

FREEDOM OF ASSEMBLY IN POST-SOVIET STATES

REPORT

Belarus • Moldova • Russia • Ukraine
2016-2017



2017

Freedom of Assembly in Post-Soviet states. Report on Belarus, Moldova, Russia, and Ukraine – 2016-2017. By ed. Eugene Krapyvyn, Serhii Bahlai – Kyiv, Expert group “Police under control”, 2017. – 56 p.

Authors:

Dzmitry Charnych (Belarus) – coordinator of legal programs, Belarusian Helsinki Committee, Human Rights Center «Viasna»

Alexandru Postika (Moldova) – lawyer, head of monitoring on democratic processes program, Promo-LEX Association

Alexey Kozlov (Russia) – expert of the Moscow Helsinki Group on freedom of assembly, PhD

Serhii Bahlai (Ukraine) – analyst of the Expert group “Police under control”

Editors – Eugene Krapyvyn, Serhii Bahlai

Design, page layouts – Ivan Yurchyk



This report presents the main trends in the practical implementation of the right to freedom of peaceful assembly in recent years in four countries of the post-soviet states: Belarus, Moldova, Russia and Ukraine.

In recent years, protest movements have intensified in the post-soviet states – the Revolution of Dignity in Ukraine (2013-2014); anti-corruption protests in Russia (2017) and Moldova (2015); unproportional activity of Law-Enforcement agencies in Belarus in preparation for the annual action «Freedom Day» (2017) – which raised new challenges for the government, whose duty is to ensure the right to peaceful assembly.

The material will benefit everyone who is interested in the issues of compliance with international human rights standards in sphere of peaceful gatherings and role of Law-Enforcement agencies on guarantee public order during them.

The report was prepared specifically for the annual Conference of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) in Warsaw in 2017.

Content:

Preface	4
----------------------	---

Belarus (Dzmitry Charnych)

I. Summary.....	8
II. Full Report.....	8
2.1. Legal Framework.....	8
2.2. Demonstrative cases of recent years: review.....	10
2.3. New Trends.....	15
III. Recommendations.....	16

Moldova (Alexandru Postika)

I. Summary.....	20
II. Full Report.....	22
2.1. Legal Framework.....	22
2.2. Demonstrative cases of recent years: review.....	25
III. Recommendations.....	30

Russia (Alexey Kozlov)

I. Summary.....	34
II. Full Report.....	34
2.1. Legal Framework.....	34
2.2. Demonstrative cases of recent years: review.....	36
2.3. Use of force, illegal arrests, disproportionate restriction of peaceful assemblies.....	39
2.4. New Trends.....	41
III. Recommendations.....	42

Ukraine (Serhii Bahlai)

I. Summary.....	46
II. Full Report.....	46
2.1. Legal Framework.....	46
2.2. Demonstrative cases of recent years: review.....	50
2.3. Use of force, illegal arrests, disproportionate restriction of peaceful assemblies.....	53
2.4. New Trends.....	54
III. Recommendations.....	55

Preface

This report is an attempt to briefly present the main trends in the practical implementation of the right to freedom of peaceful assembly in recent years. It was important for the authors of the materials presented in the report to cover key types of government reactions to citizens' activities, to give examples of successful peaceful assemblies held by activists, as well as examples of meetings whose participants faced problems in realizing their right to freedom of peaceful assembly. The main focus of this report is on mechanisms that actually restrict the right to freedom of peaceful assembly, formal and informal practices of law enforcement agencies while ensuring public order for peaceful protests. The final part of each report contains recommendations that the authors provide to the authorities to improve the situation with freedom of peaceful assembly.

Belarus

The situation with the realization of the right to freedom of peaceful assembly sharply deteriorated. The authorities, trying to suppress protest street activity, again began to resort to detentions and arrests of participants of meetings. The culmination of the spring of 2017 was the hard crackdown of the annual mass event «Freedom Day». More than 500 people were detained, about 200 were subjected to administrative arrest for a period of 2 to 25 days.

Russia

The criminalization of the protest continues: the legislation is moving toward the creation of lists of undesirable and unreliable, which, probably, will soon be attracted simply for being in these lists. Legislative changes in recent years, especially the so-called « Package of Yarovaya », are a serious attempt to equate the authorities' criticism not with extremism, but with terrorism. Detentions on single pickets, subsequent fines, and sometimes arrests have become a nationwide practice.

Moldova

Strikes, marches and other kinds of mass events became the norm in the center of Chisinau. The most significant mass actions broke out in the spring of 2015, the reason for their conduct was the growing corruption. Most of the protests in the past three years have been peaceful. The police were trained in organizing and holding peaceful assemblies and were adequately provided with respect to equipment and logistics. At the same time, there were acts and omissions, which can also be seen as limiting freedom of peaceful assembly, several cases were recorded when the police reacted disproportionately to the threats that emerged during a particular peaceful assembly.

Ukraine

The number of claims for banning meetings is also decreasing, as is the percentage of «prohibitive» court decisions. The creation in 2015 of the National Police, as a separate executive body, has become a significant step towards reducing political pressure on the law enforcement system. Law enforcement agencies have become less likely to involve organizers and participants in peaceful assemblies in administrative or criminal proceedings. At the same time, due to the socio-economic situation and military actions, the number of non-peaceful assemblies increased with the use of violence by both the police and protesters. In general, there is an escalation of violence in the

country, which is a new challenge for law enforcement agencies, including in ensuring the right to peaceful assembly.

Eugene Krapyvin,
lawyer, expert of the Expert group "Police under control"

Serhii Bahlai,
analyst of the Expert group "Police under control"

Belarus

(Dzmitry Charnych)

*coordinator of legal programs, Belarusian Helsinki Committee,
Human Rights Center «Viasna»*

I. Summary

Belarusian legislation on mass events contains excessive and disproportionate restrictions on the right to freedom of peaceful assembly. In Belarus, a permissive principle of holding meetings operates, burdened by the obligation of the organizers before filing the application for holding the meeting to enter into civil law contracts with public authorities to protect order, clean up the territory and provide medical care. In some cases, these authorities refuse to conclude such contracts without the decision of the local executive committee to authorize a mass event. And in some cases, the local executive committees refuse to authorize a mass event without concluding these contracts. Such an order devalues the meaning of freedom of assembly; the state de facto refuses to fulfill its positive duty to ensure the exercise of the right to freedom of assembly. This situation in Belarus is exacerbated by the fact that the activities of the militia¹ are not aimed at ensuring the law enforcement and protecting participants in peaceful assemblies, even if it was not sanctioned, but for taking unproportional measures, including detention, use of physical force and special equipment.

Since the majority of peaceful assemblies take place in the absence of a special permit from the local authorities, the very fact of participation in an unauthorized mass event gives the militia officers an opportunity to arbitrarily resort to the dispersal of peaceful assemblies and the detention of its participants. In some cases, the militia officers use physical force and special equipment, again - often unproportionally.

Starting in August 2015, there have been some positive trends in the sphere of realization of the right to freedom of assembly in Belarus, which were reflected in the refusal to practice the violent cessation of unauthorized meetings by the militia officers and arrests of organizers and participants in the meetings. In 2016, this practice has been preserved. At the same time, the organizers and some participants were drafted administrative protocols for organizing and participating in unauthorized mass events. The courts, considering these administrative cases, usually collected disproportionately high fines.

In the spring of 2017, the situation with the realization of the right to freedom of peaceful assembly deteriorated sharply. The authorities, trying to suppress the protest street activity, again began to resort to detentions and arrests of participants in meetings. The culmination of the spring of 2017 there became the hard crackdown of the annual «Freedom Day» mass event. More than 500 people were detained; about 200 people were subjected to administrative arrest for a period of 2 to 25 days.

The use of repression to observers for peaceful assemblies and journalists is of particular concern.

II. Full Report

2.1. Legal Framework

The Belarusian legislation on peaceful assembly contains excessive and disproportionate restrictions on the right to peaceful assembly. As noted in the Joint Opinion of the Venice Commission and OSCE/ODIHR, adopted on the basis of the analysis of the Law of the Republic of Belarus «On Mass Events», the Belarusian Law is characterized by overly detailed regulation of procedural aspects

¹ Name of police in Belarus from soviet times – note by ed.

of holding the meetings. The law creates a complex procedure for adhering to a rigid and time-consuming procedure for obtaining authorization, while at the same time leaving a great deal of discretion to the administrative authorities for the application of the Law.

This procedure does not reflect the positive obligation of the state to ensure and encourage the exercise of the right to freedom of peaceful assembly and freedom of expression. The law also does not provide for appropriate mechanisms and procedures to ensure that these freedoms are practically used and not subject to excessive bureaucratic regulation. Such excessive regulation can unduly restrict the exercise of the right to freedom of assembly and freedom of speech.

The main problem that determines the national context of holding peaceful assemblies in the Republic of Belarus is the permissive procedure for holding all the meetings without exception, including single pickets. Obtaining permission to conduct a mass event is a complex multi-stage procedure, which includes the submission of an application for a mass event, conclusion of relevant contracts for cleaning, medical care and protection of law and order by the organizer. At the same time, compliance with all formalities does not guarantee the obtaining a positive permission to hold a mass event.

In this regard, it is necessary to emphasize the selective nature of the actions of the local authorities in the field of freedom of peaceful assembly. Therefore, as a rule, in the regions the local authorities do not give permission for public actions dedicated to Freedom Day (the day of the proclamation of the BPR, which is celebrated by the public and the opposition as an unofficial day of independence). At the same time, in Minsk the authorities, as a rule, allow demonstrations dedicated to this event (except for 2017). By the same principle, the events on the anniversary of the accident at the Chernobyl Nuclear Power Plant («Charnobylski Shlyakh») are prohibited in the regions, and the procession in Minsk was allowed.

The lack of permission to hold a mass event leads to the fact that the bodies of internal affairs (militia) can take measures to end the mass event on formal legal grounds, disperse its participants, detain them and bring them to administrative responsibility.

According to Part 1 of Article 12 of the Law «On Mass Events», a mass event, as well as preparation for it, must be stopped at the request of the head or deputy of the relevant local executive committee or militia in the following cases:

- if no application has been submitted or a decision has been taken to prohibit a mass event;
- if the provisions of the Law are violated;
- in case of emergence of danger to life and health of citizens.

In accordance with Part 2 of Article 21 of the Law, in case of refusal of the participants of a mass event to comply with the requirements of the head of the local executive committee, the internal affairs body to stop the mass event. The internal affairs bodies take the necessary measures to terminate the mass event in accordance with the legislation of the Republic of Belarus.

This provision is of reference; in case of refusal to terminate the mass event, the actions of the militia are regulated by a special regulatory act – the Law «On Internal Affairs Bodies».

Thus, Part 2 of Article 24 of the Law on internal affairs bodies provides the right of the militia to detain and keep the persons in places of detention, place the persons concerning which the administrative

process is being conducted, and the persons who have been subjected to administrative arrest, in the other premises of the subdivisions of the militia.

According to the Procedural and Executive Code of the Republic of Belarus on administrative offenses, persons may be detained for more than 3 hours (including pre-trial detention) for committing an administrative offense for which an administrative arrest is provided. Article 23.34 of the Code of the Republic of Belarus on Administrative Offenses provides for the responsibility for violating the procedure for organizing and participating in a mass event in the form of an administrative fine or administrative arrest for up to 15 days. This circumstance allows the militia officers to detain the participants in unauthorized mass events and keep them before the trial at the centers of isolation of offenders.

It should be noted that the decision to detain the participants in unauthorized mass events is taken arbitrarily by the militia officers, without any clear criteria. It is not clear why the participants in some mass events are being detained, while the participants in others are not. In a number of cases, the detentions are carried out with the use of physical force, in rare cases they are carried out with the use of special equipment.

The conditions and limits of the use of physical force, special equipment, weapons and special equipment are defined in Article 26 of the Law «On Internal Affairs Bodies». The basic principle of the use of force and special equipment is that, firstly, they are used in the fulfilment of tasks to protect life, health, honor, dignity, rights, freedoms and legitimate interests of the citizens, the interests of society and the state against criminal and other unlawful attacks, and secondly, the fulfillment of these tasks is not possible in other ways.

Physical force and special equipment according to Part 2 of Article 26 of the Law on internal affairs bodies are applied at the discretion of a militia officer based on the current situation.

The use of physical force, special equipment, weapons, military equipment must be preceded by a clear and obvious warning to the person against whom they apply, except when delay in their application creates an immediate danger to the lives of citizens or may entail other grave consequences.

It should be noted that the militia officers often ignore these provisions upon the termination of an unauthorized mass event. In most cases, the detentions of individual participants in mass events occur without warnings.

In recent years, a practice has developed when at the site of unauthorized mass event an information group from the territorial militia's station is present, whose representatives announce through the sound reinforcement equipment that the mass event is unauthorized and that the participants can be detained and brought to administrative responsibility if they are not cease to participate in the mass event.

2.2 Demonstrative cases of recent years: review

Starting in August 2015, there have been some positive trends in the sphere of realization of the right to freedom of assembly in Belarus, which were reflected in the refusal to practice the violent limitation of unauthorized meetings by the militia officers and arrests of organizers and participants in meetings. Cases of detentions and arrests of organizers and participants in unauthorized mass events were a rare exception, which nonetheless occurred.

This practice preserved in 2016. The militia officers abandoned the practice of power overlocking of most of the peaceful assemblies, although they were not coordinated by the local executive committees. At the same time, organizers and some participants were drafted the administrative protocols for organizing and participating in the unauthorized mass events. Perhaps this was due to the establishment of the authorities to restore the contacts with the European Union and the United States.

