

Research Paper

International regulatory basis of the right to freedom of association

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Freedom of association plays important role in human rights system with its quite long historical roots. Protection of freedom of association is one of the important obligations that states undertook in modern times. Protection of freedom of association can be acknowledged as protection of fundamental human rights. One of the important points deserving attention is that in modern times, enforcement of freedom of association means observance of democratic principles. Enforcement of freedom of association is the indicator of protection of human rights in general. In this context, it may be argued that freedom of association has come into focus since the time protection of general human rights became a pressing issue. It should be taking into consideration that mechanisms of protection of human rights emerged actively after the World War II. Actually, legal basis for protection of human rights was for the 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.

Keywords: freedom of association, human rights, society, state, international acts, association.

INTRODUCTION

Freedom of association is noteworthy for its central position in human rights system. Today, freedom of association has been accurately stipulated in constitutions of almost all the states in the world. The issue of realization of citizens' constitutional right to freedom of association has always been in the spotlight of researchers. Wealth of international regulatory framework of freedom of association reinforces its pertinence to the category of rights of great importance. Availability of multiple important international documents regulating freedom of association also justifies its significant role in human rights system. In order to have more substantial idea about international acts regulating freedom of association, it should be analyzed international standards in freedom of association. In other words, it is advisable to determine the way of formulation of freedom of association in international acts.

Formation of international regulatory basis of the right to freedom of association

Our studies show that the notion of "non-governmental organization" has been broadly used enough in most international documents¹. This notion came into scientific use with the adoption of UN Charter in 1945. And since the 70th of the previous century it has been used more frequently. Actually, since that period the phrase of "non-governmental organization" has been used for expressing non-profit organizations of any legal and structural form. And nowadays, the expression of "civil society organization" is used more often in international organizations. Certainly, the expression of "a non-governmental organization" remains relevant to this day. These two notions are almost used in combination. The notion of "association" has its

individual meaning within the European Convention on Human Rights. By the fact that the court itself decides if any sort of collaboration is association in the context of the Convention. In scientific literature the expression of “non-governmental organizations” is widely used together with those of “non-state organizations”, “public organizations”, “voluntary organizations”, “civil organizations”, “transnational organizations” etc (Willets P. Transnational Actors and International Organizations in Global Politics // J. B. Baylis and S. Smith (eds.), *The Globalisation of World Politics*, Oxford and New York: Oxford University Press, second edition, 2001, pp. 356-383)

Freedom of association is a personal right commonly-accepted in world practice. It is appropriate to recall that the Universal Declaration of Human Rights 1948 says: “Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association”(Universal Declaration of Human Rights, 1948 // Human Rights: Sat. International documents. M., 1986, article 29-30). Freedom of association, together with other inalienable rights, is the basis for human dignity and freedom. For illustrative purposes, 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 lay down fundamental human civil, political, economic and cultural rights and freedoms. These rights are supported worldwide. The Universal Declaration of Human Rights reflected the first time principle of universality and integrity and inalienability of human rights. Article 20 of the Universal Declaration of Human Rights includes a more important provision regarding freedom of association. It should be underlined Articles 18 and 19 which are closely related to freedom of association. By the fact that 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 freely express them. Certainly, this right also confirms possibilities of free functioning of the people sharing common opinion within the same entity. Article 20 of the Universal Declaration of Human Rights expresses directly freedom of association. This article consists of two paragraphs:

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

It should be taken into account that the Universal Declaration of Human Rights was adopted as a resolution. From this point of view, it is not legally binding, but non-regulatory act. However, the provisions of the Universal Declaration of Human Rights are legally binding. It could be substantiated by the fact that these provisions have gained significance of common standards of international law and are applied in

constitutions and courts of many countries. Moreover, these standards served as a basis for international legal acts on human rights, as well as freedom association.

