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The Legislative Regulation of Ensuring the Right to Peaceful Assemblies

1. Introduction

Geographical and political place of Ukraine in the engine of the European race of big politics, dictates not a simple but sometimes tragic way of socio-political movement of the society of citizens – to take a direct part in solving economic and social programs. Taking into account the processes of state formation and long-term reform of various state institutions, the freedom and right of citizens to peaceful assembly raises before the authorities the question of compliance of citizens' activity in deciding their participation at the state and regional levels, defending their interests by expressing and local authorities.

There is a question of legislative and practical regulation of such a painful issue as the relationship between government and society by regulating the holding of peaceful assemblies and active «unarmed» actions of influence on government agencies at various levels. The necessity of introduction of international standards of ensuring the right to peaceful assembly, first of all the standards of the European community, which is connected with the European integration aspirations of Ukraine, is proved. After all, the implementation of European standards and their observance by the subjects of public administration is one

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of the preconditions for Ukraine's integration into the European legal space. Since the right to freedom of peaceful assembly cannot be exercised in the absence of corresponding responsibilities imposed on the state by its authorized bodies, the analysis of the Constitution and laws of Ukraine allowed to separate such bodies into the category of subjects of power to ensure the right to peaceful assembly.

2. Formulation of the problem

Today peaceful assemblies are an integral part of public political life and essential for building a domestic democratic state regime. Today the science of constitutional law is faced with the need for a comprehensive analysis of the system of regulations in the field of peaceful assemblies. The imperfection of national mechanisms for the legal provision of the right to assemble poses to the theory the task of modeling effective legal constructions in this area and finding immediate ways to improve the current situation.

The purpose of this article is to determine the legal provision of the constitutional right to peaceful assemblies. Achieving this goal involves solving the following **tasks**:

- to characterize the protection of citizens' rights as a sign and the main function of the rule of law;
- to characterize the essence of the right to peaceful assemblies and its place in the human rights system;
- to analyze the content of regulatory and legal support for the implementation of the right to peaceful assemblies.

3. The state of the study

Some aspects of the issue of legal provision of peaceful assemblies have recently attracted some attention of scholars. These problems were dealt with by M.O. Baymuratov, V.V. Bukach, O.V. Vaskovska, M.I. Logvynenko, S.M. Mishchenko, E.E. Regushevsky, V.O. Skomarovsky, R.B. Topolevsky, V.D. Yavorsky and others. At the same time the study of the constitutional and legal nature of peaceful assemblies would be impossible without taking into account theoretical developments in the field of hu-

man rights, historical and foreign experience in the field of peaceful assemblies. It draws attention to the works of such domestic and foreign scientists as L.M. Balitsevich, D. Bayan, M.V. Burmytsky, M. Hamilton, O.R. Zaytseva, Y.A. Dmytriev, B.I. Ismailov, I.S. Kolosov, E.V. Konovalov etc., but there was no analysis of the legal provision for the exercise of the right to peaceful assemblies.

4. Presentation of the main provisions

Freedom of peaceful assemblies is protected by Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, according to which its exercise “is not subject to any restrictions except those established by law and necessary in a democratic society for national or public security purposes, for the prevention of riots or crimes, for the protection of health or morals or for the protection of the rights and freedoms of others”.

According to Art. 39 of the Constitution of Ukraine citizens have the right to assemble peacefully, without weapons and to hold meetings, rallies, marches and demonstrations, the holding of which is notified in advance by the executive authorities or local governments².

Restrictions on the exercise of this right may be imposed by a court in accordance with the law and only in the interests of national security and public order – in order to prevent riots or crimes, to protect public health or to protect the rights and freedoms of others.

This provision of the legislation of Ukraine is essentially the only one that regulates the exercise of the right to peaceful assemblies. The law on the right to peaceful assemblies has not been adopted in Ukraine, although there have been several attempts to adopt it. **The European Court of Human Rights has repeatedly stressed the need to adopt relevant legislation in Ukraine, but it seems that Ukraine is “more comfortable” without such a law.** Thus today at the legislative level the rules for all participants in peaceful assemblies are not regulated, including law enforcement officers, provided clear rules and an exhaustive list of

² Konstytutsiia Ukrainy [The Constitution of Ukraine] (1996, June 28). Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine. Kyiv: Parlam. vyd-vo [in Ukrainian].

grounds for interfering in the exercise of the right to peaceful assemblies, established strict rules governing the use of special means during the suspension of meetings, etc.

