

Forms of Stating the Right to Freedom of Association in International Regulatory Acts

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Introduction

The right to freedom of association gives to people the opportunity to express and protect their common interests. The novelty supported in this article suggests that in order to define the level of protection of freedom of association in accordance to international documents and domestic legislative acts, the status of civil society which consists of various social entities should be assessed first of all. The discussion about guaranteeing freedom of association in countries with underdeveloped civil societies itself is unavailing. Respect and observance of this right by all levels of the government, as well as, abidance of the respective legislation by all strata of the society are necessary not only for the development of the genuine democracy and democratic institutions. These are also requirements, laid down before the states by relevant international forums which serve for the overall development of the society as a whole. Some organizations, like the United Nations (UN), the Council of Europe (COE) and the Organization for Security and Cooperation in Europe (OSCE) can be introduced as examples for such forums. In this regard, respective statutory acts accepted by these organizations ensure wide use of the right to freedom of association. Universal and European documents on human rights includes all guaranties for freedom of association. Namely, these documents are accepted as standards for the legal status of a person. There are numerous sources of international laws which define the standards concerning associations established for specific purposes based on individual membership. For instance, it should be mentioned that a number of guaranties set out in article 20 of the Universal Declaration on Human Rights, article 22 of the International Covenant on Civil and Political Rights, article 16 of the American Convention on Human Rights. [1, 6, 15] The wealth of the international regulatory framework of freedom of association reinforces its pertinence to the category of rights. Furthermore, the availability of numerous important international documents regulating freedom of association also justifies its significant role in the human rights system. It needs to analyze the international standards in freedom of association in order to have a substantial idea about international acts regulating

freedom of association. From this point of view, the focus of this article is that the scope of defining freedom of association in various international acts has direct impacts on the development of civil societies and democratization process in different societies. The provisions related to the protection of freedom of association have been faithfully defined in both international and national levels. The protection of freedom of association can be acknowledged as the protection of fundamental human rights. One of the important points deserving attention is that the enforcement of freedom of association means the observance of democratic principles since the functioning of various social organizations is a typical sign of a civil society implies. Additionally it is even irrelevant to discuss the establishment and operation of social organizations when there is no guarantee for freedom of association. From this point of view, points regarding non-governmental organizations included in international acts of the right to freedom of association should be of special focus.

There are a lot of scientific studies carried out on the international legal basis of the right to freedom of association nowadays. The studies are conducted mainly from scientific points related to theory of state and law and constitutional law. From historical point of view, the US judiciary system has been prevailing in this direction. We can argue the availability of individual points stipulating it. The individual cases from US experience necessitated specifications in this direction. For instance, the US Supreme Court took a decision regarding a disputable issue between “the National Association for the Advancement of Colored People” and the State of Alabama. [17] The decision stated that the area of defending the interests of the association members is an insignificant fact in establishing this association. Apparently, such a decision was important from the viewpoint of generating more progressive regulatory basis for freedom of association. Indeed, in all universal theories freedom of association mainly means association of people for joint activity and common interests. In other words, the nature of an area of activity is not considered as a crucial point for realization or enforcement of the right to freedom of association. [14] So, the certain area of people’s mutual activity cannot limit freedom of association. If there is an opportunity for guaranteeing common interests, then securing freedom association becomes a topical issue. [17] In all existing international statutory acts the approach to freedom of association is almost identical with the point considered above.

Freedom of association in the UN Charter

The legal basis for human rights protection in international level was first reflected in the UN charter. The reason why the UN paid a special attention to the protection of human rights were laid down in the preamble of the Charter and can be described as follows:

-firstly, to reaffirm the faith in fundamental human rights, in the dignity and worth of the human person that were trampled down during the World War 2;

-secondly, to show the existence of close ties between human rights and international safety and security, which involved the foundation of the UN. Human rights and freedoms can be fully guaranteed only by maintaining peace and security. Any conflict involves gross violation of human rights and freedoms first of all. [18]

During the deliberations on the UN Charter, the United States initiated to annex a universal declaration on human rights. However, as a result of disagreement among the founding states, the objectives and directions of human rights protection in international level were generally formulated in the UN Charter.

