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Constitutional Right to Peaceful Assembly in the System of Modern Legal Values

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■ **Abstract.** The purpose of the study is to investigate the constitutional right of citizens to peaceful assembly in the system of modern legal values. The scientific novelty of the study is that the paper substantiates the place of the constitutional right of citizens to peaceful assembly in the system of modern legal values, defines the concept and essence, presents a general overview of the system of legal values in Ukraine, studies the role of the constitutional right of citizens to peaceful assembly in the relevant system, and formulates scientifically sound conclusions based on arguments and available facts. The issue of the formation and development of the system of modern legal values is extremely relevant in the context of the formation of national democracy and the establishment of the principles of the rule of law. The legal system of society is a purely legal phenomenon, which is closely related to the system of legal values, takes its origins from it and is formed on the basis of traditions and established public (social) practices. According to the analysis of the impact of the culture of peaceful assembly, the exercise of the relevant right by citizens and its formation in the system of modern legal values, it was proved that each historical stage of the formation of Ukrainian statehood was marked by a mass assembly. Ukrainian history, in particular the history of Ukrainian law and the legal system, has several clear examples of public exercise of the right to peaceful assembly by citizens, which led to real legal consequences, and prevention of the usurpation of power and other illegal acts, which supports the authors' stand on the fundamental importance of the relevant right of citizens

■ **Keywords:** constitutional law; peaceful assembly; rally; march; demonstration; legal values; meaning; human and civil rights

■ Introduction

Any modern society has a certain legal system that regulates it. This provides an opportunity to assert democratic values and live together in a peaceful environment, reach new civilisational and technological heights in science and technology.

Ukrainian statehood, which is young in comparison with established European democracies, is at the stage of formation, which is characterized by the search for possible ways to implement it as a state based on the rule of law. This also gives grounds to assert that all institutions of the rule of law are at the stage of formation or development and do not function at the proper level.

The constitutional right of citizens to assemble peacefully, unarmed, to hold rallies, marches and demonstrations are one of the leading human rights institutions that played a critical role in the formation of Ukrainian statehood and marked its revival after a long period of Soviet oppression. This is emphasised in the research by E. Kobruseva [1], I. Konyev [2], A. Chub [3] and M. Sambor [4].

Given the fact that the system of Ukrainian legal values is only now being formed, it is reasonable, to determine the role and place of the right to peaceful assembly in it, and also to define the content and essence of this system in general.

At the same time, the most prominent applied research on this issue was presented by O. Vaskovskaya [5], O. Vlasenko [6], O. Klymenko [7], R. Melnyk [8], O. Shkarnega [9], M. Sereda [19], M. Filoretova [11; 12], A. Zagorodniuk [13] et al.

The achievements of these researchers contributed to the study of the implementation of the right to peaceful assembly under different branches

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of legal science. However, given the critical social significance of the relevant right, the crucial issues of its normative regulation, as emphasised by researchers, and the necessity to determine the place of the constitutional right to peaceful assembly in the system of modern legal values, this topic requires further study.

The purpose of the study is to investigate the place of the constitutional right of citizens to peaceful assembly in the system of modern legal values.

The set goal necessitated the implementation of a number of research tasks, including, in particular: defining the concept and essence, providing a general overview of the system of legal values in Ukraine; studying the role and place of the constitutional right of citizens to peaceful assembly in the relevant system, substantiating this statement; substantiating the conclusions to the study based on the arguments and available facts.

The scientific novelty of the publication is that the constitutional right of Ukrainian citizens to assemble peacefully, unarmed, is defined as one of the fundamental democratic mechanisms that form the basis of the rule of law, serves for the realisation of other political rights and freedoms of citizens, and must be ensured at a high constitutional level in any civilized society.

■ Results and Discussion

The modern system of legal values of Ukraine is a direct reflection of the level of legal consciousness of citizens, which evidences the complex efforts in the sphere of human rights and guarantees sustainable democratic development of all spheres of public legal life.

Scientists O. Zaychuk & N. Onishchenko's approach to law is based on the fact that it is freedom conditioned by equality, an equal measure of freedom, legitimized in society by norms that are determined by the level of morality and ethics achieved by society, based on the means of protection of power [14]. At the same time, O. Petryshyn, S. Pogrebnyak & V. Smorodynsky argue that law is a measure of the possible behaviour of an individual [15]. This gives grounds to assert that the legal system and law as its basic element are essentially interrelated since the law itself cannot exist without a set of characteristic features.

