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*N. V. Mishyna*

**UKRAINIAN LEGISLATION ON ASSOCIATIONS:  
CONSTITUTIONAL AXIOLOGY AND THE EUROPEAN COURT OF  
HUMAN RIGHTS' CASE KORETSKYI AND OTHERS V. UKRAINE**

**Problem statement and its connection with important scientific or practical tasks.** 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 – economic, 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.

**Analysis of recent research and publications, which initiated the solution of this problem and on which the author relies, highlighting previously unresolved parts of the overall problem to which the article is devoted.** Associations, different aspects of their functioning and studying, are the subject 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. In this article the author uses mostly Constitution of Ukraine 1996, laws of Ukraine

at the researched topic, as well as the case law – the case of *Koretskyy and others v. Ukraine* (Application no. 40269/02). Some of the theoretical provisions are grounded on the works of the legal scientists, that research the right to associate (see [1 - 5]).

The aim of the article is to show the perspectives of the improvement the Law of Ukraine 'On Civic Associations' (2012).

This Law of Ukraine was passed during the period of the country's development, when European 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 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.

Constitution of Ukraine guarantees the freedom of associations in Chapter II, Articles 36-37. According to Article 36, citizens of Ukraine have the right to freedom of association in political parties and public organisations for the exercise and protection of their rights and freedoms and for the satisfaction of their political, economic, social, cultural and other interests, with the exception of restrictions established by law in the interests of national security and public order, the protection of the health of the population or the protection of rights and freedoms of other persons.

As one can see, the text of Article 36 is created according to the international standards.

European integration efforts of Ukraine should emphasize the influence of the European Court of Human Rights' decisions. Ukraine recognises the importance of the decisions of *the European Court of Human Rights (ECHR)* and always follows them. According to the international duties of Ukraine, these decisions are obligatory for our country. On January, 1, 2011 there were more than 35 decisions of the ECHR concerning the freedom of associations. One of the decisions was on the case of *Koretskyy and others v. Ukraine* (Application no. 40269/02).

Mr. Koretskyy and other applicants live in Kyiv, and on 7 June 2000 the applicants and two other persons founded an association named "Civic Committee for the Preservation of Wild (Indigenous) Natural Areas in Bereznyaky", the "Civic Committee". Mr Koretskyy was elected as the Civic Committee's head. On 27 July 2000 the applicants filed an application for the State registration of the Civic Committee together with a copy of its Articles of Association with the Kyiv City Department of Justice. The Civic Committee is a non-governmental (NGO), non-profit organisation.

On an unspecified date the application and Articles of association were returned to the applicants and they were advised to make changes to the text, which were noted down by the City Department in the same documents. In particular, several sentences and paragraphs were crossed out, including paragraphs 3.1, 5.1 (d), and 6.4. Some other parts of the Articles were rephrased or amended, like, for instance, the word "lobbying" in paragraph 4.2 (e) was replaced by "submission of propositions" and the phrase "to carry out non-governmental ecological expert examinations" in paragraph 5.1 (i) was reformulated to the effect that the Civic Committee could carry out ecological expert examination on a "voluntary basis".

According to the applicants, on 6 September 2000 they submitted the redrafted version of the Articles of association, in which the Department's amendments were partially accepted. The Government denied this.

By the letter of 18 September 2000, the City Department informed the applicants of its refusal to register the Civic Committee on the ground that its Articles had not been drafted in accordance with the domestic law. In particular, the Civic Committee's status was not indicated; the provision that the Civic Committee could have representative offices in other cities and towns of

Ukraine did not correspond to the provision that its activities were to be carried out on the territory of Kyiv; the Articles listed two aims of the organisation instead of one aim and tasks; the Executive Board of the Civic Committee was entrusted with economic functions while section 24 of the Associations of Citizens Act envisaged that the economic activities of an association could only be carried through separate legal entities which it could establish for that specific purpose; and the provisions that the Civic Committee could carry out publishing activities on its own and involve volunteers in its activities as members were contrary to the same law. Finally, the applicants had not taken into account all the corrections made to the text of the Articles of association and they had submitted a copy of the document showing that they had paid registration fees, while the original was required.

The applicants continued to negotiate with the registered body, but also to carry out certain activities of the Civic Committee, in particular, publishing Articles on its behalf in various newspapers.

On 30 November 2000 the applicants lodged a complaint with the Pechersky District Court of Kyiv, seeking the annulment of the City Department's decision not to register the Civic Committee. They alleged a violation of their right to form an association and the right to freely choose its aims and areas of activities. They also argued that the reasons for the refusal to register their association had been based on an incorrect interpretation and application of the relevant law by the City Department. Furthermore, according to them, the City Department had failed to take into account the amended version of the Articles of Association, which they annexed to their complaint to the court.

Within the period of 2 years the applicants used all the legal possibilities to solve their case in the Ukrainian courts. Finally, on 14 March 2002 a panel of three judges of the Supreme Court rejected the applicants' request for leave to appeal in cassation, finding no grounds for examination of the case by the Civil Cases Chamber of the Supreme Court.