In general, the international statutory basis of human generates international standards as well. States refer to these standards in protection or observance of human rights and freedoms. These standards pave the way to argue the failure of states to fulfill their obligations in relevant areas, as well as to determine the international mechanisms for protection of human rights. The standards for protection of human rights are considered in two directions being universal and regional. The worldwide accepted standards are considered as universal, but the standards influencing only on certain regions are regional. Respectively, international and regional standards exert great influence on social entities (non-governmental organizations) operating in the field of enforcement of the right to freedom of association. Our studies show that the notion “non-governmental organization” has been widely used in most international documents. [11] This notion came into scientific use with the adoption of UN Charter in 1945 and since the 1970s has been in frequent use. Actually, since that period the term “non-governmental organization” has been used to indicate non-profit organizations of any legal and structural form. And nowadays, the expression “civil society organization” is used more often in international organizations. Certainly, the expression “non-governmental organization” remains relevant to this day. These two notions are almost used in combination. The European court decides if any sort of collaboration is an association in the context of the Convention. In scientific literature, the expression “non-governmental organizations” is widely used together with “non-state organizations,” “public organizations,” “voluntary organizations,” “civil organizations,” “transnational organizations,” etc. [10]

Freedom of association is a personal right commonly accepted in world practice. It is appropriate to recall that the Universal Declaration of Human Rights of 1948 states, “Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association.” [1] Freedom of association together with other inalienable rights is the basis for human dignity and freedom. It should be noted that the Universal Declaration of Human Rights was adopted in the third session of UN General Assembly on 10 December 1948. Thirty articles of the

Universal Declaration of Human Rights define fundamental human civil, political, economic and cultural rights and freedoms. These rights are supported worldwide. For the first time, the Universal Declaration of Human Rights reflected the principle of universality, integrity and inalienability of human rights. However, it should be also mentioned that Universal Declaration of Human Rights is a non-regulatory act. Nevertheless, in practice the provisions of the convention gradually became an absolute legal force for states or actors of international law. Inclusion of the provisions of the Declaration into legislative acts of different states affirms this argument too. For instance, the constitutions of most states give explicit references to the Declaration. In most cases national courts of various states acknowledge the provisions of the Declaration and refer them when taking decision. For instance, the decision taken at the plenum of the Supreme Court of Russian Federation dated to 31 October 1995 recommended that all Russian courts should refer to the Universal Declaration of human rights. [12]

Article 20 of the Universal Declaration of Human Rights includes an important provision regarding freedom of association. It should be underlined that Articles 18 and 19 are closely related to freedom of association. Article 18 of the declaration clearly states that everyone has the right to freedom of thought, conscience and religion. And Article 19 of the declaration stipulates that everyone has the right to freedom of opinion and to freely express opinions. Certainly, this right also confirms the opportunity for free functioning of people who share a common opinion within the same entity. Article 20 of the Universal Declaration of Human Rights directly expresses freedom of association.

The International Covenant on Civil and Political Rights (1966) clearly sets forth the right to peaceful assembly for everyone. Certainly, the key point in this important international document is related to freedom of association. The document states, "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests." [6] Although the International Covenant on Civil and Political Rights was adopted by the UN General Assembly on 16 December 1966, it came into force on 23 March 1976. The International Covenant on Civil and Political Rights is a universal international treaty and comprises all civic and political rights stipulated in the Universal Declaration of Human Rights adopted in 1948. Unlike the Universal Declaration of Human Rights, this international document has an absolute judicial force in relation to all the participating states. The International Covenant on Civil and Political Rights determines the establishment and operation of the UN Human Rights Committee. This committee has a broad range of competencies in the field of human rights protection. The committee has the authority to consider complaints made by states against each other. Article 22 of the International Covenant on Civil and Political Rights says that everyone has the right to freedom of association with others and to form and join trade unions. An optional protocol to the International Covenant on Civil and Political Rights has been adopted. Namely, according to this protocol the UN Human Rights

