of non-profit organisations. This article will compare registration requirements for businesses and non-profits (i.e. associations and charities) and draw attention to certain discriminatory regulations governing registration of the latter. The article does not deal with political parties, churches, trade unions or non-banking institutions, nor the registration of representative offices of foreign non-profits.

Securing non-discriminatory terms for registration of any legal entities should be an important step in the planned administrative reform in Ukraine. Indeed, since registration bodies do not grant tax-exempt status to non-business corporations, why do they set excessive requirements for their incorporation?

Legal analysis of the legislation in effect shows that during the registration process non-business entities face extensive discrimination mostly due to ill-grounded requirements in the regulations (mentioned below in brackets-the first digit refers to one of the regulations listed at the end of this text; the second digit is the article number).

EXCESSIVE MINIMUM NUMBER OF FOUNDERS

Businesses may operate throughout Ukraine and abroad having only one or two founders, depending on the type of company. Non-business corporations must have at least three founders, which does not seem to be discriminatory. Because of the outdated division of non-profits based on their territorial scope, they have local, national or international status. Therefore, non-business corporations wishing to operate throughout the country have to set up branches in the majority of Ukraine's regions and be registered with the Ministry of Justice (1:9; 2:7). Hence, the minimum number of founders increases to 14 for charities and 30-40 for associations. Charities of local status may have a sin-

gle founder; however, only charities of national or international status have the right to establish branches (2:7).

Non-business corporations of international status are required to submit evidence of their activities abroad (powers of attorney, minutes, certificates of legalisation, etc.) to the Ministry of Justice (3:3; 7:3). Besides costs for consulate legalisation, notarisation and translations of legal papers, it means that one or more non-resident founders are required as well.

Unless the law prescribes otherwise, only so-called collective members (1:12), i.e. not other legal entities, but their staffs collectively, may be founders of non-business associations. It forces non-business corporations to increase the number of individual founders, even they operate as associations of legal entities.

EXCESSIVE COSTS OF REGISTRATION

Business corporations may authorise one individual to submit an application for registration, while a special application form is issued by the registration body free of charge and does not have to be notarised (4:3). Except for charities of local status, applications for registration of non-business corporations must be submitted by at least three founders whose signatures must be notarised (3:3; 7:3).

Private companies of any type have to pay registration fees equivalent to 7 individual minimum monthly incomes (hereinafter: IMI) (4:6), which is now about 20 Euros. Non-business corporations have to pay registration fees of 5-20 IMI, depending on their territorial scope; associations of international status have to pay fees of 5 IMI plus 500 USD (5:1; 8:1). For instance, if environmental monitoring of transborder rivers in Ukraine and Moldova is exercised by an international non-profit association, the registration fee is about 500 Euros as of July 2002; if by a stock company, it is only 20 Euros.

If an association becomes a founder and/or member of any international organisation, it must apply for re-registration by the Ministry of Justice as an international organisation within a month (1:34). Aside from the expenses mentioned in the previous section above, this entity has to pay a registration fee of 516 USD. On the other hand, the re-

registration of businesses in Ukraine is obligatory only when they change their names, legal status or property (4:20), but not for setting up branches in Moldova or exercising their rights to association with other entities.

Issuing duplicates of registration certificates costs 10% of the registration fee for businesses (4:6) and 50% for non-business corporations (5:2; 8:2). In other words, businesses have to pay 2 Euros for each duplicate, while an association of international status has to pay 250 Euros for the. same duplicate. This requirement obviously discourages international cooperation on the part of Ukrainian non-profits.

Founders of business corporations are provided with three official copies of the registration certificate (4:12). However, founders of non-business corporations have to pay for notarisation of copies of the certificate which they have to submit to other government agencies (tax authorities, social insurance funds, etc.).

Business corporations are not required to register their branches throughout Ukraine; it is enough for them to inform the tax authority in the jurisdiction where they are based (4:18). In contrast, branches of non-business corporations are generally subject to registration (1:14). No branches are entered into the Register of Tax-Exempt Entities, but non-business corporations have to pay a registration fee of 5 IMI (8:1) or 10 IMI (5:1) for the registration of each branch.

