

**THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLIES
AS AN EFFECTIVE INSTRUMENT FOR PRESERVING THE TERRITORIAL INTEGRITY
OF UKRAINE IN THE ASPECT OF RUSSIAN FEDERATION MASS MILITARY INVASION
IN FEBRUARY-MARCH 2022**

**ПРАВО НА СВОБОДУ МИРНИХ ЗІБРАНЬ ЯК ЕФЕКТИВНИЙ ІНСТРУМЕНТ
ЗБЕРЕЖЕННЯ ТЕРИТОРІАЛЬНОЇ ЦІЛІСНОСТІ УКРАЇНИ В АСПЕКТІ МАСОВОГО
ВІЙСЬКОВОГО ВТОРГНЕННЯ РОСІЙСЬКОЇ ФЕДЕРАЦІЇ НА ТЕРИТОРІЮ УКРАЇНИ
У ЛЮТОМУ-БЕРЕЗНІ 2022 РОКУ**

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This scientific publication is devoted to the problematic aspects of the realization of the right to freedom of peaceful assembly of citizens of Ukraine as a constitutional right under martial law, introduced on the territory of our state on February 24, 2022. The paper states that in conditions of martial law and the urgency of military intervention, there can be no question of notifying the executive or local authorities about meetings, rallies, marches and demonstrations, and in terms of countering mass propaganda of the Russian Federation freedom of peaceful assembly acquires the character of a legal instrument for preserving the territorial integrity of Ukraine. The author analyzes the provisions of the Decision of the Constitutional Court of Ukraine of September 8, 2016 № 6-рп / 2016 on the official interpretation of the requirement «early notification of executive authorities or local governments on meetings, rallies, marches and demonstrations» under Article 39 of the Constitution of Ukraine. The thesis confirms that the norms of the Constitution of Ukraine, which enshrine restrictions on the right to freedom of peaceful assembly and their understanding by the Constitutional Court of Ukraine, meet international standards. Some aspects of the legal mechanism of martial law in the context of the exercise of the right to freedom of peaceful assembly by citizens of Ukraine are considered. It was stated that for the period of martial law in Ukraine, in accordance with the Decree of the President of Ukraine «On the imposition of martial law in Ukraine» of February 24, 2022, the right to freedom of peaceful assembly is such that may be limited. The paper argues that the ban on peaceful assemblies, rallies, marches and demonstrations, other mass events during martial law is not mandatory – it is not mandatory, as evidenced by the wording «can independently», enshrined in Part 1 of Article 8 Law of Ukraine «On the legal regime of martial law». At the end of the paper, the author concludes that further research is needed to substantiate the legality of peaceful assemblies during martial law, as well as the need to amend or clarify Article 39 of the Constitution of Ukraine in this direction.

Key words: legal regime, constitutional rights, martial law, restriction of human and civil rights in martial law.

Дана наукова публікація присвячена проблемним аспектам реалізації права на свободу мирних зібрань громадян України як конституційного права в умовах воєнного стану, запровадженого на території нашої держави 24 лютого 2022 року. Зокрема, у роботі констатується, що в умовах воєнного стану та стрімкості військової інтервенції, не може бути і мови про сповіщення органів виконавчої влади чи органи місцевого самоврядування про проведення зборів, мітингів, походів і демонстрацій, а в аспекті протидії масової пропаганди Російської федерації право на свободу мирних зібрань набуває характеру правового інструменту збереження територіальної цілісності України. Автор аналізує положення Рішення Конституційного Суду України від 8 вересня 2016 року № 6-рп/2016 щодо офіційного тлумачення вимоги «завчасності сповіщення органів виконавчої влади чи органів місцевого самоврядування про проведення зборів, мітингів, походів і демонстрацій», передбаченої статтею 39 Конституції України. У роботі знаходить свого підтвердження теза про те, що норми Конституції України, які закріплюють обмеження права на свободу мирних зібрань та їх розуміння Конституційним Судом України відповідають міжнародним стандартам. Розглядаються окремі аспекти правового механізму запровадження воєнного стану в контексті реалізації громадянами України права на свободу мирних зібрань. Констатовано, що на період дії воєнного стану в Україні, відповідно до Указу Президента України «Про введення воєнного стану в Україні» від 24 лютого 2022 року, право на свободу мирних зібрань є таким, яке може бути обмежено. У роботі аргументовано, що заборона проведення мирних зборів, мітингів, походів і демонстрацій, інших масових заходів під час воєнного стану не має імперативного характеру – вона не є обов'язковою, про що свідчить формулювання «можуть самостійно», закріплене у частині 1 статті 8 Закону України «Про правовий режим воєнного стану». Наприкінці роботи автор підсумовує, що подальшого дослідження потребує, обґрунтування законності мирних зібрань під час воєнного стану, а також необхідності внесення змін чи уточнень до статті 39 Конституції України в даному напрямку.