Committee has the authority to consider complaints made by individual people. It is pertinent to note that the human rights related bodies are subject to certain changes within the reforms in the UN system. Such changes open new prospects and provide mechanisms for more reliable protection of human rights and freedoms, particularly freedom of association. For instance, the establishment of the Human Rights Committee and the Human Rights Council is promising better results in this field. Being UN General Assembly subordinates, these bodies were the progressive steps towards increasing the efficiency of the enforcement of human rights and freedoms. The Human Rights Council was established as a subsidiary body of the UN General Assembly in 2006. [8] The Council is responsible for promoting cooperation in protecting human rights and freedoms. It investigates cases of human rights violations as well. This body also supervises that states abide by the obligations concerning observance of human rights.

It should be mentioned that the United Nations High Commissioner for Human Rights is the UN official with principal responsibility for the United Nations human rights activities. The high commissioner for human rights is appointed for a fixed term of four years and has very important official duties. For example: [11]

- to promote the effective enjoyment of all human rights;
- to enhance international cooperation for the promotion and protection of human rights;
- to coordinate the human rights promotion and protection activities throughout the United Nations system;
- to assist in development of new standards in the field of human rights;
- to promote ratification of international treaties on human rights

Besides the above-mentioned, the High Commissioner is capable of taking relevant measures in the cases of human rights violations and implement preventive steps. As you can see, there is a quite effective and efficient human rights protection system within the United States.

Freedom of association in other international legal acts

The International Labor Organization Convention concerning Protection of Freedom of Association and the Right to Organize was adopted on 8 July 1948. This convention came into force in July 1950. The basis of modern international standards for freedom of association was developed before the World War 2. Even though the Convention of the International Labour Organization was adopted in 1948, the organization itself was established in 1919.[19] With the emergence of the International Labour Organization the right or freedom of association found its first reflection at an international level. The organizational structure of the International Labor Organization is tripartite: the representation of a state is

composed of state authorities, trade unions and representatives of other organizations. Accordingly, there are three groups in the International Labour Organization. They are: [9]

- representatives of states;
- employers;
- workers.

The above-mentioned groups develop international standards acceptable for all in the field of labour and social relations. After the establishment of the UN in 1945, the activities were initiated for a general agreement on human rights and the establishment of trade unions. Freedom of association has been particularly stipulated in most international acts. As one of the earliest organizations, the International Labour Organization became the first specialized agency of the UN. The International Labour Organization specifies international standards for regulation of labour in its conventions and recommendations. These conventions have been ratified by most of the countries. Moreover, the General Conference of the International Labour Organization adopted the Declaration on Fundamental Principles and Rights at Work in 1998. According to the declaration, all the member-states of the International Labour Organization are committed to respect the fundamental association rights and principles of workers and employers.[20] For this purposes, ratification status of the relevant conventions and declaration by the states is not important. So, the member states should respect such rights and principles regarding freedom of association even without ratification of the relevant documents. This point itself is very important for more effective regulation of freedom of association.

The convention obligates states to ensure that all working people and entrepreneurs establish their organizations and are engaged in their activity without any additional permits. This convention is one of the first international documents including provisions regarding protection of workers' rights. [20] As already mentioned, this convention defines concrete obligations for the states in this direction. According to the Declaration on Fundamental Principles and Rights at Work adopted in 1998, the membership to the International Labour Organization considers ensuring freedom of association at work regardless of the ratification of any specific convention.

Numerous international normative acts comprising freedom of association have appeared since the adoption of the Universal Declaration of Human Rights. Furthermore, it should be noted that the international documents adopted thereafter absolutely encompassed freedom of association as well. Different kinds of documents, declarations, agreements regulate human rights and freedoms in various spheres of life. Freedom of association and other related standards are definitely reflected in almost all these regulatory acts. Actually, freedom of association of people was clearly stipulated in "the International Covenant on

Economic, Civil and Cultural Rights” adopted in 1966. The Covenant came into force on 3 January 1977. The International Covenant on Economic, Civil and Cultural Rights is the main international treaty in the spheres of economic, civil and cultural rights. [23] The Covenant comprises standards related to the human status in the spheres of work and life, occupation, education, and social protection. These standards consider ensuring relevant conditions for the free realization of human potential in the mentioned spheres. Article 8 of the International Covenant on Economic, Civil and Cultural Rights ensures everyone the right to form trade unions and to join trade unions, as well as free actions in this sphere.

