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UDC 342.2

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**CONTEMPORARY DEVELOPMENTS IN THE UKRAINIAN  
LEGISLATION ON NGOs**

The importance of associations in the modern societies and states is enormous. They unite people and legal persons into the territory-based or the interest-based groups. They constantly develop and exist in different organizational forms. They represent the views and needs of the different groups of people – majorities, minorities, created on the different basics – economical, political, religious, sexual etc. They participate in the state building and in the building of civil society. They take part in elections to create democratically functioning state and municipal authorities. They create the “legal-free” space between the society and the state, which is known as the “civil society”.

The associations come in different forms – churches, charities, trade-unions, sport club, political parties and so on. In the democracies they are created by the initiative of people or non-public legal persons (without influence of state and municipal bodies and officials), function without such an influence and have voluntary membership – or no membership at all. That is why the regulation of associations is one of the most important problems in every country – based on the national history and traditions, the most effective approach should be developed.

Associations, different aspects of their functioning and studying, are the subjects of the research of politicians, sociologists, economists and surely lawyers. The associations are regulated by the administrative law (registration, control of their activity, penalties for the felonies), civil law (property of the associations, other resources of the associations), tax law (taxation of the associations, taxation of the people and companies that do the donations), and criminal law (penalties for the crimes). But the basics of this regulation are created by the norms of the constitutional law.

Some of the aspects of the problem were previously researched by the author of the article [1; 2], as well as by D.E.Volkova [3; 4]. Yet the Ukrainian legislation in this field needs the constant renovation – this time, because the processes of the European integration were intensified during the last years.

The aim of this article is to propose the ways of how to improve the current Law of Ukraine “On Civic Associations” (2012).

Nowadays Ukraine has a law “On Civic Associations” (2012). It was passed during the period of the country’s development, when Euro integration wasn’t a priority, so now it is urgent to change it in accordance with the main values of the European constitutionalism.

Constitutionalism is the main concept of the branch of constitutional law. Constitutionalism is a political-legal theory that develops for centuries – since the Magna Charta was introduced in 1215. Thus, constitutionalism changes constantly, according to the main values of the state and society.

There are many definitions of the constitutionalism. Constitutionalism is both the political and the legal doctrine. The legal understanding of the constitutionalism states that it is the special regime of the functioning of the state authorities. This regime is based on the certain principles. Most of them are in the Ukrainian Constitution since 1996, but aren’t reflected in the current legislation, including the NGO’s legislation.

The principles of constitutionalism show the main values of the constitutionalism. Because of that, the researchers consider these principles as the opened list of the modern state characteristics. The principles can be changed and modified in order to serve the main goal of the state. Modern Ukrainian state (and thus the modern Ukrainian constitutionalism) sees the human being, his or her life and health, honour and dignity, inviolability and security as its main value. Thus associations are extremely important to achieve this goal – creation of the social state in Ukraine (Article 3 of the Constitution of Ukraine).

The principles of the modern Ukrainian constitutionalism could be found in the text of the Constitution, mostly in Chapter 1. The list includes the principle of separation of powers, the principle of the checks and balances, the principles of guaranteeing of the local self-government, the principle of the rule of law and many others.

There are some principles of constitutionalism relating to the associations. *Principle of sovereignty of the people* includes the possibility and the real ability of the people to take part in the state and local government. One of the forms of taking part in the state and local government is through the elections. In Ukraine the political parties can suggest the lists of their candidates to the Verkhovna Rada, Verkhovna Rada of the Autonomic Republic of Crimea and the local councils, and recommend their candidates to be elected the President of Ukraine, or the head of some local council. Other types of associations have the possibility to nominate the candidates to be elected the President of Ukraine, or the head of some local council. But they can contribute the election process by observing, agitating and other activities. This is only one example of how the associations take part in the implementation of the principle of sovereignty of the people in Ukraine.

*Principle of support of civil society* is connected with the association’s activity. In fact, associations mostly form the civil society. The rights and possibilities, the legal status of the associations in the country show the situation with the state support of the civil society. In order to encourage the development of the civil society, the country usually revises the laws on associations.

*Principle of the rule of law* has a great impact on the associations and is protected by them tremendously. One of the main activities of the associations is lobbying and advocacy activity. Due to the organized groups of people (associations) the attention of the state authorities is attracted to the current problems.

