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Sinhaievska O. I.,
Chief Specialist of the Division of State Representation
in Civil Cases of the Secretariat of the Agent of Ukraine
before the European Court of Human Rights,
Ministry of Justice of Ukraine

PROHIBITION AND RESTRICTION OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY: CONSTITUTIONAL AND INTERNATIONAL PERSPECTIVE

Abstract. This article examines the right to freedom of peaceful assembly as a fundamental human right in a democratic society, focusing on ECHR jurisprudence and the constitutional approaches of various states. Its aim is to analyze ECHR case law and national legal frameworks to clarify how "restrictions" and "prohibitions" on assembly are defined and enforced, especially under emergency conditions (the COVID-19 pandemic and martial law).

Any interference with assembly must be lawful, pursue a legitimate aim (such as security, public health or others' rights), and be "necessary in a democratic society". In particular, the Court has emphasized that a blanket prohibition on public gatherings is an "extremely serious" interference that requires a particularly compelling justification (for example, the ECtHR found an indiscriminate ban on mass rallies without adequate justification to be a disproportionate restriction).

Comparative analysis reveals significant variation among constitutions. Some states simply guarantee assembly rights with few details, while others enumerate specific grounds for limiting them. For example, in Ukraine or Germany a mere notification suffices to hold a spontaneous gathering (subject to ex post judicial review), whereas in other countries organizers must seek prior permission – making any unsanctioned event effectively unlawful.

Crucially, the terminology matters: when a law speaks of a "prohibition," authorities tend to bar an assembly outright, but when it speaks of a "restriction," they generally mean imposing conditions (on time, place or conduct) without denying the right itself. These legal distinctions are reflected in practice and shape how democracies tolerate or constrain public demonstrations.

The study pays particular attention to crisis situations. It notes that the COVID-19 pandemic and wartime emergencies prompted many governments to impose strict rules (participant limits, social distancing) or even temporary total bans on gatherings. Several states officially derogated from international assembly obligations during these emergencies. Throughout, the principle of proportionality remains paramount: measures may not exceed what is objectively necessary, and once the crisis abates any overly broad prohibitions should be lifted or eased. This analysis highlights the delicate balance between protecting public order or health and preserving civil liberties in times of crisis.

By systematizing these comparative approaches, this article contributes to human rights theory and doctrine. It clarifies that authorities must weigh each restriction against its necessity and distinguishes permissible constraints from impermissible bans. This framework has practical implications: a clear distinction between valid restrictions and prohibited actions will facilitate correct implementation of Article 11 of the Convention at the national level.

Looking ahead, these findings can guide courts and policymakers by clarifying criteria and terminology for assembly restrictions even under emergency powers. The study argues that striking a principled balance between security requirements and fundamental freedoms is achievable under the rule of law. Its insights are therefore poised to inform ongoing legal debates and the evolving doctrine on civil liberties during extraordinary times.

Key words: *freedom of peaceful assembly; European Court of Human Rights; constitutional regulation; restriction of rights; prohibition of rights; martial law; proportionality.*

Сінгаєвська О. Заборона та обмеження права на свободу мирних зібрань: конституційна та міжнародна перспектива

Анотація. У цій статті розглядається право на свободу мирних зібрань як одне з основних прав людини в демократичному суспільстві, з особливим акцентом на судовій практиці Європейського суду з прав людини (ЄСПЛ) та конституційних підходах різних держав. Мета статті – проаналізувати судову практику ЄСПЛ та національні правові рамки з метою з'ясування, як визначаються та застосовуються

«обмеження» та «заборони» щодо зібрань, особливо в надзвичайних умовах (пандемія COVID-19 та воєнний стан).

Будь-яке втручання у збори має бути законним, переслідувати законну мету (таку як безпека, охорона здоров'я населення або права інших осіб) і бути «необхідним у демократичному суспільстві». Зокрема, Суд наголосив, що загальна заборона публічних зібрань є «надзвичайно серйозним» втручанням, яке вимагає особливо переконливого обґрунтування (наприклад, ЄСПЛ визнав безрозбірливу заборону масових мітингів без належного обґрунтування непропорційним обмеженням).