Ключові слова: правовий режим, конституційні права, воєнний стан, обмеження прав людини та громадянина в умовах воєнного стану.

The formulation of the problem. The vile and unexpected mass military invasion of the Russian Federation into the territory of Ukraine in February-March 2022 posed a number of legal issues that require deep doctrinal understanding, especially from the standpoint of constitutional law. The right to freedom of peaceful assembly in the history of independent Ukraine has been repeatedly embodied by the citizens of Ukraine and led to effective political consequences. We all remember the Orange Revolution of 2004, which, in fact, led the opposition presidential candidate Viktor Yushchenko to power, and the Revolution of Dignity of November 2013-February 2014, which overthrew the then President of Ukraine Viktor Yanukovich. In this aspect, the position of the Ukrainian researcher S. Tretyak is correct, who notes that the years of independence of Ukraine changed the life of society and the minds of people [12, p. 11]. Unfortunately, the military intervention of the Russian Federation was so rapid and dev-

astating that some cities were in ruins faster than the citizens of Ukraine realized what was happening. However, we have all seen mass protests in Kherson, Slavutych and other cities of Ukraine, where people chanted under the occupiers' bullets «Kherson is Ukraine!», «No the Kherson People's Republic!», «Slavutych is Ukraine!». In the context of opposition to the Russian Federation propaganda, the right to freedom of peaceful assembly is of particular importance.

The state of the study. The research of the right to freedom of peaceful assembly was devoted scientific works of such Ukrainian scientists as A.G. Zagorodniuk, R.S. Melnyk, A.P. Svyatnenko, M.L. Seredy, O.Yu. Tilipska. However, in the context of the historical events that are taking place in Ukraine, the theoretical understanding of the right to freedom of peaceful assembly requires a new approach. The issue of legal regulation of the right to freedom of peaceful assembly in the aspect of martial law has not been considered in the scientific literature.

The purpose of the article is to outline the issue of exercising the right to freedom of peaceful assembly by citizens during martial law on the territory of Ukraine.

Presenting main material. It is no exaggeration to say that mass protests by Ukrainian civilians in the occupied cities of Ukraine are an effective tool for preserving Ukraine's territorial integrity during the Russian military's massive military invasion of Ukraine. In this context, the normative provision enshrined in Part 1 of Article 39 of the Constitution of Ukraine is of particular importance: «Citizens have the right to assemble peacefully, without weapons, and to hold meetings, rallies, marches, and demonstrations, which are notified to the executive or local government early» [5]. It is obvious that in the conditions of martial law and the urgency of military intervention, there can be no question of notifying the executive authorities or local self-government bodies plenty of time.

Part 2 of Article 39 of the Constitution of Ukraine provides: «Restrictions on the exercise of this right (*the right to assemble peacefully – A.T.*) 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 protect rights and freedoms other people». At present, we can state that the right to freedom of peaceful assembly is currently being exercised by the citizens of Ukraine, in particular, the residents of Kherson, with the aim of national security – preserving the territorial integrity of Ukraine.

In this regard, I would like to reproduce certain provisions of the Constitutional Court of Ukraine's Decision in the case of the constitutional petition of the Ukrainian Parliament Commissioner for Human Rights on the constitutionality of the provisions of Part 5 of Article 21 of the Law of Ukraine «On Freedom of Conscience and Religious Organizations» (case about early notification of public services, religious ceremonies, ceremonies and processions) of September 8, 2016 № 6-rp / 2016, which relates to the requirement of early notification of executive or local government bodies on meetings, rallies, marches and demonstrations.