International Labor Organization Convention concerning Freedom of Association and Protection of the Right to Organize was adopted on 8 July 1948. This convention came into force in July 1950. Another point to be mentioned is that in international level the basis of modern standards for freedom of association developed before the World War 2. In fact, in spite of the adoption of Convention of International Labour Organization in 1948 the organization itself established in 1919. With the emergence of the International Labour Organization right or freedom of association found its first reflection in international level. Organizational structure of the International Labor Organization is tripartite: representation of a state is composed of state authorities, trade unions and representatives of other organizations. Accordingly, there are three groups in the International Labor Organization. They are followings:

- representatives of states;
- employers;
- workers (Handbook of procedures relating to international labour Conventions and Recommendations, International Labour Standards Department, International Labour Office, Parts VI and XI, 1995, P.116).

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, activities started regarding a general agreement on human rights and 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. 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 member-states of the International Labour Organization are committed to respect fundamental association rights and principles of workers and employers. For this purposes, ratification status of the relevant conventions and declaration by the states is not important. So, member states should respect such rights and principles regarding freedom of association even without ratification of 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 document including provisions regarding

protection of workers' rights. As already mentioned, this convention defines concrete obligations for states in this direction. According to the Declaration on fundamental principles and rights at work adopted in 1998, membership to the International Labour Organization considers ensuring freedom of association at work regardless ratification of any specific convention

Basic international documents

In general, it is apparent that almost all international documents on human rights express particularly freedom of association. A lot of international normative acts comprising freedom of association have appeared since adoption of the Universal Declaration of Human Rights. Even, it should be noted that international documents adopted afterwards absolutely encompassed freedom of association as well. Different kinds of documents, declarations, agreements regulate human rights and freedoms in various spheres of life. The freedom association and other related norms have been certainly reflected almost in all these regulatory acts. It can be provided several examples to them. 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. The Covenant comprises standards related to the human status in the spheres of work and life, occupation, education, social protection. These standards consider ensuring relevant conditions for freely realization of human potential in the mentioned spheres. Article 8 of "the International Covenant on Economic, Civil and Cultural Rights" ensures for everyone the rights to form trade unions and to join them, as well as free actions in this sphere.

And the states joined to this covenant undertook appropriately the commitments to ensure the right of everyone to form their unions (International Covenant on Economic, Social and Cultural Rights 1966 // Human Rights, p.1, art.8). Moreover, one more important document was adopted on human rights in the same year, i.e. in 1966. "The International Covenant on Civil and Political Rights" clearly set forth the right of peaceful assembly of everyone. Certainly, the key point for us in this important international document is related to freedom of association. It is pointed in the document: "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests" (International Covenant on Civil and Political Rights 1966 // Human rights, article 21.). Although the "International Covenant on Civil and Political Rights" was adopted by the UN GA on 16 December 1966, it came into force on 23 March 1976. "International Covenant on Civil and Political

Rights" is a universal international treaty and comprises all civil 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 absolute judicial force in relation to all participating states. "The International Covenant on Civil and Political Rights" determines establishment and function of the UN Human Rights Committee. This committee has competence wide enough in the field of human rights protection. Even, it has an authority to consider complaints by states regarding 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. It has been also adopted an optional protocol to the International Covenant on Civil and Political Rights. Namely, according to this protocol, UN Human Rights Committee has the authority to consider complaints made by individual people.

As we know, it was adopted "the European Convention on Human Rights and Fundamental Freedoms" in 1950. Concentrating on the convention, we can note that freedom of association has been quite accurately reflected there. By the fact that as with "the International Covenant on Civil and Political Rights", this document also clearly formulates freedom of association to ensure for everyone free assembly and their certain interests with others (European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. / Human Rights and Proceedings: Sat. Documents. Edition OSCE, Part 1, art. 11).

From the above-considered points, it is obvious that there is international regulatory basis enough rich for protection of freedom of association. Freedom of association was even stipulated in "the Convention on the Rights of the Child" adopted in 1990. The states parties of the convention undertook ensuring unhindered implementation of freedom of association of the child (Convention on the Rights of the Child 1990 // Human Rights. Article 15). It should also be mentioned that everyone under the age of 18 years is considered as a child according to the convention. One of the remarkable points is that freedom of association has been stipulated in constitutions of many states as an unalienable human right besides in international level documents. For example, it is highlighted in the constitution of Germany, the leading European state: "all Germans have the right to form their own unions and associations" (Constitution of foreign states. M., Publishing House BEK, 1998, p.156). Freedom of association has also stipulated in constitutions of other countries. Moreover, as already mentioned, states undertook observance of freedom of association by joining various international conventions, treaties and pacts.