The courts, with rare exceptions, moved to the practice of imposing penalties in the form of fines instead of administrative arrests to all organizers and active participants in peaceful assemblies. This definitely characterizes the degree of independence of the judiciary system, whose representatives began to consider the possibility of applying this type of punishment even to those public activists whom they had previously punished with administrative arrests, with the appropriate justification in judicial decisions of the impossibility of applying a softer type of punishment.

The amount of fines imposed on a number of politicians and civic activists often exceeded their financial means (the average penalty was about 300 euros for participating in one unauthorized mass event. In the event of a repeated violation, the fines increased manyfold). In this regard, there were recorded the cases of imposing a ban on the alienation of housing, inventory, seizure or attempts to sell the property from the auction to pay fines for the exercising their constitutional right to peaceful assembly.

It should be noted that even in the absence of the authorities' previously harsh measures to prevent or stop peaceful assemblies, there has not been a single instance where such meetings or pickets have become a threat to national security, public order, public health or morals, or accompanied by unlawful behavior of their participants.

In 2016, the authorities, as before, provided the applicants with the opportunity to conduct legally several landmark events: the demonstration on Freedom Day, «Charnobylski Shlyakh», demonstrations and rallies of «Dzyady» in Minsk. The Minsk City Executive Committee agreed upon all of them.

However, some organizers and active participants in these actions were punished with fines under various far-fetched pretexts. The rest of the events were held, as a rule, without seeking the permission from the local authorities, so the participants in such meetings and pickets were subjected to reprisals.

In the first half of 2016 the dozens of activists were prosecuted for taking part in the actions that were carried out in many cities of Belarus in defense of the interests of individual entrepreneurs. The participants in peaceful pickets in support of Nadezhda Savchenko, the pickets against raising the retirement age, actions with other social and economic demands were subjected to repression. The participants in numerous actions of solidarity with political prisoners have been fined.

In total, «Viasna» Human Rights Center is aware of 484 cases of imposing an administrative penalty for exercising the right to peaceful assembly and expression of opinions in 2016, which is almost 7 times higher than the level of repression in this indicator in 2015.

It should be noted that the situation when in 2016 the application of physical force to the participants in peaceful assemblies was rather fragile. Public activist Dmitriy Dashkevich took part in the counter-demonstration during the opening of the monument to Lenin at the Minsk Tractor Plant. Sergey Klishevich, second secretary of the Central Committee of the Belarusian Republican Youth Union,

attacked him with a cry of «Lenin, party, komsomol!»). Then he and several people began to beat D. Dashkevich. After that, the militia officers dragged D. Dashkevich into a minibus, where, as he claims, he was heavily beaten by the militia officers. They mocked, tried to put a baton in his mouth. Doctors recorded traces of beating on the body of D. Dashkevich. Nevertheless, not the OMON² officers were brought to justice, but D. Dashkevich himself. The OMON officers witnessed and did not recognize that they beat the activist. The court relied on the testimony of the militia officers.

Thus, it can be concluded that in the last year and a half before the spring of 2017, the militia officers rarely resorted to detentions and the use of physical force against the participants in mass events. As a rule, protocols on administrative offences for the participants in the meeting were drawn up on the spot, which were then sent to the courts for consideration. During this period, more than 560 cases were considered, the participants in unauthorized mass events were subjected to administrative fines for a total of more than 120 thousand euros.

In March 2017, in Belarusian cities the protest activities increased due to the worsening socio-economic situation in the country, as well as the implementation of Presidential Decree No. 3 «On the Prevention of Social Dependence³» according to which persons who did not participate in financing public expenditure (did not work and did not carry out other activities defined by Decree No. 3) were to pay a fee of about 200 euros. The authorities responded to protest activity with a sharp increase in repression.

On March 5, the «March of Non-Parasites» was held in Brest. On this day, a series of preventive detentions of politicians and activists occurred, but the action became a notable event. Five detained representatives of the anarchist movement were seized in the form of administrative arrest, while other active participants were fined. Later, on March 9, the court appointed an activist Aleksandr Kabanov from Bereza administrative arrest for participating in this action.

Judges also punished the participants in the picketers in the Kuropat security zone with the administrative arrests: Sergey Palchevskiy and Dmitriy Dashkevich were assigned 3 days of administrative arrest.

On March 10, in Molodechno, the «March of Non-Parasites» took place. When the participants began to disperse, harsh detentions began: Anatoliy Lebedko, Yuriy Gubarevich, Vitaliy Rymashevskiy, the politicians and Olga Kovalkova, the activist of the BCD, were detained and thrown into the minibus with their faces to the floor. All were taken to the Molodechno militia's station. Some other participants in the March were also detained. Subsequently, Vitaliy Rymashevskiy, Anatoliy Lebedko and Yuriy Gubarevich were sentenced to 15 days of administrative arrest.

The action in Orsha ended with detentions; there the journalists and Pavel Severinets, co-chairman of the BCD, were preventively detained.

Protests took place on March 12 in Rogachev, Brest and Bobruisk.

On March 13, the courts considered protocols for the participants in these actions; many participants were punished with fines, there are also resolutions on arrest: Pavel Severinets was arrested for 15

² The name of special police unit, which usually involved to ensure order in peaceful assemblies – *note by ed.*

³ «Tuneyadstvo» – it is near one of the meaning of word «parasitism» about person, who doesn't work and doesn't want. In soviet times it was even crime – *note by ed.*

days, Viktor Andreyev and Vasiliy Beresnev were arrested for 13 and 14 days.

On March 14, the courts were held in Grodno, Gomel; on March 15, the persecution of participants in peaceful assemblies continued in Mogiliov, Gomel, and other cities.

On March 15, 2017, in Minsk, a protest took place against Decree No. 3 – «March of Non-Parasites». Despite the exclusively peaceful nature of the meeting, the members of the special services, using excessive violence, detained the participants.

Already on March 16 around Belarus, a wave of lawsuits had been launched against the active participants in Marches in different cities. In Minsk, all the detained members of March were punished by administrative arrest.

«Viasna» Human Rights Center and the International Federation for Human Rights (FIDH) condemned the extensive repression. On March 17, Michael Georg Link, the director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) expressed concern for information on fines and detentions of dozens of protesters and human rights defenders in Belarus.

Meanwhile, on the eve of March 25, the Freedom Day, the courts continued to systematically reduce the number of potential participants of the action: in all regions of the country the activists were punished by administrative arrests.

On March 25 street actions were held, dedicated to the Freedom Day - the anniversary of the BPR formation. To this day, the authorities seized a large number of armed special forces officers, OMON and newest equipment to disperse demonstrations in Minsk. In the morning the entire prospective gathering area was blocked and cordoned off by the militia.

Violating the Law on mass events, the Minsk City Executive Committee proposed the only platform for the event – the Park of People's Friendship – on the eve of the event, stated that the meeting was illegal to gather in any other districts of the city. Under the Law on mass events, the organizers must be notified of the decision on the application for a mass event not later than 5 days before its date.

Despite the exclusively peaceful nature of the event, many of its participants were detained with unproportional force; among the detainees were even random passers-by. Many detainees spent a long time under the open sky on the territory of the departments of internal affairs waiting for the execution of detention, where they were treated cruelly and degradingly.

Some of the detainees were released after the fixation of the data, and the rest, as well as the participants in the action of solidarity, which took place on March 26 in Minsk, passed through the judicial conveyor on March 27, where they were given administrative penalties - fines and administrative arrests.

According to the information of «Viasna» Human Rights Center, on March 27 totally 178 people were sentenced to administrative procedure: 145 people in Minsk and 33 people in the regions of Bobruysk (3), Borisov (2), Brest (1), Vitebsk (11), Gomel (14) and Polotsk (2). As a punishment, the observers counted 75 arrests and 93 fines, including 57 arrests and 80 fines in Minsk (1 case was terminated, consideration of 2 cases was postponed, the results of consideration of 5 cases are unknown); 18 arrests and 13 fines in the regions (the results of consideration of 2 cases in Vitebsk are unknown). The minimum period of arrest is 2 days, the maximum is 25 days. The minimum fine is 2 basic units (46 BYN), the maximum is 80 basic units (1 840 BYN).

Protests on March 25 were held in the regions. According to «Viasna» HRC, more than 900 people were victims of the persecution of activists for exercising their right to peaceful assembly and expression of opinions.

From March 27 to April 13, 2017, «Viasna» Human Rights Center collected 130 questionnaires from individuals whose rights were violated in connection with their statement of opinion and the exercise of the right to peaceful assembly.

The circumstances, that have become known by the result of the questioning, lead to the conclusion that militia officers deliberately violate the norms of the law that regulate their activities: in accordance with the Constitution of the Republic of Belarus, a person, his rights, freedoms and guarantees for their implementation are the highest value and purpose of society and state. The state, all its bodies and officials act within the limits of the Constitution and the acts of legislation adopted in accordance with it. Restriction of individual rights and freedoms is allowed only in cases provided for by law, in the interests of national security, public order, and protection of morals, public health, rights and freedoms of others. Often, the militia officers grossly violated these standards.

Thus, people without uniforms took part in the detention of 80 out of 130 persons interviewed, two officers were in black uniforms of indeterminate purpose. This does not directly violate national legislation, but it contradicts the OSCE Guidelines on Freedom of Peaceful Assembly, according to which «it is necessary that police officers be easily distinguished (including by personal identification marks). When law enforcement officers are in the uniform, their uniforms and/or headgear must have their own identification marks (for example, name or number).

They do not have the right to remove or hide such identification marks, or to prevent others from reading this information during the meeting.» The presence of the militia officers in uniform during the protection of order at a peaceful assembly also serves as a means of ensuring their security, warning of possible incidents of misunderstanding of their official status by those surrounding them.

109 detainees reported that the militia officers had not been introduced; this combination with the above circumstances makes it difficult to identify representatives of law enforcement officers, including the cases of complaints about their actions.

In accordance with the Law «On Internal Affairs Bodies», in all cases of restriction of the rights and freedoms of a citizen, the employee of the internal affairs bodies is obliged to explain to the citizen the grounds for such restriction, as well as his rights and obligations arising in connection with this. Meanwhile, 107 out of 130 respondents did not receive an explanation of the reasons for their detention; some of them were informed of the reason which was not corresponding to reality or law, for example, suspicion of committing a crime or previous participation in protest actions.

80 detainees claimed that the militia officers used physical force. 68 detainees claimed of the use of special equipment without the detainee's cause. Such treatment is a violation of the Constitution and Article 7 of the International Covenant on Civil and Political Rights, and also does not comply with the requirements of the Law «On Internal Affairs Bodies», which allows the use of physical force and special equipment in carrying out the tasks to protect life, health, honor, dignity, rights, freedoms and legitimate interests of the citizens, the interests of society and the state from criminal and other unlawful infringements only in cases when the fulfillment of these tasks is not possible.

2.3. New Trends

In the Republic of Belarus, the realization of the right to peaceful assembly has long been accompanied by such negative trends as:

- 1) the use of physical force and special equipment by the militia officers to participants in peaceful assemblies;
- 2) preventive detention of organizers and potential participants in meetings;
- 3) the presence of a large number of the militia officers in civilian clothing at large events. In many cases, the number of the militia officers in civilian clothes is many times higher than the number of the militia officers in a special form;
- 4) video recording of the participants by the militia officers. Such actions are applied, in our opinion, in order to arouse fear among possible participants in meetings (especially in schoolchildren and students) and thereby to reduce the number of participants in protest activity, and also to create and replenish the card index of persons participating in the protest activity.

The above tendencies should also include repression of observers for peaceful assemblies.

On November 24, 2015 an unauthorized meeting was held in the center of Minsk, organized by Nikolay Statkevich, the opposition politician. The action was timed to coincide with the anniversary of the referendum of 1996. The protocols on an administrative offense were drawn up against at least 12 people. Nataliya Satsukevich and Sergey Kasperovich, the observers from «Viasna» Human Rights Center and the Belarusian Helsinki Committee, were also among them. Thus, the militia officers equated the monitoring of freedom of assembly to the participation in an unauthorized action. Also, the protocols on a similar article were drawn up against the journalists Dmitriy Galko («Novy Chas»), Galina Abakunchik («Radio Svoboda»), Ekaterina Andreyeva («Narodnaya Volya»). Later, Aleksandr Lastovskiy, the press secretary of the Main Department of Internal Affairs of the Minsk City Executive Committee, said that administrative cases against the journalists were terminated. At the same time, according to the militia officers, the observers of human rights organizations that monitored the meeting did not have the right to be present at the venue and were the participants in an unsanctioned meeting. In connection with this fact of persecution, human rights defenders informed a number of UN and OSCE special rapporteurs. In addition, the Belarusian Helsinki Committee sent a request to the leadership of the Main Department of Internal Affairs of the Minsk City Executive Committee to stop the administrative prosecution of the observers.

It is worth noting that the drafting of administrative protocols for the observers did not end with the issuance of an indictment. On December 7, a judge of the court of the Moscow district of Minsk sent the cases of two observers, Nataliya Satsukevich and Sergey Kasperovich, for the revision. Later the militia refused to continue the persecution of the observers.

The situation with the observers of the Belarusian Helsinki Committee and «Viasna» Human Rights Center in March 2017 was of particular concern.

On March 25, during the training of the observers for the holding of public events, riot militia officers rushed into the office of «Viasna» HRC and, after putting all those present in the office on the floor, arrested them. As a result, more than 50 observers, journalists and representatives of international organizations were detained.