EXCESSIVE LENGTH OF REGISTRATION

According to the law, the registration of private companies must be done within five working days (4:10), while the process of checking the applications of non-business corporations can last up to 72 days. On top of that, the registration body has ten days more to inform the founders of its decision (3:4; 7:7). Moreover, registration bodies may take up to two months to check a minor amendment to a non-profit's statutes (7:14).

Businesses have the right to accelerated registration within one working day, if they pay three times the normal registration fee (4:6). Non-business corporations, however, have no legal right to accelerated

registration. This often prevents non-profits from dealing with urgent matters in important areas such as health care and environmental protection.

Registration bodies are liable to businesses for each day that the registration process goes over the five-day limit – this can amount to as much as 20% of the registration fee (4:8). Yet they bear no such liability towards non-business corporations, some of whom pay registration fees that are 25 times higher than those of businesses.

With respect to both business and non-business corporations, it is founders who are responsible for compliance with Ukrainian law. However, the registration body is obliged to give the necessary advice only to business corporations filing an application (4:10). Non-business corporations are not legally entitled to any free advice by registration bodies. Depriving the founders of non-profits of legal advice on registration issues is a discriminatory practice that violates their constitutional right to information. It leads to technical mistakes and delays in registration.

Another discriminatory practice is that the reservation of corporate names is available only for businesses. The registration body even does a preliminary check of the names of registered business corporations (4:2). In contrast, a decree of the Ministry of Justice deprived Ukrainian non-business corporations of this opportunity in 1999 (6). Since no preliminary checking of organisational names or their reservation is provided for, a number of non-profits are denied registration under the pretext that another entity submitted the application under the same name first (3:10; 7:11). If this happens, founders have to wait another two months or more and pay expenses for resubmitting an application and other papers. Finally,, the registration fee is not paid back to the founders in case of refusal to register a non-business corporation (7:13)

Given these facts, one can conclude that it takes 10 times longer for registration bodies in Ukraine to process the applications of founders of non-profits than those of private firms. Moreover, the same administrative services cost 25-115 times more for the former.

It is false to assume that the Ukrainian government gives businesses free advice and the opportunity .to be incorporated in their own jurisdiction (thus freeing them of the need to travel to the Ministry of Justice in Kyiv) in order to get extra tax revenues. In fact, currently 50% of Ukrainian businesses do not declare taxable income, while 60% of non-profits do not have tax-exempt status. Their status as taxpayers is the same, and these discriminatory practices regarding registration do not have an impact on budget revenues. On the contrary, simplifying the registration procedures for businesses enabled the government to raise funds in the form of registration fees and tax revenues. In conclusion, uniform procedures should be established for registration of legal entities, whether they are business or non-business corporations in Ukraine.

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List of Legal Regulations

1. The Law of Ukraine «On Citizens' Associations» of 16.06.1992, No 2460-XII

2. The Law of Ukraine «On Charity and Charities» of 16.09.1997, No 531/97BP

3. Cabinet of Ministers Resolution «On Approval of Regulations for Legalisation of Citizens' Associations» of 26.02.1993, No 140

4. Cabinet of Ministers Resolution «On State Registration of Businesses» of 25.05.1998, No 740

5. Cabinet of Ministers Resolution «On the Amount of the Registration Fees for Citizens' Associations and their Payment» of 26.02.1993, No 143

6. Ministry of Justice Decree «On Amending the Decree of 14.12.1998, No 66/5 «On Approval of Regulations for a Unified State Register of Citizens' Associations and Charities» of 10.06.1999, No 33/5

7. Cabinet of Ministers Resolution «On Approval of Regulations on the Registration of Charities» of 30.03.1998, No 382

8. Cabinet of Ministers Resolution «On the Amount of Registration fees for Charities and their Payment» of 30.03.1998, No 383

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TASKS, FUNCTIONS, RIGHTS AND PRINCIPLES OF HUMAN RIGHTS PROTECTION ORGANIZATION ACTIVITIES

Yevgeniy Zakharov, Kharkiv Human Rights Protection Group

A human rights protection organization is a special kind of non-profit NGO, whose activities are intended for the establishment and protection of rights and freedoms of people, for the efficient control of their observation by the state, its bodies and officers. Human rights protection organizations attempt to decrease the organized violence on the side of the state. To reach this aim human rights protection organization work at the same time in three directions:

protection of human rights in concrete cases (without remuneration), public investigations of facts of the violation of human rights by state bodies and officers;

spreading information about human rights, legal enlightenment;

analysis of the state with human rights.

