

# THE RIGHT TO PEACEFUL ASSEMBLY IN THE LEGAL POSITIONS OF THE CONSTITUTIONAL COURT OF UKRAINE

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**Annotation.** The article analyzes the legal positions of the Constitutional Court of Ukraine on the right to peaceful assembly. Despite their small number (two decisions of the Court are devoted to the right to peaceful assembly), they are considered to be landmark and have been serving as a reference for the national legal system for many years.

The authors point out that the concept of the right to peaceful assembly in the legal positions of the Constitutional Court of Ukraine is revealed from different sides. First of all, the Court's decisions define the general (inalienability, inviolability, and guarantee by the Basic Law of Ukraine) and special (conscious nature; participation of a group of persons; special purpose (expression of common views and interests); peaceful (non-violent) nature; public place, etc. The Court also substantiated the existence of a link between the right to peaceful assembly and other rights and freedoms, e. g. freedom of thought, conscience and religion, the right to free expression of one's views and beliefs, the right of access to information, etc. The author points out that such a position of the Court is in line with international and European practice, where the right to freedom of assembly is traditionally associated with the rights aimed at expressing communication between a person and society or the state.

The authors have shown that the Court is most interested in the issue of the timeframe for notifying the authorities of a peaceful assembly. The Constitutional Court of Ukraine consciously avoids setting specific deadlines (one day, 10 days, one hour), instead clearly defining the criteria that must be met by the advance notification. In general, the Court's decisions have confirmed the notification rather than permissive nature of peaceful assemblies. This provision remains relevant even during martial law.

**Key words:** right to peaceful assembly, fundamental rights, Constitutional Court of Ukraine, legal positions.

## 1. Introduction.

The unprecedented challenges and threats faced by the Ukrainian state after February 24, 2022, forced its government to take decisive measures to ensure national security and public order. One of them was the restriction of rights and freedoms, in particular the right to peaceful assembly guaranteed by Article 39 of the Constitution of Ukraine. Despite the fact that this right is not absolute and is subject to restrictions even in peacetime, the legislator established additional requirements for its implementation, granting the military command, military administrations and the National Police with the relevant powers. However, even under such conditions, peaceful actions in Ukraine didn't stop, indicating that civil society remains active and that the dialogue between the authorities and the population continues. At the same time, the public debate on the expediency of restricting (banning) peaceful assemblies, the special procedure for their holding has intensified. In view of this, it's useful to refer to the practice of the constitutional jurisdiction body, the Constitutional Court of Ukraine, whose decisions have been a benchmark for the national system of protection of rights and freedoms for decades.

## 2. Analysis of scientific publications.

Obviously, many scholars have studied the theoretical and practical aspects of the right to peaceful assembly. Among them are O. Vaskovska, M. Denisova, A. Zagorodniuk, R. Melnyk, S. Mishchenko, S. Rabinovych, M. Sereda, T. Fulei, and others. It is important that scientific research continues during Russia's full-scale invasion of Ukraine. For example, the article by V. Ryndiuk and O. Hryshko is devoted to the constitutional and legal framework for the realization of the right to peaceful assembly in Ukraine [1], and N. Doroshenko – to limitations on the right to peaceful assembly under martial law [2]. Representatives of human rights organizations, whose advice and recommendations are of great practical importance, are also actively involved in the scientific dialogue [3].

## 3. The aim of the work.

The purpose of this paper is to analyze the legal positions of the Constitutional Court of Ukraine on the right to peaceful assembly.

## 4. Review and discussion.

The catalog of legal positions of the Constitutional Court of Ukraine (hereinafter – CCU) on human rights and freedoms includes dozens of decisions and opinions. Most of them concern civil, economic, social rights and freedoms (e.g., the right to have his/her dignity respected, the right to social protection, the right to adequate standard of living, etc.). Instead, only two decisions of the CCU are devoted to the right to peaceful assembly – Decision of the Constitutional Court of Ukraine dated April 19, 2001 № 4-rp/2001 in the case upon the constitutional petition of the Ministry of Internal Affairs of Ukraine concerning official interpretation of article 39.1 of the Constitution of Ukraine on timely notification of bodies of the executive power or bodies of local self-government on conduct of meetings, rallies, marches and demonstrations (the case concerning timely notification on peaceful gatherings) [4] and Decision of the Constitutional Court of Ukraine dated September 8, 2016 № 6-rp/2016 in the case upon the constitutional petition of the Ukrainian Parliament Commissioner for Human Rights concerning the conformity to the Constitution of Ukraine (constitutionality) of the provisions of Article 21.5 of the Law of Ukraine on «On Freedom of Conscience and Religious Organizations» (the case of advance notification of public services, religious rites, ceremonies and processions) [5]. However, the small number should not undermine their importance, as these documents are among the 25 landmark cases of the Court that it has delivered throughout its history [6].

