THE STANDARDS OF PUBLIC ADMINISTRATION ACTIVITIES IN THE SPHERE OF PEACEFUL ASSEMBLY (BASED ON THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS)

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ABSTRACT

Purpose: The article is to analyze the standards of public administration activities in the sphere of peaceful assembly, based on the relevant judgments of the European Court of Human Rights.

Methodology: The study used general scientific and special methods of legal science, in particular, analysis and synthesis method, logical method, comparative and legal method, normative-dogmatic method, legal modeling method.

The results of the study: It has been stated that the issue of peaceful assembly has always been, is, and undoubtedly will remain relevant both from a theoretical and a practical point of view, since peaceful assembly is not only a criterion for determining the level of democracy in the country, but also an extremely effective method of public control over the institutions of public authority.

Practical Implications: It has been proved that every representative of the public administration and every judge of administrative courts are obliged to verify the compliance of any judgment in the mentioned area with the ECHR's case law. This also applies to the organizers (participants) of peaceful assembly, which would help them to better understand their own legal status in this area.

Value/Originality: All the judgments of the ECHR regarding the issues of peaceful assembly and assessing both the legislation and the actions of public administration officials have been evaluated by the specific aspects.

Keywords: Public Administration, Peaceful Assembly, Case Law, European Court Of Human Rights, Judgment.

INTRODUCTION

The issue of peaceful assembly has always been, is, and undoubtedly will remain relevant both from a theoretical and a practical point of view. And this is understandable, since peaceful assembly is not only a criterion for determining the level of democracy in the country, but also an extremely effective way of public control over the institutions of public authority. There are

many vivid examples in the latest European history that demonstrate that "*demonstrations*", "*rallies", "processions*" are an effective mechanism for the implementation and maintenance of national sovereignty, that is, the right of the people to independently determine the political, economic and social fate of their country, by using peaceful assembly as a tool. It is also worth mentioning that peaceful assembly is sometimes a mean of realizing a number of other rights of individuals-the right of a citizen to freedom of opinion and belief, thought and speech, to free expression of their views and beliefs, to the use and dissemination of information orally, in written or in another way, the right to free development of the personality, etc.

In this regard, the State has a duty, on the one hand, to develop proper legal regulation of the procedure for the exercise of the right to peaceful assembly (usually at the level of a separate law), and, on the other hand, to create the necessary organizational preconditions for the free exercise of this right.

National Level of Regulating and Implementing the Right to Peaceful Assembly

Nowadays each European country contains an appropriate Article in the Constitution, which provides the starting point for the implementation of the right of individuals to peaceful assembly. Despite the processes of globalization, including the globalization of normative regulation of social relations, which became the inevitable consequence of the creation of the European Union, normative regulation of the procedure to implement this right cannot be considered unified. This can be explained by many reasons, among which, in our opinion, there are peculiarities of the historical and cultural development of a particular nation that play the major role and that are manifested, namely, in the level of readiness of its representatives for a common peaceful protest (resistance) to the authorities. Hence, it is a question of the fact that some nations in comparison with other ones (in the case of a historical retrospective), have more actively used the possibilities of peaceful assembly to influence the authorities, to defend their own rights and to change the State and/or political structure of the country. Ukraine is a good example in this regard; its citizens have radically changed the political vector of the country's development using the right to peaceful assembly in 2004 and 2013-2014.

Similar examples can be drawn for other countries. For example, the Revolution of Roses was held in Georgia in November 2003. The main motive of the revolution-the protestation against the falsification of parliamentary elections held on November 2, 2003. The Armenian revolution power took place on April 12, 2018. The reason for the protests was the nomination of Serzh Sargsyan for the post of prime minister after the changes in the Constitution in the Armenian Constitution, conducted by Sargsyan, which established the transfer of power from the president to the prime minister of the country.

These examples can be different, demonstrating either the reluctance of the population of a particular country to influence the government in this way (this can be explained by reasons not only of negative, but also of a positive aspect-a high level of guaranteeing and provision of human rights and freedoms within a particular country that excludes the need for mass protests) or the willingness of the authorities in any way to block the exercise of this right by the people of the country (for example, by adopting non-democratic laws on the conditions and procedure for conducting peaceful assembly, e.g. in Russian Federation (Law of the Russian Federation, 2004)).