This Decision states: «The right of citizens to assemble peacefully, without weapons and to hold meetings, rallies, marches and demonstrations, enshrined in Article 39 of the Constitution of Ukraine, their inalienable and inviolable right guaranteed by the Basic Law of Ukraine. This right is one of the constitutional guarantees of the right of a citizen to freedom of his worldview and religion, thought and speech, to freely express his views and beliefs, to use and disseminate information orally, in writing or otherwise – at his choice, the right to free development personality, etc. In exercising these rights and freedoms, there should be no encroachment on the rights and freedoms, honor and dignity of others. According to the Constitution of Ukraine (Article 68), everyone is obliged to strictly abide by the Constitution and laws of Ukraine. The right to assemble peacefully, without weapons and to hold meetings, rallies, marches and demonstrations can be exercised subject to mandatory prior notification to the executive or local authorities. Such notification should be made by citizens through the organizers of mass meetings. Early notification of the relevant bodies about the holding of certain mass meetings is the period from the day of such notification to the date of the mass meeting.

The Constitutional Court of Ukraine considers that the duration of the notice period should be within reasonable limits and should not restrict the right of citizens to hold meetings, rallies, marches and demonstrations provided for in Article 39 of the Constitution of Ukraine. Such deadlines should guarantee the realization of this right of citizens. During this period, these bodies must carry out a number of preparatory measures, in particular, for the unimpeded holding of meetings, rallies, marches or demonstrations, ensuring public order, rights and freedoms of others. If necessary, the bodies of executive power or local self-government may agree

with the organizers of mass meetings on the date, time, place, route, conditions, duration of their holding, etc.

The duration of the notice period should be sufficient for the executive or local self-government bodies to determine whether such meetings comply with current legislation and, if necessary, to apply to the court to resolve disputes in accordance with Article 39 (2) of the Constitution of Ukraine» [10].

Analyzing the reproduced provisions, we can say that the requirement of «early notification of executive authorities or local governments on meetings, rallies, marches and demonstrations» is designed, firstly, to ensure respect for the rights and freedoms, honor and dignity of others people, secondly, spatial placement of a certain number of people in a limited area, and thirdly, to ensure that during peaceful assemblies (meetings, rallies, marches and demonstrations) the interests of national security and public order will not be violated.

The right to freedom of peaceful assembly is also provided at the international level. Article 21 of the International Covenant on Civil and Political Rights guarantees everyone the right to freedom of peaceful assembly: «the right to peaceful assembly is recognized. The exercise of this right shall not be subject to any restrictions other than those imposed by law and necessary in a democratic society in the interests of national or public security, public order, public health or morals, or the protection of the rights and freedoms of others» [8].

Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms states: «everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. The exercise of these rights shall not be subject to any restrictions other than those established by law and necessary in a democratic society in the interests of national or public security, to prevent riots or crimes, to protect health or morals or to protect the rights and freedoms of others. This article shall not preclude the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State» [2].

We see that, at the international level, the right to freedom of peaceful assembly implies that its restriction must, firstly, be established by law and, secondly, «be necessary in a democratic society in the interests of national or public security, public order and health, and the morals of the population or the protection of the rights and freedoms of others». In this aspect, we state that the norms of the Constitution of Ukraine, which enshrine restrictions on the right to freedom of peaceful assembly and their understanding by the Constitutional Court of Ukraine, meet international standards.

R.S. Melnyk provides a system of legal regulations governing the right to freedom of peaceful assembly in other international and European legal acts:

- article 15 of the Convention on the Rights of the Child (1989, November 20): «1. States Parties recognize the right of the child to freedom of association and to freedom of peaceful assembly. 2. No restrictions may be imposed on the exercise of this right, except those which are enforceable by law and which are necessary in a democratic society in the interests of national security, public order, public health or morals, or the protection of rights and freedoms other people» [3];

- article 15 of the American Convention on Human Rights (1969, November 22): «Recognizes the right to peaceful assembly, without weapons. The exercise of this right shall not be subject to any restrictions other than those imposed by law and necessary in a democratic society in the interests of national or public security, public order or the protection of the health and morals or rights and freedoms of others» [1];

- article 12 of the Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms (1995, May 25): «1. Everyone has the right to freedom of peaceful assembly and association with others, includ-

ing the right to form and join trade unions for the protection of his interests. 2. The exercise of this right shall not be subject to any restrictions other than those provided by law and necessary in a democratic society in the interests of national and public security, public order, public health and morals, or the protection of the rights and freedoms of others. This article shall not preclude the establishment of legal restrictions on the exercise of these rights by persons belonging to the armed forces, law enforcement or administrative bodies of the State» [4];

- clause 9.2 of the Copenhagen Document of the Organization for Security and Cooperation in Europe (1990, June 29): «Everyone has the right to peaceful assembly and demonstration. Any restrictions that may be imposed on the exercise of these rights are established by law and comply with international standards» [6; 7, p. 19-20].