Today the lack of legal regulation of mass events leads to numerous abuses, violations of citizens' rights to exercise the right to peaceful assemblies and unjustified interference by the authorities in holding meetings of citizens.

In its decision of 19 April 2001, the Constitutional Court of Ukraine ruled that citizens *"must notify the authorities of the measures taken in advance, that is within a reasonable time prior to its date. These terms should not limit the right of citizens provided in Art. 39 of the Constitution, and should serve as its guarantee and at the same time enable the relevant executive authorities or local governments to take measures to ensure the unimpeded holding of meetings, rallies, marches and demonstrations, ensuring public order, rights and freedoms of others. Determining the specific terms of early notification taking into account the peculiarities of the forms of peaceful assemblies, its mass, place, time, etc. is the subject of legislative regulation"*.

The right to choose the place of meetings, rallies, marches and demonstrations has persons who intend to exercise the right to peaceful assemblies, provided by Article 39 of the Constitution. Article 182 of the Administrative Procedure Code stipulates that the court may prohibit the holding of peaceful events or restrict the right to peaceful assemblies in another way (regarding the place or time of its holding, etc.), as stated in its ruling³.

This norm of the court does not provide the authority to determine the place of a peaceful assembly, so the practice of courts, which determine in the decision the place of a mass event, can not be determined correctly. Claims for restrictions on the exercise of the right to peaceful assemblies in relation to the venues are subject to court analysis only in respect of the venues chosen by the organizers of the peaceful assembly. Other venues need not be identified.

The current legislation does not set specific deadlines for early notification of the subjects of power by the organizers of peaceful assemblies

³ ² Кодекс адміністративного судочинства [Code of Administrative Procedure] (2005, July 6). *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*. Kyiv: Parlam. vyd-vo [in Ukrainian].

about the latter and the deadlines for appeals of executive authorities and local governments to the court on restrictions on the exercise of citizens' right to peaceful assemblies.

According to Part 1 of Article 182 of the Administrative Procedure Code "executive authorities, local governments immediately after receiving notice of meetings, rallies, marches, demonstrations, etc. have the right to apply to the district administrative court at its location with a statement of claim prohibiting such activities or other restriction of the right to peaceful assemblies (as to the place or time of its holding, etc.)".

Part two of Article 182 of the Administrative Procedure Code provides that "the statement of claim received on the day of the measures specified in part one of this article, or after that, remains without consideration". Judicial practice testifies to the wide application of this norm. This rule, on the one hand, obliges the subject of power to apply to the court in a timely manner and aims to avoid illegal interference by such⁴.

In addition, the notification of mass events on the day of its holding effectively deprives the executive and local governments of the opportunity to fulfill its responsibilities for maintaining public order during such events, which may lead to the danger of riots or crimes, a threat to public health or the rights and freedoms of others.

This problem becomes especially relevant in case of untimely notification by the organizers of peaceful assemblies about events that are planned to be held for a long time (several days (months), regularly on certain days of the week (month), etc.).

Since the provision of Part 2 of Article 182 of the Administrative Procedure Code regarding leaving without consideration the statement of claim received on the day of the peaceful event or after its holding is imperative for the court, the provisions of Article 100 of the Administrative Procedure Code update missed.

In our opinion, in the case of a lawsuit to restrict the exercise of the right to peaceful assemblies on the events announced by the organizers within a few days after the start of its holding, the court, in the absence of other obstacles, must accept it and decide in accordance with Ar-

⁴ ³ Кодексы административного судопроизводства [Code of Administrative Procedure] (2005, July 6). Відомості Верховної Ради України – Bulletin of Verkhovna Rada of Ukraine. Kyiv: Parlam. vyd-vo [in Ukrainian].

ticle 182 of the Administrative Procedure Code. In this case, in the case of a decision to satisfy the claim, the prohibition of measures or other means of restricting the right to peaceful assemblies will be applied by the court from the day following the day of the decision in the case.

In deciding cases of restrictions on the exercise of citizens' right to peaceful assemblies, the court must proceed from a fair balance between ensuring the interests of national security and public order and ensuring respect for the rights of citizens guaranteed by the Constitution.