European Standards for the Implementation of the Right to Peaceful Assembly

Taking into account the existence of different national approaches to the realization of the right to peaceful assembly by individuals, the importance and value of European standards are intensified, and the decisions of the European Court of Human Rights (hereinafter-the Court) play the fundamental role in this area. Determining the admissibility of the existence of differences in regulatory and organizational guaranteeing of the named right, the Court has its vocation to "*correct*" national practices in order to ensure that all citizens of the European continent enjoy the same (equal) usage of the right to peaceful assembly guaranteed by the Art. 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter-the Convention) (Council of Europe, 1950).

Case Law of the European Court of Human Rights in the Sphere of Peaceful Assembly

The Court, during the time of its functioning, has taken a lot of decisions, many of which were aimed at forming standards of public administration activities in the area of peaceful assembly. Besides, it should be emphasized that the Court's case law is an extremely powerful impulse that determines the further development of national, in particular, Ukrainian legislation. Thus, Article 19 of the Law of Ukraine "*On the Implementation of Decisions and Application of the European Court of Human Rights Practice"* (Law of Ukraine, 2006) states that both draft laws and current legislative acts must be constantly verified for compliance with the Court's practice in order to coordinate their content with the decisions of the Court. Taking into account the fact that the Law "On Peaceful Assembly" has not been adopted in Ukraine yet, the analysis of the relevant decisions of the Court is a necessary step on the way of finalizing its draft. Besides, the Court decisions should serve as a basis for the analysis of existing regulations that directly or indirectly relate to the interaction of public administration with individuals in matters of exercising the right by the latter (Melnyk, 2005).

Referring to the Court's practice, we would like to note that all its decisions, assessing both the legislation and the actions of public administration officials, were evaluated by the following aspects:

Positive duties of the state (public administration) regarding the protection of assemblies

The right to freedom of peaceful assembly cannot be implemented in the absence of correspondent duties entrusted to the State legally represented by its public administration. Such correspondent duties include the positive responsibilities of public administration in protecting the assembly, in particular from the participants in the counter-assembly, from persons who do not share the views (positions) of the participants of the peaceful assembly, etc.

> *"To take reasonable and co-sponsored measures to ensure the security of peaceful demonstration participants, emphasized by the Court-is the duty of the Member States" (§ 32) (ECHR, 2007).*

Accordingly, the prohibition of holding the peaceful assembly with reference to possible violations of public order is unlawful. The public administration should use all the available organizational, technical and human resources to ensure the protection of the members of the

assembly, thus guaranteeing the implementation of the right to peaceful assembly by the latter.

> *"The participants of the meeting should be able to conduct it without fear of being subjected to physical violence by the opponents; such fears could prevent public expression of socially significant positions in associations and other groups (§ 32) (ECHR, 1988); a positive obligation of the State to protect the right to freedom of assembly is particularly important in cases of unpopular views or minorities, as there is a high probability of harassing their rights" (§ 64) (ECHR, 2007).*

Thus, the duty of the public administration is to apply reasonable and commensurate measures to ensure the conduction of the peaceful assembly. Failure to perform positive obligations to protect the assembly by the public administration is the violation of the Art. 11 of the Convention, which makes it impossible or substantially complicates the exercise of the right to peaceful assembly by individuals.

At the same time, it should be noted that the law, authorizing the public administration to protect the assembly, does not require the latter to achieve a certain result, since it (the result) may depend on a number of circumstances that are not under the control of the competent authorities. Thus, in the case of the "*Organization "Platform of "Doctors for Life" vs. Austria*", the applicant accused the law enforcement agencies in omission during a peaceful assembly, which led to the participants being subjected to verbal images and thrown by eggs. In his view,

> *"The Austrian authorities did not take practically the necessary steps to ensure the easy course of the demonstration, neglected the true significance of freedom of assembly" (§ 28) (ECHR, 1988).*

According to the analysis of the case, the Court found out that:

> *"Despite the fact that the obligations of Member States to the Convention include taking reasonable and appropriate measures to ensure the peaceful nature of demonstrations conducted in accordance with the law, they cannot provide absolute guarantees in this regard, although they have wide powers, when choosing such events. In this regard, Article 11 of the Convention obliges the States to apply measures, but does not oblige them to obtain certain results" (§ 34) (ECHR, 1988).*

In other words, the positive responsibilities of the public administration in protecting the peaceful assembly are limited to the application of all reasonable and appropriate measures, in a given situation, aimed at protecting the members of the assembly from unlawful pressure of their opponents or other persons. At the same time, it should be emphasized that the law enforcement agencies cannot interpret their positive responsibilities in the mentioned area in the form of *"non-interference"* that would enable them not to react to violations of the rights of the participants of the meeting.