Oleg Gulak (Chairman of RHRPA BHC), Raisa Mikhaylovskaya, Lyudmila Kuchura, Dmitriy Drozd (Belarusian Documentation Center), Ales Belyatskiy, Anastasiya Loyko, Irina Smeyan-Semenyuk, Sergey Semenyuk, Alexey Loyko («Viasna» HRC), Mariya Shishchenkova (Front Line Defenders), Evgeniya Andreyuk (Crimea-SOS) were among the detainees. Because of the illegal use of physical force against Alexey Loyko by OMON officers, he was hospitalized with a head injury. Until now, no criminal case has been initiated on this fact.

Five human rights activists – L. Svetik, K. Mordvintsev (“Viasna” HRC), P. Levinov, A. Evseyenko, E. Balanchuk (BHC) – were detained and brought to administrative responsibility for participating in unsanctioned meetings and arrested, although in fact they watched the actions. The appeals of the RHRPA “Belarusian Helsinki Committee” to the internal affairs bodies on the termination of administrative cases against the BHC observers, as well as to the UN Special Rapporteur on the protection of human rights defenders, did not bring a positive result.

III. Recommendations

1. The Republic of Belarus should begin systemic work on reforming legislation on mass events involving a wide range of interested persons, including representatives of civil society and political parties. At the initial stage, changes should be introduced, including, in particular:

- a. The notifiable principle of peaceful assemblies;
- b. Exclusion of the duty of the organizers in peaceful assemblies to conclude contracts for cleaning the territory of the meeting venue, medical care and law enforcement, since these actions result from the positive obligations of the state to realize the right to peaceful assembly;
- c. Removing unreasonable restrictions on places of mass events.

2. Before adopting the appropriate amendments to legislation on mass events, the bodies of internal affairs should refrain from disproportionate use of physical force against participants in peaceful assemblies, detain them and draw up protocols on administrative violations, fulfill positive obligations to promote and protect peaceful assemblies;

3. International organizations should keep the focus on the implementation of the right to peaceful assembly in Belarus; offer the Belarusian authorities the opportunity to study the progressive international experience on the issue of holding peaceful assemblies.

Moldova

(Alexandru Postika)

lawyer, head of monitoring on democratic processes program,
Promo-LEX Association

I. Summary

The freedom of assembly is enshrined in the Constitution of the Republic of Moldova and enjoyed in line with the Law on Assembly, which regulates how assemblies are organised and conducted. The new legal framework was adopted in 2008. It meets most of the requirements provided for in the OSCE recommendations with regards to the right to assembly.

A lot of assemblies took place during 2015-2017. Most of the assemblies were of electoral and political nature. It is particularly during this period that several elections were held in Moldova. Thus, the parliamentary election took place in 2014, local general elections – in 2015, with the presidential election being held in 2016.

The continuous electoral fight led to exploiting to the utmost extent the right to assembly in order to put pressure on authorities, political parties, individuals, as well as on courts of law to adopt certain decisions. Strikes, marches and other mass assemblies became a common thing in the centre of Chisinau Municipality. These assemblies divided the society and made the authorities to act in certain ways that brought to light issues and realities that stood out of sight for years.

The most relevant assemblies were the protests that burst out in the spring of 2015, the issue at stake being corruption and indignation at the theft of nearly one billion dollars out of Moldova's banking system, which was possible thanks to fraudulent alienation schemes.

Starting with 6 September 2015, the centre of Chisinau, the capital city of Moldova, turned into an amphitheatre where opinions and ideas regarding the political system and the issues that affected the entire society were expressed. Since September 2015, protests have been taking place non-stop. There were even tents put up in front of the Presidential Office, the Parliament building and in front of the Government building too. The key objectives of the protesters were fighting against corruption, having the persons at fault for the banking system fraud dismissed and making sure Moldova keeps moving towards the EU. As their most important claims, the protesters demanded for the president to resign, for the Constitution to be amended so as to allow the people elect the president by direct voting and for having incorruptible persons in public dignity offices.

The non-stop protests ended in August 2016. A part of the protesters gave up on 1 August 2016, while the other part was forced to pull out of the place where the assembly used to be held as a decision prohibiting the assembly was issued in this regard. Mass protests continued to take place after the presidential election of 30 October 2016 too, their purpose being to change the electoral system. On the other hand, the loyal forces of the governing parties held demonstrations in support of changing the electoral system, while on the other hand – civil society organizations and opposition parties protested against it. Thus, the first half of 2017 was perturbed by politics-related events.

The concern that the limitation of the right to assembly would be unjustified, which was tolerated by the competent authorities and the members of the society, demands that the cases of abuse be investigated, holding to account those who are guilty of violating the right to assembly. Although 8 years have passed since the events of April 2009¹, the international bodies are still concerned of

¹ On 7 April 2009, mass protests broke out in the centre of Chisinau after the voting results in the Moldovan Parliament were made public. The protests escalated into mass riots with the Parliament building and the Presidential Office being vandalized. In the aftermath, hundreds of persons were apprehended, some of whom reported that they were subjected to physical force and torture without any justification. At least one person died during the protests.

the fact that the allegations made were not investigated completely. The most recent example, in this regard, is the report of the UN Human Rights Committee on the final conclusions regarding assemblies, of 31 October 2016².

Most of the protests that took place over the last 3 years (2015-2017) were peaceful. We think positively of the change in the way the police authorities work. In the recent years, the police were trained in assembly management and were seriously endowed in terms of equipment and logistics.

Thus, in general terms, most of the mass assembly organizers thought positively of the behavioural change of the police as far as peaceful public assemblies are concerned. On the other hand, the opposition political parties believed police were biased and discriminative and that they were used as a tool to harass and put pressure on the opposition.

Our opinion is that there were very few cases when the police officers reacted disproportionately during some assemblies, using special means excessively. Some organisers of and participants in mass assemblies were apprehended, their cases still being looked into in courts. The way in which the trials of these persons are being handled has given rise to great concerns regarding the independence of justice.

At the same time, there are actions and inactions whereby the right to protest peacefully could be limited. These actions seem to be tolerated and sometimes even coordinated by police officers or other public authorities.

Persons dressed as civilians, who were actually officers of special forces, of security bodies as well as sportsmen in some sports clubs affiliated to certain political forces were spotted at the assemblies organised by opposition parties. According to the organizers, these persons made attempts to start quarrels with the people who participated in the assemblies, which added to the pressure that the organizers were under.

During assemblies at which the number of participants was small, there were almost as many police officers. At other assemblies, the police officers meant to separate simultaneous assemblies had guns on them, although the law provides that using a gun is prohibited unless the life of the police officer is at risk.

During 2016-2017, there were at least 3 cases when the police and the local public administration authorities violated people's right to assembly by limiting, without good reason, the movement by public transportation from district centres to Chisinau Municipality and by stopping even railway transport. The organizers of those assemblies reported that the number of participants decreased significantly because of those concerted actions.

It was particularly the opposition parties that reported that territorial party leaders were persecuted for having organized people to participate in the assemblies. They filed a number of complaints with the international structures, whereby they reported that the police used recordings from the previous protests in order to put pressure on the local leaders so as for them to no longer get involved in organizing other assemblies on behalf of the opposition parties.

² The Human Rights Committee, Concluding observations on the 3rd periodic report of the Republic of Moldova (CCPR/C/MDA/3) at its 3309th and 3311th meetings (see CCPR/C/SR.3309 and 3311) held on 18 and 19 October 2016.

Another damaging trend was the use of the mass media to discredit certain political leaders and/or organizers of ample assemblies. A case that happened recently proved that the police did not respond promptly and appropriately to stop the dissemination of flyers denigrating the organizer of the assembly, and neither did they take any measure afterwards to find and punish those who did it. Thus, just when these ample assemblies were about to begin, a great number of flyers containing slanderous information about the party leader were disseminated at the venue.

Several organizers of mass assemblies reported that the law does not regulate simultaneous assemblies fairly. The 'first come, first served' principle provided for in the law seems to lead to situations where one abuses one's rights. Thus, according to the website where preliminary declarations to hold assemblies are registered – some organizers have booked places in the centre of Chisinau for more than 3 years for certain public assemblies. It is worth-mentioning that, more often than not, these organizers did not hold any assemblies, but the fact that they registered them makes it impossible for other honest-minded organizers to assemble in the same place.

II. Full Report

2.1. Legal Framework

The Constitution of the Republic of Moldova provides that assemblies are free and may be organized and conducted only peacefully and without the use of any kind of weapon. According to the Law on Assemblies, the Parliament safeguards the right of any person to organize, conduct and participate in peaceful assemblies in public places outside buildings. The Law No 26 of 22.02.2008 on Assemblies regulates only the procedure of organizing and holding the assemblies held outside the buildings. It does not regulate religious assemblies, processions, demonstrations, sport competitions, cultural and artistic events, commemorative events, meetings on the occasion of official visits, trading activities, which should be regulated by a separate document. Nevertheless, until special regulatory acts are passed, such assemblies will take place in compliance with the Law No 26. As for the trading activities, the local public administration authorities can collect payments for providing the services required by the organizers.

To conduct an assembly, the organizer must inform the local public administration authority of the administrative territorial unit concerned about the assembly at least five days before it. Spontaneous assemblies and assemblies with a small number of participants (less than 50) are not subject to this rule. The fact that no notification was made with regards to an assembly cannot serve as a reason for prohibiting it from taking place, but it can lead to charges for contravention, which, according to Article 67 of the Contravention Code, implies the payment of a fine in the amount of 42 to 58 euros.

The organizer is to provide in the preliminary declaration the name of the organizer, the contact data, the purpose of the assembly, the place, date and hour that the assembly is to be convened at, the route (if any), how is the assembly going to be conducted, the approximate number of participants and the services requested from the local public administration authority. Thus, depending on what services are required, there can be other bodies or institutions involved. Usually the waste collection services, emergency health care services and the services of police authorities to keep public order (in case of rallies) are requested. The law provides that the local public authorities are to take the necessary measures to provide the services that the organizer requested. They are usually provided by the LPA or by the subordinate bodies. Fees can be charged only for the actions and services that are not provided by these institutions.

Chisinau City Hall (Chisinau being the capital city were most assemblies in number and the most numerous ones take place) has an on-line platform for years where records are kept of the registered assemblies. So, every assembly organizer can see whether a particular venue is pre-booked on a particular date. This platform allows for a more efficient systematization and planning of assemblies.

According to the law, the organizer does not have the obligation to meet separately with the representatives of local public authorities or with the police before the assembly. He/she has the obligation to appoint an assembly coordinator. At the same time, the organizer can create his/her own public order team for as long as the assembly takes, the members of which would need to wear distinguishing insignia to be easily identifiable.

According to the good practices in place, more often than not, the police meets with the organizers, before the assemblies, to establish the exact route, planned actions, as well as the services that the police or other public services can provide.

The interviews with most of the leaders of political parties who conducted public assemblies during 2015-2017 revealed that only a few representatives of opposition parties were not called on by the police before the assemblies. The opposition parties reported that they were stalked around by the police and by secret services. No organizer mentioned having had discussions with the police after public assemblies.

As for simultaneous assemblies, the City Hall holds preliminary meetings, at which the representatives of all organizers who intend to convene an assembly at the same venue and at the same time are invited, and they try to establish how the assemblies will be conducted concomitantly. If, considering the venue and the number of participants expected, the persons at the meeting conclude that holding two simultaneous assemblies is possible, then they will give recommendations to the organizers regarding the distribution of space at the venue and to the police authorities regarding public order. If, however, they conclude that holding all simultaneous assemblies at the same venue and taking into account the number of expected participants is impossible, then the City Hall is to propose the organizers to change the time, venue or the format of their assemblies. This suggestion is made orally at the meeting for the organizers at it and then sent in writing, within 24 hours after the meeting, to those who did not participate in the meeting. If none of the organizers accepts to change the time, venue or format of the assembly, then priority is to be given to the organizer that pre-booked the venue first.

Formally, the organizers are under no obligation to contact with one another not even during the meeting with the police. Still, the organizers do have to comply with the requirements of the police, as well as to take away persons who commit contraventions during the assembly.

An assembly can only be prohibited if there is a court decision in this regard. The law provides that the court can be informed about prohibiting an assembly if it is known that the purpose of the assembly is inciting people to aggression, national, racial, ethnic or religious hatred. Also, an assembly can be prohibited if it incites to discrimination or public violence, as well as if it undermines the national security or territorial integrity of the country, if crimes are committed or the public order and public morality are violated alongside the rights and freedoms of other persons or if people's lives and health are at stake.

The legal basis that law enforcement bodies follow during public assemblies consists of the Law No 320 of 27.12.2012 on the Activity and Status of Police Officers, the Law No 806 of 12.12.1991 on

Carabineer Troops (internal troops) of the Ministry of Interior, the Law No 26 of 22.02.2008 on Assemblies, the Law No 218 of 19.10.2012 on the Use of Physical Force and Guns – legislative acts that provide for general powers and duties and for the categories of special measures that can be used.

Some attempts to amend the legal framework on assemblies were made first back in 2013, when the Ministry of Interior (Mol) submitted a Draft Law Amending the Law on Assemblies and a Draft Law on Ensuring and Restoring Public Order During Public Events, whereby certain barriers were to be introduced as far as public assemblies are concerned. It seems, however, that the Mol gave these two drafts up after the public debates during 2013-2014. At present, there are no public discussions regarding any drafts meant to bring changes to the legal framework on assemblies.

The use of physical force and special measures is strictly regulated in the special law on special measures and in the classification on physical force. According to the rules, those subject to this law shall use physical force, including special combat techniques, to defend themselves, to fend away attacks onto citizens, onto law enforcement bodies and other persons involved in ensuring public order and safety and in combating crimes, as well as to stop violations of the law, apprehend offenders, take down those who go against the legal requirements should the non-violent methods be helpful in fulfilling their obligations.