The only legal basis for upholding a lawsuit by the executive and local government to restrict the exercise of the right to peaceful assemblies is a court's recognition that such an event could create a real danger of riots or crimes, a threat to public health or the rights and freedoms of other people. Such a danger should not be imaginary. The executive and local authorities should not only report the real threats that may arise in connection with the meeting, but also provide the court with the evidence that led to such a conclusion.

In order to properly and objectively resolve the case, the court must investigate the nature, purpose and content of the planned peaceful assemblies, the behavior of the organizers and participants of the action during the preliminary events and other circumstances relevant to the case.

5. The law provides for liability during peaceful assemblies

Namely, Article 185–1 of the Code “On Administrative Offenses” establishes administrative liability for violating the procedure for organizing and holding meetings, rallies, street marches and demonstrations. Administrative liability is also provided for officials. In particular, Article 185–2 of the Code “On Administrative Offenses” provides that the provision of officials to conduct in violation of the established order of meetings, rallies, street marches or demonstrations of premises, transport, equipment or other conditions for the organization and conduct of these events, entails imposing a fine⁵.

⁵ Kodeks Ukrainy pro administratyvni pravoporushennia [Code of Ukraine on Administrative Offenses] (1984, December 7). Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine. Kyiv: Parlam. vyd-vo [in Ukrainian].

Criminal liability is established if a peaceful assembly has lost its peaceful character and escalated into mass riots. Thus, Article 294 of the Criminal Code provides for liability for organizing mass riots, accompanied by violence against a person, massacres, arsons, destruction of property, seizure of buildings or structures, forcible eviction of citizens, resistance to government officials with weapons or other objects used as weapons, as well as for active participation in mass riots.

Criminal liability is also established in the case of a call to commit acts that threaten public order. Thus, Article 295 of the Criminal Code provides for liability for public appeals to massacres, arsons, destruction of property, seizure of buildings or structures, forcible eviction of citizens threatening public order, as well as distribution, production or storage for distribution of such content ⁶.

Persons guilty of blocking transport communications, which sent the normal operation of transport or endangered human life, as well as the involvement of a railway station, airport, port, station or other transport enterprise are criminally liable under Article 279 of the Criminal Code.

Thus, analyzing the nature of offenses for which liability is established during peaceful assemblies, it can be argued that the existing rules are not aimed at ensuring guarantees for the exercise of citizens' rights to peaceful assemblies, as it provides for prosecution of participants of peaceful assemblies, which can be a tool of reprisals over participants and organizers of peaceful assemblies who are "disliked" by the authorities. For example, the authorities have not been held responsible for obstructing peaceful assemblies. Legislation governing freedom of assemblies also does not provide for liability for the use of force that is disproportionate to the actions of protesters, and at the legislative level power does not guarantee that the police should use force proportionately and only in extreme cases. Of course, some such provisions are contained in the legislation on the police, but as practice shows, it is not enough to ensure the proper implementation of the rights of protesters.

The history of the consideration of bills on peaceful assemblies also shows that at the legislative level, attempts are often made to establish

⁶ Kryminalnyi kodeks Ukrainy [The Criminal Code of Ukraine] (2001, April 05). Vido-mosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine. Kyiv: Parlam. vyd-vo [in Ukrainian].

the limits of the right to peaceful assemblies, without regulating the issue of legislative guarantees of this right. Such guarantees for the exercise of the right to peaceful assemblies should be: an exhaustive list of places where the assembly is not allowed, in order to prevent illegal prohibitions or territorial restrictions on the holding of peaceful assemblies; clear powers of public authorities to ensure the maximum holding of peaceful assemblies of citizens; ensuring the free possibility of holding spontaneous/urgent meetings that have not been previously notified, in order to cancel the permitting form of meetings and the bureaucratic procedure of notifying it in advance; establishing clear restrictions on the exercise of the right to freedom of peaceful assemblies to avoid abuses of power in this area;⁷ regulation of the rights of participants in peaceful assemblies and their responsibilities; establishing a procedure for appealing against violations of the rights of participants in peaceful assemblies; responsibility for illegal actions of provocateurs of mass riots during peaceful assemblies and personal responsibility of organizers of such provocations; personal responsibility for the ban on participation in peaceful assemblies, etc.

6. Conclusions

The normative unregulated peaceful assemblies in Ukraine are the cause of the chaos and arbitrariness of the authorities that are often present during peaceful protests in Ukraine.

