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## ON THE ISSUE OF THE STUDY OF FREEDOM OF ASSOCIATION IN POLITICAL PARTIES

*In Ukraine considerable attention is paid to the availability of membership in political parties for every citizen of Ukraine who has the right to vote – because the exercise of passive suffrage is possible only if included in the electoral list of candidates from the party in the national constituency, or if you sign the application to run as a candidate for deputy in each single-member constituency by the party leader and sealing it with the party seal. Thus, the analyzed constitutional right becomes essential.*

*Ukraine's aspirations for European integration stipulate that an important scientific task is to develop proposals for further improvement of Ukrainian legislation in this area, and for this it is necessary to assess the existing researchers. This is important in connection with the urgency of Europeanization of the constitutional law of Ukraine.*

*The purpose and task of the article was an analytical assessment of the work of A.M. Moiseev, who analyzed the rules of law governing the activities of political parties, public authorities, as well as citizens on the exercise of the right to association. He also studied a number of international legal acts in this area, the legislation of some foreign countries, as well as the practice of courts at various levels.*

*Author concludes, that A.M. Moiseev chose a rather complex research topic. This is due not only to the fact that political rights and freedoms are difficult to analyze from a theoretical point of view – because the historical practice of democratic existence after leaving the USSR is quite small, and therefore – the doctrinal basis as well. A similar remark can be addressed to the experience of normative regulation of all aspects of the constitutional right of citizens to unite in political parties – during the existence of a one-party system it was diametrically opposed to modern, and therefore not of much interest to modern researchers. The research of A.M. Moiseev has the high level of the complexity, and the fact that he decided to combine theory and practice – in terms of studying the case law of the selected right. This approach should be welcomed, because it increases the relevance of the study and the possibility of applying the conclusions and suggestions formulated by the author.*

**Key words:** association, freedom of association, political parties, human rights, freedoms, association in the political parties.

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## ДО ПИТАННЯ ДОСЛІДЖЕНОСТІ СВОБОДИ ОБ'ЄДНАННЯ В ПОЛІТИЧНІ ПАРТІЇ

*В Україні значна увага приділяється доступності членства в політичних партіях для кожного громадянина, який має право голосу, адже здійснення пасивного виборчого права можливе лише за умови включення до виборчого списку кандидатів від партії у загальнодержавному окрузі або якщо особа підписує заяву про балотування кандидатом у депутати по кожному одномандатному виборчому окрузі у керівника партії та скріплює її печаткою партії. Таким чином, аналізоване конституційне право стає істотним.*

*Прагнення України до євроінтеграції передбачає, що важливим науковим завданням є розробка пропозицій щодо подальшого вдосконалення українського законодавства у цій сфері, а для цього необхідно оцінити наявні дослідження. Це важливо у зв'язку з актуальністю європеїзації конституційного права України.*

*Метою та завданням статті була аналітична оцінка роботи А.М. Мойсеєва, який проаналізував норми законодавства, що регулюють діяльність політичних партій, органів державної влади, а також громадян*

щодо реалізації права на об'єднання. Також цей дослідник вивчив низку міжнародно-правових актів у цій сфері, законодавство деяких зарубіжних країн, а також практику судів різних рівнів.

Автор робить висновок, що А.М. Мойсеев обрав досить складну тему дослідження. Це пов'язано не тільки з тим, що політичні права і свободи важко піддаються аналізу з теоретичної точки зору, адже історична практика демократичного існування після виходу з СРСР досить мала, а отже, і доктринальна основа майже не сформована. Подібне зауваження можна адресувати і досвіду нормативного регулювання всіх аспектів конституційного права громадян на об'єднання в політичні партії. За часів існування однопартійної системи вона була діаметрально протилежною сучасній, а тому не становила особливого інтересу для сучасних дослідників.