All the three directions are closely interlaced, the work only in one direction, generally speaking, cannot be efficient. If one works only with the protection of individuals, then a human rights protection organization is doomed to the non-stop fight with the state under the condition of paternalism, which remains intact, when people do not know their rights and legal instruments of their protection, all these facts threatening human rights. The legal enlightenment and teaching human rights, the knowledge of one's rights, national and international tools of their protection are needed for the successful defense of rights and for the creation of the rightful atmosphere. The analysis of the state with human rights needs analysis of the legal system, of the court and administrative practices, of the measure of their correspondence to the norms of the international right, of the observation of legislation processes, of the initiation of necessary changes in legislation and human rights protection practices. In order to carry out such analysis one must know international agreements in the sphere of human rights, the internal legislation and court practices of other countries, where 'milder' rights are applied, in particular of the European Court on human rights.

It would be great if a network of organizations existed which would deal with one important right, for example, the right to live, or the right to be protected from torture and degrading treatment, or the right to the freedom of expression (freedom of speech and information) and so on. Yet, there are very few organizations (we mean public organizations which deal with the three mentioned above questions), so they have to deal with greatly different abuses of human rights working in the regime of a firemen's brigade. It would be more efficient if human rights protection organizations concentrated on one or two key rights and would treat them profoundly and systematically.

Let us try to consider more exactly and in more details the subject of activities of human rights protection organizations: their tasks, functions, rights, principles of their activity, having in mind the development in the future of the special law 'On public human rights protection organizations'.

The subject of control on the side of human rights protection organizations is the current state policy in the sphere of human rights, decisions, activity (passivity) of state bodies and officers that violate rights and freedoms of people or create obstacles for realizing by people their rights and freedoms. Another kind of human rights abuses is when people are illegally involved into executing some duties or when people are illegally made answerable for some obligations. These violations, obstacles and coercion can be systematic, that is to relate not to single individuals, but to groups; that is why human rights protection organizations regard complaints both from physical and juridical persons, including groups of people who carry out investigation of similar cases by their own initiative.

Human rights protection organizations have to solve such problems:

To protect human rights and freedoms that are fixed in the Constitution and national legislation (including international agreements which the Parliament agreed to satisfy).

To be a source of information on human rights for the people and power bodies, to raise the education level in the branch of human

rights, to encourage respect to law and the development of structures that promote the respect to and understanding of human rights.

To analyze the state of human rights in their country and its separate regions.

In order to solve these tasks human rights protection organizations have to execute such functions:

1. 1. To consider complaints of physical and juridical persons or their associations about abuses of human rights and freedoms fixed in the Constitution, international and national legislation.

1. 2. To inform the claimants about their rights and available opportunities of their legal protection, and to assist the claimants in their access to these opportunities.

1. 3. To act as mediators in the process of regaining the rights and freedoms.

1. 4. To carry out public investigations of violations of human rights (according to the complaints of physical and juridical persons, or by the organization's initiative).

1. 5. To readdress the complaints on behalf of the claimant or on behalf of the human rights protection organization to competent bodies for solving the question.

1. 6. To turn on behalf of the claimant or on behalf of the human rights protection organization to courts or to international organizations.

1. 7. To take part in the court process in order to defend the restoration of the abused rights and freedoms.

1. 8. To draw conclusions from the carried out public investigation.

1. 9. To pronounce the judgement according to the results of the carried out public investigation, to draw a public accusation and public warning to the state bodies or officers whose activity or inactivity resulted in the violation of human rights and freedoms.

1. 10. To publish the results in mass media.