The concept of the right to peaceful assembly in the legal positions of the CCU is revealed from different sides. First of all, the Court defines its features – inalienability, inviolability, and guarantee by the Basic Law of Ukraine [4]. Obviously, they are general, as they are inherent in most rights and freedoms. As for the special features, they are contained in the CCU Decision № 6-rp/2016. It defines the concepts of «assembly» and «peaceful assembly» based on the Guidelines on Freedom of Peaceful Assembly conceived by the Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights and the European Commission for Democracy through Law (Venice Commission). Thus, an assembly is an intentional and temporary presence of a number of individuals in a public place for a common expressive purpose. An assembly should be deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent [5], [7, 15]. With this in mind, we can formulate special features of the right to peaceful assembly: conscious nature; participation of a group of people; special purpose (expression of common views and interests); peaceful (non-violent) character; and public place. Also, most assemblies may have an organizer (organizers), although researchers consider this feature to be optional [8, 53-54].

A special part of the CCU's decisions is devoted to the connection between the right to peaceful assembly and other rights and freedoms. Thus, in the Court's opinion, the right to peaceful assembly is one of the constitutional guarantees of citizen of his/her right to freedom of his/her ideology

and religion, thought and speech, free expression of opinions and views, use and dissemination of information verbally, in writing or by other means subject to his/her choice, free development of his/her personality etc. [4]. This position of the Court is in line with international and European practice, where the right to freedom of assembly is traditionally associated with the rights aimed at expressing communication between a person and society or the state. However, there are exceptions. For example, CCU Judge M. Hultai in his dissenting opinion on CCU Decision № 6-rp/2016 stated that the Court erroneously concluded that the holding of worship, religious rites, ceremonies and processions as a form of exercising the right to freedom of worldview and religion (Art. 35 of the Constitution of Ukraine) with holding meetings, rallies, marches and demonstrations, the right to which is enshrined in Article 39 of the Basic Law of Ukraine, since these articles establish human rights that are different in content and essence [9]. In this context, it is worth mentioning that some researchers insist on distinguishing between the right to peaceful assembly and other rights, such as freedom of expression [10, 98-99].

However, the CCU is most interested in the issue of the timing of notification the authorities of a peaceful assembly. According Article 39.1 of the Constitution of Ukraine, citizens have the right to assemble peacefully without arms and to hold meetings, rallies, processions, and demonstrations upon notifying the executive authorities or local government in advance [11]. The CCU indicates that such notification should be carried out by citizens through the organizers of mass gatherings. At the same time, the Court defines the concept of advance notification: it is the period from the date of such notification to the date of the mass assembly. The CCU consciously avoids setting specific deadlines (one day, 10 days, one hour), instead clearly defining the criteria that advance notification must meet. First, the duration of the period should be within reasonable limits and should not restrict the rights of citizens to hold meetings, rallies, marches and demonstrations. Secondly, during this period, the authorities must take a number of preparatory measures, in particular, to ensure the unimpeded holding of meetings, rallies, marches or demonstrations by citizens, to maintain public order, and to protect the rights and freedoms of others. Thirdly, the period of advance notification should be sufficient to allow the executive authorities or local self-government bodies to determine whether the holding of such assemblies complies with the law and, if necessary, to apply to the court to resolve disputed issues. Ultimately, the CCU concludes that the determination of the terms of advance notification of executive authorities or local self-government bodies, taking into account the peculiarities of peaceful assemblies, their forms, mass, place and time of holding, etc. is subject to legislative regulation [4]. Unfortunately, there is no special law on peaceful assembly in Ukraine. Nevertheless, the significance of the CCU Decision cannot be overestimated, as it confirmed that citizens wishing to organize peaceful assembly need to notify the authorities, not seek permission from them.

This thesis is also the basis of the CCU Decision № 6-rp/2016, which emphasizes that in a democratic, law-based state there can't be set a different procedure of peaceful assemblies depending on their organizers and participants, purpose and location, form, etc., namely: a permit is required in some cases, whereas in other – notification in advance about its intention to hold such meeting. In the Court's opinion, Article 24 of the Constitution of Ukraine in conjunction with Article 35.1, Article 39.1 obliges the State to create common legal mechanisms that regulate the conducting by the citizens, public or religious organizations, other legal entities of public assemblies of religious and non-religious nature. Such meetings should take place after prior notification of relevant bodies of the executive authorities or local governments [5]. It is important that Court's Decision based on European Court of Human Rights case-law and the Guidelines on Freedom of Peaceful Assembly produced by the OSCE Office for Democratic Institutions and Human Right and the European Commission for Democracy through Law of the Council of Europe (Venice Commission) [12].

The provision on advance notification of peaceful assemblies is still relevant today. Despite the fact that during martial law, national legislation gives the military command, military administrations, independently or with the involvement of executive authorities, local self-government bodies, the opportunity to take special measures, in particular to prohibit peaceful assemblies, rallies, marches and demonstrations, the relevant documents still refer to the approval of peaceful assemblies rather than permission [13].

## 5. Conclusions.

Thus, in the catalog of the CCU's legal positions, decisions on the right to peaceful assembly play a significant role and are considered landmark. They define both general (inalienability, inviolability, guaranteed by the Basic Law of Ukraine) and special (conscious character; participation in the assembly of a group of persons; special purpose (expression of common views, interests); peaceful (non-violent) character, etc.) However, their greatest significance lies in the fact that they confirm the notification rather than permissive nature of peaceful assemblies.

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