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INTERNATIONAL LEGAL STANDARDS FOR IMPLEMENTING THE RIGHT TO PEACEFUL ASSEMBLY[1]

The article analyzes key international human rights sources and identifies provisions that directly regulate the right to peaceful assembly, confirming that the right to peaceful assembly exists for certain social groups. The article outlines guiding principles for freedom of peaceful assembly. It emphasizes the importance of the European Court of Human Rights as a genuine mechanism for ensuring the right to peaceful assembly. Particular attention is paid to the Guidelines on freedom of peaceful assembly developed by the Organization for security and cooperation in Europe (published in 2007).

Keywords: *standards, international standards, human rights, the right to peaceful assembly.*

Acceptance of the International Covenant on Civil and Political Rights in 1976 was an important step towards detailing international human rights standards. Article 21 of this document «recognizes the right to peaceful assembly. Such a right shall not be subject to any restrictions on its exercise except those imposed in conformity with the law and which are necessary in a democratic society for national security, public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others». As we can see, the right to peaceful assembly is recognized, but it can be limited in certain cases. It is important to note that the Covenant is binding on signatory countries, unlike the Universal Declaration of Human Rights. Article 21 of the Covenant provides protection for both organized and unorganized (spontaneous) private meetings aimed at achieving common goals, particularly in formulating and expressing a position on a specific issue of public or state life [1, p. 15].

The Syracuse Principles of Interpretation of Limitations and Derogations from the Provisions of the International Covenant on Civil and Political Rights are directly related to the Covenant. They are specifically related to the sphere of ensuring freedom of peaceful assembly and reveal the concepts used in the Covenant, particularly: «Provided by law», «in a democratic society», «public order», «health and morality of the population», «national and public security», and «rights and freedoms of others» are examples of factors that may limit individual rights [2].

It is important to note that certain groups in society, and children in particular, have the right to freedom of peaceful assembly. According to Article 15 of the Convention on

[1] Закінчення. Початок у попередньому номері.

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the Rights of the Child (1989), states parties recognize the right of the child to freedom of association and peaceful assembly; no restrictions shall be placed on the exercise of this right except such as are in accordance with the law and are necessary in a democratic society in the interests of national security, public safety, public order, public health or morals or for the protection of the rights and freedoms of others [3].

The content of international human rights instruments adopted in the second half of the last century clearly demonstrates the different trends in the development of human rights in the global space. Simultaneously with the broad process of disseminating universal human rights standards and globalizing them, another process has begun – regionalization, that is, the creation of standards and mechanisms for protecting human rights in accordance with the traditions and cultural specificities of particular regions. Taking into account the specifics of groups of states, such documents often acquire special weight.

The American Convention on Human Rights (1969) recognizes the right to peaceful, unarmed assembly. No restrictions shall be placed on the exercise of this right except such as are in accordance with the law and are necessary in a democratic society in the interests of national security or public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others [4].

Article 11 of the African Charter on Human and Peoples' Rights guarantees the right to freely assemble with others, subject only to necessary legal restrictions. These restrictions are established in the interests of state and public security, health and morals of the population, and protection of the rights and freedoms of others [5].

Chronologically, the latest provision on freedom of assembly was enshrined in the Arab Charter of Human Rights, Art. 24, which recognizes the right of citizens of the signatory countries to peaceful assembly [6].

Let's examine the most important European legal norms for our country in detail.

In November 1950, the Convention for the Protection of Human Rights and Fundamental Freedoms (short title – the European Convention on Human Rights) was opened for signature. Article 11 of the Convention is directly devoted to freedom of assembly and association, stating that:

«1. Everyone has the right to freedom of peaceful assembly and association, including the right to form and join trade unions for the protection of their interests.

2. The exercise of these rights is subject only to restrictions established by law in the interests of national or public security, for the protection of order or crime prevention, for the protection of health or morals, or for the purpose of protecting the rights and freedoms of other persons, and which are necessary in a democratic society. This article does not prohibit the implementation of legal limitations on the exercise of these rights by individuals who are part of the military, law enforcement, or government agencies». Therefore, the European Convention for the Protection of Human Rights and Fundamental Freedoms directly regulates the protection of fundamental rights and freedoms of a person, which provides for the direct effect of its norms. The Convention guarantees these rights without requiring participating states to adopt additional acts. The norms of the Convention take precedence over the provisions of national legislation if the latter contradict them, which is reflected in two main

