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**CITIZENS' RIGHTS TO PEACEFUL MEETING:
PROBLEMS OF TERMINOLOGICAL UNCERTAINTY**

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Комісаров О. ПРАВА ГРОМАДЯН НА МИРНІ ЗІБРАННЯ: ПРОБЛЕМИ ТЕРМІНОЛОГІЧНОЇ НЕВИЗНАЧЕНОСТІ. Розглянуто основні проблеми термінологічної невизначеності права громадян збиратися мирно. Здійснено аналіз основних категорій, які стосуються реалізації права громадян збиратися мирно. Здійснено співвідношення понять «мирне зібрання», «масовий захід», «публічний захід». Визначено дії, які не можуть вважатися публічними та виділено зібрання й заходи, які не слід вважати публічними.

Ключові слова: *права громадян, свобода мирних зібрань, мирне зібрання, масовий захід, публічне місце, публічний порядок, публічна безпека.*

Formulation of the problem. Since the asset 39 of the Constitution of Ukraine came into force and the official determination of the first part of this asset in decision of the Constitutional Court of Ukraine №4/2004 from 19.04.2001 has been continued a discussion about the content of citizens to gather peaceful and about its forms and ways of such meetings. The events of 2014-2018 made active the component of security of the mentioned problem from discussion of legal regulation of forms and ways to realize the citizens' rights for peaceful meetings to a problem of suitability of such a meeting cause of threats to national and public security and probability of terror acts and group breaches of public order. The refreshing of discussion demands the revising of basic terminology and working out of proposals to improve an effective law which regulates the holding up of peaceful meetings and public arrangements.

The analysis of publications which consist the solution of the problem. The problems of realizations of citizens' rights for peaceful meetings without weapons, and to hold up meetings, rallies, marches and demonstrations, and restrictions for realization of this right in the interests of national security and public order are the traditional objects of scientific researches of domestic law experts. "The peaceful meetings as an object of research was in works of M. Denisova (2010) in frames of consideration of problematic questions of legal ensuring to realize the constitutional right for peaceful meetings in Ukraine, A. Shevchenko (2010) during the research of constitutional right for peaceful meetings, O. Klymenko (2015) in frames of consideration of a problem of legal ensuring of constitutional right to hold peaceful meetings in Ukraine, E. Cobruseva (2015) during the research of administrative-law ensuring of rights and freedoms of person and citizen for peaceful meetings, O. Shkarnega (2016) in frames of researches relatively to realization of right for peaceful meeting, O. Tronko (2016) in research about administrative-law principles of realization of human right for peaceful meetings. "Public arrangements"- works of V. Polishchuk (1999) in consideration of administrative-law regulation and practice of holding of peaceful meetings, Y. Lemishko (2009) in frames of research of constitutional-law basis of participation of Ukrainian citizens in public and mass arrangements, M. Voznyk (2010) during the consideration of a problem of securing the meetings by units of Interior Ministry, V. Pokaychuk (2011) in studying the peculiarities of leading the special operations by units of public order of Interior during the holding of sports events, R. Katsuba (2012) in consideration a problem of prevention of public order breaches during the holding of sports events, V. Berezana (2014) the administrative-law ensuring of public order protection and public security during holding the mass arrangements, V. Zarosylo (2017) the administrative-law ensuring of holding the mass arrangements in Ukraine, A. Dolynnyi (2017) in studying of the administrative-law ensuring by the national police of Ukraine the public se-

curity and order during holding the mass arrangements.

The other terms and categories in scientific researches were not deeply considered but in law-practice and normative-law acts which regulate public relations in places of peaceful meetings are used such terms “the mass being of people”, “the mass confluence of people” etc.

The aim of the article. On the ground of analysis of effective law and practice of its realization to determine the main problems of terminological uncertainty as regards the realization of human rights for peaceful meetings.

Basic content. The Constitution of Ukraine guarantees the realization by citizens on their rights to gather peaceful, without weapons and hold meetings, marches and demonstrations. But the authors of the Main law didn't mention the realization of such right by any of law category or juridical construction. Thereafter in the text of the Main law isn't used neither concept “mass arrangement”, no “peaceful meeting”.