Резюмовано, що дослідження А.М. Мойсеева має високий рівень складності, оскільки він вирішив поєднати теорію і практику з точки зору вивчення судової практики щодо обраного права. Підкреслено, що такий підхід підвищує актуальність дослідження та можливість застосування сформульованих автором висновків і пропозицій.

**Ключові слова:** асоціації, об'єднання, політичні партії, свобода об'єднань, право на об'єднання в політичні партії.

*Formulation of the problem.* Ukraine pays considerable attention is paid to the availability of membership in political parties for every citizen of Ukraine who has the right to vote – because the exercise of passive suffrage is possible only if included in the electoral list of candidates from the party in the national constituency, or if you sign the application to run as a candidate for deputy in each single-member constituency by the party leader and sealing it with the party seal. Thus, the analyzed constitutional right becomes essential (see Mishyna, 2020, 2021).

*Relevance of the research topic.* Ukraine's aspirations for European integration stipulate that an important scientific task is to develop proposals for further improvement of Ukrainian legislation in this area, and for this it is necessary to assess the existing researchers. This is important in connection with the urgency of Europeanization of the constitutional law of Ukraine.

*The degree of research of the problem.* Within the specialty 12.00.02 “constitutional law; municipal law” monographic studies of the constitutional right of citizens to unite in political parties belong to V.V. Chernychka, who has submitted the dissertation for the degree of Candidate of Law on the topic “Constitutional right to unite in political parties in Ukraine and EU countries: comparative legal analysis” (Uzhhorod, 2016) and A.M. Moiseev, who has submitted the dissertation for the degree of Candidate of Law on the topic “Constitutional the right of citizens to unite in political parties and the judicial practice of its protection” (Moscow, 2008). Also the object of the studied law – political parties in general – was studied by V.I. Kafarsky. There are other publications and studies on the constitutional right to join political parties, but in the context of this article, Moiseyev's dissertation research attracts the most attention.

*The purpose and task of the article* is an analytical assessment of the work of A.M. Moiseev, who analyzed the rules of law governing the activities

of political parties, public authorities, as well as citizens on the exercise of the right to association. He also studied a number of international legal acts in this area, the legislation of some foreign countries, as well as the practice of courts at various levels.

*Presentation of the main material.* A.M. Moiseev chose a rather complex research topic. This is due not only to the fact that political rights and freedoms are difficult to analyze from a theoretical point of view – because the historical practice of democratic existence after leaving the USSR is quite small, and therefore – the doctrinal basis as well. A similar remark can be addressed to the experience of normative regulation of all aspects of the constitutional right of citizens to unite in political parties – during the existence of a one-party system it was diametrically opposed to modern, and therefore not of much interest to modern researchers. The research of A.M. Moiseev has the high level of the complexity, and the fact that he decided to combine theory and practice – in terms of studying the case law of the selected right. This approach should be welcomed, because it increases the relevance of the study and the possibility of applying the conclusions and suggestions formulated by the author.

A.M. Moiseev briefly described his work:

– “The object of study is a set of constitutional relations that arise in the process of exercising the right of citizens to unite in political parties. As the most important legal relations the dissertation has chosen questions of liquidation of parties, and also establishment of restrictions of the rights and freedoms of citizens;

– the subject of the dissertation research is the law governing the activities of political parties, public authorities, as well as citizens to exercise the right to association. In addition to the legislative framework of the Russian Federation, a number of international legal acts in this area, the legislation of individual foreign states, as well as the practice of courts at various levels have been studied;

– the purpose of the dissertation research is to comprehensively study the right of citizens to unite in political parties, to identify the most acute problems of its provision and protection” (Moiseev, 2008, p. 6).

The work is structured in three chapters. Chapter 1 “The right of citizens to form political parties in the system of human rights and freedoms” covers a number of important issues on which further parts of the study are based. Section 1.1. is devoted to the consolidation of the right of citizens to association in regulations, in which the author analyzes national and international documents on this issue.