From the points already considered above, international and European documents on human rights reflect freedom of association which is universal and

typical for all. These rights are envisaged as a standard of human rights. A number of sources of international law stipulated standards oriented to associations established for special purposes. For instance, once again as already mentioned, important international documents considered enough serious guarantees related to freedom of association. There are provisions ensuring freedom of association in a number of important international documents, namely, in Article 20 of the Universal Declaration of Human Rights, Article 22 of the International Covenant on Civil and Political Rights, Article 11 of the European Convention on Human Rights and Fundamental Freedoms, Article 10 of African Charter of Human and Peoples' Rights, in American Convention on Human Rights etc. All these points are the evidence that protection of freedom of association has serious international basis. At this point, it should be mentioned that there is a guaranty for freedom of association of concrete social groups. In fact, as already reviewed, there is a separate legal guaranty for freedom of association of the child in international level. Besides that, there are guaranties for freedom of association of concrete groups in various activity areas. At the same time certain human rights recognized in various areas give rise to realization of freedom of association. For instance, we reminded above the International Covenant on Economic, Social and Cultural Rights, adopted in 1966. Then, we also noted that freedom of association has been specifically formulated in the covenant. Because, the protection of rights in mentioned directions involves formation of certain associations. Legal doctrine justifies that the right to freedom of association with others belongs to a negative group of rights (Isaeva AA The right to unite and its limitations by the state in accordance with the European Convention on the Protection of Human Rights and Fundamental Freedoms 1950 // Bulletin of Tomsk State University. Right. 2015, No. 2 (16), p.53). It considers non-interference by a state against citizens to legally exercise their freedom of association. However, such an obligation of the state must not be directly assumed. This obligation coexists with positive obligations of a state. They can be reviewed as follows:

- to ensure effective coexistence of individual rights and freedoms;

- to provide exclusion of conditions where realization of rights and freedoms of an individual hampers such activities of other people.

Necessity of creating balance between the rights and freedoms of individuals and interests of civil society considers possibility of restricting individual rights by states. In simple words, hereby it is introduced the practice of restricting rights for respecting other rights. Since, if there is no such a balance, rights of any of the sides will be certainly violated.

Regulation of the right to freedom of association through international instruments

Discussing international normative basis of freedom of association, it is important to pay attention to provisions regarding its restriction. As already mentioned, the universal basis of human rights is completely attracted in the Universal Declaration of Human Rights adopted in 1948. At the same time, the document, which also stipulated the observation of freedom of association, considers the cases of its restriction in addition to obligations regarding this right. Criteria for restriction of freedom of association from the side of states were also determined in the document. Such a case can be met in the articles 29 and 30 of the declaration (Universal Declaration of Human Rights, 1948 // Human Rights: Sat. International documents. M., 1986, article 29-30). Moreover, European Convention adopted two years later than the Universal Declaration of Human Rights formulates more specific provisions regarding freedom of association. In general, it should be mentioned that human rights were extended and classified in the European convention. Actually, the convention provides difference between general and private rights. Private rights refer to rights such as individual, property, freedom of assembly, free decision-making over property, choice of abiding place and etc. Restriction of these rights is prohibited. But, sometimes it was considered to restrict these rights. They could be restricted in accordance with certain procedures when required by interests of national security, territorial integrity and public stability. Therefore, freedom of association may be restricted. These cases may be carried out by a state.

