

## THEORETICAL AND LEGAL CHARACTERISTICS OF THE CONSTITUTIONAL LAW OF CITIZENS TO THE LIBERTY OF ASSOCIATIONS

*Paper describes the contents and essence of human constitutional right to freedom of association in unions and associations. The role and place of social associations in the foundation of legal state and civil society are analyzed as well.*

**Keywords:** *freedom of association, legal state, civil society, social associations.*

After the proclamation of the independence, Ukraine was on the path of democratic reforming of the society and the State. The emergence of democratic institutions has contributed to the growth of public activity and changed the character of the development of a civil society in Ukraine. Formation of the latter is closely connected with the development of public associations, which create opportunities for the realization and protection of the fundamental rights and freedoms of man and citizen. The constitutional right of citizens to freedom of unification have investigated scientists: O. Vashchuk, Mykhail Chudakov, M. Kravchuk, Y. Zhylin, Y. Bityâk, L. Loiko and others. The purpose of this writing is to reveal the meaning and essence of the constitutional rights of the citizen to the freedom of associations, as well as to analyze the concept and types of public associations.

The right of people to freedom of associations is enshrined in a number of international legal acts. So, art. 20 of the Universal Declaration of Human Rights states: "Everyone has the right to freedom of peaceful assembly and associations. No one can be compelled to belong to any association"[1]. In addition, part 1 of art. 22 of the International Covenant on Civil and Political Rights states: "Everyone has the right to freedom of association with others, including the right to form trade unions and join them to protect his interests" [2]. Also p.1 of the art. 11 of the European Convention for

the protection of human rights and fundamental freedoms establishes freedom of assembly and associations. In particular, the article states: "Everyone has the right to freedom of peaceful assembly and freedom of association with others, including the right to form trade unions and join them to protect his interests" [3].

Analyzing the dispositions of these international instruments, we can conclude that the right to freedom of Association can be understood as guaranteed by law ability to create relevant associations, trade unions and political parties to hold peaceful assemblies in order to protect the civil rights and freedoms. In national legislation the right of citizens to freedom of Association was stipulated in art. 36 of the Ukrainian Constitution, according to which the citizens of Ukraine have the right to freedom of the association in political parties and public organizations for the realization and protection of their rights and freedoms and meet the political, economic, social, cultural and other interests, with the exception of restrictions established by law for the national security and public order, public health or the protection of the rights and freedoms of others"[4].

O. Vashchuk believes that "the content of the right to freedom of association includes the following features of the subject: creating a variety of Union citizens; joining any association of citizens; participating in their activities; refraining from entering; freedom to leave at any time the associations of citizens" [5, p. 19]. Right to freedom of association enables individuals to realize their political, personal, socio-economic and cultural rights. This right is realized by the standard way. To create a merge is required a certain number of founders. Members of political parties can only be adult citizens. As a rule, the right to association is limited to military personnel, and the right to join a political party may be restricted for judges, prosecutors, other groups of people that are public servants [5, p. 20].

At present, in the legislation of the developed European democracies the constitutional rights of the Union are fixed by such kinds of bills: about political parties; about community socio-economic and other associations that do not put the goal of profit and charitable foundations. However, in the constitutions of some European countries, in addition to the consolidation of the common law on the uniting principles

is also determined the legal status of the several types of public associations. So, art. 21 of the Basic Law of Germany [6]. art. 4 of the Constitution of France [7], art. 11 of the Constitution of Poland [8] determine the status of political parties; art. 39 of the Constitution of Italy [9], ch. 1, art. 23 of the Constitution of Greece [10] and § 4 of the Constitution of Hungary [11] – trade unions.

The Constitution of Ukraine in part 1. of the art. 36 establishes the right to freedom of association in political parties and public organizations for the realization and protection of their rights and freedoms and meets the political, economic, social, cultural and other interests. And in part 3 of the art. 36 are determined the principles of the activities of trade unions. The legal status of other types of public associations is determined by special laws, which, in our opinion, meets the eurointegrating way. In our opinion, the right of people to freedom of association in unions and associations is implemented through the creation of public associations in the specific organizational-legal form.