> *"The true and effective respect for the freedom of association and assembly cannot be reduced to the mere duty of non-interference by the State; just the negative concept would be incompatible both for the purpose of the Article 11 and for the purpose of the Convention in the whole. Therefore, there should be positive responsibilities for ensuring the effective realization of these rights" (§ 64) (ECHR, 2007).*

Punishment for Conducting the Assembly and Participation in the Assembly

Legislation of some countries contains norms, which provide legal liability of the participants of assembly for the commission of certain actions during or after its conduct (Law of Germany, 2010). Such an approach, in general, is reasonable and logical, since participants in

mass events may go in for a variety of violations of public order, which, in turn, considering Part 2 of the Art. 11 of the Convention and Part 2 of the Art. 39 of the Constitution of Ukraine (Law of Ukraine, 1996) may become the basis for the recognition of the non-peaceful assembly and its forced dissolution.

The formulated conclusion finds development in the case law of the Court, which reminds that:

> *"... Condemnation of actions that incite violence during the demonstration can be considered an acceptable mean in certain circumstances. Moreover, imposing sanctions on participation in an unauthorized demonstration is similarly considered to be consistent with the safeguards of the Art. 11 of the Convention" (§ 115) (ECHR, 2007).*

At the same time, the use of penalties to the organizers and/or participants of the assembly should be carried out on legal grounds, since otherwise the legal liability will inevitably turn from the mean of keeping public order into a mean of violating the right to freedom of peaceful assembly. In the latter case, we consider that legal liability can be used as an unlawful mean of preventing (limiting) the participation of individuals in future assemblies.

In the process of considering the cases arising from the Art. 11 of the Convention, the Court has formulated a number of provisions that specify the conditions and procedure for the application of punishment for holding of an assembly and participating in an assembly. First of all, the Court focused attention on the fact that intervention with the right of a person to freedom of peaceful assembly, which is manifested in the application of punishment, must be, firstly, provided by the law and, secondly, must pursue the purpose of preventing riots. In particular, the Court stated that:

> *"The freedom to participate in a peaceful assembly is a matter of such importance that a person cannot be subjected to punishment-even a small one according to the scale of disciplinary sanctions-for taking part in a demonstration, which is not forbidden, if a person does not perform any action that deserves to be condemned" (§ 115) (ECHR, 2007).*

Consequently, the punishment for holding an assembly and participating in an assembly is possible under the following conditions:

Firstly**,** a person participated in an assembly that was prohibited in accordance with the law. A decision to prohibit an assembly may be taken either by an administrative court prior to its commencement or by an authorized public administration (if there are appropriate grounds) during its conduct. In this case, it is especially necessary to emphasize that an assembly not notified by its organizers in advance to the public administration (spontaneous assembly), could not automatically be declared illegal or prohibited. In case if the participants of such an assembly do not violate the restrictions set forth in Part 2 of the Art. 11 of the Convention and Part 2 of the Art. 39 of the Constitution of Ukraine, such an assembly should be considered lawful and, accordingly, permissible to conduct. Accordingly, legal liability cannot be applied to its participants;

Secondly**,** a person participating in a prohibited or uncontested assembly committed illegal acts, those prohibited by the law (in case of Ukraine, it is the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine or other normative act containing the elements of the offense). It is important, however, that the measures taken should have the purpose of punishing the person for unlawful acts committed during the meeting, and not for the

fact of attending the meeting. In this regard, the ECHR notes:

> *"... the essence of the right to freedom of peaceful assembly may be prejudiced in case if the State does not prohibit the demonstration, but then imposes sanctions ... by the fact of the presence of its participants, who have not committed any actions that would deserve to be condemned" (§ 117) (ECHR, 2007);*

Thirdly**,** the application of certain sanctions to a participant of a peaceful and, accordingly, non-prohibited assembly must in a mandatory manner be *"necessary in a democratic society"*. In this regard, the following provision, formulated by the Court, is important. The Court considers that:

> *"On the basis of the wording of Part 2 of the Article 11, as well as the Articles 8, 9 and 10 of the Convention, the only need that can justify interference with any of the rights set forth in those Articles is the fact that one can argue that it arose from a democratic society" (§ 61) (ECHR, 2007).*

In this regard, in particular, we consider it is necessary to point out that the cases of bringing to legal liability of citizens, who organized a peaceful spontaneous assembly, would not meet the requirement of "*necessity in a democratic society".* Despite the fact that spontaneous assemblies, on the one hand, contradict the requirement of the need for advanced notification of such an event, on the other hand-such assemblies, we'd like to emphasize, if they are of a peaceful nature, are extremely necessary in a democratic society, since they allow individuals to promptly respond to certain events occurring in the State or society and express their attitude towards them, and therefore the prohibition of a peaceful spontaneous assembly in the form of sanctions cannot be "*necessary for a democratic society*".