In order to solve problems of the kind 2 human rights protection organizations have to:

2. 1. Collect, prepare and distribute information materials which include:

internal laws (including implemented international ones) which concern human rights, comments to them, corresponding administrative and court decisions and their interpretation by superior court organs;

internal mechanisms of human rights protection;

international juridical documents on human rights and comments to them;

international mechanisms of human rights protection;

information on the activities of the human rights protection organizations and its publication.

2. 2. Create educational printed matter, audio-, photo- and video-materials on human rights for the massive consumers and for specialists.

2. 3. Develop educational curricula and methods for teaching human rights to various social and professional groups.

2. 4. Hold specialized seminars on human rights for representatives of so-called high risk professions (workers of bodies of internal affairs and security services, servants of penitentiaries, advocates, judges, prosecutors, military servicemen, physicians, journalists, trade union leaders and workers of social services), representatives of legislative and executive power whose work concern human rights.

2. 5. Organize various public campaigns and actions supporting human rights in the public mind: competitions for the best essays on human rights and for the best pictures or photographs on the same topic for schoolchildren, sport competitions for students and other similar happenings dedicated to the Day of human rights, to the Day of political convicts and so on.

2. 6. Collect and distribute materials on the history of the idea of human rights and the history of human rights protection movement.

Likewise, to fulfil item 3 human rights protection organizations have to:

3. 1. Prepare conclusions about laws, law drafts and other legal acts and programs directed at the protection of human rights and send them to the Parliament.

3. 2. Monitor the legislation, court and administrative practices in the sphere of human rights.

3. 3. Favor the ratification of international agreements in the sphere of human rights and control the concordance of the national legislation and international obligations in the sphere of human rights.

3. 4. Prepare independent reports about the state of observation and protection of human rights and freedoms, supply comments to official reports directed to international organizations about observation of human rights.

3. 5. Prepare and distribute in the Parliament, government and other bodies of state power and administration analytical materials, recommendations and propositions concerning various questions concerning human rights, in particular, in the sphere of:

national policy;

administrative procedures and practices;

procedural actions of law-enforcing bodies, such as court, militia, prosecutor's office, security services, tax militia, etc.;

international aspects of human rights.

In order to execute these functions human rights protection organizations must have such rights:

the right for a free access to all documents, including documents that are stored by state organs and archives that are necessary for a concrete investigation, as well as the right to copy these documents, if the information stored in these documents does not contain state secrets or other secrets defined by law;

the right to receive written or oral explanations from all persons including state officers, if this information concerns the violation of human rights;

the right to investigate the case on the spot including places of arrest or detainment, as well as penitentiaries or places of military service or psychiatric hospitals and other places of confined freedom;

the right to carry out other actions necessary for checking the facts of the violation, if these actions do not contradict law;

the right to give recommendations to state organs depending on the results of the investigation, as well as assess the actions of state and non-state organs;

the right for the free access to the legislation activity, the right to receive law drafts from the parliamentary commissions, the right to take part in discussing the drafts at the meetings of the committees, the right to turn to subjects of legislation initiatives;

the right to take part in the development of state programs that concern teaching and investigating in the sphere of human rights, in teaching these subjects at schools, higher schools and other institutions where state officers are trained and educated;

the right to be present at court sessions and meetings of other state bodies where the questions of protection of rights and freedoms are discussed, as well as the right to have access to and the right to copy the minutes of such meetings;

the right to receive official reports that the state directs to international organizations, such as the UNO, OSCE, or to the national organizations such as the Supreme Rada and others;

the right to pass the collected information about the violation of human rights or own analytical materials to state bodies, mass media and international organizations, if this information does not contain state secrets or other secrets defined by law.

As to the principles of activities of human rights protection organizations, they are as follows:

Rights of man are protected independently of his race, sex, citizenship, ethnic or social origin, property, rank, occupation, residence, language, religion, political and other views.

Human rights protection organizations have the right to motivated rejection of a complaint. This principle means that an organization has a certain freedom of choice. The organization, in contrast to a state organization of similar profile, accepts a complaint, if the organization anticipates that its efforts could lead to the restoration of rights and freedoms and stop the activity (passivity) of state bodies and officers which caused the violation. A refusal to consider the complaint must be well-motivated.

