

PEACEFUL GATHERINGS AND OTHER FORMS OF CITIZENS' RIGHT IMPLEMENTATION TO RESIST CORRUPTION

Oleksii MAKARENKO,

Candidate of Law Sciences (PhD), Associate Professor, Docent of the Department of History and Theory of State and Law, Vice-Dean for International Relations of the Law Faculty of Zaporizhzhia National University

The article deals with the peaceful gatherings and other forms of citizens' right implementation to resist corruption. The right to peaceful assembly is a freedom, a public expression of a citizen's civil position in a non-violent form of assembly, rally, campaign, demonstration, or in any other form. This right is legally recognized by the international community, which determines the openness of society for progressive change. When this right becomes a means of combating and fighting corruption, it becomes a feature of extreme integrity, sincerity and strong emotions and feelings. During such implementation, prolonged persecution of citizens for justice and further unconstructive acts of public authority may provoke violent forms the protests of citizens - vigilantism or rebellion. They go beyond the current state laws for the sake of recovery law.

Keywords: *vigilantism, corruption, peaceful assembly, non-violent, law, protest, public authority, values.*

МИРНИ ЗБОРИ ТА ІНШІ ФОРМИ ЗДІЙСНЕННЯ ПРАВА ГРОМАДЯН НА ОПІР КОРУПЦІЇ

Олексій МАКАРЕНКОВ,

кандидат юридичних наук, доцент, доцент кафедри історії і теорії держави та права, заступник декана юридичного факультету з міжнародних відносин Запорізького національного університету

У статті йдеться про мирні зібрання та інші форми здійснення права громадян на опір корупції. Право на мирні зібрання являє собою свободу з публічного вираження правової позиції громадянина з приводу публічних питань в ненасильницькій формі зібрань, мітингів, агітацій, демонстрацій або в будь-якій іншій формі. Це право юридично визнане міжнародною спільнотою. Його реалізація визначає відкритість суспільства до прогресивних змін. Коли це право стає засобом боротьби з корупцією, воно ґрунтується на широті та сильних емоціях й почуттях громадян, а спрямоване на досягнення стандартів доброчесності. Реалізація цього права стає наслідком тривалого переслідування громадян за справедливість. Це у сукупності з подальшими неконструктивними діями органів публічної влади може спровокувати вігилантизм, заколот чи інші насильницькі форми протестів громадян. Вони виходять за рамки діючих законів держави заради відновлення закону правового, хоча насильство загрожує праву, часто збільшує вразливість доброчесних громадян, послаблює праведність шляху до відновлення правопорядку.

Ключові слова: *пильність, корупція, мирні збори, ненасильство, закон, протест, державна влада, цінності.*

ADUNAREA PAȘNICĂ ȘI ALTE FORME DE EXERCITARE A DREPTULUI CETĂȚENILOR DE A REZISTA CORUPȚIEI

Articolul tratează adunările pașnice și alte forme de exercitare a dreptului cetățenilor de a rezista corupției. Dreptul la întrunire pașnică este libertatea de a exprima poziția legală a cetățenilor cu privire la problemele publice cu privire la întâlniri non-violente, mitinguri, agitații, manifestații sau orice altă formă. Acest drept este recunoscut legal de comunitatea internațională. Implementarea acesteia determină deschiderea societății către schimbări progresive. Când acest drept devine un mijloc de combatere a corupției, se bazează pe sinceritatea și emoțiile și sentimentele puternice ale cetățenilor și are ca scop atingerea unor standarde de integritate. Realizarea acestui drept este rezultatul unei persecuții îndelungate a cetățenilor pentru justiție. Acest lucru, împreună cu alte acțiuni non-constructive ale autorităților publice, poate provoca vigilență, rebeliune sau alte forme violente de protest de către cetățeni. Ele depășesc legile actuale ale statului pentru a restabili legea dreptului, deși violența amenință legea, crește adesea vulnerabilitatea cetățenilor virtuoși, slăbește dreptatea căilor de aplicare a legii.