The attaching in art. 39 in the Constitution of Ukraine of the possibility to meet peaceful without weapons and to hold meetings, marches and demonstrations may be considered one of the constitutional guarantees of citizen's right on free conception of the world, and also religious liberty, liberty of mind and word, on free expression on one's look and conviction, the use and spreading on one's choice the information mouthly, written or in another way, rights on self-development etc. By this means the state fastens by declaring for its citizens the freedom to meet peaceful and rights to hold mass arrangement in its Constitution a hierarchy of information- communicative possibilities of individual development. By common position of OSCE and Venice commission such meetings are arrangements that have on target the message of a certain information to one or another person (persons).

It is necessary to agree with position of R. Melnik, regarding the existence of a board right on social – communication which is important for a person, citizen, because through it are realized the needs of human and citizen in communicating with other persons; Thanks to it self realization of a person takes place and citizen in society and in state. [1, p. 59]

From the perspective of personality development such a need should be strengthened by the collective activity aspect which guarantees participation of the citizen in social, religious, political, economic-processes, etc.

Formed be above mentioned positions the content of interpretation “peaceful meeting” becomes incomprehensible. First of all in phrase is considered a category “meeting” in its relationship with a category “arrangement” as fixed in law to avoid by some individuals an intellectual and social isolation (solitude) and fixed in law the possibility to take part in formation of a common position to solve problems. According to a general model the right to meet as to organize and to hold an arrangements belongs as to one individual as to any group of individuals independently their degree of relationship, subordination, registration the form of such association or availability of organization-law form etc.. Besides that it should be verified the prohibition of any discrimination of “meeting” and its participants on such features as race, the color of skin, sex, language, religion, politic or another views, national or social origin, state, place of birth or any other status. The discrimination on any of these features restricts the right to peaceful meetings and must be considered as the breach of international law in branch of human rights [2, p. 14]

Recording this model should be added that international law recognizes only general principle of the right to assemble peaceful, does not recognize the detail of its content or the formation of a categorical basis for its implementation, while in the national legislation of most countries of the world not only “confirms” the existence of such a right or freedom, but also “tries” to maximally clarify the content of its basic components and to regulate the procedure for its implementation.

In art 39 of the Constitution of Ukraine as an additional sign of the “peaceful” the absence of weapons determined which should be manifested of its public demonstration by the participants of such a meeting and/or their expression in any way with the intention of its application.

In turn the national legislation contains refinement and a detailed of specific procedures regarding to provide the right of freedom of peaceful assembly in the relevant by laws, including local governments.

Thus, in Ukraine, in accordance with item 1 of section XV “Transitional Provisions” of the Constitution of Ukraine, is valid in part that does not contradict of the Constitution of Ukraine, the procedure for the organization and holding of meetings, rallies, street marches and demonstration, approved by the Presidium of the Supreme Soviet of the USSR of 28.07.1988 N 9306. [3]

It should be considered that effective order does not cover the organization and holding any meetings that had characteristics of publicity and regulates the organization and conduct

meetings, hiking trips, demonstrations that permission to restrict such concept “peaceful meeting” determine the legal status of his participants such participants peaceful meeting in every case. The action of the specified order in part of the requirements for the order of organization and holding peaceful meeting, timely notice of the executive authorities or organs of local government, documents which should be included to the application about conducting of peaceful meeting should be proceed taking into account the legal position, which Constitutional Court of Ukraine expressed in its decision since 19 April 2001 year N 4 p (the case of early notification of peaceful gatherings) [4] and in part of the requirements for an early notification of the worship, religious rites ,ceremonies taking into account the legal position which Constitutional Court of Ukraine expressed in his decision since 08.09.2016 year N 6 rp (the case of an early notification of public worship, religious ceremonies, ceremonies and processions) [5].

So group of people which want to avoid intellectual or social isolation or participate in the formation of a common position, have to realize their own opportunity, due to staying at the same time in a certain place, the characteristics of which allow to express the formed position. Analysis of constitutions of European countries allowed to identify two types of places-collection “out of door” and collection in another places (non-public) places (building) [1, 33]. Every appropriate collection answer a signs of “public” and chosen place of collection should be determined as “public place”. The term of “public place” can determined as open area for free access, building or structure or their part useable for your characteristics for residence the group of peoples and their expression of formed position. In practice of European Court of Human Rights to category “public place” to refer public streets and squares [6].