provisions: firstly, the rights and freedoms guaranteed by the Convention are of a fundamental nature; secondly, the preamble of the Convention emphasizes one of the main tasks of the Council of Europe – to achieve greater unity between the member states, and the activity of the European Court as a control mechanism serves the achievement of the mentioned goal. The European Convention on Human Rights obliges states to respect the freedom of peaceful assembly, establishing this right for everyone and at the same time providing for the possibility of its restriction. The interpretation of the enshrined freedom, as well as the specification of the criteria for the legality of state intervention in its implementation, has been provided in the practice of the European Court of Human Rights. The Court has consistently recognized the close connection between the freedom of peaceful assembly and other rights, particularly the freedom of expression as reflected in Article 10 of the Convention. As a result, the European Court, while maintaining its autonomous role and special scope, often interprets Article 11 in the context freedom of expression, which is both a goal of peaceful assembly and a means of achieving it. It should be noted that the Convention on the Protection of Human Rights and Fundamental Freedoms is one of the few international acts that not only describes human rights, but also establishes an appropriate system for their protection. In this respect, the great value of the Convention lies not so much in the definition of the rights and freedoms it contains, but rather in the regulation of the mechanism for their implementation in the participating States, the essence of which lies in the functioning of a judicial body unique in the European area - the European Court of Human Rights. The jurisdiction of the Court extends to all cases concerning the interpretation and application of the Convention. The Court may not only decide whether a violation of the Convention has occurred, it may also award reparation for the damage suffered [7, p. 319].

When creating a legal framework to promote and protect human rights, both international organizations and states rely on international human rights standards. Some scientists suggest distinguishing two directions with a certain degree of conventionality [8].

The first direction is the development of international treaties with the aim of normatively enshrining international legal guarantees of human rights protection. This branch is dynamically developing, including a wide group of international and regional agreements in the field of human rights, which are legally binding for the signatory countries.

The second direction can be distinguished based on the provisions of paragraph 1 of Article 13 of the UN Charter, which states that the General Assembly shall organize studies and make recommendations in order to: a) promote international cooperation in the field of politics and encourage the progressive development of international law and its codification; b) <...> promote the realization of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion [9].

The first one includes conventions, covenants, protocols (they can be included in the category of international treaties), which have a legally binding character for the states if they have expressed their consent to the recognition of these documents. Along with international treaties, this group also includes some declarations adopted by the General Assembly of the United Nations, which were subsequently transformed into treaties or received by states as opinio juris.

The second direction comprises a variety of documents often titled «standard rules», «recommendations», and the like, which are of a recommendatory nature (otherwise referred to as «soft law» instruments).

Although the second group of instruments does not create legal obligations, they do require States to take action as they contain instructions aimed at making the provisions of international treaties more meaningful and applicable in national practice.

In the context of researching standards for ensuring the right to peaceful assembly, there are several important documents of this nature. However, the Guidelines on Freedom of Peaceful Assembly, developed by the Organization for Security and Cooperation in Europe and first published in 2007, deserve special attention. Researchers rightly point to this document as a unique source of European international legal doctrine, based on the national experiences of states in the region, international agreements, and the jurisprudence of the ECHR.

The OSCE Bureau for Democratization and Human Rights, in cooperation with the Venice Commission, developed the guiding principles and explanatory notes for freedom of peaceful assembly. These were created by a group of experts and took into account the recommendations of its members [10, p. 54].

The seven basic principles are binding rules for administrative and judicial bodies.

2.1 Presumption in favor of holding assemblies. As the right to freedom of peaceful assembly is a fundamental right, its exercise should be ensured without regulation to the extent possible. Everything that is not expressly prohibited by law should be deemed permitted, and those who wish to assemble should not be required to obtain a permit to hold an assembly. Legislation should contain a clear and unambiguous presumption in favor of freedom of peaceful assembly.

2.2 The state has a duty to facilitate and protect peaceful assemblies. This includes establishing appropriate mechanisms and procedures to ensure the realization of the right to freedom of peaceful assembly without excessive bureaucratic regulation. In particular, the state should always facilitate and protect peaceful assemblies in locations desired by the organizers, ensuring the unimpeded dissemination of information about planned assemblies to the public.

2.3 Lawfulness. Any restrictions on assemblies must be based on the provisions of the law and comply with the requirements of the European Convention on Human Rights and other international human rights instruments. In this context, the proper development of a legal framework defining the limits of the permissible scope of the authorities' powers is crucial. The law must comply with international human rights standards and be specific enough for individuals to determine if their behavior violates the law and the likely consequences of such a violation.

2.4 Proportionality. Any restrictions on freedom of assembly should be proportionate. In pursuing the legitimate aims of the authorities, preference should be given to measures that involve the least interference. The principle of proportionality requires that authorities should not impose day-to-day restrictions that significantly alter the nature of the event (e.g., moving the venue to areas away from the city center). The application of statutory restrictions could lead to imposing those restrictions on all assemblies as a general principle, which may fail to

comply with the principle of proportionality by not considering the specific circumstances of each case.