Порівняльний аналіз показує значні відмінності між конституціями. Деякі держави просто гарантують права на зібрання без деталізації, тоді як інші перелічують конкретні підстави для їх обмеження. Наприклад, в Україні чи Німеччині для проведення спонтанного зібрання достатньо простого повідомлення (з подальшим судовим переглядом), тоді як в інших країнах організатори повинні отримати попередній дозвіл, що фактично робить будь-яку несанкціоновану подію незаконною.

Важливо, що термінологія має значення: коли в законі йдеться про «заборону», влада, як правило, повністю забороняє зібрання, але коли йдеться про «обмеження», зазвичай мається на увазі встановлення умов (щодо часу, місця або поведінки) без заперечення самого права. Ці юридичні відмінності відображаються на практиці і визначають, як демократичні держави толерують або обмежують публічні мирні зібрання.

У дослідженні особлива увага приділяється кризовим ситуаціям. У ньому зазначається, що пандемія COVID-19 та надзвичайні ситуації воєнного часу спонукали багато урядів запровадити суворі правила (обмеження кількості учасників, соціальне дистанціювання) або навіть тимчасові повні заборони на зібрання. Декілька держав офіційно відступили від міжнародних зобов'язань щодо зібрань під час цих надзвичайних ситуацій. При цьому принцип пропорційності залишається найважливішим: заходи не можуть виходити за межі об'єктивно необхідного, а після закінчення кризи будь-які надмірно широкі заборони повинні бути скасовані або пом'якшені. Цей аналіз підкреслює делікатний баланс між захистом громадського порядку або здоров'я та збереженням громадянських свобод у кризові часи.

Систематизуючи ці порівняльні підходи, ця стаття робить внесок у теорію та доктрину прав людини. Вона роз'яснює, що органи влади повинні зважувати кожне обмеження з огляду на його необхідність, та розрізняє допустимі обмеження від недопустимих заборон. Ця концепція має практичне значення: чітке розмежування між дійсними обмеженнями та забороненими діями сприятиме правильному виконанню статті 11 Конвенції на національному рівні.

У перспективі ці висновки можуть слугувати орієнтиром для судів та політиків, прояснюючи критерії та термінологію щодо обмежень зібрань навіть у разі надзвичайних повноважень. У дослідженні стверджується, що досягнення принципового балансу між вимогами безпеки та основними свободами є можливим за умов верховенства права. Отже, його висновки можуть стати основою для поточних юридичних дебатів та розвитку доктрини щодо громадянських свобод у надзвичайних ситуаціях.

Ключові слова: *свобода мирних зібрань; Європейський суд з прав людини; конституційне регулювання; обмеження прав; заборона прав; воєнний стан; пропорційність.*

Introduction. Freedom of peaceful assembly is a fundamental human right without which a democratic society cannot exist. This right is closely related to freedom of expression and participation of citizens in social and political life. In its case law, the European Court of Human Rights has repeatedly emphasised the fundamental nature of the right to assembly and required that any state interference be justified by a pressing social need and proportionate to a legitimate aim. According to Article 11 of the European Convention on Human Rights, freedom of assembly may be subject only to such limitations as are prescribed by law and are necessary in a democratic society to protect national security, public order, public health or morals, or the rights and freedoms of others.

At the same time, the constitutional provisions of different countries enshrine this right in different ways. Some countries explicitly provide for the possibility of restrictions on freedom of assembly in accordance with the law (usually listing grounds similar to those in international instruments). In other states, constitutions or laws use the term 'prohibition' to prohibit assemblies in exceptional cases (e.g., when public order or security is threatened) or require prior permission from the authorities. At the international level, the concept of 'interference' is also used, which includes any state action that impedes the exercise of a right, and such interference must meet the criteria of legality, legitimate purpose and necessity. The difference in the terms 'restriction' vs. 'prohibition' is not only semantic, but also affects practice: for example, a general complete ban on all public assemblies for a certain period is considered by the ECtHR to be an extremely serious interference and requires a particularly convincing justification.