Physical force can be used in any situation where the law allows for special measures or guns to be used. Using physical force shall be avoided, as much as possible, against minors, if their age is obvious or known, against women, older persons and persons that show visible signs of disability. Physical force shall not be used against women that show visible signs of being pregnant, except for cases where they attack the subjects of the law or other persons, including a group of persons, fight back in a way that threatens the lives and safety of people and if such behaviour cannot be stopped by non-violent measures.

According to the police representatives, they use the risk analysis method, which allows to increase, if required, the staff in charge of public order, as well as to determine what is this staff to be equipped with.

Should the law be seriously violated during what was supposed to be a peaceful assembly, the representative of the local public administration authority shall ask the organizer to stop the assembly immediately. Should the participants not abide by the repeated summons to leave the venue of the assembly, the police shall take all legal measures to force people to go away when asked to do so by the representative of the local public administration authority. If the assembly is put an end to forcibly, the police shall develop a protocol indicating the reasons and grounds to stop the assembly.

The legislation provides for individual liability, but the organizers cannot be held liable for the inactions or the actions of other persons.

There were very few cases when the police officers took into custody the organizers of certain assemblies before the protests themselves even started. Usually, people are apprehended for not having complied with the requests of the police or for having insulted the police officers. No-one was apprehended, though, for not having observed the preliminary booking. A few persons who participated in mass assemblies were apprehended and taken into custody during the reference period. They were charged with mass rioting, but no final court decisions were issued.

In general, the trust in justice has decreased significantly of late. The way in which the administrative/criminal cases of persons taken into custody before or during assemblies are being tried has given rise to new protests in front of the courts of law. The number of assemblies held in front of courts of law increased lately to a significant extent.

Given that the assemblies were mostly peaceful and no special measures were used, emergency health care was needed only a very few times.

The organizers of or participants in assemblies have the right to challenge the action or inaction of authorities or representative of authorities, including of the police in disciplinary, criminal or administrative cases. Nevertheless, although several complaints were filled on matters of discipline, criminal and administrative behaviour, none of them was settled in favour of the complainant.

2.2. Demonstrative cases of recent years: review

As already mentioned, the freedom of assembly has gone through positive developments recently. Still, there were some public assemblies where both the organizers/participants and the police officers were not able to safeguard appropriately the right to freedom of assembly. These cases brought into the limelight certain behavioural issues characteristic of both the organizers and the police. All those assemblies where police or participants overdid it were of political nature.

Find below, in chronological order, recounts of several assemblies that took place between 2015 and 2017, which were widely covered by the media because the organizers/participants or the police went too far. Most of the cases are in the middle of judicial or extra-judicial trials. So far, there are no final decisions with regards to any of the cases described hereinafter.

The Protest of 6.09.2015 (The Petrenco Group Case)

On 6 September 2015, around 2 p.m., Mr Petrenco, as leader of 'Casa Noastra – Moldova' (Our Home – Moldova) party and given the pre-booking registered with Chisinau City Hall, led a number of participants in a protest march to the General Prosecutor's Office. They demanded for the Prosecutor General to resign. Mr Petrenco was outside the building, on the stairs, shouting slogans against the Prosecutor General. Special forces came at the site. Shortly after that, a special response squad showed up at the venue and formed a police chain stretching around the Prosecutor's Office, separating the protesters from it. A lot of people were at that time on the stairs of the Prosecutor's Office. Before long, when the protesters hailed the suggestion to put up tents, the special forces standing on the upper stairs at the entrance into the PO pushed the persons in front of them downwards, making thus the crowd jostle, which led to clashes between protesters and police officers. This jostling served as grounds for the special forces to act against the protesters. As a result, eight persons were picked out of the crowd, among which Mr Petrenco. They were apprehended and escorted to the Riscani Police Inspectorate, then taken into custody and charged with mass rioting. All the members of the organizers' group were taken into custody, their arrest being extended often until January-February 2016, when they were released and put under judicial control. According to the last final decision of the court, the group was prohibited to participate in any public assemblies that could escalate into mass riots. On 28 June 2017, the representatives of the group were found guilty of mass rioting and sentenced to 4 years in prison with conditional suspension for the same period of time and were imposed a fine too. This decision was appealed.

It is worth-mentioning in this regard that the aforementioned persons were held for a long period of time in inhuman detention conditions. The custody was extended numerous times until the case was sent to the court of law. This group of people was held in Penitentiary No 13, in inhuman and degrading conditions. Note that these people were under judicial control and they were forbidden to participate in any type of assemblies. This limitation seems to violate Article 11 of the Convention. This case raises concerns over the way in which the right to protest and the staging of mass riots are interpreted, considering that the group was charged with allegedly attempting to put up tents in front of the Prosecutor's Office and thus block it. The court regarded their actions as mass rioting. At the same time, another associated issue, noticeable in this case, is the way in which the criminal case of this group was examined in court.

The Protest in Front of the Parliament Building of 20.01.2016

Another great protest took place on 20 January 2016. This protest broke out while another protest – a non-stop one – was already taking place in front of the Parliament of the RM since September 2015 and lasted until August 2016. The purpose of the assembly was to voice disagreement with the appointment of the Prime Minister and with the way in which he was appointed. Although many police officers were present on site, they were not able to hold the lines. Before long, a group of protesters broke through them and entered into the Parliament building, where they destroyed some items they found in the hall³. The clashes resulted in many victims, who needed doctors to help them. On 20.01.2016, in the evening, 15 persons – 9 police officers and 6 civilians – were taken to the Emergency Care Hospital with traumas they got at the protest in front of the Parliament. Two party leaders were among the injured⁴.

A criminal case was opened following the protest. The case is still being tried at present. It raises questions over the inaction of police who did not stop the aggression because of which the line of police was broken through and the hall of the Parliament building was deteriorated. The police did not use any special measures during this protest, nor did they apprehend anyone, as it happened in the Petrenco case described above. Criminal proceedings were initiated only after the protest.

The Protest March of 24.04.2016

On 24 April 2016, in the centre of Chisinau Municipality an assembly in the form of a protest march was going to take place. It was organized by an opposition party and was to take place in the Great National Assembly Square. The protesters started out in lines moving to the Great National Assembly Square from four points: Eternity Memorial, 'National' Hotel, the Circus and the Topaz factory. The road traffic on the streets where the march passed was either restricted or redirected to adjacent streets. After the crowd protested in the centre of the capital city, it marched in protest along the central avenue. A number of protesters clashed with the police officers, who were in charge of keeping the public order, near the Bulgara Street and then on Cantemir Street, in front of the business centre owned by a political party in power. On 24 April 2016, in the evening, the Head of the GPI reported that at least 14 police officers were injured⁵. Four persons were apprehended

³ Interview regarding the appointment and election of Pavel Filip as Prime Minister <http://www.europalibera.org/a/27499947.html>, viewed on 2.12.2016

⁴ Interview with the Minister of Interior <http://www.europalibera.org/a/27499939.html>, viewed on 2.12.2016

⁵ Coverage about the movie about the events of 24.04.2016 – <http://agora.md/live/1344/live-protestul-organizat-de-platforma-da-la-24-aprilie-2016>, viewed on 4.12.2016

in relation to this protest. They were then charged with mass rioting⁶.

On the other hand, the monitoring of public transport by Promo-LEX Association showed that in 9 districts out of 32 – Soldanesti, Ungheni, Calarasi, Straseni, Ialoveni, Hancesti, Cimisia, Cahul and in Chisinau Municipality – public transport was stopped. The organizers believe it was done on purpose so that the people who wanted to participate in the GNAS never get there⁷.

According to a memoir of the organizers, the leaders of the territorial organisations of the party involved in the protest were warned beforehand by police officers and employees of other control bodies not to organize the transport of people to the protest venue.

The March of 22.05.2016 (March in Support of the LGBT Community)

On 22 May 2016, the 'No Fear' LGBT March was stormed into by counter-protesters. For reasons of security, the police made the participants in the 'No Fear' March hide in buses. Both the participants and the police trying to keep the counter-protesters away were attacked with eggs by priests, church-goers and other counter-protesters. On the same day, the PSRM organized in the Great National Assembly Square a demonstration supporting the 'the traditional family'. The Moldovan President, Igor Dodon, had a xenophobic and discriminatory message for the participants in the 'No Fear' March and urged his supporters to defend 'the traditional family'⁸.

Such a demonstration proves yet again the fact that a xenophobic and discriminatory attitude against the LGBT community exists and is being artificially fuelled by civil servants too. Although the purpose of the meeting was to support equality and the observance of human rights, as it wasn't only members of the LGBT community who participated in it, there still was a massive counter-protest that disturbed the conduct of the march.

The Protest of 27.08.2016 (The Independence Day Protest)

On 27 August 2016, a number of meetings and assemblies were held all across Moldova. Most of them were of entertaining and cultural nature, given that Moldova turned 25 years of independence. The Great National Assembly Square (the largest public space in the centre of Chisinau Municipality) was to host several entertaining and cultural events. The most important assembly on the Great National Assembly Square was the one organized by the central public authorities. There was supposed to be a military parade at the event. The pompous events were organized amid protests against the fraudulent schemes played with the state budget, as huge amounts of money were spent for the parade. Because of this, a group of a few hundred persons organized a counter-protest chanting 'I am not afraid'. This group of people was kept away from the pompous assembly by a mesh fence supported by a police cordon. The many video recordings of the event showed that at a certain moment in time, a few protesters started to push against the police cordon. Later, without any warning whatsoever, the police officers started to scatter the crowd using teargas. The breaking

⁶ Coverage – The Moldovan police and the participants in the Sunday protest accuse one another of violence <http://www.europalibera.org/a/27696483.html>, viewed on 4.12.2016

⁷ Coverage – Promo-LEX monitored the right to free movement on 24 April 2016. Transport was stopped in nine districts, <http://linprofunzime.protv.md/stiri/politic/promo-lex-a-monitorizat-dreptul-la-libera-circulatie-pe-24-aprilie.html>, viewed on 4.12.2016

⁸ Coverage Chisinau 2016: the 'No Fear' LGBT March was stormed into by counter-protesters, <http://www.europalibera.org/a/27750196.html>, viewed on 4.12.2016

up of the crowd with teargas caused panic. Some protesters, who looked peaceful, were affected by the teargas.

Having analysed more thoroughly the video recordings, it was noticed that there were 5 persons among the participants in the counter-protest who started to shout offensive words at the police officers. Moreover, they pushed against the mesh fence that was put there to separate the two groups of protesters. We can notice that not the organizers of the assembly, nor the representatives of the City Hall urged the protesters not to be aggressive, unlike what is provided in Articles 21 and 22 of the Law on Assembly. What is more, the police did not try to take the aggressive persons away from among the peaceful protesters either. They just scattered the crowd using teargas. In the end, many persons sustained injuries, including peaceful protesters, and needed health care services. Some of the peaceful protesters filed complaints with the Prosecutor's Office, which refused to investigate the case upholding that the police acted lawfully and rightfully. This refusal was taken to courts, which have not issued any decision on the matter yet.

The Protest of 11.06.2017 (The Protest Against Changing the Electoral System)

On 11 June 2017, several civil society organisations, alongside opposition and extra-parliamentary parties, conducted a protest. As many as 2000 people participated in it. Although the protest passed without incidents, Promo-LEX found that public transport was stopped in a number of localities across the country. The organizers believed that a lot of people willing to participate in the assembly were thus kept away from it. Therefore, certain bus trips from Leova, Floresti and Calarasi districts bus terminals were cancelled or the transport of passengers was made difficult in other cases. In Leova district, the route to Filipeni village was closed. In the town of Floresti, drivers and owners of the buses were warned not to transport protesters, or else their driving licenses will be withdrawn and they will no longer work transporting people. In the town of Straseni, no bus left the terminal towards Chisinau from 10:15 a.m. to 1:00 p.m. The reason – the ticket operators said that the drivers did not want to travel to Chisinau (drivers from the BTA 28 bus terminal). The observers reported that at 1 p.m. the public transport to Chisinau and from villages was restored.

Same as with other assemblies, the organizers reported that there were many people at the protest dressed as civilians, but working for the special services in fact. Moreover, many representatives of some sport clubs affiliated to the party in power mingled among the protesters too. Just like in other cases, the organizers mentioned in a memoir that the territorial leaders of the faction were persecuted for having participated in these assemblies.

The Protest of 20.07.2017 (Against the Passing by the Parliament of the Law Changing the Electoral System)

On 20 July 2017, the Parliament of Moldova was to pass in final reading the Draft Law on the Mixed-Member Electoral System. The party in power decided to set up a stage in front of the Parliament building, to broadcast live the meeting of the Parliament and to thus call on its supporters to participate in an assembly in support of the said procedure.

At the same time, the opposition political factions and some members of civil society organisations declared previously that they would hold a protest in front of the Parliament when the draft law changing the electoral system was to undergo the second reading.

Therefore, the Chisinau City Hall and the police should have convened about how the simultaneous assemblies were to take place. So, the assembly convened by the governing party was held right at the entry into the Parliament building where a stage and sound cabinets were set up, while the other same-time assembly was taking place just a few tens of meters away.

The assemblies did not pass without incidents. Thus, on 19 July, late in the evening, a few supporters of an opposition party decided to hold a spontaneous protest. For this purpose, they brought together a few persons in front of the Parliament, who were then joined by a few tens of other people. Before long, two participants who were more active were apprehended under the pretext that they had tents that they wanted to put up there in front of the Parliament. They were accused of not complying with the requirements of the police and of calling the police officers names. On 20 July 2017, Buiucani Court found them guilty of administrative offences and put them under a 10-day contravention arrest. Although a second appeal was filed against that decision, the Court of Appeal did not provide an answer with regards to it during the time that they spent in custody. It turned out that they had already served their punishment without the court responding to the second appeal.