2.5 Non-discrimination. Everyone has the right to freedom of peaceful assembly. The competent authorities shall not discriminate against any person or group of persons in regulating freedom of assembly. The freedom to organize and participate in public assemblies shall be guaranteed to individuals, groups, unregistered associations, legal persons, and other organizations; members of minority groups – ethnic, national, religious and sexual; citizens and non-citizens of the state (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists); children, women and men; law enforcement officials; and persons without full legal capacity (including persons with mental illness).

2.6 Efficient management. The legislation should clearly state which government body is responsible for regulating freedom of assembly.This regulator should ensure that citizens have sufficient access to reliable information about its procedures. Organizers of public assemblies and individuals whose rights and freedoms of assembly will be directly affected should have the opportunity to address the administrative body in person or in writing.

Regulatory procedures should provide for a fair and objective evaluation of all available information. Any restrictions imposed on a particular assembly shall be promptly communicated to the organizer in writing, stating the reasons for each restriction.

Decisions regarding the application of restrictions should be made as early as possible to ensure that an independent tribunal can hear the application by the date specified in the notice of meeting.

2.7 Responsibility of the regulatory body. Regulatory bodies are responsible for fulfilling their legal obligations and are accountable for any procedural or substantive failures. At the same time, the degree of responsibility should be determined according to the principles of administrative law and judicial supervision in terms of abuse of official powers [11].

The above sources are definitely of a recommendatory nature, but according to M.L. Sereda they rely heavily on binding legal documents, in particular on the practice of the European Court of Human Rights and, in the case of reports of the UN Special Rapporteur, also on the practice of the Inter-American Court of Human Rights. This relationship is two-way because the mentioned courts often base their practice on reports or conclusions from authoritative international institutions. Thus, it is highly likely that violating «soft» international standards will also constitute a violation of stricter legal norms [12].

The European Court of Human Rights is the practical mechanism for the application of the mentioned norms and laws, and these decisions are often of key and fundamental importance for the national legal systems of today.

After all, the Court's decisions are not only legally binding for the respondent state, but also have a direct impact on the development of the legal system of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which in turn is part of the national legislation of the member states [13, p. 18].

Its decisions are a direct source of law for the courts. Many of our compatriots see it as a real mechanism for ensuring their rights, which is evidenced by the fact that year after year Ukraine is one of the leaders in the number of applications to the European Court of Justice, especially in cases involving restrictions on the freedom of peaceful assembly.

Under the Act «On ratification of the Convention for the Protection of Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols Me 2, 4, 7 and 11 to the Convention», the Verkhovna Rada of Ukraine has fully recognized the jurisdiction of the European Court of Human Rights in all matters relating to the interpretation and application of the Convention, and in accordance with Article 17 of the Act «On the implementation of decisions and the application of the practice of the European Court of Human Rights», the courts apply the Convention and the practice of the European Court of Human Rights as a source of law when considering cases. These court cases fall under the jurisdiction of administrative proceedings, and their specific considerations are defined in Articles 280-281 of the Code of Administrative Procedure of Ukraine. Additionally, Article 6 of the Code obligates judges to apply the case law of the European Court of Human Rights, which states that «the court shall apply the rule of law, taking into account the case law of the European Court of Human Rights». Ukrainian legislation recognizes and applies not only ECHR judgments related to Ukraine but also those related to all Council of Europe states as a source of law.

This peculiarity of the practice of the European Court of Human Rights is due to the nature of its judgments, which is manifested in the binding nature of the principles of solving a particular problem, which, although it concerns a foreign state, can be applied to solving a similar problem in Ukraine. This approach also corresponds to the principle of legal certainty, since in this case the solution of a particular problem can be predicted and foreseen.

O.V. Kolisnyk notes that the national courts, when conducting judicial proceedings, must refer to the conclusions of the ECHR as a direct source of law. They should not only be guided by the formal interpretation of legal norms, but also adhere to the idea of justice and humanity inherent in the decision of the ECHR and implement it in their decisions [14, p. 481].