Open consideration. The work of a human rights protection organization must be open and transparent for the public control. In my opinion, annual reports on activities of the organization would be reasonable; such reports must include the list of the considered complaints, their results, expenditures and sources of financing.

Inviolent character of activities. Certainly, there happen such periods when the violent struggle with the state is justified (Nazi Germany, Soviet Union under Stalin's rule), but this is the method of struggle too distant from the protection of human rights.

'Do not harm!'. This principle means that the methods applied in human rights protection must not worsen the position of the victim. This follows from a more general principle that the main goal of human rights protection activities is to minimize the level of violence in the society.

Independence of the political position. For the human rights protection activities it is important that the civil life must reflect all the parts of the political spectrum and social activities. I believe that human rights protection organizations have the duty to be non-party in principle; they must not support this or that party platform in election campaigns, the political choice must be left individual for each member. In my opinion, members of such organizations must not be members of political parties or deputies of the Parliament.

Independence of the public thought. The public opinion may support ideas that are very far from those shared by human rights protection activists. For example, the public opinion in any country supports the death penalty, whereas human rights protection organizations fight for its abolition.

Honesty, maximal reliability and objectiveness of information. This principle means that the work should be governed by the English court principle: 'To say truth, all the truth and nothing but truth'. This is one of the principal differences between human rights protection and political activities. For a politician, at best, the principle is to say the truth, but not all the truth. The information which may harm a party's reputation is usually concealed. The well-known formula 'He is a son-of-a-bitch, but our son-of-a-bitch' is unacceptable for human rights pro-

tection organizations. Such organizations must attain the objective truth even if it contradicts their interests.

Modesty. This principle is difficult to formalize. Unfortunately, a phenomenon has developed that could be named ‘human rights protection tourism’, when the people calling themselves human rights protectors infrequently stay in their own country; their organizations permanently hold conferences with banquets; this is especially unbearable in the beggarly country.

Independence of the state. Since human rights protection organizations oppose the state, they must be maximally independent of the state, especially in financing. In my opinion, such organizations must not be financed from the state funds and must not use any special privileges, except those established by law for all non-profit NGOs. Nonetheless, the independence must not become confrontation. I am troubled by the prosecutor’s tone which many human rights protection organizations apply to the state, their wish to blame the power in all cases.

Honest cooperation of differently thinking people. This principle of mutual relations of human rights protection organizations with the state was formulated in 1988 by Sergey Kovalev. In everything where I agree with the power, I am ready to cooperate honestly, but whenever the state errs, I will oppose the state by using all lawful methods.

Taking into account interests of all sides involved in a conflict, including those of state organs. This is one of the main principles in conflictology – a clear understanding of the fact that harmony in a society comes not when the interests of all members agree (this would be unnatural and impossible), but when the interests of all the interested sides are regarded in the equal extent.

Encouragement of citizens’ rights by the state. Notice that a human rights protector may not be an etatist, since human rights presuppose the state’s duty to observe them. As an outstanding American human rights protector Catherine Fitzpatric remarked, ‘without just laws, independent judges and professional advocates the struggle for human rights is the elementary struggle for openness: distribution of information about crimes in the hope to wake consciousness or at least

cause some worry among power structures'. That is why human rights protection organizations must keep up the dialog with the state, until the state is capable to do it. The character of the dialog is determined by the above-mentioned principles of the honest cooperation of differently thinking people, and taking into account interests of all sides connected with the conflict, including those of state organs. That is why the old formula of human rights protection in the totalitarian period – 'protection of rights of citizens from the organized violation by the state' – must be expanded by 'assistance to the state in protection citizens' rights.

The question of legalization of a human rights protection organization is a puzzling one. It is obvious that legalization must not be decided by a state organ. It is also obvious that the question whether an organization is a human rights protection one or just called itself so must be decided by human rights protectors' community. Perhaps it should be done by the national association of human rights protection organizations, and a state body should only stamp the decision. A procedure of acceptation of a new organization by the national association should be explicitly formulated, as well as some other demands to a new organization: a code of professional ethics, a declaration of rights and duties and so forth. Yet, we first must grow and develop in order to create a national association.