By its content, law is a set of norms and regulations that regulate social relations and define a set of rules of conduct, the application of which is sanctioned by the state in the regulation of social relations. That is, the conscious active or passive behaviour of subjects of law actually determines the formation of the legal essence of the law. It is the individual who chooses a specific variant of his behaviour that can satisfy a certain interest or need.

The content of any subjective right is that it provides the authorised subject with the opportunity to: behave accordingly (the right to their own actions); demand appropriate behaviour from other subjects (the right to other people's actions); apply to the state for the protection of their legal right [16]. Thus, these phenomena consist primarily in the society's certainty as to what is the boundary of law, what behaviour is legal and what is illegal, what means of protection of the law are established in a particular society, and what hierarchy of human rights is established in a particular society.

The most thorough definition of human rights is proposed by M. Kozyubra, who believes that human rights are the benefits and living conditions recognised by the world community, which a person can seek from the state and society in which he lives, and the provision of which is possible in the conditions of progress achieved by mankind [17]. However, A. Kolodiy notes that despite the difference in the views on the problem of the principles of law, legal science in the relevant historical epochs was united in the proclamation of certain provisions and ideas as principles of law [18]. At the same time, the key function of law in a liberal society is to regulate existing social relations on the basis of the principles of law that constitute its essence, which can be characterized as permissive and regulatory [19]. Thus, the decisive role of law in the formation of the legal system of society is indisputable. The law is the matter that forms it, and the system, in turn, ensures its action in space, and compliance by all subjects, bringing to justice those who violate it. The most fundamental is the essential role of human rights and the processes of their implementation in the development of modern democracy since it is through the practical implementation of their rights that individuals participate in important social and state processes.

Scientists V. Nagrebelsky & V. Stretovych argue that the Ukrainian national legal system was formed in difficult conditions, and this is due to the lack of state independence for long periods of history, and the geopolitical location of Ukraine and the corresponding ideological influence on Ukrainian society of opposite European and Eastern concepts [20; 21].

In previous studies, it was stressed that the historical stages of the formation of the Ukrainian legal system and statehood significantly influenced the modern functioning of the relevant concepts, and not all of them had positive features, and since the liquidation of the Cossacks, until Ukraine gained independence (with the collapse of the USSR), the Ukrainian legal system experienced times of systematic destruction.

Nowadays, the legal system of Ukraine is in the process of identifying the most effective means

of social development and adequate reflection of general social processes. In the context of the globalisation of society, the legal system of Ukraine is guided by international standards, accumulated experience of the world community and achievements of civilisational development of mankind [22]. This is evidenced by a number of historical events that have dramatically influenced the formation of Ukrainian statehood, as European integration efforts in particular and the European choice of Ukrainians, in general, have significantly changed its vector.

According to M. Miroshnychenko, the national legal system of Ukraine is a system that reflects the socio-economic, political, cultural and historical peculiarity of the development of the Ukrainian people (the legal system of a particular society). Its cultural and historical originality is an expression of the mental traits of the Ukrainian people, formed into a nation. The core of the Ukrainian legal system is its law, which develops on the basis of traditions and innovations [23]. Ukrainian law, like any other component of the formation of statehood in the countries of the world, played a decisive role in this process. Since it is the active and systematic demand of Ukrainian society to involve it in the management of public affairs, the realisation of fundamental human and civil rights and freedoms that formed the main core of the Ukrainian legal system. Perhaps the most important in these processes was the institution of peaceful assembly and the direct realisation of this right by the society in situations when the national policy in cases where the national policy was pursuing a different direction than the one chosen by the community.

According to N. Pilgun & O. Vinichuk, along with the process of establishing human rights and freedoms, Ukrainian society underwent a thorny path, applying the principle of equality to more and more people and the range of relations between them. In fact, the entire civilizational history of mankind is the genesis of human rights. It was the struggle for human rights, for new degrees of individual freedom that became the catalyst for large-scale changes in the socio-political life of most states of the world, led to a new understanding of the role of man in his relations with other people, society and the state [24]. Such a position gives grounds to assert that in the process of formation of the legal system of Ukraine, the processes of regulation and implementation of a number of fundamental human and civil rights and freedoms, the most important thing is to try to build a state based on the rule of law.