R.S. Melnyk also mentions the Guidelines on Freedom of Peaceful Assembly developed by the Organization for Security and Cooperation in Europe. This document, the scientist writes, is a unique source of European international legal doctrine, based on the national experience of the region, the norms of international agreements and the case law of the European Court of Human Rights [7, p. 20]. The guidelines, together with explanatory notes, were developed by a team of experts on freedom of peaceful assembly from the Office for Democratization and Human Rights of the Organization for Security and Cooperation in Europe in cooperation with the Venice Commission, taking into account the recommendations of its members [13, p. 54].

Returning to the issue of the right to freedom of peaceful assembly as an effective tool for preserving the territorial integrity of Ukraine in terms of mass military invasion of the Russian Federation into the territory of Ukraine in February-March 2022, we will analyze some provisions of the Law of Ukraine «On the legal regime of martial law» of June 11, 2015.

The first thing to pay attention to is the legislative definition of martial law enshrined in Article 1 of the Law: «its territorial integrity and provides for granting the relevant state authorities, military command, military administrations and local governments the powers necessary to deter the threat, repel armed aggression and ensure national security, eliminate the threat to Ukraine's independence, territorial integrity and temporary integrity. due to the threat, the restriction of the constitutional rights and freedoms of man and citizen and the rights and legitimate interests of legal entities, indicating the term of these restrictions» [9].

Let's try to comprehend the meaning of the last phrases, namely – «as well as temporary, threatened, restriction of constitutional rights and freedoms of man and citizen and the rights and legitimate interests of legal entities, indicating the duration of these restrictions». Logically, the question arises – what are the rights, freedoms and legitimate interests of man, citizen and legal entity that can be limited?

The answer to this question is given by Article 6 of the Law entitled «Decree of the President of Ukraine on the imposition of martial law». Paragraph 4 of Part 1 of this article provides that: «the Decree of the President of Ukraine on the imposition of martial law shall contain an exhaustive list of constitutional rights and freedoms of man and citizen, which are temporarily restricted in connection with the imposition of martial law, restriction of the rights and legitimate interests of legal entities, indicating the term of these restrictions» [9].

We refer to the text of the Decree of the President of Ukraine «On the imposition of martial law in Ukraine» of February 24, 2022, approved by the Verkhovna Rada of Ukraine immediately on the day of its adoption – and indeed, paragraph 3 of this Decree provides: «In connection with the introduction of martial law temporarily, for the period of martial law, may restrict the constitutional rights and freedoms of man and citizen under Articles 30 – 34, 38, 39, 41 – 44, 53 of the Constitution of Ukraine, as well as introduce temporary restrictions on the rights and legitimate interests of legal persons within the limits and to the extent necessary to ensure the possibility of introducing and implementing measures of martial law, which are provided for in part one of Article 8 of the Law of Ukraine «On the Legal Regime of Martial Law» [11].

As we can see, Article 39 of the Constitution of Ukraine is in the list of restricted human and civil rights and freedoms.

In this aspect, paragraph 8 of Part 1 of Article 8 of the Law of Ukraine «On the Legal Regime of Martial Law» is important, which states: «may independently or with the involvement of executive bodies, the Council of Ministers of the Autonomous Republic of Crimea, local governments introduce and implement within the temporary restrictions of constitutional rights and freedoms of man and citizen, as well as the rights and legitimate interests of legal entities. state, such measures of the legal regime of martial law – to prohibit peaceful assemblies, rallies, marches and demonstrations, other mass events» [9].

Here I would like to emphasize that the ban on peaceful assemblies, rallies, marches and demonstrations, other mass events during martial law is not mandatory – it is not mandatory, as evidenced by the wording «may independently», enshrined in Part 1 of Article 8 of the Law of Ukraine «On the Legal Regime of Martial Law».

Conclusions. Unfortunately, outlining the general issue of citizens' exercise of the right to freedom of peaceful assembly in the aspect of martial law, we can state that in the legal field there are more questions than answers. After all, as practice has shown, the right to freedom of peaceful assembly is now an effective tool for preserving the territorial integrity of Ukraine and counteracting the propaganda of the Russian Federation. However, further research requires at least a justification of the legality of peaceful assemblies during martial law, and at most – the need to amend or clarify Article 39 of the Constitution of Ukraine in this direction.

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