The simultaneous assemblies of 20.07.2017 were peaceful, in general, without any major incidents. Still, the organizers of the protest against changing the electoral system reported that among the participants there were many instigators working, in fact, for secret services and some sport clubs. The police created a cordon to separate the two crowds. During the assembly, some leaders of the opposition broke through the police cordon and tried to get up on the stage where the main protest was taking place, but they were driven away forcibly by persons dressed up as civilians. Still, police officers used physical force on another party leader recording the entire incident, although his behaviour did not require special measures to be taken. At present, his complaint is under examination.

The Protest of 30.07.2017 (The Protest Against the Changed Electoral System)

On 30 July 2017, several opposition parties announced about holding in front of the Parliament building a large protest against the fact that the electoral system was changed. Although the protest was conducted peacefully, it did not pass without incidents. The worst is yet again that public transport was suspiciously stopped. All bus trips from Straseni to Chisinau were stopped for at least an hour. A number of trips from the towns of Ungheni and Calarasi to Chisinau were cancelled. Mini-bus and bus owners were allegedly threatened into not transporting people to the protest.

Also, a party leader was calumniated, the purpose of which was to keep people from joining the protest. In the morning of the day that the protest was to take place on, thousands of flyers with denigrating information about that leader were scattered across the main street. Unknown persons put in the central area boxes to collect diapers for that party leader. In none of the cases did the police take any measures. It was only on the second day that they said they would start an investigation into the matter. What is more, these incidents were broadcast excessively by the mass media holding owned by the leader of the party in power. The deontological rules were violated too, the purpose being to discredit the leader of the opposition party.

III. Recommendations

Should we compare the number of violations in relation to the number of assemblies, we would see that the freedom of assembly saw constant positive dynamics. Most of the assembly organizers that the authors of this note met with agreed with this conclusion⁹, except for the representatives of the opposition parties, who have had more difficulties conducting their assemblies.

With regards to the right to assembly – the key actors acknowledge the responsibility involved and the importance of having free and peaceful assemblies. The police officers mentioned that proper trainings in the area of assembly management were conducted for them recently. They were also equipped appropriately, to be able to ensure public order in situations of conflict. As they mentioned, they have a risk analysis system that allows them establish along the way how much staff is required to maintain the public order. The parties that organize frequently assemblies have a well-thought-out mechanism to keep the public order among the participants in assemblies, as well as to cooperate with the police and the local public authorities.

Nevertheless, there are certain issues because of the police either overdoing it or not doing anything. The cases described above are reason enough – as far as this matter is concerned – to have more efficient response mechanisms in place so as to allow for assemblies to take place without anyone being hurt during them. Looking, for instance, at the assemblies that had had the greatest negative impact, the police was not able to engage in dialogue with the protesters. In fact, on 20.01.2016, the organizers of the assemblies were not able to keep the crowds under control either. The aggressiveness of some participants in the assembly of 24.04.2016 was fuelled by the fact that public transport to Chisinau Municipality was stopped. On the other hand, the organizers of the assembly of 24.04.2016 could not keep the crowd under control either. What is more, when a group of persons behaving aggressively was apprehended, the organisers said initially that those were instigators.

Another concerning and endless issue is that people are not allowed to assemble. These cases of pressure put on bus and mini-bus drivers, on territorial organizers was mentioned in a number of public meetings and stressed out by several interviewees. Although many complaints were filed, the law enforcement bodies did not look thoroughly into these allegations.

A separate dilemma is the ever so increasing number of criminal cases initiated on charges of mass rioting. The way these cases were interpreted as mass rioting leaves room for discussions, since in one and the same situation the police interprets differently the behaviour of the participants in assemblies as mass rioting, not responding to the requests of the police, hooliganism etc. By examining the cases uniformly, the courts of law play an important role in granting the right to assembly too. Keeping in custody protest organizers for a long period of time can be regarded as a punishment for having allegedly committed offences. The case of that person sentenced to 10 days in custody without the second appeal against the detention being examined all that while puts great question marks over the quality of justice and the independence of courts too.

The overly long time it takes to examine complaints regarding the use of physical force and special measures can dissuade victims of such abuse from going on – on the one hand, and strengthen the

⁹To develop this analytical note, the representatives of all the governing and opposition parties that conducted assemblies during the last three years and civic groups that participated in the assemblies were met with and interviewed

feeling of impunity – on the other. Thus, it remains unclear whether the actions of the police on 27.08.2016 were legal or not and whether the use of teargas was really necessary and proportionate.

The actions undertaken to denigrate certain assembly organizers, powered by the mass media, are meant to work against the right to assembly and affect severely the freedom of expression.

In terms of recommendations, some of them might have been made before, but they are still reasonable at present:

- The organizers should comprehend the responsibility they assume when it comes to organizing assemblies and to the way they send the message in;
- Before assemblies, the organizers should inform, in advance, the potential participants in the assembly about the purpose, objectives and reasons of the assembly;
- For large assemblies or those that a great number of participants is expected to come to, the organizers should have enough people with the help of whom they would manage the assembly and keep public order;
- Police authorities should put in place well-thought-out practices on their interaction with assembly organizers so as to ensure a cohesion during public events;
- The General Prosecutor's Office should examine thoroughly the situations where physical force and special measures were used and disclose the results of the investigations and call the persons at fault – if any – to account.

Russia

(Alexey Kozlov)

*expert of the Moscow Helsinki Group on freedom of assembly,
PhD*

I. Summary

Criminalisation of the protest continues in Russia: the legislation is moving towards the creation of lists of the undesirable and the unreliable, which, probably, will soon be arrested simply for being in these lists. The so-called “Package of Yarovaya” is a serious attempt to equate the authorities’ criticism not with extremism, but with terrorism, and at the same time solve the problem of competition of other faiths and practices with the Russian Orthodox Church.

Detentions of single pickets, subsequent fines, and sometimes arrests have become a common practice all over Russia. Prohibitions and revocation of approvals (a method not existing in the law) on holding public events obviously affect either certain social and political groups (LGBT, non-organised opposition) or social protest when it acquires mass forms (truckers’ movement). Attacks against organisers of events, meetings, discussions, being held by both anonymous and so-called non-anonymous “patriots” are estimated in dozens, and few from them are being investigated. Separately it is worth noting the increase in attacks and attempts to disrupt events in closed premises – exhibitions, presentations, and concerts. We are witnessing more cases of using the Criminal Code against freedom of assembly, which leads, among other consequences, to the forced emigration of activists. The accepted course causes the final ousting of the critics of the regime not only from the streets, but also from any sites. The public grounds themselves are placed in a complicated position in one way or another. The population’s reaction to such actions is obvious. The number of uncoordinated actions, including those relatively radical in nature (road blocking), is growing. The territory of the Crimea peninsula is used to rehearse the “final” prohibitive schemes, the application of which should be expected in the next two years, and especially in the year of the election of the president of the Russian Federation.

II. Full Report¹

2.1. Legal Framework

News in legislation and other legal initiatives

In February 2016, State Duma deputies approved immediately in the second and third reading a bill that equates rallies and tent erection to public events that require approval under the law on rallies: 238 deputies supported the initiative, 199 opposed, three abstained. Against the project were the factions of “Just Russia” and the LDPR. As a result, single pickets are threatened with bans – the only remaining forms of action are those that do not require prior approval and are allowed to respond quickly to socially significant events.

In March 2016, the Ministry of Internal Affairs proposed to ban the departure from the country of persons suspected of extremist activity and those convicted of extremism charges. It has also suggested developing a list of countries in South-East Asia, which are considered dangerous for Russian citizens, due to an uneasy political situation.

¹ Chapter grounds on published report Alexey Kozlov “Freedom of Assembly in Russia in 2016. Review of Legislation and Law Enforcement”, prepared for Legal Dialogue (Access: <http://legal-dialogue.org/freedom-assembly-russia-2016-review-legislation-law-enforcement>) – note by ed.

In June 2016, the State Duma adopted immediately in the second and third reading the so-called “anti-terrorist package” of bills by State Duma deputy Irina Yarovaya and Federation Council member Viktor Ozerov. The adopted amendments significantly tighten a number of laws. In particular, the Criminal Code introduced an article for “non-reporting of a crime”. Failure to report suspected cases of terrorism, seizure of power and encroachment on the life of a public official will be punished by a prison sentence of up to one year. In cases of terrorism, the age of criminal responsibility has been reduced to 14 years. The “Yarovaya Package” tightens control over correspondence. Communication operators will be obliged to store user messages for six months, as well as provide government agencies with the means to decrypt encrypted correspondence. The Criminal Code is also supplemented with the article “declination, recruitment or other involvement” in the organisation of mass riots. It provides for punishment in the form of imprisonment for a term of five to ten years.

On June 23 2016, Russian President Vladimir Putin signed the law “On the Basics of the Russian Federation’s Offences Prevention System”. In particular, the law introduces the concept of “anti-social behaviour”: this behaviour will be considered to be “violating the generally accepted norms of behaviour and morality.” The law gives the right to employees of the Ministry of Internal Affairs to collect data on citizens who were not previously brought to justice, but who are prone to offences.

There have been numerous attempts to introduce official restrictions on freedom of assembly at regional level. They exist de facto in the North Caucasus, where an authorisation system is in force for public events, whereas by law there should be a simple notification process. According to the letter of the law, organisers should inform the authorities of their wish to hold a picket. The authorities may then suggest a change of time or place for the picket, but formally they have no right to permit or prohibit events of this kind.

Putin’s 10 May 2017 directive on special security measures during the 2017 FIFA Confederations Cup and 2018 World Cup. The directive includes the introduction of a strict authorisation system for public events, which for a limited period will require permission from the FSB. The idea of a directive of this kind is not new (there were similar restrictions in place during the 2014 Winter Olympics), but the scale will be much larger this time.

Protection of the right to freedom of assembly in the courts of Russia

In March 2016, the Sverdlovsk District Court of Kostroma awarded activist Nikolai Alekseyev six thousand rubles in compensation for the ban on holding LGBT actions.

Tagansky court in Moscow decided to pay compensation for moral harm to the four base-jumpers, which were held as defendants in the case of painting the star on Stalin’s high-rise, but were acquitted. Each of them will receive about 90 thousand rubles.

In November in Ulyanovsk, the Leninsky District Court refused to arrest Daniel Alferyev, an activist of the Left bloc, accused of extremism for speaking at the CPRF rally on November 7, 2014. Now the activist has been released on the condition of house arrest.

The Chairman of the Supreme Court of the Russian Federation, Vyacheslav Lebedev, based on the decision of the European Court for Human Rights, raised the issue of recognising as illegal the case of arrest and detention the actions of Ilya Gushchin, Artem Savelov and Leonid Kovyazin after the riots at Bolotnaya Square in Moscow. He introduced to the presidium of the court the idea of the resumption of proceedings.

Protection of the right to freedom of assembly at the European Court of Human Rights (ECtHR) and other structures of the Council of Europe

In January, the ECtHR ruled on the complaint of Russian Evgeny Frumkin, who was held for 15 days after being detained during a rally on Bolotnaya Square on May 6, 2012. Russia will have to pay Frumkin compensation of 25.000 euros.

The ECtHR found detention of solitary picketers in Russia a violation of the article of the Convention on the Protection of Human Rights and awarded them 35,000 euros³².

In July, the ECtHR communicated complaints of 15 detainees at public events in Moscow on February 21 and December 30, 2014.

In October, the ECtHR awarded compensation of 1,300 euros to the mother of Leonid Nikolaev, member of the Voina art group, for his arrest in 2010³³. Nikolaev, who appealed the detention, died in 2015.

ECtHR ordered compensation payment of 12.500 euros to the activist of the “Bolotnaya case” Yaroslav Belousov for violation of four articles of the European Convention for the Protection of Human Rights against it.

ECtHR gave priority to the complaints of the persons involved in the Bolotnaya case, Alexey Gaskarov and Ilya Gushchin. Earlier, the ECtHR united seven complaints of Bolotnaya prisoners into a single action. Pavel Chikov (AGORA) notes significant progress in promoting complaints about the Bolotnaya case in the ECtHR. He also does not exclude the possibility of issuing a pilot resolution where ECtHR will express a systemic position on the practice of holding public events in Russia. The court’s interest in such events has grown dramatically over the past couple of years.

In November, the ECtHR gave priority to the complaint of Ildar Dadin and demanded Russia provide his medical documents and conduct a medical survey of Dadin. Doctors working independently from the FSIN should do the survey.

In December, the ECtHR ordered Russia to pay compensation of 5.000 euros and pay court costs of 3.000 euros to Garry Kasparov, Lev Ponomarev, Alexander Averin and four other activists who were detained at the March of Dissent in 2007.

2.2. Demonstrative cases of recent years: review

Bolotnaya case

In January, a court in the Ryazan region granted the parole request of the activist of the “Bolotnaya case” Alexander Margolin.

In March 2016, member of the federal political council of the party PARNAS Natalia Pelevina became a suspect in “Bolotnaya case”. The investigation suspects Pelevina of organising riots. After interrogation as a suspect, the issue of the measure of restraint in respect of her will be decided.

Maxim Panfilov, a 30-year-old resident of Astrakhan, was detained on Thursday, April 7, and taken to Moscow. Panfilov is charged with participation in mass riots and the use of harm and violence against life and health of government officials.

In April 2016, the Moscow court, at the request of the investigator, imposed a security arrest on the property of the leader of the movement “Autonomous Action” Dmitry Buchenkov, accused of involvement in mass riots in Bolotnaya Square in Moscow.