Cuvinte-cheie: *vigilență, corupție, adunare pașnică, non-violență, lege, protest, putere de stat, valori.*

Statement of the problem and relevance. As the eminent contemporary thinker rightly pointed out, there is no more important, more complicated and dangerous task in the policy of freedom at the beginning of the 21st century than to give the chance to a successful life as many people as possible throughout the world [1, p. 15-16]. In this regard, the role of the whole system of legal guarantees of individual freedom and the collective of people who are the priority institution in the system of public law of each state increases and is one of the key elements of the legal status of a person and a citizen. Among such guarantees, the right to peaceful assembly has become an important political and legal means and institution aimed at creating conditions for the realization of law, as well as ensuring its comprehensive guarding and protection from violations during its implementation and development. Its nutritional force is so large that it is able to shake off the corruption schemes of public authority, to set the correct vector of transformation of the legal system in the current conditions of global problems, the spread of transnational crime and other complex social challenges faced by members of an open society for progress. In this regard, the accomplishment of the right to peaceful assembly is difficult to overestimate. The relevance of the research topic is confirmed by the insufficient research degree of the right to peaceful assembly realization for counteract and combat corruption. This right may include non-violent forms of implementation, as well as acute forms of uprising for justice and integrity.

Analysis of recent research and publications. The information base of the study was the works of domestic and foreign scientists: from Ukraine – S. Bostan, S. Gusarev, A. Kolodiy, O. Lysenko, O. Tikhomirov, T. Kolomoets, Yu. Oborotov, P. Rabinowitz (the legal nature of human freedom, including the right to peaceful assembly; methodological and other the general legal anticorruption issues etc.), O. Vaskovska (the constitutional right to peaceful assembly and the mechanism for its implementation in Ukraine, 2007); from Poland Republic – P. Brzenczek (antyutopizm Karla R. Poppera a liberalny projekt społeczeństwa otwartego, 2008); H. Izdebski, A. Stępkowski (political and legal theory of the development of democracy and civil society, 2003); J. Jemielniak, P. Miklaszewicz (interpretation of law in the global world, 2010); A. Chmielewski (społeczeństwo otwarte czy wspólnota; filozoficzne i moralne podstawy nowoczesnego liberalizmu oraz jego krytyka we współczesnej filozofii społecznej; analiza krytyczna filozofia Poppera, 2001-2006); A. Jabłoński (budowa społeczeństwa wiedzy – zarys teorii społecznej Karla R. Poppera; status teoretyczny i funkcja tech-

niczna wiedzy o społeczeństwie – wokół myśli Karla R. Poppera i Józefa M. Bocheńskiego, 2002, 2006); from other countries: P. Lobeira (EU Citizenship and Political Identity: The Demos and Telos Problems, 2012), J. Aguiar e Silva (for a hermeneutic theory of justice, 2008; political and legal means for ensuring human rights in conditions of building an open society in Europe, 2015-2016), J. Araujo (institutional change and persistence of public management in Portugal, 1999), Ph. Benesh (political-legal doctrines of ideologues of the theory of open society), N. Flatters (visagalantizm and other ways of influencing citizens on officials of public authority, 2018), M. Dani (rehabilitating Social Conflicts in European Public Law, 2012), Y. Akdeniz, C. Walker, D. Wall (The internet, Law and Society, 2000). However, the aspect of the anti-corruption potential of the right to peaceful assembly in the context of the transformation of the legal system of an open society remains to date not fully resolved. This is determined by the political, practical and theoretical relevance of our research.

The subject, purpose and scientific methods of the article. The subject of this thesis is the nature, concepts and forms of realization the right to peaceful assembly in conditions of the citizens struggle with the corruption of public authority. The main aim is to reveal this subject. The purpose of this work has resulted in the comprehensive use of general philosophical/theoretical scientific methods (dialectical logic and formal logic, include analysis, synthesis, generalization etc.), general scientific methods (hermeneutic, systemic, structural-functional, axiological) and special legal methods of cognition (formally legal dogmatic, comparative legal etc.), which allowed to cover the key aspects of

Presentation of the main material. Each human being has an inalienable right to life, freedom and property [2, p. 55]. Legal mechanisms for the realization, keeping and protection of these values are based on constitutional and legal norms. The real and long-term threat of the loss of such values is the ineffectiveness of the individual measures taken by each to protect themselves and their families. An essential element of the ineffectiveness of law is the corruption of public servants. For example, the domestic experience of perception of corruption by the population is known to us on the background of procedural law efficiency lack and public authorities illustrate the following results of sociological research (Charts 1-3)*.