However, we consider it to be appropriate to mention that the Constitution of Ukraine names only 3 types of public associations (political parties, public organizations and trade unions), but mentions other kinds of associations as well. To complete the study we consider it necessary to work over the concept, characteristics and types of public associations in Ukraine. The legislation of most democratic countries for the definition of non-profit associations uses the term "unions" or "union". The Bill of Ukraine "About Public Associations" dated March 22, 2012 № 4572-VI [111] refers to associations without the purpose of the receipt of profits and introduces the term "public associations", under which you should understand the voluntary association of individuals and (or) legal entities of private law for the realization and protection of rights and freedoms, public satisfaction, in particular, economic, social, cultural, environmental and other interests [12].

In addition, above mentioned Bill allocates two organizational-legal forms of public associations – public organization and Civic Union. We believe this to be a major disadvantage of the Bill of Ukraine "About Public Associations", because, according to

the current legislation, at the moment there are the following types of organizational-legal forms of public associations:

1. political parties.
2. non-governmental organizations: a) youth and children public organizations; b) trade unions; c) the employers' organization).
3. charities.
4. volunteer organizations.
5. the Ukrainian Red Cross Society.
6. the Public formations of Public Order and State Borders.
7. formation of civil protection.
8. religious organizations.
9. creative unions.

In the world practice one can find the standard separation of three major signs of association, namely: *non government* – independence from the State Union is considered the dominant trait; *non profit* and voluntary service of association members (voluntary). Thus, the combination of these three elements gives rise to what we call the public association, and in line with Western norms – unions and associations [13]. According to the number of authors, public association is a voluntary association of the individuals, which contributes to the development of their organizational activities in various fields of social life that satisfies their personal interests or is created to participate in public life, in manufacturing, professional, creative, demographic or other signs [14]. While opponents stress the fact that you cannot define the essence of this category only as the collection of people, without counting the numerous relationships in the society on which is based the system approach, when the effect of the activities of the Organization citizens exceeds the sum of the effects of the activities of each of its member [14, p. 20]. According to M. Kravchuk, the social organization is a system of interconnected behaviors of a certain circle of persons [15].

According to J. Biták, the concept of the "Association of Citizens" is only generalized and reflects the diversity of the forms of social activity of citizens, expressed in their various associations in the real life of the community [16]. At the same time L. Loiko notes that public associations as institutions of a civil society are the liaison between the society and state power, is a form of institutionalization of various social interests and their protection at the level of public-legal relations [17,

pp. 51–60]. Interesting from a scientific point of view is the definition of the "associations of citizens", which is always positive, formulated by M. Model and B. Model, arguing that public associations – initiative, amateur, based on the association of citizens, whose activities are focused on solving of common problems, the protection of shared interests, not related neither with the conquest of power, no getting profits to enrich their members [18, 20]. We believe that the definition of the entity public associations, proposed by M. Model and B. Model, is the most complete and thus reflecting objectively the purpose of the activities of public associations. The reason is that it highlights the characteristics and significance of these elements of civil society.

Legal systems of the countries of the world has its own features, and therefore the attitude to public associations, their importance in public relations and political system of the State may have a different character. The differences between American and European approach to the development of a civil society are as it follows: 1) in the American legal sphere of common ideas of pluralism, independence; characteristics of the historical need for the United States residents association for the realization of political interests, solving social issues and achieving personal goals without the intervention of the State; the weakness of American political parties through the distribution of legislative and executive authorities, etc.; 2) European legal field is a corporate focus and the need for the State intervention in the sphere of social relations; the party had a significant impact on the legislators, because, for example, the UK's tenure as a premier depends on the parliamentary support, etc. [19].

The right of people to freedom of association in the Union and Association is the prerequisite of forming in Ukraine a legal State and a civil society. Form of the implementation of the above-mentioned bill is created in the dure order and organizational-legal form of the public association. On the basis of the analyzed US legislation we can conclude that in the legislation regulating the activities of public associations, several gaps exist that impede their functioning and, as a consequence, inhibit the process of formation of the legal State and a civil society. In particular, the

Constitution of Ukraine does not specify all the types of public associations. In addition, the Basic Bill of Ukraine "About Public Associations" from 22.03.2012 № 4572-VI defines only two organizational-legal forms of the activities of public associations: social organizations and civil society. To remove the existing legal gaps we propose to reconcile the dispositions of the above mentioned regulations with the international documents and special national laws and to establish the practice of the activities of non-governmental organizations.