In August 2016, the Moscow Basmany Court extended to Dmitry Buchenkov and Maxim Panfilov the terms of detention until December 2, 2016 and January 7, 2017, respectively. During the hearings it became clear that the investigation term for the Bolotnaya case had been extended until March 6, 2017.

Problems with ensuring the security of action participants

In February, an attack was launched in Moscow on activist Vadim Korovin, who planned to conduct a rally on Krasnye Vorota, in support of Article 35 of the Constitution, which guarantees the protection of private property.

The chair of the Parnas party, Mikhail Kasyanov, postponed the meeting scheduled for February 13 in Nizhny Novgorod because of attacks on him and his associates the day before. According to Kasyanov, the activists of “Anti-Maidan” and “People’s Liberation Movement” (PLM) participated in the attacks.

In Chelyabinsk on February 26, Vyacheslav Kislitsin, the organiser of the rally in memory of Boris Nemtsov, was beaten. The activist was treated in hospital for a broken rib and a heart attack. In the attackers, Kislitsin identified the staff of the Centre for Combating Extremism.

In March, activist Sergei Mokhnatkin was beaten by six officers of the FSIN in Colony No. 4 of the Arkhangelsk Region after trying to prevent transfer to the Kotlas detention centre.

In April, in the Moscow House of Cinema the winners of the school competition “The Man in History. Russia – the 20th century”, organised by Memorial, were attacked. Activists of the People’s Liberation Movement threw eggs and brilliant green at the children participating in the contest, as well as guests of the ceremony.

On May 17 at the Anapa airport Cossacks beat employees of the Fight against Corruption, Alexei Navalny foundation. Six people were injured in the attack, with one hospitalised.

On the night of September 8-9, eight armed, masked men attacked the firefighters of Greenpeace Russia in the Kuban. Two Greenpeace members were hospitalised with fractures. The attackers cut tents, damaged vehicles, stole parts of machinery.

In September, unknown persons broke into the Sakharov Centre and demanded the closure of the exhibition of photographer Alexander Vasyukovich, dedicated to the Ukrainian soldiers who died during the fighting in the Donbass.

Victor Kapitonov, who was detained in Moscow on October 7 during a solitary picket in memory of journalist Anna Politkovskaya, was handcuffed and detained by police officers.

In December, Tomsk video blogger Alexander Sidorov, known as SiberianGuyRu, hosted a single picket in Makhachkala with the poster “To hate gays is an anti-science mistake” and was beaten.

Anti-corruption protests²

The past two months have seen prominent and mass protests in Russia. The most high profile was the “Anti-Dimon” protest, initiated by Alexei Navalny and his Anti-Corruption Foundation. This demonstration was directed against PM Dmitry Medvedev’s alleged illegal activities. On 26 March, tens of thousands of people across Russia, from small towns as well as large regional centres, took to the streets carrying placards with anti-corruption slogans. In most places, the demonstrations went peacefully, but in Moscow there were mass detentions of protesters by the police.

At the same time as these rallies were taking place, the country’s road traffic was being disrupted by a long distance truckers’ strike. The truckers are protesting an electronic toll system introduced to compensate for damage done by heavy goods vehicles to Russia’s roads. And, finally, on 29 April came the “Fed Up” demonstration, set up initially by the Open Russia movement, although admittedly it wasn’t the demo itself that had the most impact, but the inclusion of the movement’s American and British branches in the Russian government’s list of “undesirable organisations”, as well as an illegal search of its Moscow office and seizure of equipment and literature.

The “Fed Up” protest, unlike the 26 March protests, attracted few people and was basically a failure. It was unsuccessful in part due to its strange format in part due to unsuccessful mobilisation of participants (there were practically no direct or repeated calls to drum up potential protesters), as well as the inability of the organisers to convert the moves against Open Russia into media hype and a call to action. There was no publicity around the fact that the searches of Open Russia were linked directly to the forthcoming protests.

The authorities’ reaction to the new wave of protest was predictable: mass arrests, detentions, searches and other infringements of civil rights. Charges and trials on a scale similar to those triggered by the Bolotnaya Square events in May 2012 are a distinct possibility for those involved in the 26 March protests. The Russian authorities are evidently still terrified of street protests and don’t understand why they are happening.

Protesters, in numbers comparable only to those of the first days of the For Fair Elections demonstrations in 2011, have been charged with both criminal and administrative offences. There have been far more detentions and administrative charges than even during the violent dispersal of the Bolotnaya protesters in May 2012.

Moscow City Court’s official record shows that Tverskoy district court filed 732 administrative charges against people detained on Tverskaya Street on 26 March alone. There were also dozens of charges filed in the regions, and 89 known in St Petersburg. So far 64 people in Moscow have been sentenced to administrative detention of between two and 25 days.

No less than 543 people detained by police in Moscow have been given fines of 10,000- 20,000 roubles (£138-£275). All those known to have been charged with administrative offences have been found guilty. Court sessions have had a formal, unlawful and accusatory character.

³ Read more on author’s article “What can we learn from Russia’s spring of protest?” (in English, access: <https://www.opendemocracy.net/od-russia/alexei-kozlov/what-can-we-learn-from-russia-s-spring-of-protest>) – note by ed.

2.3. Use of force, illegal arrests, disproportionate restriction of peaceful assemblies

Prohibitions of public events

In February 2016, applicants for holding of mourning events in Nizhny Novgorod, St. Petersburg and Yekaterinburg reported on the refusal of the city authorities to agree marches and pickets on the anniversary of the murder of Boris Nemtsov.

In March 2016, the authorities in Simferopol banned any public events, tightening restrictions on public actions after the introduction of an emergency status in the Crimea, which applies to all public events except those held by state or local authorities.

The authorities of St. Petersburg have banned the gay parade and two LGBT rallies scheduled for April and May, including the “Rainbow flash mob”, held in the northern capital since 2009. Among other things, the authorities said their conduct would lead to a violation of the federal ban on the propagation of non-traditional sexual relations among minors.

The organisers of the traditional Moscow RAW-Fest, which was due to take place on July 9-10, announced its cancellation due to the pressure of the authorities.

Litigation and other prosecutions of organisers

In January 2016, Preobrazhensky Court of Moscow announced the search for a pensioner Vladimir Ionov. Ionov is accused of repeatedly violating the procedure for picketing (article 212.1 of the Criminal Code). The amount of fines in administrative cases amounted to 320 thousand roubles.

In March, law enforcement agencies re-qualified article 243 of the Criminal Code of the Russian Federation (destruction or damage to cultural heritage objects) to a criminal case instituted against the artist Petr Pavlensky, who set fire to the door of the FSB building. Punishment under this article provides for a real term of imprisonment.

In May, activist Dmitry Vorobyevsky was forcibly taken to the hospital, where he was tied by the arms and legs to the bed, injected and given pills. The hospital personnel refused to disclose the names of the drugs used.

On May 12, the court ruled that there were no grounds for involuntary hospitalisation of Vorobyevsky, who was released in the courtroom.

In relation to the anarchist Elizabeth Tsvetkova, a criminal case was initiated under Art. 282 part 1 of the Criminal Code (incitement of hatred and enmity to the social group “police officers”). Tsvetkova is accused of having downloaded a leaflet with criticism of law enforcement agencies, printed it and posted it at public transport stops and lampposts.

Dmitry Boynov, defender of the park “Dubki” in Moscow, in August became a criminal in the case. After the interrogation, Boynov learned that a criminal case had been instituted against him under Art. 213 Part 2 of the Criminal Code (hooliganism committed by a group of persons by prior conspiracy, or associated with resistance to a representative of power). The maximum punishment under this article is seven years of imprisonment.

On October 14 2016, the judge of the Tverskoi District Court, Alesya Orekhova, decided to punish Roman Roslovtsev, an activist, with a 20-day administrative arrest on part 8 of Article 20.2 of the Code of Administrative Offences (repeated violation of the procedure by a participant in a public event). Roslovtsev was detained a day earlier on Red Square with a placard "I'm not afraid of 212.1".

In November, the members of the Human Rights Council ended their work in the Karelian penal colony, where the opposition leader Ildar Dadin is detained. The facts of violence described by him are confirmed, a member of the Human Rights Council Igor Kalyapin said on Tuesday. Earlier, Dadin's wife reported that her husband was beaten in the colony, tortured and threatened with being killed.

Termination of activities that do not require coordination with the authorities

In January 2016, opposition activist Mark Halperin was detained while holding a picket against the "Platon" system on Manezhnaya Square. In relation to Halperin, a criminal case was instituted under Part 1 of Art. 212 of the Criminal Code of the Russian Federation (repeated violation of the established procedure for organising or holding a meeting, rally, demonstration, procession or picketing).

In Nizhny Novgorod, police prevented a meeting of truckers protesting the tax on travel on federal routes in the "Platon" system.

In Moscow, several members of the opposition were detained near the presidential administration building. Yabloko party members were detained while trying to conduct a series of single pickets against the head of Chechnya Ramzan Kadyrov.

On March 10 2016, the Syktyvkar police detained human rights activist Igor Sazhin during a solo picket against attacks on journalists and human rights defenders from the "Committee for the Prevention of Torture" on the border of Chechnya and Ingushetia.

In April 2016, next to the State Duma, police detained participants of solo pickets, demanding impeachment of Russian President Vladimir Putin. The reason for the pickets was the leakage of the Panama Archive.

In June 2016 51 bicycle night parade "White Nights", in which over 1,000 cyclists took part, was dispersed in St. Petersburg. According to organiser Ilya Gurevich, the police detained the co-organiser of the bike ride Mikhail Ivanov. He was taken to the police department of the Admiralty District of the Ministry of Internal Affairs.

Violations at the coordinated public events

At the May Day march in St. Petersburg, 11 people were detained – LGBT activists and two people from a convoy of feminists, as well as a public figure Vsevolod Nelaev.

In May 2016, the Novosibirsk resident Artem Loskutov, one of the organisers of the annual procession "Monstration", was found guilty of part 1 of Article 20.2 of the Administrative Code (Violation by the organiser of a public event of the established procedure for organising or holding a meeting, rally, demonstration, procession or picketing) and awarded a fine of 20,000 rubles. The judge did not explain what actions of Loskutov had violated the law.

In August 2016, OMON officers surrounded farmers and truckers who wanted to conduct a "tractor campaign" to Moscow, and loaded them onto a bus for detaining.

In September 2016, the participants of the protest action in Beslan, detained by the police, drafted administrative protocols on the article on violation of the order of the rally. During the mourning events, five women took off their jackets, under which they wore T-shirts with the inscription "Putin is the executioner of Beslan".

2.4. New Trends

One new initiative has been fining parents of underage protesters, as well as applying extra-judicial pressure (FSB and police officers visiting protesters' schools and homes, parents being summoned to juvenile affairs commissions and the public prosecutor's office etc.). The earlier practice of detaining young protesters at protests has been dropped in favour of this new repressive mechanism.

"The police used to turn a blind eye in at least half of cases, but now the Tverskoy court will swallow everything," says Sergei Sharov-Delaunay, who works in Moscow as a public defender. "It's come to the stage when someone might be detained at 3pm for a supposed offence at a rally that had been banned between 4pm and 6pm, not to mention that half the trial documents would no longer be in place and the court session would be taking place without any witnesses being called."

There's a similar situation in other cities. In Samara, for example, an activist was convicted of taking part in a picket, although he had been detained before it started and was sitting in a police station when it was taking place. Exceptions, such as the case of the Arkhangelsk pensioner Marina Venchikova, only prove the rule. Local law enforcement tried to charge Venchikova with holding an unlawful picket on the basis of a photo posted on a social network in which, according to them, she was allegedly standing with some other people carrying a placard reading "Putin isn't Russia: Russia is us". In the end, an Arkhangelsk district court found she had no case to answer.

So far (in most cases), Russian courts have convicted people who have been actually (however unjustifiably) arrested at public events. But in the future, photos and video clips may be enough to charge someone with an administrative offence.

In general, the present situation with administrative prosecutions doesn't much differ from previous protests followed by mass detentions. There has been no order to "rough them up", but no one is to be allowed to get off scot-free. One new initiative has been fining parents of underage protesters, as well as applying extra-judicial pressure (FSB and police officers visiting protesters' schools and homes, parents being summoned to juvenile affairs commissions and the public prosecutor's office etc.). The earlier practice of detaining young protesters at protests has been dropped in favour of this new repressive mechanism.

As well as administrative cases, numerous criminal cases have been instigated. In Moscow, four people have been accused of attacking a police officer during a protest, and one charge of using force against a representative of authority has been brought in Volgograd, with another one attempted in Petrozavodsk.

The 26 March protests and the St Petersburg metro attack in April have been used by the authorities in

several regions to limit the public's right to peaceful assembly. Voronezh's Anti-Terrorist Commission, for example, has ordered "measures to be taken to limit public and mass events within the Voronezh city limits. The authorities in Tomsk moved the city's "Hyde Park" away from the city centre (where it had been the venue for an anti-corruption rally on 26 March) to an industrial zone on its north-eastern outskirts. In Samara and Orenburg, protest venues were removed from the list of local "Hyde Parks" — specially designated places where Russians could rally without seeking permission from the city authorities, the name a reference to London's famous "Speakers' Corner".

The role of protest organisers is again significant. The direct participation of Alexei Navalny in his own protests, along with his 15 days' detention, certainly won't harm his reputation. Faced with a situation where mass media deliberately do not mention forthcoming protests, circulating information about the course of such demonstrations becomes extremely important — which is why independent media initiatives are important once again. This is exactly why the authorities searched the Anti-Corruption Foundation's offices — in order to disrupt their live broadcast and find any evidence of preparations for future mass protests.