One of the guiding principles of justice is the rule of law, according to which a person, whose rights and freedoms are recognized as the highest values and determine the content and direction of the state. Any restrictions on the right may be applied only within the limits and on the basis of law. Because the right to freedom of peaceful assemblies is protected by the state, which is obliged to ensure its effective practical implementation.

⁷ Konstytutsiia Ukrainy [The Constitution of Ukraine] (1996, June 28). Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine. Kyiv: Parlam. vyd-vo [in Ukrainian].

References

- Zahalna deklaratsiia prav liudyny [Universal Declaration of Human Rights] (1948, December 10). Retrieved from: http://zakon2.rada.gov.ua/laws/show/995_015 [in Ukrainian].
- Kodeks administratyvnoho sudochynstva [Code of Administrative Procedure] (2005, July 6). *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*. Kyiv: Parlam. vyd-vo [in Ukrainian].
- Kodeks Ukrainy pro administratyvni pravoporushennia [Code of Ukraine on Administrative Offenses] (1984, December 7). *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*. Kyiv: Parlam. vyd-vo [in Ukrainian].
- Konstytutsiia Ukrainy [The Constitution of Ukraine] (1996, June 28). *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*. Kyiv: Parlam. vyd-vo [in Ukrainian].
- Kryminalnyi kodeks Ukrainy [The Criminal Code of Ukraine] (2001, April 05). *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*. Kyiv: Parlam. vyd-vo [in Ukrainian].
- Mizhnarodnyi pakt pro hromadianski i politychni prava [International Covenant on Civil and Political Rights] (1966, December 16). Retrieved from: http://zakon1.rada.gov.ua/laws/show/995_043 [in Ukrainian].
- Topolevskyi R. (2002), Prava liudyny v Ukraini [Human rights in Ukraine]. Retrieved from: <http://www.khpg.org/index.php?id=1040031165> [in Ukrainian].
- Kuřbida R., Sereda M. (2012), Svoboda myrnykh zibrani u praktytsi Yevropeiskoho Sudu z prav liudyny (kompiliatsiia pozytsiř Sudu) [Freedom of peaceful assemblies in the case law of the European Court of Human Rights (compilation of the Court's positions)]. Retrieved from: http://pravo.org.ua/files/_murni_zibranya.PDF [in Ukrainian].

Summary

The scientific article is devoted to the study of the content of the legal provision of the constitutional right to peaceful assemblies in Ukraine as a means of ensuring the observance of citizens' rights. Types of liability for violation of the order of organization and holding of meetings and rallies are considered.

The study emphasizes the importance of enforcement of court decisions that have entered into force.

The changes taking place in Ukrainian society arouse high activity and the desire of people to take a direct part in solving problems that concern their common interests, including the use of the right to peaceful assembly. However, despite the importance of this type of political rights, the constitutional provisions on freedom of assembly, assembly, street demonstrations and demonstrations, which are still not properly specified in the current legislation, are often limited or even violated. Based on the international experience of regulating the right to peaceful assembly, ways to increase the effectiveness of the mechanism of administrative and legal support of the right to peaceful assembly are proposed, which are to create a domestic mechanism to monitor compliance with international standards of human rights and freedoms. human being, if this or that problem is not solved at the national level. It is proved that even a rather small range of current norms enshrined in legislative acts of various levels, which guarantee the right to peaceful assembly, often show some inconsistency in the content of the outlined rights, especially from the standpoint of the right to freedom of peaceful assembly. the subject is called a citizen, and civil law – an individual. The necessity of introduction of international standards of ensuring the right to peaceful assembly, first of all the standards of the European community, which is connected with the European integration aspirations of Ukraine, is proved. After all, the implementation of European standards and their observance by the subjects of public administration is one of the preconditions for Ukraine's integration into the European legal space. Since the right to freedom of peaceful assembly cannot be exercised in the absence of corresponding responsibilities imposed on the state by its authorized bodies, the analysis of the Constitution and laws of Ukraine allowed to separate such bodies into the category of subjects of power to ensure the right to peaceful assembly.

In order to improve the situation in the studied area, it is advisable to review the current legislation, which ensures the implementation of court decisions, to continue reforming public authorities for the effective operation of the judiciary and the protection of citizens' rights.

Keywords: peaceful assemblies, international standards, subjects of ensuring the right to peaceful assembly, civil society