The European Convention on Human Rights and Fundamental Freedoms was adapted in 1950. Focusing on the convention, it can be noted that freedom of association has been quite accurately reflected in this convention. The document also clearly formulates that everyone has freedom of assembly and freedom of association with others to pursue their own interests. [3] The European Convention on Human Rights and Fundamental Freedoms has certain distinctive features. The one is that it is primarily focused on personality and aims at the protection of their fundamental rights. Thereby, the European Convention produced the legal basis for the protection of human rights and freedoms in international relations. The rights and freedoms of all nationals of the signatory states are protected under the Convention. Certainly, the rights and freedoms means the ones stipulated in the Convention. The main feature of the European Convention is that it holds the rights and obligations to affect the signatory states. [2] Besides that the European Convention set forth the opportunity for the nationals of the contracting parties to file applications to the supervising bodies regarding the cases of human rights violation in individual basis. Of course, the Court deals with the matter after all domestic remedies have been exhausted. According to the amendment made by Protocol No. 11 to the European Convention, the European Court of Human Rights may receive applications from any person, nongovernmental organization or group of individuals. This point significantly increases the responsibility of the state’s contracting parties to the European Convention. Respectively, it secures efficiency in the protection of human rights and fundamental freedoms.

It is important to touch the European Social Charter when reasoning about international regulatory basis for guaranteeing freedom of association. Above all, the European Social Charter adopted in 1961 deals with labour and employment issues. The Charter recognizes workers’ rights to establish local, regional and international organizations. It also sets forth the right to bargain collectively and requires from the states to establish advisory and arbitration instruments.[22] Initially the European Social Charter was not very effective in the protection of human rights. With the changes and amendments to the charter later on became a more efficient mechanism for the protection of social and economic rights. A new protocol to the Charter was adopted in 1988. According to this protocol the list of rights under the protection of the Charter expanded significantly. And in 1991 another additional protocol was adopted to increase the efficiency of the follow-up

mechanism of the Charter. The Charter was revised in 1996 and came into force in 1999. To this end, it paved the way for more guaranteed freedom of association. The revised Charter included also the collective application system, which was a major quality change in the field of the protection of social and economic rights. A complaint system set forth in the protocol is not of legal or judicial nature.

It would be correct to argue that it mostly performs determinative or analyzing function. The European Committee of Social Rights practically determines, as a rule, the level of admissibility of collective complaints on economic and social grounds. The Committee reviews the issues determined as most important on the basis of written lodgment. Besides that, depending on the essence of the issue and its significance public hearings are held with a report addressed the Committee of Ministers of the Council of Europe. Consequently, the Committee of Ministers adopts a resolution against the states that violated the European Social Charter. The resolution includes relevant recommendations to such states. The following subjects have the right or possibility to file an application to the European Committee of Social Rights:

- International organizations of employers and trade unions. The European Trade Union Confederation, the European Confederation of Employers' and Entrepreneurs' Associations and International Organization of Entrepreneurs belong to this category;
- Nongovernmental organizations with participatory status in the Council of Europe. As a rule, these organizations are registered on a special list by the Intergovernmental Committee;
- Entrepreneurs' associations and trade unions of the state-parties of the above-mentioned additional protocol.