The strike against Open Russia was pre-emptive. It's as yet unclear quite what the consequences will be for the authorities' inclusion of Open Russia's British and American branches in the list of "undesirable" organisations. But there should be no illusions about the prosecutor's statement that this will not impede their regular operation. If you look carefully at Russia's law on "undesirable organisations", it becomes obvious that prosecutions will be carried out against individuals, not organisations.

III. Recommendations

I. To Parliament of the Russian Federation:

- ideally, it is necessary to return to version of Federal Law №54 before the changes in 2012 with the preservation of the chapter on "hyde-parks";
- minimal "cosmetic" changes that at least approximate the current version of the law to international norms and the observance of the European Convention on Human Rights – the refusal to prosecute "repeated offenders", the reduction of fines at least 10 times, the refusal to "damage the rights" of repeated violators of the Federal Law №54.

2. Recommendations to international institutions (the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, the OSCE, the UN special rapporteur on freedom of assembly, the Venice Commission etc.):

- expressing concern to the Russian Federation over the refusal of the state to legal regulation and ensuring fundamental freedom of assembly at the national level and the risk of arbitrary restriction of freedom of assembly by regional authorities;
- monitor and discuss the situation on the legal regulation of freedom of assembly in the Russian Federation and prepare proposals on bringing the norms of Russian national legislation to acceptable standards in ensuring freedom of assembly;
- strengthen the monitoring of the implementation of the decisions of the ECHR and the Human Rights Committee in Russia regarding general measures. Initiate a hearing procedure to discuss the reports of the Russian Federation on the implementation of decisions of the ECHR and the Human Rights Committee on Freedom of Assembly;

– support the initiative to establish a permanent expert body – a working group on the legal protection of freedom of assembly. To provide for the conditions and possibilities for the working group to promptly issue opinions when applying with statements from human rights NGOs on the facts of gross and massive violations of freedom of assembly. Subsequently, such expert opinions assessing the violation (observance) of international principles of freedom of assembly could be submitted to national courts.

Ukraine

(Serhii Bahlai)

analyst of the Expert group
“Police under control”

I. Summary

Violent abuse of the right for the peaceful assembly on the November 30, 2015 became a reason for further strengthening of the protests. Thus, honoring of this right gained increased importance in Ukraine nowadays.

The issues of reforming the power bodies, including the law enforcement, became crucial after the Revolution of Dignity. The MIA and judicial system previously careless with their responsibilities on ensuring the realization of the right to peaceful assembly by citizens, received broad attention of the public. Nevertheless, 3 years have passed and reforms haven't been completed and now are at risk of conservation or even a total cessation.

Dynamics of judicial trials of prohibition of peaceful assemblies has changed: number of claims for prohibition of peaceful assemblies has decreased along with a number of injunctions. For instance, only 19 claims for prohibition of peaceful assemblies were examined in 2016, only 8 of them received positive answers. This number is six times less than in 2014 and two times less than in 2015. The issue shifted from the judicial sphere to the field of law.

Reform of the MIA, which started in 2014, also has a great impact on practical implementation of the right to peaceful assembly in Ukraine. Creation of the National Police in 2015 as a separate executive body was a significant step towards reduction of political pressure on the law enforcement system. Nevertheless, politics still has a great impact on the Police, including the use of informal practices. Police force is still anonymous – some police officers don't have individual identification insignia and such military unit as the National Guard of Ukraine, also empowered with law enforcement functions, is involved in all peaceful assemblies by default.

Law enforcement agencies have called organizers and participants of assemblies to administrative or criminal account less often lately. Unfortunately, number of non-peaceful assemblies with the use of weapons and violence has increased. The most frequent negative trend is involvement of sporty men or so called "titushki", who use violence against protesters in most cases. In such situations the Police usually don't react.

II. Full Report

2.1. Legal Framework

Legal Framework

1. Constitution of Ukraine (article 39) guarantees that: "citizens have the right to assemble peacefully without arms and to hold meetings, rallies, processions and demonstrations, upon notifying in advance the bodies of executive power or bodies of local self-government". This article provides for "notification" procedure for exercising freedom of peaceful assembly instead of "authorization" procedure, as it used to be in the past. This freedom can be restricted only by a court and only in special cases provided for by the Constitution – "in the interests of national security and public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons".

2. International documents on the freedom of peaceful assemblies are also a part of Ukrainian legislature: International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Practice of the UN Human Rights Committee and European Court of Human Rights.

3. ECHR paid attention to implementation of the right to peaceful assembly in Ukraine by its decisions on cases of *Vyerentsov v. Ukraine* (no. 20372/11, ECHR, 11 April 2013), *Shmushkovych v. Ukraine* (no. 3276/10, ECHR, 14 November 2013), where the Court stated the abuse of Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

4. Responsibilities for violation of organization and conduction of peaceful assemblies are regulated on the national level by a number of documents besides the Main Law: separate articles of the Code of Ukraine on Administrative Offences; Criminal Code of Ukraine; Code of Administrative Procedure of Ukraine; decision of the Constitutional Court of Ukraine on a case of advance notice of peaceful assemblies No 4-пн / 2001 as of 19.04.2001.

5. At the same time, state and local authorities frequently used the Order of the Presidium of the Supreme Soviet of the USSR as of July 28, 1988 № 9306-XI «On the order of organization and conduction of peaceful assemblies, rallies, processions and demonstration in the USSR», because it was the only document providing for the order of organization and conduction of peaceful assemblies. When the Constitution of Ukraine took effect in 1996, some normative acts were applied on the succession, but only in cases, when their provisions didn't contradict the Main Law. Thus, the Order had to lose its power, because it contradicts Article 39 of the Constitution: notwithstanding the notification procedure of peaceful assemblies the Order legitimized authorization procedure for peaceful assemblies and obliged organizers to submit an application on a peaceful assembly not later than 10 before the assembly. It also provided for a number of other limitations.

6. Moreover, abovementioned decision of the Constitutional Court of Ukraine as of 19.04.2001 didn't list the Order of 1988 among normative acts to be applied, because it didn't distinguish it as a part of valid legislation of Ukraine. But it was used by courts to support their decisions, which became the main obstacles for peaceful assemblies in Ukraine. Restraining order regarding the peaceful assembly was the first and the last barrier for certain assembly, because protesters had no time enough to appeal. The question was completely closed by the Decision of the Constitutional Court of Ukraine No 6-пн / 2016 as of 08.09.2016, which recognized it as unconstitutional.

7. The Ukrainian legislation doesn't provide for a special law on peaceful assemblies. The lack of it for last 20 years was a subject of heated debates. Several draft laws were sent to the Verhovna Rada of Ukraine for consideration, but the majority voted against them. Usually, arguments against those laws included: special legislation will only create extra responsibilities for organizers and participants of peaceful assemblies and will legalize formal bases for prohibition of assemblies or punishment of participants according.

8. Dynamics of judicial trials of prohibition of peaceful assemblies has changed after the Revolution of 2013-2014: number of claims for prohibition of peaceful assemblies has decreased along with a number of injunctions. For instance, 117 claims for prohibition of assemblies were filed in 2014 and the court answered positively to 85 of them. Number of such claims in 2015 decreased to 41 and there were 20 positive answers. Only 19 claims for prohibition of peaceful assemblies were examined in 2016 and only 8 of them got positive answers.

9. 8 cases against Ukraine, mostly related to Euromaydan protests of 2013-2014, were under consideration in the European Court of Human Rights at the beginning of 2017. Not one case against Ukraine under article 11 of the Convention was sent to the ECHR in 2016.

10. The issue shifted from the judicial sphere to the field of law. At the moment attention is mostly on law enforcement officers, who ensure the protection of public order during peaceful assemblies.

Law enforcement agencies

Depolitization

11. Creation of the National Police of Ukraine in 2015 as a separate executive body, which is controlled and coordinated by the government via the MIA, was a significant step towards depolitization of the Police force. According to European standards of law enforcement the Law "On the National Police" was based on the principle of distribution of functions between the minister-politician and manager-chief of the National Police.

12. According to article 63 of the Law of Ukraine "On the National Police" the Minister of Internal Affairs signs a contract with the Head of the National Police of Ukraine for 5 years. Such innovation in the law reinforces positions of the Head of the Police and decreases political pressure on the law enforcement system. Even if the Minister or the Government resign, the Head of the National Police will keep his position.

13. Creation of the National Police of Ukraine made it possible to differentiate spheres of influence in the Ministry of Internal Affairs and develop a certain system of checks and balances in decision making. Reform of the Police was meant to change existing practices, where law enforcement bodies were used by political parties as a tool manually controlled by the Ministry of Internal Affairs. Work of the National Police is a first step to reduce responsibilities of the Minister (as a political person) and spare him the operative control over the Police.

14. Nevertheless, the Minister of the Internal Affairs keeps substantial control over the Police, for example: *development of the state policy on ensuring public safety and order; distribution of the budget; approval of appointments to key positions in the Police.*

15. Though political neutrality is essential principle of the Police work, stated in *article 10 of the Law of Ukraine "On the National Police"*, which provides for protection of human rights and freedoms by the Police regardless of political beliefs and affiliations, and which also assumes that work of police officers doesn't depend on decisions, declarations or positions of political parties and public organizations – impact of the politics on the Police is still considerable, including the use of informal practices.

Anonymity of the Police force

16. By the year 2014 the key force of the Public Security Police had been represented by the "Berkut" special unit (former "OMON" unit, well-known in the post-Soviet space). The public often drew attention to the "Berkut" officers' disproportionate actions and abuse of power during peaceful assemblies. Human Rights Watch reported that hundreds of people were injured because of the use of force by representatives of special police units in early December 2013. International advisory group in its report published on March 31, 2015 adduced strong evidence that officers of

the "Berkut" unit are responsible for the majority of deaths on February 20, 2014 in Kyiv.

17. The Order No. 144 as of 25.02.2014 "On elimination of the "Berkut" special unit of the Public Security Police" terminated existence of this subdivision. "Berkut" embodied institutional problems of law enforcement bodies: militarization and anonymity. Elimination of this unit slightly improved the security level of peaceful assemblies in Ukraine, but it didn't resolve the anonymity issue.

18. International Advisory Group in its report on investigation of the Maydan events noted that work of the investigation bodies on criminal cases was complicated because none of law enforcement officials, whose faces were completely covered by masks, had any insignia for personal identification. It contradicted recommendations of the most institutions of the European Council, for instance "Recommendation Rec(2001)10 of the Committee of Ministers to Member States on the European Code of Police Ethics".

19. "Improve the identification system for law-enforcement officials, especially riot police, in order to render them accountable for their actions" is stated in the resolution 2116 (2016) of the Parliamentary Assembly of the European Council "On urgent need to prevent human rights violations during peaceful protests".

20. Despite requirements of the new Law "On the National Police" the issue of the police officials' identification is still unresolved. Monitoring of recent mass actions shows that a part of police officers attach badges to their belts or hide them under their flack jackets. Technical aspect of badges also leaves much to be desired: numbers are hard to read and photos are almost indecipherable.

21. At the moment the Parliament of Ukraine examines a draft law on identification of police officials and officers of the National Guard of Ukraine during their work on ensuring of the public order and safety.

Militarization

22. Internal troops of the MIA were engaged in protection of peaceful assemblies. They became the basis for the National Guard of Ukraine – a military subdivision fulfilling law enforcement functions, which was established on March 13, 2014, according to the Law of the Verhovna Rada. National Guard is obliged to ensure public safety and public order during assemblies, rallies, processions, demonstrations and other mass actions.

23. Participation of the National Guard in protection of peaceful assemblies is regulated by the special Law and Order of the Ministry of Interior No. 773 as of 10.08.2016 "On the order of the interaction between the National Guard of Ukraine and the National Police of Ukraine during protection of public safety and order". In fact, participation of the National Guard officers in any peaceful assembly is a default rule.

24. Use of identification insignia by officers of the National Guard is not required by the law, what makes identification in cases of abuse of power almost impossible.

25. Military personnel of the National Guard has to subordinate to the command fully. Hierarchical structure of the military unit means that soldiers cannot apply certain tactics at their discretion, but have to follow the command from the top. For foot soldiers of the military unit it is almost

impossible to recognize the “criminal order” and refuse to fulfil it. Thus, during the Euromaydan internal forces and “Berkut” officers were trapped within political schemes of the elites in power and used as their tools.

26. Centralization put restraint on actions of law enforcement bodies in cases, when it is necessary to act immediately, what makes them helpless (for instance, events in front of the Verhovna Rada on August 31, 2015, when an explosion of a grenade killed four soldiers of the National Guard, who were summoned to protect public order).

27. Use of military units for security during peaceful assemblies can be justified only if they fulfill additional functions, but not their main function – implementation of a positive obligation of the state to protect peaceful assemblies.

28. From the legal point of view the practice of involvement of military personnel of the National Guard of Ukraine to protection of the public order during peaceful assemblies is worrisome, considering the constitutional prohibition to use military units for restriction of human rights and freedoms.

Dialogue police

29. The European Union Advisory Mission (EUAM Ukraine) initiated work of “anti-conflict groups” – “dialogue police”, which is charged with a number of tasks: facilitate conduction of peaceful assemblies; protect the right to peaceful assembly; support a continuous dialogue with participants; prevent possible confrontations and contribute to their de-escalation.

30. Anti-conflict groups of police officers should be spread among participants and wear bright vests instead of common outfit of special forces. Such police officers have to support continuous contact with people, promoting understanding of human rights and obligations and encouraging the feel of security among participants.