In general, our studies found out that majority of more than two hundred universal acts on freedom of association have been adopted after the World War II. Main reason was related with the existence of serious disagreement between representatives of trade unions and employers. Actually, there were different approaches regarding freedom of association. Despite of serious disagreement, after the World War II a number of important international documents were adopted whereby freedom of association determined. As mentioned above, in 1948 a new convention, Co84 on freedom of association was adopted in the framework of the International Labour Organization ([Http://lib.sale/mejdunarodnoe-pravo-besplatno/pravovyye-aktyi-svobode-obyedineniya-priznani.html](http://lib.sale/mejdunarodnoe-pravo-besplatno/pravovyye-aktyi-svobode-obyedineniya-priznani.html)(müraciət tarixi: 31.10.16)). In 1949 second fundamental convention of the International Labour Convention was adopted. This convention also expressed principles of rights to establish organizations and to conclude collective bargaining agreement. It should be mentioned that in 1976 another convention of

the International Labour Organization was devoted for realization of this principle. At this point, it should be noted that the International Labour Organization established in 1919 according to peace treaty of Versailles. In 1946 it became a specialized agency of the UN. Important conventions were adopted in the framework of this organization to enrich the regulatory basis of freedom of association. According to the conventions adopted in the framework of the International Labour Organization, everyone, who has occupation, has the right to establish their organizations as desired. Then, there is no necessity to obtain any permission. The conventions also stipulate working people's right to join freely to any organization they wish to. It should be also stressed that international labour standards are important for developing national legislation of states where these conventions have not been ratified yet. When adopting a new labour law or changing existing legislation, governments as a rule referred to conventions of the International Labour Organization. So, provisions of regulatory acts adopted by the International Labour Organization serve as the basis for development and update of national legislation. There are other rights in the area of labour and social relations besides basic security or legal basis for freedom of association. For instance, everyone's right to form trade unions and to join them to realize their own economic and public interests. A number of states try to restrict activity of trade unions by prohibiting people from certain categories to enjoy these rights. As usual, people working in the agricultural sector or engaged in indoor works are major subjects of such a restriction. It should be mentioned that international documents consider restriction of freedom of association only for members of police and armed forces. Personnel of these entities may be prohibited to form trade unions. It should be also mentioned that to some extent freedom of association of other public servants may be restricted as well. Nevertheless, according to international documents, such restrictions must meet general requirements, principles of a democratic society and proportionality. Another important right supposes that anyone must not be incurred to discrimination for their membership to associations or trade unions. The idea is that anyone cannot be rejected to be employed for their membership to any organizations or for rejection of membership. It is also unacceptable to dismiss anyone for having used this right. One of the important rights in the said direction is right to strike. According to international legal documents regulating freedom of association, this right is not absolute nature, since implementation of this right may lead to restriction of other social interests. For instance, there is a group of workers whose absence in the workplaces may cause to really endanger life, health and safety. In this context, legislations of some countries do not permit firefighters, health workers, personnel of law-enforcement bodies etc. to be on strike. International

documents also considered the possibility to introduce such restrictions.

Freedom of association is a set of some guaranties. If there are not any guaranties, the realization of freedom of association can be actually impossible. In this regard, guaranty for individuals' freedom of joining to any organizations or forming such organizations either in international or in national legislative level is a fundamental question. "Everyone's right of association with others" plays the role of base element of the right or freedom of association. Positive freedom of association prohibits any discrimination or pursuit for joining to any association. Moreover, it should be mentioned that this right does not lay associations or organizations under obligation regarding admission of an individual to membership or prolongation of the membership. At this moment it should be noted that issues related with foreign citizens' freedom of association are solved in a different way per country. International documents accept possibility of restricting freedom of association of foreign citizens. Taking into account our studies, we can argue that such restrictions appear mostly in political sphere. And the restrictions in political sphere are distinctive for their strictness. Prohibition to join political parties can be a prevailed example to such kind of restrictions. However, restrictions should not be conceived that these rights are unexercised at all. Then, certain standards stipulated in international documents are applied on. In general, international pacts stipulate everyone's freedom of association even those of children. For instance, Article 15 of the Convention on the Rights of the Child adopted in 1989 exactly formulated freedom of association of the child (Convention on the Rights of the Child, 1989. // International acts on human rights: A collection of documents. 2 nd ed., Ext. M.: Publishing House NORMA, 2002, p. 220). Paying attention, it is sure that legislation of most states ensures freedom of association of the child. However, there are certain restrictions considered in accordance with character of this social group. And while introducing such restrictions, standards formulated in international pacts should be observed. This point itself demonstrates that freedom of association is regulated in all aspects through international instruments.