Thus, one of the fundamental factors in the formation of the Ukrainian legal system, and the establishment of democratic processes in the context

of the rule of law is the exercise by citizens of the right to peaceful assembly, which is one of the fundamental rights in the world and is also regulated by the Constitution of Ukraine. Article 39 of the Basic Law stipulates that citizens have the right to assemble peacefully, unarmed, to hold meetings, rallies, marches and demonstrations, which shall be officially notified in advance by the executive authorities or local self-government bodies. Restrictions on the exercise of this right may be imposed by a court in accordance with the law and solely in the interests of national security and public order – to prevent disorder or crime, to protect public health or to protect the rights and freedoms of others [25]. At the same time, it should be noted that the norms of the Constitution of Ukraine are the norms of direct action, which make it possible for citizens to implement them without special legislation (although this would significantly simplify the relevant processes, and provide additional guarantees for the implementation of the right in modern realities). Therefore, the unambiguity of the importance of the institute of peaceful assembly in the process of formation of national statehood is undisputed, as stated by researchers.

Analysing the content of the constitutional provisions on the right to freedom of peaceful assembly, R. Melnyk, Ye. Kobruseva, I. Konev, A. Chub & M. Sambor note that such a right is recognised without alternative and guaranteed by the Basic Law of the respective country; does not require authorisation by the authorities; is subject to protection under the condition of peaceful and unarmed assembly; the limits of the exercise of this right are different, some countries recognise this right for every person, others - exclusively for their citizens; provides for the possibility of restricting the right to freedom of peaceful assembly on the basis of and in accordance with a special law [1; 2; 8].

It is necessary to highlight the history of the largest peaceful assemblies that played a key role in the formation of Ukrainian statehood, in particular, the Revolution on Granite (October 1990), Orange Revolution (November 2004 – January 2005) and Revolution of Dignity (November 2013 – February 2014). The authors believe that these events had a decisive influence on the establishment of the right to peaceful assembly in the system of modern legal values, which made it possible to realise other human and civil rights and freedoms.

One of the participants of the Revolution on Granite V. Roh notes that the protest was organised by students, and its result was the resignation of the Chairman of the Council of Ministers of the Ukrainian SSR Vitaliy Masol and the fulfilment of a number

of demands. These events had a significant impact on the further activity of young people. Moreover, a lot of Western literature has expanded to other regions [26]. The key in the legal context is the provision of the resolution of the Supreme Soviet of the Ukrainian SSR "On consideration of the demands of students on hunger strike in Kyiv since October 2, 1990", to address all the demands of the protesters in paragraphs 1 (on holding new elections), 2 (on military service of Ukrainian citizens), 3 (on nationalization of the property of the CPSU and Komso-mol on the territory of Ukraine), 4 (on the Union Treaty), 5 (on the resignation of the Chairman of the Council of Ministers of the Ukrainian SSR) [27], which became the imminent point of restoration of Ukrainian statehood, the establishment of democratic values in Ukrainian society, despite centuries of attempts to destroy the Ukrainian national idea.

Besides, another significant factor influencing the formation of the system of legal values of the Ukrainian society and state is the Orange Revolution that took place in 2004-2005. According to R. Ofitsynskyi's estimates, up to 500,000 protesters gathered in the centre of the capital, in Lviv – more than 100 thousand, in Kharkiv – up to 70 thousand [28], which testified to the mass nature of the protest movement. At the same time, it is necessary to emphasize the significant legal consequences of the protests, which were primarily related to the indignation of Ukrainian society as a result of the massive falsification of the 2004 presidential elections.

Therefore, the resolution of the Verkhovna Rada of Ukraine of November 27, 2004, № 2214-IV "On the political crisis in the state that arose in connection with the election of the President of Ukraine" recognised the political crisis in Ukraine and formed the main organisational and legal forms and specific steps that should have influenced the active way out of it, stabilisation of the functioning of the legal system of society in its classical sense.

For example, the Verkhovna Rada of Ukraine decided to invalidate the results of the second round of voting in the 2004 presidential election (as a result of violations of electoral legislation); expressed distrust in the Central Election Commission in connection with the improper performance of its duties; proposed that the President of Ukraine submit to the Verkhovna Rada of Ukraine by December 1, 2004, a proposal for early termination of the powers of the members of the Central Election Commission; recognised the need for further consideration of the establishment of a temporary investigative commission, the procedure for holding a solemn meeting of the Verkhovna Rada of Ukraine, as well as other important steps [29]. Thus, the Ukrainian government

has confirmed the declared provisions of the Constitution of Ukraine regarding the determining and constituent nature of the position of the Ukrainian people, which was embodied as a result of mass peaceful assemblies in the form of protest (in this case).