On 7 July 2002 the applicants decided to liquidate the Civic Committee and discontinued its activities.

Using the European Convention on Human Rights, the Ukrainian Constitution, the Laws and bylaws of Ukraine, the European Court of Human Rights came to such overall conclusions:

- that there has been a violation of Article 11 of the Convention.
- that each applicant should be awarded EUR 1,500 in respect of non-pecuniary damage (Mr. S. Koretsky claimed EUR 6,000) and the other applicants claimed EUR 3,000 each in respect of pecuniary and non-pecuniary damage. They stated that, given his managerial responsibilities in respect of the Civic Committee and his professional experience in the field of ecology of more than thirty years, Mr. S. Koretsky's moral suffering because of the violation of his rights under Article 11 of the Convention had been greater than that of the other applicants. The applicants did not specify the nature of the pecuniary damage they had allegedly suffered) ;
- that the applicants should be awarded the requested sum of EUR 1,600 for costs and expenses in the proceedings before the Court.

**Conclusion.** As for the Ukrainian legislation on the NGOs, the Court did not find it necessary in the circumstances to determine whether the fact that the authorities made changes and amendments to the text of the Articles of association, thereby indicating the provisions which they thought were not in compliance with the law and proposing the wording which, according to them, would satisfy the existing legal requirements, raises a separate issue under Article 11 of the Convention. Ukraine has a new law 'On Civic Associations' now, but some of the facts, stated by the ECHR, aren't included into it. There is one more trend how the legislation on NGOs might be modernized in the nearest future.

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 European 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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#### Summary

**Mishyna N. V. Ukrainian legislation on associations: constitutional axiology and the European court of human rights' case Koretsky and others v. Ukraine.** – Article.

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 – economic, 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 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 European 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.

Analyzing provisions of the Constitution of Ukraine 1996, principles of the modern Ukrainian constitutionalism and the judgement on case of Koretsky and others v. Ukraine (Application no. 40269/02), author formulates technical proposals based on it. For example, as for the Ukrainian legislation on the NGOs, the European Court of Human Rights did not find

necessary in the circumstances of the case to determine whether the fact that the authorities made changes and amendments to the text of the Articles of association, thereby indicating the provisions which they thought were not in compliance with the law and proposing the wording which, according to them, would satisfy the existing legal requirements, raises a separate issue under Article 11 of the Convention. Ukraine has a new law 'On Civic Associations' now, but some of the facts, stated by the ECHR, aren't included into it. There is one more trend how the legislation on NGOs might be modernized in the nearest future.

*Key words:* civil society, associations, constitutionalism, axiology, principles of the constitutionalism, European Court of Human Rights.

#### Анотація

**Мишина Н. В. Законодавство України про об'єднання: конституційна аксіологія та справа Європейського суду з прав людини «Корецький та інші проти України». – Стаття.**

Значення асоціацій у сучасних суспільствах і державах величезне. Вони об'єднують людей і юридичних осіб у групи за територією проживання або групи за інтересами. Вони постійно розвиваються та існують у різних організаційних формах. Вони репрезентують погляди та потреби різних груп людей – більшості, меншин, створених на різних засадах – економічних, політичних, релігійних, сексуальних тощо. Вони беруть участь у розбудові держави та розбудові громадянського суспільства. Вони беруть участь у виборах для створення демократично функціонуючої державної та муніципальної влади. Вони створюють «вільний від прав» простір між суспільством і державою, відомий як «громадянське суспільство».

У статті показано перспективи вдосконалення Закону України «Про об'єднання громадян» (2012). Сьогодні є необхідність це зробити, зважаючи на євроінтеграційні перспективи уряду та бажання більшої частини українського населення. Перший напрямок удосконалення – змінити окремі статті цього Закону відповідно до принципів європейського конституціоналізму (вони вже є в Конституції України). Другий напрямок стосується використання рішень Європейського суду з прав людини.

Аналізуючи положення Конституції України 1996 р., принципи сучасного українського конституціоналізму та рішення у справі «Корецький та інші проти України» (Заява № 40269/02), автор формулює на їх основі практичні пропозиції. Наприклад, щодо українського законодавства про громадські організації, Європейський суд з прав людини не визнав за необхідне надавати можливість лише місцевим органам публічної влади визначати, чи зміни і доповнення до тексту статуту відповідають закону, та пропонувати формулювання, які, на їхню думку, задовольнятимуть існуючі правові вимоги; це піднімає окреме питання щодо статті 11 Конвенції. В Україні зараз діє відносно новий закон «Про громадські об'єднання», але в ньому не враховані деякі факти, підкреслені у цьому рішенні ЄСПЛ. Це може бути визнано одною з тенденцій, одним з напрямів модернізації законодавства про громадські організації найближчим часом.

*Ключові слова:* громадянське суспільство, асоціації, конституціоналізм, аксіологія, принципи конституціоналізму, Європейський суд з прав людини.