*Principle of the social state* is connected with the high social standards. Trade unions and other types of the associations contribute a lot, when it comes about the solving the problem with the low level of the social guarantees of the human rights. Another aspect of the principle of the social state is the corporate social responsibility – a new theory within law and economics. According to this theory, each association should function in the way which is the friendliest to the society, state, ecology and so on. The concept of the corporate social responsibility is a new trend within the constitutionalism. The importance of the corporate social responsibility is enormous, that is why probably soon the list of the principles of the Ukrainian constitutionalism will include one more principle – the *principle of state support of corporate social responsibility*.

*Principle of priority of human rights compared to the state's rights* supposes the priority of all of the human rights, including collective (freedom of associations) to the state's rights. This principle is implemented mostly in constitutional, civil and criminal national legislation.

Human rights in a democratic state are the highest value, the centre of the doctrinal understanding of the constitutionalism. Human rights are the centre of the subject of the branch of constitutional law – as this branch regulates three main groups of the social relationships. The first group is the legal status of the personality (the main part of it are the human rights). Two other groups – the form of the state and the basics of the society – state interaction – are closely connected with the human rights. The form of the democratic state is usually designed in a way that encourages the human rights' protection. The interaction of the society and the state is only effective when the human rights are not only proclaimed, but also real.

The interaction of the society and the state is possible mostly due to the freedom of associations and freedom of expression (freedom of speech). These two freedoms are among the oldest in the list of human rights. The freedom of associations and freedom of expression have universal status and are included in the various international standards of human rights, including the Universal Declaration of Human Rights 1948.

*Freedom of expression* is a wider version of freedom of speech. The freedom of speech is used to define the freedom of verbal speech, while the freedom of expression includes not only the verbal speech, but also popularization and imparting of the information in all of the possible ways.

Freedom of expression is the human right of the first generation. It can be found in the oldest human rights acts. England's Bill of Rights 1689 granted freedom of speech in Parliament. The Declaration of the Rights of Man and of the Citizen 1789 provides for freedom of expression in Article 11: "The free

communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law”.

Freedom of expression is essential in enabling democracy to work and public participation in decision-making. Citizens cannot exercise their right to vote effectively or take part in public decision-making if they do not have free access to information and ideas and are not able to express their views freely. Freedom of expression is thus not only important for individual dignity but also to participation, accountability and democracy. Violations of freedom of expression often go hand in hand with other violations, in particular the right to freedom of association and assembly (according to the Study Guides of the Human Rights Education Associates).

The main modern international standards for Ukraine that guarantee the freedom of expression are:

1) Universal Declaration of Human Rights, Article 19: everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;

2) International Covenant on Civil and Political Rights (1966), Article 19:  
a. Everyone shall have the right to hold opinions without interference.  
b. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

c. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: for respect of the rights or reputations of others; for the protection of national security, public order, public health and morals;

3) European Convention on Human Rights, Article 10 (1. Everyone has the right to freedom of expression and this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Constitution of Ukraine guarantees the freedom of speech in Chapter II, Article 34. According to this Article, everyone is guaranteed the right to free-

dom of thought and speech, and to the free expression of his or her views and beliefs. Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice. As one can see, the text of Article 34 is created according to the international standards. The third part of Article 34 creates the limits of the exercise of this freedom – again, according to the international standards the freedom of speech may be limited. So, the exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice.

*Freedom of associations* is the human right of the first generation. It helps to express, promote, pursue and defend collectively the common interests of the group of people, as well as to form groups. The Human Rights Education Associates define a number of key rights relating to freedom of association and assembly:

a) Right to peaceful assembly. This upholds the right to peaceful assembly which should not be denied except in situations of national security or public safety. The right to violent assembly is not upheld. However, international standards limit the use of force by authorities in controlling peaceful or non-peaceful assemblies. International standards require that law enforcement officials should use force only as a last resort, in proportion to the threat posed, and in a way to minimize damage or injury.

b) Right of association. This covers the right of individuals “to associate” together and establish associations. Some countries have sought to hamper the ability of individuals to form associations by a variety of means: by claiming they do not agree with the political purposes of the associations; by denying legal personality which would be essential for day to day running and for taking on contractual relationships; by imposing cumbersome and partial registration processes; by imposing financial constraints. The right of association not only applies to individuals who wish to form associations but also guarantees associations so formed have rights to operate freely and without interference.