According to D. Kostyuk, an important initiative that helped to determine the level of civil society development in Ukraine on the basis of documentary data collection and surveys of citizens was the project "Determination of the Civil Society Development Index", conducted during 1999-2005 by the International Organization CIVICUS. The study revealed a number of positive features that characterise the civil society in Ukraine. This is, in particular, the development of human rights groups that inform citizens about the state and ways to protect their rights, and the tolerance of civil society, its inclination to non-violent methods of struggle. The Orange Revolution dispelled the widespread stereotype: the study showed a fairly high level of participation of citizens in civil society actions (although only 12% of the adult population as of 2005 was covered by formal organisations, 50% of respondents admitted that they participate in various actions [30]). This demonstrates the necessity and importance of systematically strengthening the institution of peaceful assembly in the hierarchy of human and civil rights and freedoms in the world in general and in Ukraine in particular. Only this institution, through the co-operation of many citizens, is able to demonstrate the importance of civic position on the course of state policy in the pre-election period.

At the same time, the most tragic, but effective were peaceful protests in the autumn and winter of 2013-2014, which gradually escalated into a bloody confrontation with representatives of the ruling elite and resulted in their delegitimation and the overthrow of the totalitarian regime.

The main reason for holding an indefinite peaceful assembly on Independence Square in Kyiv was the refusal of the current government on November 21, 2013, to sign the Association Agreement with the EU, which was to take place on November 28. This decision caused public outrage, which resulted in the protest movement "Euromaidan", the main events of which took place in Kyiv [31].

Furthermore, one of the factors was the adoption and signing of a number of laws of Ukraine (from January 16, 2014 № 731-VII "On Amendments to the Law of Ukraine "On Elimination of Negative Consequences and Prevention of Persecution and Punishment of Persons in relation to the Events that took place during Peaceful Assemblies"") [32] (which exempted from criminal liability the law enforcement officers accused of mass

unlawful use of force, special means and weapons against peaceful protesters); No. 728-VII of January 16, 2014 "On Amendments to the Law of Ukraine "On Amendments to Article 297 of the Criminal Code of Ukraine regarding liability for desecration or destruction of monuments erected in memory of those who fought against Nazism during the Second World War – Soviet soldiers-liberators, participants of the partisan movement, underground fighters, victims of Nazi persecution, soldiers-internationalists and peacekeepers" [33] (which would automatically provide law enforcement agencies with the possibility of bringing to justice for the overthrow of memorials and sculptures to Soviet leaders), etc.), significantly restricted the rights and freedoms of man and citizen, contradicted the position of society on the vector of development of the Ukrainian state, and contradicted the conscious and accepted democratic values of the Ukrainian people.

The result of these events and steps that marked the establishment of the institution of the right to peaceful assembly as a key instrument of influence on Ukrainian politics was the adoption of a number of laws that restored human and civil rights and freedoms and were aimed at stabilising the functioning of law and order in society by preventing the establishment of a dictatorship of power (for example, the Laws of Ukraine of January 28, 2014, № 732-VII "On the recognition as invalid certain laws of Ukraine" (which abolished the above-mentioned number of anti-democratic) [34], and the Law of Ukraine No. 742-VII of February 21, 2014 "On the Restoration of Certain Provisions of the Constitution of Ukraine" (which determined the superiority of the Ukrainian Parliament over the institution of the President of Ukraine, which is traditional for a parliamentary-presidential republic) [35], and other important legal acts.

The Revolution of Dignity played a decisive role in the history of Ukraine. The events on Maidan contributed to the reawakening of the values of freedom. Maidan became the epicentre of drastic changes in the country, it directed Ukraine on the path to Europe [36]. In this regard, I. Korotenko argues: "Protest spirit of winter 2013-14 began with students. The real Revolution of Dignity, active phases of confrontation began just after the beating of students on Independence Square. However, prior to that, the demands of young people were simple – European association. Despite various economic disputes, students, public activists and ordinary people at large saw the European vector as a better future. The winter protests can be divided into phases, where the student phase was the calmest, peaceful and tolerant" [37] The authors believe that the sacralisation

of the Revolution of Dignity process is quite justified, as these events, which were realised as a peaceful assembly due to the brutal aggression of the then government, demonstrated to the world the totalitarian context of the current regime, and at the same time the invincibility of the Ukrainian people.