The author supports the thesis that the legal acts of the Russian Empire and the times of the USSR are not of significant interest to modern researchers, and therefore notes that he does not dwell on the analysis of their content in detail. However, as a milestone in historical development in the context of the study of relevant experience during the Russian Empire, he mentions the Manifesto of October 17, 1905, which established freedom of association, and in the context of the study of relevant experience in Soviet times – the USSR Constitution of 1936, which “completely crossed the possibility of creating any political organization, which was reflected in the scientific understanding of the problems of multiparty system in the USSR” (Moiseev, 2008: 11–12). The conclusion of A.M. Moiseev that “the negative experience of a one-party system should not become an irresistible force in the formation of a real multiparty system, as the stage of totalitarianism have passed almost all existing democracies” (Moiseev, 2008: 12). We should completely agree with this opinion.

Section 1.2. “Fundamentals of the constitutional order and ensuring the right of citizens to join political parties” is quite innovative in terms of research on the constitutional right of citizens to join political parties – because, as a rule, for a deeper understanding of the essence and content of this right, it is usually analysed by comparison with other subjective rights, mainly personal and political. Therefore, this paragraph deserves special attention. At the same time, the constitutional system in the aggregate of its characteristics can be considered as part of the guarantees of the constitutional right of citizens to unite in political parties, and this makes the author’s approach even more interesting.

Characterizing paragraph 1.2, A.M. Moiseev notes that “he paid special attention to the analysis of concepts related to the activities of political parties, as well as their role in further improving Russia’s multiparty system” (Moiseev, 2008, p. 13). It should

be emphasized that the constitutional order is far from being multiparty. Among other concepts that A.M. Moiseev analyzed in paragraph 1.2 – political pluralism, competition for public power. It should be noted that the content of the analyzed paragraph is somewhat narrower than its title.

The last paragraph of Chapter 1 is paragraph 1.3. “The content of the right of citizens to unite in political parties”. From the point of view of our research, this paragraph is of the greatest interest. At the same time, it should be noted that it is the most theoretical, it has almost no connection with regulations – which is important in the context of the fact that A.M. Moiseev based his work on the regulations of a foreign country. In this section, the author quite rightly separated the concepts of “everyone’s right to association” from the concepts of “citizens’ right to association” and “freedom of association”.

While analyzing the previous paragraph, it was noted that the author slightly deviated from the traditional logic of the post-Soviet literature of studying the constitutional right of citizens to unite in political parties – by not devoting a separate structural part of his work to comparing it with other personal and political rights. The relevant material is placed in paragraph 1.3 – A.M. Moiseev briefly characterizes the relationship between the studied law and freedom of thought, freedom of speech, freedom of expression. It should be agreed that “the existence of the right of citizens to association is a logical continuation of freedom of thought and speech, as only when they can express their positions in collective activities do they find significance and can claim expression of common will” (Moiseev, 2008: 14).

Chapter 2 “Political Party as a Type of Public Association” is of considerable interest from the point of view of the analysis of the objects of the constitutional right of citizens to unite in political parties. However, it should be noted that in the dissertation of A.M. Moiseev paid considerable attention to the object of the researched right (Chapter 2), to a lesser extent – to the content (Section 1.3). But there is no separate structural part devoted to the characteristics of the subjects of the analyzed citizen’s right.

Chapter 2 of the dissertation research consists of two paragraphs: “The concept of a political party” and “Basic requirements for a political party and its structures”. In this chapter, the author formulated the characteristics of political parties, which he combined into an appropriate definition, and also criticized the assessment of the requirements of current legislation for political parties and their local branches. Some of the findings of

A.M. Moiseev in this area are interesting, but in this chapter the author proceeds from the provisions of Russian Federation's legislation, so many of his conclusions and suggestions are unlikely to be implemented in Ukraine.