The importance and content of the case law of the European Court of Human Rights on peaceful assembly began to grow after the entry into force in 1998 of Protocol No. 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms on the Reorganization of the Monitoring Mechanism established under the Convention. Thus, according to the European Court of Human Rights search engine, by the end of 2016, the Court had considered more than 120 complaints of violations of Article 11 of the Convention by States in the context of freedom of peaceful assembly, of which the Court found violations of the Convention in 99 cases. Therefore, after the entry into force of Protocol 11, the Court has been hearing an average of 7-8 cases in this category each year. The «record holder» for violations of Article 11 of the Convention is Turkey, which has violated Article 11 in the context of freedom of peaceful assembly in almost half of the cases examined by the Court. It is noteworthy that most of the cases against Turkey are of the same type – the Court has mostly recognized the brutal actions of the police in the dispersal of demonstrations as a violation of Article 11. Five cases involving the violation of the right to freedom of peaceful assembly were considered in Ukraine. Three cases raised questions about the validity of applying administrative and criminal sanctions to individuals who violated the procedure for holding peaceful meetings. Another case questioned the validity of banning a strike by airline employees. The final case questioned the legality and proportionality of dismissing an employee for absenteeism related to participation in a picket strike [12, 96].

M.L. Sereda highlights several principles that are guided by the ECHR when considering cases on ensuring the right to peaceful assembly, in particular cases of its restriction:

- the legitimacy of the intervention;
- the legitimacy of the objectives of the intervention;
- the necessity of the intervention in a democratic society;
- adherence to the principle of proportionality in balancing the interests of assembly participants and the public interest;
- the presumption in favor of holding a peaceful assembly;
- the need to show a degree of tolerance for peaceful assembly [12].

A number of court decisions during the Revolution of Dignity represented a clear departure from these principles. The dispersal of student protests on November 30, 2013, as well as permanent bans on peaceful assemblies with persecution of their participants, serve as a vivid example of the violation of the freedom of peaceful assembly in Ukraine. During this period, it was common for courts to impose automatic bans on individuals seeking to exercise their right to peaceful assembly, which was a key trend in jurisprudence.

The court decisions mentioned above disregarded both Ukrainian law and international standards. Automatic bans are in violation of the principle of proportionality. In its April 26, 1991 judgment in the case of «Ezelin v. France», the Court required a certain balance between the requirements of the purposes specified in part 2 of Article 11 and the freedom of expression. According to the principle of proportionality, rights and freedoms may only be restricted to the extent necessary to ensure the common good. The court's position violates Article 11(2) of the Convention, which requires that any interference be justified by an overriding public necessity having one or more legitimate aims. While states have some discretion in assessing whether such a problem exists, this is done in close cooperation with European supervision, extending to both legislation and practice in its application. In the case of «Vierentsov v. Ukraine» from April 11, 2013, the court noted that the Constitution of Ukraine establishes general rules regarding restrictions on freedom of assembly. However, these rules require further development in national legislation. In the «Verentsov v. Ukraine» decision, the European Court of Human Rights highlighted the lack of a clear and predictable procedure for organizing and conducting peaceful demonstrations.

Conclusion: currently in Ukraine, there is no specific law that outlines the procedure for organizing and holding peaceful assemblies. The issue of the order and time of notification of the planned action remains unresolved. Therefore, international standards are necessary to ensure the proper functioning of the legal mechanism for ensuring the right to peaceful assembly.

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МІЖНАРОДНО-ПРАВОВІ СТАНДАРТИ У СФЕРІ РЕАЛІЗАЦІЇ ПРАВА НА МИРНІ ЗІБРАННЯ

У статі проведено аналіз основоположних міжнародних джерел у галузі прав людини, визначено положення, які безпосередньо регулюють право на мирні зібрання. Окреслено думку, що наразі головним зводом нормативних стандартів у галузі прав людини залишається Загальна декларація прав людини, прийнята 10 грудня 1948 року. Наведений текст декларації англійською мовою дає підстави для буквального розуміння її саме як стандарту, адже безпосередньо в преамбулі вказано: «Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations».

Доведено наявність права на свободу мирних зібрань для певних соціальних груп, зокрема виокремлено незалежну категорію суб'єктів дітей, оскільки у ст. 15 Конвенції про права дитини (1989) йдеться, що держави-учасниці визнають право дитини на свободу асоціацій та свободу мирних зібрань.

Проаналізовано зміст низки й інших основних міжнародних актів з прав людини (Американська конвенція про права людини; Конвенція Співдружності незалежних держав про права та основні свободи людини; Африканська хартія прав людини і народів; Арабська хартія прав людини; Конвенція про захист прав людини і основоположних свобод).

Охарактеризовано певні напрями в роботі міжнародних організацій і держав з просування і захист прав людини за допомогою створення правової бази, зокрема міжнародних стандартів прав людини.

Окрему увагу приділено Керівним принципам зі свободи мирних зібрань, розробленим Організацією з безпеки та співробітництва в Європі (опублікованим у 2007 р.).

Констатовано, що рішення Європейський суду з прав людини є реальним механізмом забезпечення прав на мирні зібрання.

Ключові слова: стандарти, міжнародні стандарти, права людини, право на мирні зібрання.

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