KUCHMA APPOINTED OFFICIALS IN CHARGE OF THE DEVELOPMENT OF CIVIL SOCIETY

The Commission of encouraging democratization and development of civil society will, among others, provide the consent of actions concerning political reforms and hold consultations between citizens' unions and organs of state power for achieving consensus in this sphere.

This is stipulated by President Kuchma's Decree of 7 October 2002.

Along with it, the commission, being a consulting organ acting at President's administration, will encourage forming the institutes of civil society, as well as organizing and conducting the public forums in the

regions of Ukraine and all-Ukrainian public forum. The Commission will also aid the formation of the public TV and radio broadcasting based on representation of various layers of the society.

The President's Decree approved of the commission composition: former MP Inna Bogoslovskaya, the president of the consulting firm «Prudens» (on her consent); Evgeniy Golovakha, a main researcher of the Institute of philosophy of the National Academy of Sciences of Ukraine; Mikhail Pogrebinskiy, the manager of the Kyiv center of political research and the theory of conflicts (on his consent); Georgiy Pocheptsov, the head of the directorate of strategic initiatives of the President's administration. Aleksandr Chalenko, the head of the Internet department of the executive committee of the Social-democratic party of Ukraine (united), is appointed the secretary of the commission (on his consent). The commission is headed by Vladimir Malinkovich, the manager of the Ukrainian department of the international institute of humanitarian and political research.

As it was made public before, Kuchma in his Decree renamed the Commission of encouraging development of civil society created in spring 2001 into the Commission of encouraging democratization and development of civil society.

Our informant
«Prava Ludyny», No. 1, January, 2001

ON SOME PROBLEMS OF HUMAN RIGHTS PROTECTION MOVEMENT IN UKRAINE

Yevgeniy Zakharov, the Kharkiv Human Right Protection Group

Does the civil society exist in Ukraine and, in particular, that part of it, which is traditionally named human rights protection movement? These questions, like many other questions of the post-totalitarian society, may be answered both «yeas» and «no»; these both answers may be confirmed by weighty arguments.

While considering these questions one must bear in mind the objectively grounded antagonism between the civil society and the state. Any state (including the countries with well-established democracy),

tending to stability and order, tries to expand the sphere of its influence, to increase areas of regulating the life of its citizens, thus decreasing the freedom of choice. This is the nature of a state. A state official always thinks that he is a priori cleverer than a man in the street and knows better how the latter must live. This expansion is opposed by the civil society – a set of all non-governmental structures, which is self-conscious, a structured non-governmental part of the people. Its political sense lies in identifying itself with the dominating factor of the social progress, in understanding its natural superiority over the state. The developed civil society, being an intellectual opponent of the state, makes the state to be oriented to public interests and public opinion in the main aspects of interior and foreign state policy. Fulfilling the protecting functions, the civil society makes the violations of human rights the object of public attention and analysis, it supports justice or minimizes these violations.

In a totalitarian country, which the USSR was, the civil society was completely suffocated. On the contrary, everyone, who tried to struggle for order and justice, was completely discredited by the dependent mass media and corrupted public organization created by the CPSU. Any attempts to create any public structures from below resulted in the unpleasant attention on the side of the former 5th Directorate of the KGB and in the suspension of their activities. Nonetheless, the people were, in Ukraine in particular, who, being not afraid of the repressions, joined various independent organizations, including human rights protecting ones. Yet, it was impossible to legalize these informal associations. With the beginning of the so-called *perestroyka* numerous cultural, ecological and political public structures appeared. It is essential that almost everyone, who named himself a human rights protector, went in for politics. In the end of the 80s all the parties of national-democratic direction were headed by the former political prisoners. Human rights protection organizations had to be created from the roots.

The Law of Ukraine «On citizens' unions», which regulates NGO activities, came into effect on 16 June 1992. BY 1 January 1996 about 5000 NGOs were registered in Ukraine, up to the beginning of 2002 – about 37000 NGOs. It seems that public movements become more and more sig-

nificant and influential. Nonetheless, all experts notice weakness and shapelessness of the civil society in Ukraine. Last year, judging by the results of research, the activities of only 5000-6000 organization was noteworthy. And how many of them may be related to real NGOs that protect public interests?