Chapter 3 "Restriction of the right of citizens to unite in political parties" is based on theoretical provisions and on the materials of judicial practice. The author presents the material from general to specific – first analyzes the main restrictions on the right of citizens to association (paragraph 3.1), and then proceeds to the characteristics of the restriction of citizens' right to association in political parties on a subjective basis (paragraph 3.2), concluding the chapter by examining the important issue of the constitutionality of political parties (paragraph 3.3). Again, the materials of Chapter 3 are based on the legislation of a foreign country, but the author in his creative search touches on a number of important issues.

Thus, in paragraph 3.1 the greatest attention is drawn to the author's conclusions and suggestions on the use of the name and (or) surname of a particular citizen in the name of a political party. In this regard, A.M. Moiseyev summed up: "The ban on the use of the name and (or) surname of a citizen in the title of the party is very controversial. In resolving this issue, it is necessary to take into account the interest of the citizen whose name is used and the extent to which the party reflects private interests" (Moiseev, 2008, p. 20). Not all aspects of the above quote can be agreed with, but it should be emphasized that A.M. Moiseyev drew attention to this interesting issue and laid the foundation for future scientific discussions in this direction.

In paragraph 3.2 A.M. Moiseev analyzes the concept of "membership" in relation to political parties and the rights and responsibilities of members of political parties related to membership. Special attention is paid to the principles of voluntariness and individuality of membership in a political party. The author comes to an interesting conclusion – that the relationship of member and association is close to the relationship of citizen and state (citizenship). Thus, membership is characterized by stability, which qualitatively distinguishes membership from other relations of parties with citizens (supporters, sympathizers)" (Moiseev, 2008: 21).

Considering, that political parties on a number of issues of internal party affairs adopt their own rules of conduct (ie, regulate them by corporate norms), it is necessary to emphasize the imagery of the author's conclusion. This is confirmed by the fact that currently the citizenship of the country as "belonging to a particular state" is used only

by states with anti-democratic state regime, and A.M. Moiseev emphasizes the "ambiguity of the concept of "belonging" to political parties, which can not be defined by law precisely by virtue of the principle of *lex non cogit ad impossibilia* (the law does not require the impossible)" (Moiseev, 2008, p. 22).

Paragraph 3.3 "Constitutionality of political parties" is devoted to an interesting idea that has found practical implementation in a number of foreign countries – namely, the idea of establishing the constitutionality of parties in the process of constitutional proceedings. It should be emphasized at once that it would be more correct to talk about the "constitutionality of the formation", the "constitutionality of the functioning" of a political party, and not about the "constitutionality" of a political party as a whole. It is likely that the terminology of this paragraph needs clarification. Additionally, the author specifies the title of paragraph 3.3 as follows: "a key element in the application of the criteria for the constitutionality of a party is its attitude to the foundations of the constitutional order. Moreover, the Constitution... refers to the prohibition of the establishment and operation of public associations, the goals and actions of which are aimed precisely at the violent nature of changing the foundations of the constitutional order. Criticism of the existing foundations of the constitutional order is an inalienable right of citizens, one of the indisputable features of true democracy and the evolution of the state" (Moiseev, 2008: 22).

*Conclusion.* According to the analysis of the dissertation research of A.M. Moiseyev titled "Constitutional right of citizens to unite in political parties and the judicial practice of its protection" (Moscow, 2008), it should be emphasized that the author has made a significant contribution to the science of constitutional law. Among the advantages of his dissertation are a comprehensive approach to the analysis of the studied human right, the logical arrangement of material from general to specific, a lot of attention to the object of the constitutional right of citizens to join political parties – political parties themselves, as well as the widespread use of case law. A number of conclusions and proposals of the author are considered debatable (on the use of the name and (or) surname of a particular citizen in the name of a political party, on the idea of establishing the constitutionality of political parties in constitutional proceedings, etc.), but they are well-argued by the author. Prospects for further research in this area are seen in the need of an analysis of the other authors' studies, especially of the authors, who paid attention to the constitutional right of citizens to unite in political parties.

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