* The survey was conducted among the inhabitants of Zaporizhzhya Oblast, and in 2016 also Dnipropetrovsk and Kharkiv regions. In 2017 and 2018, experts were mainly representatives of the bodies of the public executive power of Ukraine; in 2010 - also experts from the courts and law enforcement agencies are involved.

Chart. 1. Effectiveness of procedural legislation of Ukraine and application of citizens by non-legal methods

№	The year of the questionnaire and the number of respondents	Received answers	
		The domestic procedural law more or less does not promote citizens in the realization and protection of their rights and freedoms, the number of answers in percents (%) of the total number of respondents	Citizens who seek proper implementation and protection of rights and freedoms through corruption, the number of answers in percents (%) of the total number of respondents
	2018 (60 experts)	54% (46% - rather contributes)	73% (19% - moral means)
	2017 (60 experts)	73,59%	92,45%
	2016 (40 experts i 120 ordinary citizens)	75% experts, 27,5% ordinary citizens	80% experts, 70% ordinary citizens
	2012 (100 entrepreneurs, experts)	59,00 %	76,00 %
	2010 (70 experts)	84,29 %	65,71 %

Chart. 2. Effectiveness of Public Authorities in Ukraine

Estimation	Parliament of Ukraine	Judges	Executive bodies of state power	Local / municipal authorities
2018				
unsatisfactorily	67%	59%	26%	22%
satisfactorily	30%	37%	52%	41%
good	3%	4%	22%	37%
perfectly	0%	0%	0%	0%
2016 (experts are ordinary citizens and representatives of public authorities)				
unsatisfactorily	62%	31%	25%	18%
satisfactorily	31%	47%	49%	50%
good	6%	19%	21%	27%
perfectly	1%	3%	5%	5%

Chart. 3. The degree of public confidence to public authorities in Ukraine

Estimation	Parliament of Ukraine	Judges	Executive bodies of state power	Local / municipal authorities
2018				
I do not trust at all	37%	22%	4%	4%
Rather, I do not trust	56%	67%	52%	48%
I trust more quickly	7%	11%	44%	37%
I totally trust	0%	0%	0%	11%
2016 (experts are ordinary citizens and representatives of public authorities)				
I do not trust at all	62%	31%	25%	18%
Rather, I do not trust	31%	47%	49%	50%
I trust more quickly	6%	19%	21%	27%
I totally trust	1%	3%	5%	5%

Being incapable of solving the problems of the normal exercise of their rights by reason of corruption, people are forced to unite through rallies, collective appeals and other forms of manifestation of the right to peaceful assembly. Together they carries out pressure on public authorities to stop human rights violations and prosecute corrupt officials to legal liability and prevent the widespread practice of obtaining unlawful benefit by public servants.

The nature of the right to peaceful assembly is being developed in the form of permission of citizens for claims to their own state. The fundamental idea of this requirement is to correct and force public authority to act within the legal system, which is constantly open to the development of society, which ensures steady progress [3, p. 10]. Human rights set moral standards for legitimacy and assessment of state policy. Individual rights of every person deter-

mine the supreme power of the people and the ranges of possibilities of democratic politics [4, p. 211], the free realization of individuals of their religious, economic and political needs [5, p. 120]. Reflecting the influence of these and all other general laws of human nature, the right to peaceful assembly is relevant in the time when people seek to convey to their public authorities their vision of urgent reforms, which, as a rule, relate to the whole nation. In this case, individual means of communication with public authorities on such issues have already exhausted their resources and do not give the expected effect.