British researcher Alan Fowler from the International NGO Training and Research Centre) pub the book «Striking a Balance» devoted to the problems of the development of non-governmental unprofitable organizations. He investigated the activities of about 700 NGOs throughout the world and reached distressing conclusions: not more than 15-20% of NGOs may be regarded as influencing the actions of authorities and protect other public interests. The remaining 80-85% are created for other purposes. Such NGOs are especially frequent in the countries of the East and Central Europe, former USSR, Latin America and Africa. Fowler classified these NGOs as follows[xv].

1. BRINGO (Briefcase NGO) – is created by politicians, commercial or mafia structures only for writing propositions to state organs. These NGOs do nothing else.
2. CONGO (Commercial NGO) –- is created by business for decreasing taxes, obtaining the needed equipment, aid in signing contracts and lobbying the interests of the mother-firm in state organs.
3. GRINGO (Government NGO) – is created by state organs for imitating and influencing public activities. According to Fowler's data, such NGOs make the lion share in African countries.
4. MANGO (Mafia NGO) – is created by criminal groups for money washing, raising their image, for masking their criminal activities and pressure on the administration. As Fowler states, such NGOs flourish in the East and Central Europe and former USSR.
5. MONGO (My own NGO) – is created only for self-expression of a certain individual.
6. PANGO (Party NGO) – this from is most popular in the Central Asia and Indo-China. It enables political parties to carry out their propaganda and to lobby their interests on different levels of power.

7. QUANGO (Quasi NGO) – is created by the state for imitating opposition activities and demonstrating it to international community.

Each one may find corresponding examples in the Ukrainian reality. Even without conducting social research one may be sure that the classification and characteristics given by Fowler are also suitable for Ukrainian NGOs.

In the database «Partners» created and supported by the KhG about 200 NGOs are registered, which have human rights protection among their statute goals, about 10-15 of them, by our estimate, work on the professional level. Is it many or few? If one recollects that ten years ago they did not exist at all, then it seems many. Yet, if one compares their number with Western countries, where human rights protecting NGOs are counted tens and even hundreds thousands, then it seems negligibly few, and the influence of the Ukrainian NGOs on the events is practically absent. However, the results of the work of even such a small handful of human rights protecting organizations are astonishing. On their account they have hundreds of victorious courts cases, positive changes in laws, preparation of independent reports on the fulfillment by Ukraine of her international obligations, publication of basic documents on human rights, organization of educational seminars for various professional and social groups and many other successful actions. Yet, they remain unnoticeable on the background of mass violations of human rights. Our experience shows that the activities of human rights protecting organizations are more fruitful, when several such organizations join their efforts. In our opinion, the degree of ripeness of human rights protecting NGOs is already such that it is possible to speak about the creation of institutional opportunities of cooperation. It is desirable to discuss the question about the perfection of the existing interaction mechanisms without organizational blending and the expediency of the creation the joint organizational structures for increasing the capabilities and the influence of human rights protection movement as a whole. So, in our opinion, it would be reasonable to organize the Common Council of human rights protecting organizations, which would realize the connection with the Parliamentary Committee on human rights, na-

tional minorities and interethnic relations and with the ombudsperson's staff, would suggest some standards of human rights protecting NGOs' activities, standards of their behavior and self-regulation. If the Common Council is created and its activities appear successful, it will be possible to make the next step and to raise question about the creation of the National association of non-governmental human rights protecting organizations.

The development of Ukrainian NGOs is braking with obsolete laws, whose imperfection is aggravated by administrative and court practices. Let us consider two most essential, in our opinion, drawbacks of the Law «On citizens' unions».