Prohibition of Holding an Assembly

The prohibition on holding an assembly is the most significant of all possible restrictions on the exercise of the right to freedom of peaceful assembly, and therefore the representatives of the public administration empowered to make such a decision must be extremely balanced, objective and comprehensive in its adoption, properly evaluating the proportionality of the damage to the harm caused by the prevented one. The reasons for the prohibition of holding a peaceful assembly are clearly set out in Part 2 of the Art. 11 of the Convention. The list of grounds for prohibitions of a peaceful assembly formulated in these Articles is exhaustive.

> *"The Court recalled that the list of exceptions to the rights to freedom of expression and assembly contained in the Articles 10 and 11 of the Convention is closed. The definitions of these exceptions must be restrictive and should be interpreted in the narrow sense" (§ 84) (ECHR, 2001).*

Most often, based on the practice of the Court, the public administration prohibits the holding of peaceful assembly with reference to the following:

1. Meetings can cause violations of public order, lead to riots, accompanied by the commission of crimes. The Court observes in this regard that the prohibition of holding an assembly with reference to possible violations of public order should be based on solid evidence. At the same time, such violations should constitute a serious threat to public order. "*The probability of minor incidents cannot be the basis for a ban on holding meetings ..." (§ 94) (ECHR, 2001);*
2. The members of the assembly propagate ideas aimed at changing the existing constitutional system, the

authorities, calling for separatism, etc. The Court explains: *"the fact that a group of individual's calls for autonomy or even offers separation of some parts of the country, thus requiring fundamental constitutional and territorial changes, cannot automatically justify a ban on its assembly. The requirement of territorial changes in statements and during demonstrations does not automatically endanger the territorial integrity of the country and national security ... Preventive measures to suppress freedom of assembly and expressions in cases that do not involve incitement to violence or the abandonment of democratic principles no matter how shocking or inappropriate certain views or words, caused to the authorities and whatever claims could be illegal, they do an ill service to democracy and often threaten it. Political ideas in a democratic society based on the rule of law principle, that challenge the existing system, the implementation of which is carried out peacefully, should be given the proper opportunity to express them by exercising the right to freedom of assembly, as well as other legitimate means. Thus ... the likelihood that separatist statements may be made during the meeting ... cannot justify a ban on holding these meetings" (§ 97-8) (ECHR, 2001);*

3. Probable propaganda of violence and denial of democratic principles; the Court ruled by the judgment in *"Inqal v. Turkey*" has determined that *"... an appeal read out at a memorial ceremony to a group of people ... containing words such as " resistance", " struggle" and "dismissal" are not obligatory a call to violence, armed resistance or rebellion" (§ 102) (ECHR, 2001).*
4. Creating a threat to public opinion, which can cause tension among the population? Commenting on the formulated ground for the prohibition of a peaceful assembly, the Court noted: *"... if any probability of tension and a fierce exchange of views between opposing groups during the demonstration is the basis for its prohibition, society will be deprived of the opportunity to hear other points of view on any matter that encroaches on the position of the majority ... National authorities must exercise particular vigilance while allowing the minority to express their views, even if they are contrary to public opinion" (§107) (ECHR, 2001).*

Legitimacy of the Intervention

Any restriction (intervention) on the exercise of the right to freedom of peaceful assembly, as it follows from Part 2 of the Art. 11 of the Convention and Part 2 of the Art. 39 of the Constitution of Ukraine must be established by the law. The court clearly and unequivocally emphasized:

> *"... the intervention will be a violation of the Art. 11 (Convention), if it was not "foreseen by the law", did not pursue one or more legitimate aims ..." (ECHR, 2010).*

In this regard, the Court, first of all, during the analysis of the materials of the case that is being examined, verifies whether any intervention of the representatives of the public administration in the sphere of exercising the right of individuals to freedom of peaceful assembly was legal, or, in other words, determines whether the applicable restriction was based on the law, that is, on a legal act issued by the parliament. No other rule-making entity is entitled to impose restrictions on the exercise of the right to freedom of peaceful assembly by individuals. In this regard, the Court has quite clearly stated in the case *"Vyerentsov v. Ukraine"*

> *"... the expression "prescribed by the law" in the Art. 11 of the Convention require..., that the complained measure must have a foundation in national law..." (§ 52) (ECHR, 2013).*

Speaking about the "*lawfulness of intervention*", one should also draw attention to the fact that the Court examines not only the fact of the consolidation of any restriction of exercising the right to freedom of peaceful assembly in the law, but also the quality of the latter, or, in other words, its predictability, which means that a legal act should be, if possible, proclaimed in advance-before its application, and must be predictable in relation to its consequences. It should

be formulated with sufficient clarity (to be readily accessible) so that individuals have the opportunity to adjust the behavior. Thus, each entity that is subject to a legal act must clearly understand the consequences that will be imposed on by its application.