### LIST OF USED SOURCES

1. Universal Declaration of Human Rights [Electronic Resource]. – Mode of Access: [http://zakon2.rada.gov.ua/laws/show/995\\_015](http://zakon2.rada.gov.ua/laws/show/995_015)
2. U.N. Covenant on Civil and Political Rights [Electronic Resource]. – Mode of Access: [http://zakon4.rada.gov.ua/laws/show/995\\_043](http://zakon4.rada.gov.ua/laws/show/995_043)
3. Convention for the Protection of Human Rights and Fundamental Freedoms 04.11.1950 p. [Electronic Resource]. – Mode of Access: [http://zakon2.rada.gov.ua/laws/show/995\\_004](http://zakon2.rada.gov.ua/laws/show/995_004)
4. Конституція України // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.
5. Ващук О. М. Конституційно-правовий статус громадських організацій України : дис. ... канд. юрид. наук / О. М. Ващук; Інст. держави і права ім. В. М. Корецького. – К., 2004. – 203 с.
6. Bericht über den Verfassungskonvent auf Herrenchiemsee, in: Deutscher Bundestag und Bundesarchiv (Hrsg.): Der Parlamentarische Rat 1948—1949. Akten und Protokolle, Bd. II: Der Verfassungskonvent auf Herrenchiemsee, Boppard am Rhein 1981, S. 507. [ISBN 3-7646-1671-7](https://www.bundesarchiv.de/BNF/DN/DFG/DN546494-DN546494-7)
7. ["Texte intégral de la Constitution du 4 octobre 1958 en vigueur"](#). *Conseil constitutionnel* (in French). Retrieved 14 May 2012.
8. **THE CONSTITUTION OF THE REPUBLIC OF POLAND OF 2nd APRIL, 1997** [Electronic Resource]. – Mode of Access: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

9. [The official text of the Greek Constitution as of May 27, 2008](#), source: Hellenic Parliament.
10. [Text of the Fundamental Law of Hungary as adopted by the National Assembly on 18 April 2011](#)
11. Про громадські об'єднання : Закон України від 22.03.2012 № 4572-VI // Відомості Верховної Ради України. – 2013. – № 1. – Ст. 1.
12. Чудаков М. Ф. Конституционное государственное право зарубежных стран / М. Ф. Чудаков. – М.: Харвест. – 2009. – С. 215.
13. Кравчук М. В. Теорія держави і права: навч. посіб. для студентів вищ. навч. закл. / М. В. Кравчук. – К.: Атіка, 2005. – 288 с. [Electronic Resource]. – Mode of Access: <http://pravouch.com/page/tgp1/ist/ist-16--idz-ax238.html>
14. Жилін Є. В. Організаційно-правові засади взаємодії об'єднань громадян з органами державної влади в Україні: дис. ... канд. юрид. наук : 12.00.07 / Є. В. Жилін; Дніпропетр. держ. ун-т внутр. справ. – Д., 2012. – 223 с.
15. Адміністративне право України : підручник / Ю. П. Битяк, В. М. Гаращук, О. В. Дьяченко та ін.; за ред. Ю. П. Битяка. – К.: Юрінком Інтер, 2007. – 544 с. [Electronic Resource]. – Mode of Access: [http://ebk.net.ua/Book/law/bityak\\_admpu/zmist.htm](http://ebk.net.ua/Book/law/bityak_admpu/zmist.htm)
16. Лойко Л. Типологічне позиціонування національних організацій в інституціональній структурі громадянського суспільства / Л. Лойко // Політичний менеджмент. – 2005. – № 5. – С. 51–60.
17. Модель И. М. Власть и гражданское сообщество в России: от социального взаимодействия к социальному партнерству / И. М. Модель, Б. С. Модель. – Екатеринбург, 1998. – 156 с.
18. Р. Хэйз Эллен. Роль групп лиц, объединенных общими интересами / Эллен Хэйз [Electronic Resource]. – Mode of Access: <http://www.read.virmk.ru/d/demo-USA/index.htm>