31. At the moment there are 120 police officers in 11 regions of Ukraine, who have passed a special training. Kyiv department of preventive communication, which includes “dialogue police”, consists of only 10 people. It is not enough to influence the situation effectively. For example, officers of the “dialogue police” merged into the crowd of numerous participants of the March of Equality (2017). “OZON” group of public monitoring reported that no one have noticed members of the anti-conflict group at recent peaceful assemblies.

32. Few statements on reformation of the security system of mass actions have been voiced during June-July 2017. Key lines: abandon old patterns and forceful methods; make the use of anti-conflict groups a priority. We have to note, that the agency managed to identify the problem – disproportionate use of force during peaceful assemblies – and propose progressive approaches on a strategy level.

2.2. Demonstrative cases of recent years: review

Political protests

33. Protests, organized to express certain political demands usually take place in the so called “government quarter” of Kyiv – in front of the Verhovna Rada building, Cabinet of Ministers of

Ukraine and the President’s Administration, where security is additionally regulated by the Law of Ukraine “On the state security of public state bodies and officials of Ukraine”. When peaceful assemblies take place in front of these institutions, officers of the National Police and the National Guard are additionally engaged for security measures. Usually they stay in line to block access to government buildings. Such incommunicative tactics of law enforcement bodies often results in attempts to break the cordon of law enforcement representatives.

34. Representatives of the “Automaydan” gathered in front of the President’s Administration building on 08.04.2016 demanding lustration of judges, law enforcement bodies and prosecutors. Protesters demanded to talk directly to the President Petr Poroshenko. To express their disagreement with actions of authorities they set tires on fire, what was defined as a tolerable form of a protest by the press-secretary of the National Guard Svetlana Pavlovskaya. But this particular incident resulted in a clash between participants of the assembly and police officers and one person was injured.

35. Clashes between law enforcement officials and protesters started during a protest under the President’s Administration building on 19.02.2017, where protesters demanded to blockade certain areas of Donetsk and Luhansk regions. Protesters tried to bring and set up tents, but representatives of the police prohibited those actions. Law enforcement officials put up a metal fence, which separated protesters from soldiers of the National Guard. About 10 activists of the “blockade” action broke a section of the fence, which divided the corner of Institutska and Sadovaya streets. After the incident with the fence more law enforcement officials came and forced protesters back.

36. Communicative tactics was also forgotten during the mass action in support of Mikheil Saakashvili on 27.07.2017, which was held in front of the President’s Administration building by almost 200 activists. There were small clashes with law enforcement officials. Protesters tried to break through the cordon of police officers and soldiers of the National Guard on Bankovaya street. Confrontation was stopped, when law enforcement officials compromised and let the initiative group go to negotiate.

Religious meetings

37. Procession of the Ukrainian Orthodox Church of the Moscow Patriarchate caused political debates in 2016. For a few weeks police worked in accelerated regime, escorting columns of pilgrims along several regions of Ukraine from the East and West of the country. Law enforcement officials inspected territories along the route. About 14 thousand people participated in church gatherings on 27.07.2016 and about 15 thousand – on 28.07.2016. About 6000 officers of the National Police and soldiers of the National Guard were involved in protection of the public order.

38. Reporting about the procession on briefings before it and after, authorities of the police pointed out their concerns about provocations. Opponents of the procession planned to set up tents on the Zhytomir road and keep pilgrims of the UOC MP out of Kyiv, but police officials prevented it. Later, police officers also managed to neutralize a potential explosion – a criminal case was initiated due to the fact of discovery of munitions.

39. In general, police apprehended 9 people, two of them were going to throw eggs at participants of the procession, four – had posters, which could have provoked a conflict. Three more people were summoned to the police on suspicion of an attempt to bring prohibited articles to the Kyiv-Pechersk monastery. One person had a pepper spray, which was found by police officers. Police officers identified apprehended protesters, held preventive discussions and released them.

40. To prevent possible provocations pilgrims were transported to the venue of the church gatherings on Vladimir hill at the Kyiv center. Moreover, access to that territory was organized exclusively through metal detectors and belongings of believers were inspected by police officers. In general, public order was fully protected.

41. About 15000 believers participated in celebrations of the “Baptism of Rus” on 27-28 of July, 2017. Main celebrations were carried out on the Vladimir hill, where parishioners of the Moscow Patriarchate gathered on July 27, and parishioners of the UOC of the Kyiv Patriarchate gathered there on July 28. Police put up filtration barriers using metal detectors on Pochtovaya square, Trehsvyatitelskaya street, Kostelnaya and Kreschatik streets.

42. Law enforcement bodies used well-proven strategy of 2016. Also, we have to note, that debates about this religious assembly were less hot this year. About 3500 police officers and soldiers of the National Guard of Ukraine were involved in the public order protection.

March of Equality

43. Ukrainian law enforcement officials faced certain difficulties trying to ensure public order and safety during the “March of Equality” – mass action within “KyivPride” international forum supporting rights of the LGBT-community in Ukraine. Thus, for security reasons, the assembly was cancelled in 2012; in 2014 police failed to ensure security of the action; in 2013 representatives of the MIA were attacked and seriously injured during the assembly; in 2015 participants were bombarded with petards and smoke bombs, attacked with tear gas and as a result 10 activists were injured. Police officers also got injured: nine were wounded and one in critical condition was taken to the emergency.

44. In 2016 police changed its tactics and for the first time the March was held at the Kyiv center instead of suburbs, where it took place previously. Quarters along the procession route were blocked by the National Police and National Guard. Filtration borders with metal detectors were put up along with the check points. The strategy can be defined as a “Free Speech Zone”: police creates a safe space, where certain group of people can express their views. “Human Rights Watch” organization was satisfied with conditions of the “March of Equality” in Kyiv for the first time.

45. In 2017 the March of Equality was held using a strategy, which was proven in 2016 and which made work of law enforcement officials better coordinated. No one among demonstrators and their opponents was injured during the March. Police officers weren't injured too: authorities reported about two people with “small scratches”.

46. Lack of female police officers involved in the assembly is among the cons. Superficial inspection was very slow, people lagged at filtration metal detectors because of the lack of female police officers. According to the Law “On the National Police” examination can be carried out only by an officer of the same gender as an activist or a special device should be used, but law enforcement officials had only a few.

47. Two last years showed us positive dynamics: a number of participants of the March have increased. “OZON” group of the public monitoring reports that 1200 people participated in procession in 2016 and 1600 – in 2017. The number of involved law enforcement officials has reduced since the last year from 5500-6000 to 4984 officers in 2017. It means that ratio of police officers to participants of the peaceful assembly had changed.

48. Number of apprehended persons had considerably decreased: 57 in 2016 and only 6 in 2017.

49. We have to mention that the March was strongly supported by internal and external political forces. HRW underlined in particular the role of the President of Ukraine, European Parliament and separate European deputies.

2.3. Use of force, illegal arrests, disproportionate restriction of peaceful assemblies

50. Representatives of the police try to prevent use of tents during assemblies and roughly suppress any attempts to set them up despite the illegal character of their actions. Except for the meeting in support of a blockade of certain areas of Donetsk and Luhansk regions on February 19, 2017, when an attempt to put up a tent caused clashes of law enforcement officials and protesters, the same situation happened during the counter-meeting in front of the religious procession in July 2016 and there also were several similar cases at entrepreneurs' assembly in November and December of 2016.

51. On local level authorities are inclined to prohibit and strictly regulate similar expressions of the public position. But local administrations don't have such authorities, because only the Verhovna Rada of Ukraine has the right to control placing of tents for any purposes of peaceful assemblies.

52. On 17.12.2015 the Vinnitsa City Court obliged the Vinnitsa City Council to dismantle tents of the “Tariff Maydan in Vinnytsya”. But on 25.02.2016 the Vinnytsya Appeal Administrative Court called the decision off and pointed out, that placing tents not for commercial activities, but for peaceful assemblies, doesn't require permissions. This decision of the court was based upon provisions of the Constitutions of Ukraine and the European Convention.

53. According to the national legislation police doesn't have the right to dismantle such tents without respective court's decision. As for soldiers of the National Guard and representatives of municipal services, they don't have the right to dismantle such tents even with a respective court's decision.

54. Disproportionate interference of the law enforcement officials usually happens when protesters set tires on fire. Abovementioned mass action in front of the President's Administration building on 08.04.2016 serves as examples. Eventually, the press-secretary of the National Guard defined this measure as tolerable form of protest.

55. Police officers and representatives of the National Guard regularly ensure public order during conflicts between locals and real estate developers. Law enforcement officials usually take the side of developers during such protests and fail to provide appropriate conditions for expression of locals' positions. While developers are willing to involve “titushki” – sporty men, who use violence against protesters when there is no response from the police.

56. Unknown athletic looking people started a scuffle with the ATO veterans in Dnipro on 09.05.2017. To avoid a clash the police forced them back. 11 veterans were injured, two were taken to the emergency, and one had severe brain damage. Eyewitnesses reported that police officers used tear gas and batons; they snatched phones and broke cameras, when people were trying to record them. In result, 14 people were injured – 8 protesters and 6 police officers. Authorities of the National Police initiated official investigation regarding relationship between law enforcement officials and “titushki”.

57. Parliamentary Assembly of the European Council in its Resolution 2116 (2016) “On urgent need to prevent human rights violations during peaceful protests” asks to “regulate the use of tear gas and other “less-lethal” weapons more strictly in order to include more adequate and effective safeguards to minimise the risk of death and injury resulting from their use and abuse and from avoidable accidents”

58. We shall note that there is a local dimension of peaceful assembly in Ukraine, where courts and law enforcement bodies react more forcefully than in the capital. For example, Kharkiv has been a leading city in the number of restricted peaceful assemblies for several years, before and after the Maydan events.

59. For a long time Odessa ranked second in the list of disproportionately restricted peaceful assemblies, but now it is improving its situation. There are also fewer claims on prohibition of peaceful assemblies filed to courts. Unfortunately, local authorities and police officials use another strategy against “undesirable” assemblies, which is called “mining” of the venue. Right before the assembly the National Police receives a call warning about bomb at the venue of the assembly. Police officers block the venue from everyone (the same situation happened on 02.05.2016, when people wanted to celebrate the second anniversary of a tragic fire at Kulikov field). In result, the assembly has been cancelled, bombs have not been found, “phone hooligans” have not been found either.

2.4. New Trends

60. The number of non-peaceful assemblies with use of weapons and violence has increased in comparison to the pre-Maydan period. Major cases of violence took place on August 31, 2015, when four soldiers of the National Guard of Ukraine died during the assembly in front of the Verhovna Rada building.

61. Number of attacks against peaceful assemblies by representatives of right-wing movements and “titushki” has increased. Usually, police officials don’t react at such events or coordinate their activities with attackers. Events in Dnipro on 09.05.2017 can serve as an example. The same situation happened on 19.03.2016 in Lviv during the LGBT action, when police officers only gave “educational talks” to “activists”, who attacked the participants, throwing stones and using pyrotechnic. Unknown people in balaklavas attacked a peaceful assembly at the Volyn custom office on 25.04.2016.

62. Law enforcement bodies call organizers and participants of peaceful assemblies to administrative and criminal account less often now.

63. Conditions of demonstrations, devoted to the Memorial Day of the Crimean Tatar Deportation, have improved. Deportation of Crimean Tatars was declared a genocide of Crimean-Tatar people by the Regulation of the Verhovna Rada of Ukraine in 2015 and the 18th of May was declared a memorial day.

64. March of Equality in Kyiv showed liberalization of people’s attitude and higher security guarantees during protection of the public order. But in Odessa situation with this March is difficult. In 2016 the court prohibited the demonstration, but after a repeated notification, administration of the city didn’t prohibit the action. In the same way Lviv Circuit Administrative Court prohibited mass action of the LGBT community at the center of the city on 19.03.2016 and organizers had to relocate the action.

65. Protests where participants use symbols of left-wing movements were marginalized because of adoption of the Law of Ukraine “On denunciation of communist and national-socialist (nazi) totalitarian regimes in Ukraine and prohibition of their symbols propagandas”. General interim conclusion prepared by the European Commission for Democracy through Law of the Council of Europe (the Venice Commission) and the Office for Democratic Institutions and Human Rights (ODIHR) states that regulation, introduced by the law, affects human rights, in particular the right to freedom of speech, freedom of association, assembly and electoral rights. It was also stated that the Law has overly wide scope and introduce sanctions disproportionate to the pursued legal goal.

III. Recommendations

1. Develop a security instruction for peaceful assemblies and mass actions involving a wide range of public representatives and register it in the Ministry of Justice of Ukraine. The instruction should take into account decisions of the European Court of Human Rights and the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly.

2. Teach personnel the international standards of freedom of peaceful assemblies on the regular basis. Implement more “anti-conflict groups” of higher quality and systematically involve them in peaceful assemblies.

3. Pay particular attention to proportionality of police norms underlying the need to avoid the use of force. Strictly regulate the use of tear gas and other police measures.

4. Demilitarize security of peaceful assemblies by distribution of functions between the Police and the National Guard; stop involving military men to protection of the public order during all protests by default.

5. Initiate disciplinary proceedings against police officers, who don’t wear or hide individual badges.

6. Ensure security of organizers and participants of any assemblies, including counter-demonstrations and spontaneous assemblies regardless of their political position. Pay extra attention to security of peaceful assemblies disapproved by majority of the population.

7. Ensure security of all assemblies regardless of advanced notification.

8. Don’t prevent placing of tents and symbolical burning of tires during peaceful assemblies.

9. React at attacks against participants of peaceful assemblies and call to account people, who use violence.

10. Maintain and publish statistics of the use of force by police officials and officers of the National Guard of Ukraine against participants of peaceful assemblies, and also track the number of people apprehended during assemblies.