It should be taken into account that the positive freedom of association has its opposite face. By the fact that individuals have right to withdraw from any associations or organizations besides the right to establish them. In other words, there is also negative freedom of association. However, referring to experience of international regulating agencies, it is evident that negative freedoms may be restricted in some cases to give rise to observance of more important rights. For instance, full membership to an organization may be of vital importance. In this context, restriction of withdrawal from this organization has its more serious grounds.

When discussing international documents regulating freedom of association, it should be specially mentioned that the Human Rights Committee attracts attention to importance of individual aspect of freedom of association. The Committee carries out control over the implementation of obligations by states undertaken under “the International Covenant on Civil and Political Rights”. In this regard, individual applications may be reviewed. This point has been considered in the first optional protocol to “the International Covenant on Civil and Political Rights” (Optional Protocol to the International Covenant on Civil and Political Rights of 1966 // Public International Law. Collection of documents. T. 1.- M.: BEK, 1996, c. 483 - 485). It should also be mentioned that only individuals subject to violation of rights may apply to the Committee in written form. The Committee does not consider reviewing applications by or on behalf of associations or entities. It has been noted by the Committee many times. From this point of view, as we already mentioned, in case of violation of rights to associate with others by the state, they can appeal to the Committee in written form. Moreover, the representative of the aggrieved side also may appeal to the Committee regarding the violation of rights. This moment has been reflected in Article 22 of the above-mentioned Covenant (UN Doc. HRI/GEN/3/Rev.1 Compilation of Rules of Procedure Adopted by Human Rights Treaty Bodies, 6 June 2001, p. 93). Human rights organizations offer their own services to individuals suffered from violation of rights and this gradually becomes a tendency.

It should be mentioned that European Court of Human Rights approaches to complaints regarding violation of freedom of association in a different way. The European Court recognizes complaints from unregistered non-governmental organizations as well. To this end, a complaint is addressed on behalf of the unregistered organization and is signed by all members. If a newly established or already existing organization is not able to operate autonomously, then there is no ground to argue about individual rights of association. Human Rights Committee determined an obligation for states to formulate this point in their national legislations. I.e. states must completely ensure exercise of freedom of association. However, it should be taken into account that non-interference to affairs of entities by a state is impossible. As you know, existence of an association comprises several stages. In any stage, states can significantly interfere in the activity of associations. For instance, in any case, registration of an association is solved by the state, i.e. the association is registered by the state. The decision of the state is prevailing when an association or an organization cease their activities.

It should be mentioned that besides international standards, there are various forms of legal registration of associations or organizations envisaged in legislations of different states. States introduce different mechanisms for restriction of the registration of associations or

organizations. But, as already said, there are international standards in this direction and certain obligations for states regarding observance of these standards. Excess of financial costs is a major problem in the process of registration, which does not meet international standards. Besides that, limitation of objectives of organizations, numerous requirements for membership could be considered as forms of restrictions in this direction. Formulation of such issues in international documents, more precisely, regulation of these issues by using them has profound effects in solving these problems.

CONCLUSION

Freedom of association plays important role in human rights system with its quite long historical roots. Protection of freedom of association is one of the important obligations that states undertook in modern times. Protection of freedom of association can be acknowledged as protection of fundamental human rights. One of the important points deserving attention is that in modern times, enforcement of freedom of association means observance of democratic principles. Enforcement of freedom of association is the indicator of protection of human rights in general. In this context, it may be argued that freedom of association has come into focus since the time protection of general human rights became a pressing issue. It should be taking into consideration that mechanisms of protection of human rights emerged actively after the World War II. Actually, legal basis for protection of human rights was for the 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.

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