An essential element of the right to peaceful assembly is its non-violent nature. Peaceful attitudes of citizens in the exercise of this right may change on the exact opposite, provided that the goal is to overcome corruption, stop its widespread dissemination and the like. Changes in the peaceful nature of the right to assembly are conditioned by the negative nature of the phenomenon of corruption. And if citizens feel corruption and jointly protest against it, this means that it has captured there are many people. These unfair connections systematic, prolonged and destroy the normal livelihoods of many people, excluding social progress. This is corruption at the political level, when it involves representatives of the people elected at the local and national levels. As scientists rightly emphasize, corruption is a phenomenon that has been taken out of the cultural sphere into the sphere of criminal cultures in primary cultures (in terms of the importance of their rights, above all the equal rights of each person) and as a phenomenon that is natural to secondary cultures, imitation, where it, due to social necessity, actually acquires a degree of normativity [6, p. 179]. Corruption in the judicial system is the use of judges and officials who carry out administrative management of judicial bodies, status, organizational and authoritative powers, contrary to the norms of their functioning established by the Constitution of Ukraine and legislation [7, p. 5].

In the face of preventing corruption the right to peaceful assembly, only part of it remains, and, more precisely, there is a right to assembly, a protest, against corruption. There is a legal situation of social activity of citizens and helplessness of public authority, which is dominated by malice and unjust enrichment. No one with such a tendency can cope at the time of public protests. Moreover, it does not change with further efforts of public authorities and citizens, aimed at anticorruption renewal of state-legal institutions. Successful changes require long-term, consistent, anti-corruption strategies that result in structural improvements in educational and other spiritual and

cultural foundations for the development of personality and society, a fair distribution of economic rent (profit) and political honesty in the struggle for gaining and retaining state power.

For public authority, which seeks to preserve its influence in the state, a marker of tension in society becomes time for citizens to exercise their right to peaceful assembly. This is the moment when it is possible to find a common solution to the problem, in our case, to overcome the tendency to increase corruption. Further delay by the public authorities reduces its chances of reaching agreement with citizens, because, first, public protests are radicalized and their peaceful way is gaining more and more signs of violence; secondly, the subject of citizens' dissatisfaction is not just left, but the problem further deepens; and third, citizens are resented by the stubbornness of public authority, its insensitivity to their thoughts. Actually, the very fact of the emergence of public assembly means that public authority was closed to constructive citizens' initiatives. Accordingly, there is a low probability of its flexibility and readiness for mutual understanding with citizens. Then a new pattern arises and operates, namely: the longer the conflict between public authorities and citizens is exacerbated, the less probability of solving it by peaceful means and / or the maintenance of state power by political force against actions of which citizens act. The states, where such public demonstrations and protests are widespread, have administrative and legal systems closed for progressive ideas / proposals. And therefore, by definition, they cannot how to prevent the transformation of peaceful assembly of citizens into their violent protests, so to negotiate with them. As well as emphasized in the scientific literature, this is the corruption of the political level, which in most cases becomes a marker of countries with authoritarian or transitional regimes [8, p. 7; 9].

Actually, the nature of the right to peaceful assembly has a non-violent character by definition. According to art. 21 International Covenant on Civil and Political Rights (1966), the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others [10]. The meeting should be defined as peaceful if its organizers have peaceful intentions and meetings are non-violent. The term "peaceful" should be extended to conduct that can irritate or offend others, and even to behavior that temporarily hinders, hinders or interferes with the ac-

tions of third parties. In addition to the principle of non-violence, the understanding of the mechanism for the implementation of the right to peaceful assembly also includes taking into account the ideas of presumption of support for holding meetings, a positive obligation of the state to promote peaceful assembly and its protection, legality, proportionality, non-discrimination, good governance, responsibility of the public authority [11, p. 21-25].

“Meeting (assembly)” means an intentional and temporary presence in a public place of a group of persons with the aim of expressing common interests. Freedom of peaceful assembly is one of the basic human rights that can be enjoyed and that can be realized by individuals and groups, unregistered associations, legal entities and other types of organizations. Assemblies can serve a variety of purposes - including, to prevent or combat with the corruption in public law sphere [12, p. 15].