It should be mentioned that article 1 of the Protocol added to the European Charter of Social Rights in 1995 defines the organizations with the right to make collective complaints. [7]

Besides the above-mentioned cases, article 2.1 of the Protocol (1995) to the European Charter of Social Rights recognizes further opportunities for making collective complaints about violation of social and economic rights. A state may consider the right of collective complaints to nongovernmental organizations operating in its territory. [7]

There is lack of grounds for justifying collective complaints regarding social and economic rights to be efficient. Our studies show that this mechanism has not been perfectly developed yet and it needs to be improved properly. [21] Moreover, as already noticed, the range of the issues in this context is not so wide. From this point of view, there are limited opportunities for efficient regulation of disputable issues related to guaranteeing freedom of association in the relevant fields. Besides

that only certain recommendations may be issued in relation to the states that violated social and economic rights as the result of considering the collective complaints. So, it doesn't allow taking so much effective measures to improve the situation in this direction. Taking into account all these points, we believe that it is necessary to develop the mechanisms to take comparably strict measures rather than only non-regulatory ones in relation to the states.

From the above-considered points, it is obvious that there is an international regulatory basis rich enough for the protection of freedom of association. Freedom of association was even stipulated in "the Convention on the Rights of the Child" adopted in 1990. This Convention states that the parties in the convention undertook ensuring unhindered implementation of freedom of association of the child. [4] It should also be mentioned that everyone under the age of 18 years is considered a child according to the convention. One of the remarkable points is that freedom of association has been stipulated in the constitutions of many states as an unalienable human right at the international level. For example, it is highlighted in the constitution of Germany, the leading European state, "all the Germans have the right to form their own unions and associations". [5] Freedom of association has also been stipulated in the constitutions of other countries. Moreover, as we mentioned, the states have taken on the obligations to respect for the right to freedom of association through accession to international conventions, treaties and covenants. With reference to practice, it should be mentioned that non-abidance of freedom of association by a state may entail petition the international agencies regarding defense of this right. Such petitions are mostly filed in the European Court of Human Rights. There have been quite a lot of appeals regarding restoration of violated freedom of association and free assembly addressed from former Soviet countries. For instance, Sergei Kuznetsov, a Russian national picketed with several people in front of the regional court in Yekaterinburg, 2003 and spread news stories and leaflets. No infraction happened during the picket. Despite that picket organizers were fined and brought to responsibility being blamed for violating the rules of organization and conduct of pickets based on the appeal of the regional court. The main reason was reported to be absence of prior notification of authorities. And the European Court with reference to the declaration on human rights (article 11) decided that interference by the state to such kind of pickets aiming at attracting attention of the public in democratic societies was unwanted. [13] Besides that a lot of examples can be given regarding decisions by international forums or restoration of violated right to freedom of association and free assembly.

Another case. P. Barankevich, a Russian national born in 1960, is a priest of the evangelical church in his hometown, Chekhov. In September 2002 he approached the town council seeking an official sanction to hold a massive worship ceremony in the town. But, the town council did not sanction it. It was justified with the provision that holding massive ceremonies in common areas of the town is illegal. P. Barankevich filed a lawsuit in court on behalf of the church, taking it as an

infringement of the right to freedom of religious worship and human rights. The court rejected the claim. The decision stated that no restrictive measures for arranging massive worship in the church are considered from the side of governmental bodies. Since the majority of the population adheres to another religion, arranging massive worship by the evangelical church may give them trouble. [24] This point does not contradict the principles regarding restricting the rights to freedom of peaceful assembly and of association stated in international regulatory acts.

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Summary

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The protection of freedom of association can be acknowledged as the protection of fundamental human rights. The enforcement of freedom of association is the indicator of the protection of human rights in general. In modern times, the enforcement of freedom of association means the observance of democratic principles.

It should be taking into consideration that mechanisms of the protection of human rights emerged actively after the World War II. Actually, the legal basis for the protection of human rights was for the first time reflected in the UN Charter. The reason, why the UN pays special attention to the protection of human rights, was explained in the preamble of the charter of the organization. International regulatory basis of freedom of association deserves attention for its thoroughness. Numerous conventions of non-regulatory nature or with full legal force ensure effective regulation of freedom of association. The existing international legal standards or acts clearly prescribe everyone's right to freedom of association and belong to any existing associations to achieve their goals. Different efficient mechanisms have been developed to prevent violation of these rights.

Keywords: Freedom of association, human rights, state, International acts, UN, political rights, conventions.