

**Ms. Nathalie Prouvez
Chief of the Rule of Law
and Democracy Section**

Dear Ms. Nathalie Prouvez,

In response to your letter dated 30.08.2019 about relevant information of new technologies, including information and communication technologies, and their impact on the promotion and protection of human rights in the context of assemblies, including peaceful protests, please be informed.

Nowadays in Ukraine there is an inadequate level of partnership between state authorities and the public. This affects the quality of decisions made by government bodies. The level of implementation of new information and communication technologies in public administration is insufficient to meet the needs of citizens, including peaceful protests.

With a view to openness and transparency of public policy, involvement in its formation of civil society institutions, programs were developed with the introduction of new technologies for the application of an effective instrument for combating corruption, improving the efficiency of public administration. One of the first was «The Program of Informatization of the Legislative Process for 2012–2017 years». In the same year, the principles of the Open Government Declaration were implemented. Since February 2016, the Electronic Parliament Program has been launched, using information and communication technologies (ICT) for effective interaction between the Ukrainian people deputies and representatives of civil society. Committees of the Verkhovna Rada of Ukraine are currently considering various draft laws providing for the use of new technologies, but unfortunately, there are no laws concerning the procedure for peaceful protests.

1. In view that the Decree of the Presidium of the Supreme Soviet of the USSR of 28.07.1988 «The order of organization of meetings, rallies, street events and demonstrations in the USSR» determines the permissive nature of holding a peaceful assembly, it contravenes Article 39 of the Constitution of Ukraine. Therefore, in accordance with the resolution of the Verkhovna Rada of Ukraine «On the Procedure of Temporary Action in the Territory of Ukraine of Individual Acts of Legislation of the USSR» of 12.09.1991 and the Law «On the Succession of Ukraine», this Decree has been repealed.

In 2014, Ukraine signed an Association Agreement with the EU. Article 14 of the Agreement states that the rule of law and the principle of respect for human rights

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and fundamental freedoms are of particular importance. That is why the European partners of our country insist on solving the problematic issues of holding peaceful assemblies in Ukraine. There were two draft laws on peaceful assembly in the Verkhovna Rada of Ukraine of the 8th convocation - registration numbers 3587 and 3587-1. Each had its advantages and disadvantages, but the Parliament failed to accept any of them at least in the first reading. Draft of Law no. 1200 «On Guarantees of Freedom of Peaceful Assembly» was registered in the new Council of the 9th convocation, but it was withdrawn on Parliament's website. That is why the Verkhovna Rada of Ukraine of the 9th convocation and the newly elected Cabinet of Ministers of Ukraine should come out with a legislative initiative - it is up to them to decide this issue. In partnership of the Ukrainian Ombudsman with civil society institutions, it is planned to establish a dialogue between public authorities and the community using interactive methods of interaction and social networking capabilities, modernize the government system, improve transparency of government decisions, improve access to information, improve access to information, partnership-based interactive projects.

2. It is extremely important for Ukraine to maintain freedom of speech as a value. The right to peaceful assembly and fundamental human rights are interconnected, so effective interaction between law enforcement agencies and journalists is necessary for rapid progress in this direction.

Particularly urgent is the issue of exercising the rights to peaceful assembly and journalistic activity during the period of democratic transformations in Ukraine, in particular, during the election. The protests that led to the Dignity Revolution were organized with the help of new technologies, especially social networks. Bloggers promptly disseminated important information, appealed to international institutions, the media, urged people to go to the Maidan (Square) or go to release detained protesters from the branches of the Ministry of Internal Affairs. The power authorities were hard to block sites and other social networks. Thanks to IT workers who actively cooperate with human rights organizations, programs are developed and implemented to help highlight the real state of human rights cases in Ukraine, including peaceful protests.

3. Social media platforms (such as Twitter, Facebook, YouTube, LinkedIn, discussion forums, or online campaign websites) are privately held organizations whose business model is based on providing free space for meeting information and empowerment in exchange for the right to use personal data of users for advertising purposes. However, while playing an extremely important role in the realization of online rights, social media platforms are also seen by public authorities as key actors to monitor and impose various restrictions on persons who have not even been charged or found guilty of violating the law. In addition, power authorities hold more

meetings with representatives of social networks. According to the terms of service of Facebook, it is clear that proactive removal of content is possible, while there are no clear rules for such removal. More questions arise when the legitimacy of online content is determined by private organizations rather than by a court, which risks unpunished breach of law if the state relies entirely on ad hoc private sector enforcement. Internet and telecommunication networks provide the ability to track online activities of users who have not taken self-defense measures.

Power authorities violate the right on freedom of peaceful assembly and association, as well as the right of citizens to privacy, by disproportionately collecting information and controlling communications until a specific threat arises and in the absence of a clear justification for such actions.

4. Power authorities monitor the actions of organizers and participants of peaceful protests in different ways. If previously law enforcement authorities monitored the activities of public activists through wiretapping and illegal video surveillance, so nowadays tracking mechanisms based on biometric data are used to identify protesters. Wiretapping and other forms of telephone interception are considered serious interference with privacy and correspondence. And tracking the participants of peaceful protests through biometric-based installation technology, in addition to violating human rights and freedoms, is also a threat to the confidentiality of information. For example, reading a fingerprint that allows promoters to turn on or unlock their phones. Where this information will go in the future? Therefore, clear and detailed rules for conducting such operational activities are needed, especially given that the technology is constantly evolving and improving.

Freedom of peaceful assembly is restricted by the government before and during the demonstration. The control of telephone communications and video surveillance is carried out in accordance with the law, but the specific applicable rules are unknown. Such activities can lead to a significant «cooling effect» of the demonstrators, since even staying near their location will result in the person's data being collected and stored. The Internet and telecommunication networks also provide the ability to track online activities of users who have not taken self-defense measures.

5. The use of new, less deadly weapons and ammunition technologies during peaceful protests is not legally regulated. As during the Revolution of Dignity, today there is an excess of powers by law enforcement officers in the application of these types of technologies and weapons, which is a violation of human rights and freedoms.

Regarding the unlawful use of new technologies, an effective remedy available to citizens is the submission of an official request to the police about what data was collected, and after receiving a positive response, initiating a proceedings. On this

occasion, citizens of Ukraine apply to the Ukrainian Parliament Commissioner for Human Rights.

In general, the above examples indicate that the fundamental rights of citizens to peaceful assembly, association and participation may be violated through direct and indirect activities of power authorities.

**Sincelery,
Ombudsmans Representative**

Andriy Mamalyga