At the same time, peaceful assembly is sometimes a means of implementing a number of other rights of individuals - the right of a citizen to freedom of opinion and belief, thoughts and words, to free expression of his views and beliefs, for the use and dissemination of information orally, in writing or otherwise, of his choice, the right to free development of his personality, etc. The assemblies help individuals to avoid intellectual and social isolation (loneliness) and participate in the joint formulation of a certain public position on a particular issue [11, p. 7, 18]. In accordance with the Constitution of Ukraine, the fundamental right to freedom, among other things, is disclosed through the right to freedom of assembly [13, p. 167; 14]. This is an element of the totality of normative legal constructions of regulation of morally predetermined behavior of an individual (person, citizen) in various manifestations of freedom in law [15, p. 281]. And if freedom is the highest political goal, the guarantor of the individual's right to freely seek the pursuit of the highest ideals of public and private life, then democracy is a utilitarian means for the protection of social peace and individual freedoms [16, p. 88], including through the exercise of the right to peaceful assembly against corruption or other devastating socio-legal phenomena.

According to clause 3 of Part 1 of Art. 2 of the Draft Law of Ukraine “On the Procedure for Organizing and Conducting Peaceful Measures” of 12.12.2012, No. 0918, a peaceful measure is a free, public expression of a civil or political position of persons in which it is possible to make demands, adopt resolutions, and other requests on various issues public life, accessible to each meeting, held in the form of meetings, rallies, campaigns, demonstrations, pickets or in any

other combination of these forms on the initiative of individuals or legal entities [17].

Consequently, the right to peaceful assembly is realized in a situation where, first, the violation of the existing legal norms is widespread, continuous and lasts for a long time, and secondly, there are no individual legal remedies for restoring justice through the courts and other public-law institutions. For people, this means that they are already fighting not with each other but with public authority, where the level of wrongdoing and other tyranny neutralized the social effectiveness of the legal system. At the same time, such violations should touch upon fundamental values, namely: life, property, family, and others. In particular, N. Machiavelli stressed that for a person the fundamental importance is the encroachment on property and / or spouses. In this case, people are starting to fight frankly, which, as you know, may not be limited to peaceful means.

The variety of options for implementing the right to peaceful gatherings stipulates a number of nominations for its forms. For example, the term advocacy is used to denote the organized efforts of citizens, their associations and the process of representing their interests in public authorities with a view to adopting the necessary public authority decisions; their legitimate influence on the specific officials of these bodies and / or decision-making bodies or on politicians in order to change a particular situation for the better; efforts aimed at systematic and irreversible changes in the environment, protection and representation of the interests of citizens [18, p. 5]. However, such a form of civic protest more likely resembles an acceptable variant of the current public-private partnership - the system of relations between the public authority and the subject of private law (organization or otherwise) in which this subject is given a major role in the planning, financing and / or implementation certain service / performance, rather than using traditional co-operation procedures (eg, a tender). At the same time, protection of state and communal interests is guaranteed through institutional foundations, provisions of normative acts and concluded agreements [19, p. 25].

A representative form of advocacy in content may lose its peaceful character and become violent, especially when violations of law are of a systemic nature and relate to fundamental legal values. For example, information about acceptable indicators of economic growth in the Arab world (Egypt, Libya, etc.) and Ukraine at the start of peaceful, and then violent, rallies of citizens, proves the lack of impoverishment of the population. However, the protesters were absolutely convinced of the crisis of their country's econo-

mies, linking it primarily with the corruption of the ruling elite and, accordingly, expecting a change of government to reduce corruption [20, p. 23-24]. This contradiction between economic indicators and self-perception of the population is explained by the fact that the economic rent that is extracted by the state is not distributed fairly among all members of society, but goes to the pockets of a narrow circle of powers, stimulating popular discontent and bringing about a tragic solution [21, p. 34]. In such cases, when the reason for public speeches was the unfair distribution of profits from the national economy and / or corruption, then the constitutional right to peaceful assembly immediately or in a very short time turn into violence, for example, such as nominating the term “vigilantism” (Latin *vigilio* - to take care of it, and *vigilare* all’adempimento del regolamento - to monitor the implementation of the statute; *nym überwachen*). Marked by this term concept means illegal, albeit mostly legal, form of civil opposition against inefficiency (including corruption) of public authority and lack of law and order, violent struggle of citizens for their rights, restoration of the rights, restraining of corruption in the state, establishment of constructive democratic influence of the people to the state, ensuring openness of society and real restriction the state by the law. The corpus of citizens of a country governed by democratic norms must include all persons covered by the jurisdiction of that country, except those temporarily residing therein and those whose incapacity is proven [22, p. 78]. The subject of the right to participate in the exercise of public authority is not the people in the broad sense, but every member of the public. In order to exercise this right, it is not necessary to unite in political associations (although this form is acceptable), since in a democratic state not only the community, the people, the mass can exercise control, but also an individual. It is noticeable in this context that, for example, international documents do not contain indications of the number of interested persons, while perceiving one person as a full representative of the people. For example, the term “public” in international law means one or more natural or legal persons, their associations, organizations or groups acting in accordance with national law or practice [23, p. 37; 24].