First, a public organization is defined by Article 3 as a union of citizens for servicing their legal social, economic, creative, age, national-cultural, sporty and other common interests. This definition is treated by executive organs literally, that is they regard public unions as protecting interests of their members only. Remark that political interests are absent in this list, i.e. there are no legal grounds for creating public political NGOs, in particular, human rights protecting ones. In later years we have observed the growth of the number of messages about the refusals to register organizations on the base of disagreement of their statute goals with Article 3. The chances to win such cases in court are very weak: in its letter No. 01-8/319 of 6 July 2000 the Superior Arbitrary court of Ukraine pointed out that «a citizens' union is created for joint realizing by *its* members *their* rights and freedoms on the basis of the unity of interests and the fulfillment of the duties, which reflect the main goal, tasks, directions, forms and methods of the activities of such unions». The Lugansk directorate of justice refused to register the changes in the statute of the Lugansk NGO «Postup», which declared as the main goal of its activities «cultural and educational work among children and youth and stimulating their creative activities». The refusal was based namely on the disagreement with Article 3 and the above-mentioned letter.

Secondly, the sources of financing Ukrainian NGOs are strictly limited. The laws concerning taxation of the income do not distinguish NGOs from the establishments created for extracting profit. In fact, Ukrainian NGOs may not earn money for supporting their statute activities, otherwise they will loose the status of non-profitable ones. Our laws do not encour-

age charity of businessmen, who may direct for charity not more than untaxable 4% of the income. So, practically the only source of financing of Ukrainian NGOs, whose main condition of successful activities is the independent of the state, business, political parties, etc., remain Western charity funds. The experience of the cooperation with such funds proves that human rights protecting organizations preserve their independence.

It follows that there is an urgent necessity to introduce changes in the laws on NGOs and in the practice.

The degree of freedom of Ukrainian NGOs activities is sharply lowered also because of the absence of the law on the procedure of holding peaceful public actions; this serves a reason for numerous conflicts, which often lead to violent clashes. It is enough to recollect about the events of 9 March 2001, 16 September 2002 and many others. Ukrainian laws in general do not treat such terms as «picket», «tent camp», etc. The organs of state power and local self-rule still use the Edict of the Presidium of the Supreme Soviet of the USSR of 18 July 1988, which contradicts Article 39 of the Ukrainian Constitution, since the edict introduces only permissive procedure of public actions. Since other laws are absent, courts must base their decision on this edict. Yet, the adoption of the needed law in the Parliament proceeds with many difficulties. The drafts of the Law prepared by MPs G. Udovenko and V. Pustovoytov were considered in the first reading by the Supreme Rada on 22 March 2001, the draft by V. Pustovoytov was adopted as main. This draft has been already prepared for the second reading with all corrections taken into consideration, but it is not considered yet. At the same time the Ministry of Interior jointly with the USS developed an alternative law draft, agreed it with the Ministry of Justice and passed to the Cabinet of Ministers for consideration[xvi]. So, there appeared an urgent need to organize a wide public discussion of these drafts and to accelerate the adoption of the law. From this point of view it is very important to hold the seminar planned a year ago by the KhG in the framework of the cooperation with the Directorate of human rights in the Council of Europe. The seminal will be conducted on 28-29 November 2002 in Kyiv. We believe that it would be expedient to join the seminar with the debate of the conception, problems and tasks of the modern human rights protection movement using for this one additional day 27 November. It is also

needed to prepare for the seminar the edition that will contain the survey of the messages about violating the freedom of peaceful gatherings and freedom of associations, the analysis of the corresponding laws and law drafts, the materials concerning the conception and tasks of the modern human rights protection movement and the propositions on perfecting the mechanisms of the interaction of human rights protecting organizations. In particular, it would be useful to remind the Ukrainian public about the law draft prepared by the KhG in 1998 «On public (civil) control over the state activities» that, as we learned not long ago, on May 2002 was suggested by Moldova President M. Voronin to the Moldova Parliament for adoption.

So, we invite our colleagues to discuss the above-mentioned questions on the pages of «Prava ludyny», by e-mail, on the forum of our site, etc. If the majority decides that it is preferable to meet in advance of the seminal of 28-29 November, then we will try to find money to add one more day, 27 November, for the work meeting.

[xv] Information from http://www.washprofile.com

[xvi] «Zerkalo nedeli», No. 38, 5 October 2002

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