c) right of an individual to join or not join an association. The right to join or not join an organisation. In some countries, individuals may suffer reprisals for joining organisations or be obliged to join certain associations approved of by the state.

d) right to belong to trade unions. Freedom of association has a critical meaning in the workplace and much of the jurisprudence which has developed on this issue comes from labour law. The following rights are upheld:

– right of everyone to form and join trade unions for the promotion of their economic and social interests. Some states have attempted to curtail the activity of trade unions by hindering people from joining. In other places, certain categories of workers are excluded from enjoying these rights by

national legislation. Examples include agricultural and domestic workers and others employed in informal settings; independent contractors; managers etc. In international law, the only exception to this right applies to the police and armed forces who do not have the right to form professional associations if this is contrary to national law. Other public employees have this right under international labour law although the extent to which civil servants are able to enjoy these rights has been a matter of debate in a number of countries.

- right to form national and international confederations. It is essential for domestic groups to interact with each other at broader levels. In some countries the authorities have sought to hinder external contacts.

- right of individual not to be penalised for belonging to a union. If a person belongs to a union this should not be a reason for denying this person employment or for firing this person if he or she is already in employment.

- right to strike. This is not an absolute right. It is by necessity nuanced as it affects other societal interests. This is especially so where public employees are providing essential services, the disruption of which may threaten the life, health and safety of the population. Fire fighters, for example, are prohibited from striking in some countries. Governments have attempted to hinder the right to strike through a variety of strategies. Some countries, for example, adopt a permanent replacement doctrine whereby striking employees are replaced by new employees loyal to the employer who then vote the union out of existence. Such practices contravene international law.

- Right of organisations to elect representatives and draw up their own rules and constitutions. They are also protected from being dissolved by administrative authority. These provisions exist to protect associations from unreasonable interference in governance.

No restrictions on these rights except for reasons of national security and public safety. Generally, these rights cannot be derogated except for specific reasons relating to national security and public safety. The treaties themselves have not defined the parameters of these restrictions but subsequent jurisprudence, especially from the European Court of Human Rights, has stressed a narrow interpretation which only allows states to deny these rights in exceptional situations.

**Conclusion.** The article shows the perspectives of the improvement the Law of Ukraine “On Civic Associations” (2012). Nowadays there is a necessity to do this, regarding the Euro integration perspectives of the government and wishes of the biggest part of the Ukrainian population. The first direction of the improvement is to change certain articles of this Law in accordance with the principles of the European constitutionalism (they already are in the Ukrainian Constitution). The second direction covers the usage of the precedents of the European Court of Human Rights.

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#### А н о т а ц і я

**Мішина Н. В. Сучасний розвиток українського законодавства про громадські організації.** – Стаття.

Стаття присвячена перспективам удосконалення Закону України «Про громадянські об'єднання» (2012 р.). По-перше, пропонується удосконалення деяких статей цього Закону у відповідності до принципів європейського конституціоналізму, по-друге – автор наголошує на необхідності змінити деякі статті цього Закону з використанням прецедентів Європейського суду з прав людини.

*Ключові слова:* громадянське суспільство, недержавні організації, громадські організації, конституція, конституціоналізм.

#### А н н о т а ц и я

**Мішина Н. В. Современное развитие украинского законодательства об общественных организациях.** – Статья.

Статья посвящена перспективам усовершенствования Закона Украины «О гражданских объединениях» (2012). Во-первых, предложено усовершенствование некоторых статей этого Закона в соответствии с принципами европейского конституционализма, во-вторых – автор настаивает на изменении некоторых статей этого Закона с использованием прецедентов Европейского суда по правам человека.

*Ключевые слова:* гражданское общество, неправительственные организации, общественные организации, конституция, конституционализм.

#### S u m m a r y

**Mishyna N. V. Contemporary Developments in the Ukrainian Legislation on NGOs.** – Article.

The article shows the perspectives of the improvement the Law of Ukraine “On Civic Associations” (2012). Nowadays there is a necessity to do this, regarding the Euro integration perspectives of the government and wishes of the biggest part of the Ukrainian population. First, the improvement of some articles of this Law is proposed in accordance with the principles of European constitutionalism; secondly, the author insists on changing some articles of this Law using precedents of the European Court of Human Rights.

*Key words:* civil society, non-governmental organizations, civic associations, constitution, constitutionalism.