However, the violence and content of citizens’ actions in exercising their right to peaceful assembly are not the only criteria that should be taken into account when transforming the forms of exercise of this right. For a more detailed classification of such forms, the well-known Ukrainian lawyer R. Melnyk, also based on other factors, namely: content, methods, place, ways of coordinating the actions of participants in the

peaceful assembly. On their basis, he highlighted the hike, procession, musical parades (festivals), street celebrations and street theatrical performances, concerts, pickets, infrastructure elements, information points, meetings of political parties and unions, blocking, object grabbing, smartphonemobs and flashmobs, costume performances, worker strikes, “paid” pickets and demonstrations, special public events, open air gatherings and meetings in enclosed spaces. In the aspect of successful use of these fighting corruption forms it is appropriate to recall the example of a meeting the groups of people in the Philippines 2001, via text messages, near the church of EDSA Shrine to protest against the corruption of President Joseph Estrada; The result of this action was that the country’s president resigned [11, p. 79-95, 92].

Conclusion. Consequently, the prevalence, continuity and duration of the violation of law combined with the ineffectiveness of individual legal remedies for the restoration of justice through the courts and other public-law institutes becomes a sufficient basis for the realization of the right of people to peaceful assembly by the collective of citizens. The right to peaceful assembly is the freedom, the form of direct democracy, the public expression of the civil or political position of persons, in which it is possible to make demands, adopt resolutions, and other appeals on various issues of public life, conducted in non-violent form of meetings, rallies, campaigns, demonstrations, picketing or in another form acceptable to the legal culture of society on the initiative of individuals or legal entities, carried out by a group of people, citizens jointly. This right political, legally recognized by the international community, determines the openness of society for progressive change; has a peaceful and non-violent nature of propaganda and communication, with the use of technical and other tools, which make violence impossible. That is, the use of firearms and other weapons, special means of coercion is excluded. The realization of the idea of peace in the nature of this right unfolds through the principles of presumption of support for holding meetings, a positive obligation of the state to promote peaceful assembly and its protection, legality, proportionality, non-discrimination, good governance and responsibility of the public authority.

However, the right to peaceful assembly can also be a private manifestation of existing forms of preventing and combating corruption. And in this case, it acquires the features of extreme integrity, sincerity and strong emotions and feelings. The power of these qualities, combined with the ignorance of their legitimate interests by the public authorities, leads to poor management of citizens within these acts and violent

ce. People are starting to fight frankly. Such qualities are the result of the long languor citizens for justice and the real act of law, not deception and violence. In this connection, peaceful assembly, which are basically intended to counteract and combat corruption, become violent forms. Among these forms, the most irrational and powerful is vigilantism or rebellion, going beyond the boundaries of existing laws, remaining within the limits of the natural law to development and revealing anticorruption opposition on the part of human nature and law.

The prospect of further research becomes the elements of legal mechanisms for long-term guarantee of preservation the achievements gained by citizens as the result of the realised right to peaceful assembly and revolt against corruption including variety types of vigilantism.

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INFORMATION ABOUT THE AUTHOR
 MAKARENKO Oleksii Leonidovych,
 Candidate of Law Sciences (PhD), Associate
 Professor, Docent of the Department of History
 and Theory of State and Law, Vice-Dean for
 International Relations of the Law Faculty of
 Zaporizhzhia National University;

ДОВІДКА ПРО АВТОРА
 МАКАРЕНКОВ Олександр Леонідович,
 кандидат юридичних наук, доцент, доцент
 кафедри історії і теорії держави та права,
 заступник декана юридичного факультету
 з міжнародних відносин Запорізького
 національного університету;
 almak17@ukr.net