> *"The Court reiterates that the expression "prescribed by the law", contained in the Art. 11 of the Convention, requires both that the complained measure must have a foundation in national law; and relates to the quality of the law in question. The law should be accessible to interested parties and formulated with sufficient precision in order to enable them to regulate their behavior for being able, if necessary and in terms of providing an appropriate advice, to provide the extent under appropriate circumstances, the consequences that may have its effect" (§ 52) (ECHR, 2013).*

The Validity of the Intervention

Recognizing the right of the authorized representatives of the public administration to apply restrictive and coercive measures to the participants of the meeting (prohibition of holding an assembly, restrictions on the place and time of an assembly, compulsory suspension of an assembly, etc.), the Court has repeatedly emphasized that such restrictions and prohibitions must be substantiated, that is, must be really necessary in the appropriate situation. In other words, restrictions and prohibitions should be based on obvious and indisputable evidence indicating a significant violation of the public order or public safety by the participants of an assembly. A decision to restrict or prohibit peaceful assembly cannot be based on assumptions, unconfirmed facts and assessments that do not have the basis for relevant factual materials or information.

The Court emphasizes:

> *"The state must not only guarantee the right to the peaceful assembly, but also refrain from using unreasonable indirect restrictions of this right. Considering the basic nature of the right to freedom of peaceful assembly and its close connection with democracy, there must be convincing and indisputable arguments justifying intervention with that right" (§ 64) (ECHR, 2007).*

In this regard, it is necessary to emphasize separately that in case of a dispute between the organizer (organizers) of the assembly and the public administration regarding the restriction of the latter with the right to freedom of peaceful assembly; it is the public administration that has the duty to prove the lawfulness and validity of taken decision. Failure to provide necessary evidence by the public administration proving its intervention with the named right may be grounds for recognizing the actions (decisions) of the latter unlawful.

> *"The Court reiterates that, when assessing evidence within the framework of the Convention's procedures, it is generally guided by the principle of affirmanti, non neganti, incumbit probatio (the burden of proof is borne upon by the claimant rather than the one who denies)... In certain cases, only the authorities of the respondent State has access to information that can confirm or refute certain statements. Failure to provide such information by the authorities of the respondent State without convincing explanations may contribute to the conclusion that the applicant's claims are well grounded" (§ 68) (ECHR, 2007).*

CONCLUSION

The issue of peaceful assemblies has always been, is, of course, will remain relevant from both theoretical and practical points of view. And this is understandable, because peaceful assemblies are not only a criterion for determining the level of democracy in the country, but

also an extremely effective way of public control over the institutions of public authority. There are many examples, when peaceful assemblies became an effective mechanism for implementing and ensuring the sovereignty of the nation, which has the right to determine the political, economic and social destiny of their country, using peaceful assemblies as a tool to achieve this goal. It is also worth mentioning that peaceful assemblies are sometimes a means of realizing a number of other rights of individuals-the right to freedom of thought and religion, thought and speech, to freely express the views and beliefs, to use and disseminate information orally, in writing or in another way, the right to free development of the personality, etc.

International and European standards in the area of the right to freedom of peaceful assembly are fundamentally important for any individual country in general and for Ukraine in particular. As many scientists correctly rightly point out in this regard, the latter are extremely important for the formation of the relevant national legal institutions and the development of civil society on their basis.

In summarizing the research, we would like to note that one can find answers in the decisions of the Court to almost all questions that arise in the law enforcement practice, aimed at ensuring the realization of the right of individuals to peaceful assembly. Accordingly, every representative of the public administration and every judge of administrative courts, before taking any judgment in the mentioned area, are obliged to verify its compliance with the Court's case law. This is their constitutional duty, since each of them in his oath committed to respect and protect the rights and freedoms of a man and citizen. On the other hand, the organizers (participants) of peaceful assembly should also be guided by this practice, which may allow them to better understand their own legal status in this area, and the limits, when it can be implemented. Such awareness, on the one hand, excludes excessive litigation and groundless accusations of public administration, and, on the other hand, will contribute to strengthening their own position in case, when individuals are to attend court hearings.

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