Besides, A. Kyrydon emphasised that the Revolution of Dignity became a marker and a powerful impetus of processes in the modern history of Ukraine, a litmus test of the European community as a whole, which in domestic political terms made significant adjustments to the processes of self-identification and creation of a political nation, as well as to the idea of Ukraine's place in the world as a subject of international relations [38]. It is the strong desire of the Ukrainian people to integrate into the European community and the possibility of exercising the right to peaceful assembly provided for by international and national legislation that allowed them to freely express their position on the further vector of state policy and identify the Ukrainian nation as part of the global European community.

At the same time, positively assessing the revolutionary movements and the practice of solving important state issues at peaceful assemblies of citizens, V. Stepanenko notes that the only decisive and effective lever to overcome the post-Soviet stagnation in Ukraine should be recognised the activity and pressure of civil society, the entrepreneurial class and the youth. However, even such pressure and engagement can be effective in the conditions of, first of all, mass public demand for reforming the country, constant and effective public control over the authorities by an effective and efficient civil society [39], which once again shows that the right to peaceful assembly and the relevant institution are fundamental in any democratic society, and the systematic expression of the will of the people of Ukraine makes it possible to form a system of legal values based on democratic principles, gives grounds to assert that the right to peaceful assembly is a fundamental right in any democratic society.

■ Conclusions

Thus, based on the establishment of the concept and substance, and a general overview of the system of legal values in Ukraine, the study of the role of the constitutional right of citizens to peaceful assembly in the relevant system, the following conclusions are substantiated:

1. The formation and establishment of a system of modern legal values are one of the most urgent issues in the context of the formation of national democracy and the establishment of the principles of the rule of law. The legal system of society is a

purely legal phenomenon that is closely related to the system of legal values, formed on the basis of long-standing traditions and established public (social) practices.

2. Human and civil rights and freedoms, which, according to the Constitution of Ukraine, form the content and direction of state policy, have specific features in determining directions for the formation of the legal system as an integral legal category and mechanism, and, being shaped directly as a result of the development of the system of legal values, influence the definition of the most important rights in society.

3. Based on the analysis of the influence of the culture of peaceful assemblies and the exercise by citizens of the relevant right, its formation in the system of modern legal values, the conclusion is formulated that each historical stage of the formation

of Ukrainian statehood was marked by a mass assembly. Ukrainian history, in particular the history of Ukrainian law and legal system, has several outstanding examples of public exercise of the right to peaceful assembly by citizens, which led to real legal consequences, and prevention of usurpation of power and other unlawful acts.

4. In addition to the above, a comprehensive analysis of the role and place of the constitutional right to peaceful assembly in the system of modern legal values, first of all, shows that it can also serve as a foundation for the realisation of such rights as: the right to freedom of expression and freedom of speech, the right to participate in the management of public affairs, the right to respect for dignity, the right to liberty and security of person, the right to freedom of movement, etc.

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Конституційне право громадян на мирні зібрання в системі сучасних правових цінностей

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■ **Анотація.** Мета статті – дослідити конституційне право громадян на мирні зібрання в системі сучасних правових цінностей. Наукова новизна дослідження полягає в тому, що в публікації обґрунтовано місце конституційного права громадян на мирні зібрання в системі сучасних правових цінностей, з'ясовано поняття та сутність, а також здійснено загальний огляд системи правових цінностей в Україні, досліджено роль конституційного права громадян на мирні зібрання у відповідній системі, на підставі аргументів і наявних фактів сформульовано науково обґрунтовані висновки. Питання формування та становлення системи сучасних правових цінностей є надзвичайно актуальним в умовах становлення національної демократії, утвердження принципів правової державності. Правова система суспільства є суто юридичним явищем, що тісно пов'язане із системою правових цінностей, бере з нього витoki та формується на підставі традицій та усталених суспільних (соціальних) практик. За результатами аналізу впливу культури мирних зібрань, реалізації громадянами відповідного права та його становлення в системі сучасних правових цінностей було доведено, що кожен історичний етап становлення української державності знаменувався масовим зібранням. Українська історія, зокрема історія українського права та правової системи, має кілька виразних прикладів публічної реалізації права на мирні зібрання громадянами, що зумовили реальні юридичні наслідки, а також недопущення узурпації влади й інших протиправних діянь, що підтверджує позицію авторів щодо фундаментального значення відповідного права громадян

■ **Ключові слова:** конституційне право; мирне зібрання; мітинг; похід; демонстрація; правові цінності; значення; права людини і громадянина