An important aspect is formation of the realism of law to freedom of peaceful assembly is common goal of every person such join to collection and her ways of achieve with aim and appointment of the collection. In case such common goal is possible the formation of unitary position of the people group’s with simultaneous refusal from her demonstration outside. That is ways such action cannot be considered public. Also should not be considered public: general meeting of villager (villagers), city for solving issues of local value according to the Law of Ukraine “On self-government in Ukraine”; convocation (conferences) of residents that conduct according to the Law of Ukraine «On self-organization bodies of population»; meetings of labor collectives, meetings of statutory bodies of management of legal entities, association of citizens, meeting of voters with candidates for deputies with elected deputies, Presidential candidates of Ukraine, meeting of initiative group for organizing a referendum, collection that held for recreation purposes, and public holiday, concerts, if they are not component of the peaceful assembly; wedding processions, funeral, if they are not component of the peaceful assembly, religious rites and ceremonies in case, stipulated by the Law of Ukraine “About freedom of conscience and religious organizations”.

During such events possible is gain features «publicity» in result appropriate activity such its holding in “public place” that gives it to basic presumption to benefit freedom assembly [1, 21], status of “thought public activity” but don’t give rights of participants relevant assembly or meeting, to encroach on rights and freedom, honor and dignity another people as in that is why including that are from they in within “visibility and audibility” or watch overswing “activity” in every which way on sufficient distances. The main characteristic of “activity” with the organizer or initiator (agent) such activity, becomes his character, as in p.1 art. 39 of the Constitution of Ukraine, marked over help term “peaceful”, and in p.2 art. 39 of Ukrainian Constitution not peaceful behavior of the participants in the meetings is defined as a threat to national security, public order, population’s health.

Developing such assumption should draw attention on position of the Organization for Security and Co-operation in Europe, as was expressed in leadership with human rights and provision the rule of law at times public assembly. In accordance said leadership quality for freedom peaceful assembly guaranteed if meeting is peace. Meeting is peace if his organizers claimed about their peace intent, and behavior of members is non-violent. [2, p. 17] Illegal but peace meeting what holding in situation when organizer or another persons had not carry out of requirements laws (recording order organization or notification in time – supplemented us) enjoy such most protection, as another peace meetings. [2, p. 7]

Conclusions. Summarizing the above, it should be noted that terminological uncertainty is one of the key problems on the way to introduction in Ukraine of a single mechanism for the realization of the right of citizens to gather peacefully in order to solve any problems of the life, to formulate and express a common position with regard to them while adhering to the level of security to the law and order. The systematic nature of this problem is indicated by the

content of article 39 of the Ukraine Constitution which defines the procedural and security components of the mechanism for implementing this right.

In modern conditions "peaceful assembly" is one of broadest concept that covers the entire set of public events, organized and conducted in public places peacefully, without weapons in the form of meetings, rallies, demonstrations, pickets, expressions of personal, civil or political position, from any questions.

The type of a peaceful is public (mass) activity, characterized by a large number of participants: as in most cases have been normatively defined organization of actions; availability of goal or specific goal; presence of public venues, regulation of the activity.

The term "mass events" in legislative and other regulatory acts of Ukraine is used only in connection with the law enforcement activities of the bodies of the National Police of Ukraine and other state bodies. It is widely used as departmental regulation as in service documents of the Ministry of Internal Affairs.

In case of declaration by the organizers (authorized participants) of a public activity of the exclusively peaceful nature of this measure and of non violent, albeit active conduct of its participants, such an event may be determined as peaceful.

The obligation of Police officers are providing the security and rule of law during public and another activities such as not considered but held peaceful that way it is part of the state guarantees to its citizens, enshrined in art. 39 of the Constitution of Ukraine.

The proper state of security and rule of law can be achieved only through the interaction organs of the National Police of Ukraine with the units of the interregional territorial organs of the National Police of Ukraine in particular the patrol police, units of the National Guard of Ukraine for the protection of public order.

The territorial body of the National Police of Ukraine did not interfere in the organization of such event, but carry out organizational and regulatory activities regarding provide the protection of public safety and order during its conduct, depending on its purpose and scale and other units are involved in ensuring security and order in carrying out such measures acting on his instructions.

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Summary

The main problems of terminological uncertainty of the right of citizens to gather peacefully are considered. The analysis of the main categories concerning the realization of the right of citizens to gather peacefully is carried out. The correlation between concepts "peaceful assembly", "mass event", "public event" is carried out. Identified actions that can not be considered public and highlight the collection and activities that should not be considered public.

Keywords: *citizen's rights, freedom of peaceful gatherings, peaceful assembly, mass event, public place, public order, public safety.*