The relevance of the study stems from the current challenges to freedom of assembly. The COVID-19 pandemic has forced states to introduce strict quarantine measures, including bans on mass events, to protect public health. In situations of armed conflict or state of emergency, governments also often restrict assemblies for security reasons. During the 2020 pandemic, many states have resorted to emergency regimes and even officially derogated (temporarily suspended) certain obligations under international treaties on freedom of assembly. This raises a scientific problem: where is the line between permissible restrictions and disproportionate prohibitions of this right? Differences in legal regulation and terminology make it difficult to ensure that the right to assembly is exercised equally effectively in different jurisdictions.

Problem setting. The purpose of this study is to analyse the standards of protection of the right to peaceful assembly in the case-law of the ECHR, to compare the constitutional and legal approaches of different states to the formulation and restriction of this right, and to find out how emergency circumstances (pandemic, martial law) affect freedom of assembly and its guarantees. Achieving this goal will contribute to a deeper understanding of the limits of permissible state interference with freedom of assembly and the development of recommendations for law enforcement.

Results of the study. The practice of the European Court of Human Rights establishes the fundamental role and importance of ensuring the right to freedom of peaceful assembly, in particular, the right to freedom of assembly was called a fundamental right in a democratic society, one of the foundations of such a society and that it should not be interpreted restrictively, and the court determines that the only the necessity which can justify interference with this right is the necessity which can claim to originate in a “democratic society” [1]. This highlights the key role of the right to freedom of peaceful assembly in democracies.

The main problem of enshrining this right at the level of state constitutions and its implementation at the national level is that it is not as uniform in its enshrining, unlike other rights, and this raises the question of its non-universality in terms of human rights. In particular, in various constitutions there are such concepts as “restriction” and “prohibition”, in the practice of international courts – “complete prohibition” and “interference”, which can be interpreted in different ways, in international treaties – “restriction” or “legal restriction”, at the same time, the main law of the state can only talk about “restrictions”, and special laws can establish the possibility of “banning” the exercise of the right to freedom of peaceful assembly.

The first question arises regarding the interpretation of the concept of limitation in international law. It is necessary to clarify that in view of the form of enshrining this right in various normative legal acts, it can be concluded that the concept of “restriction” (specifically in relation to the right to freedom of peaceful assembly) is considered in a narrow and a broad sense.

A narrow understanding of the concept of limitation is found in national law, since it is on the examples of provisions of constitutions and special legislation that a more detailed explanation can be found under which conditions the right is limited and under which it is prohibited.

A broad understanding of the concept of limitation is more characteristic of international public law, because it is in international documents that we find confirmation that the concept of “prohibition” is not appealed at all, and international courts refer to the competence of the state in this matter.

That is, the international courts and quasi-judicial institutions themselves do not take into account the presence of a ban in national legislation to hold one or another type of peaceful assembly, but evaluate the ban, as well as restrictions, according to three criteria, while referring to the fact that each state has the right in certain exceptional cases, nevertheless, to “restrict” (prohibit) a certain peaceful assembly.

The second question arises about the goals (or interests) of the restriction in a broad sense. The right to freedom of peaceful assembly is also enshrined in a number of international legal acts, but at the same time, at the level of these documents, inconsistency with the goals set for the restriction is already observed. Art. 21 of the International Covenant on Civil and Political Rights states that the right to peaceful assem-

bly is recognized, the exercise of this right is not subject to any restrictions, except those imposed in accordance with the law and which are necessary in a democratic society in the interests of state or public security, public order, protection of health and morals of the population or protection of rights and freedoms of other persons [2].

Art. 11 of the Convention on the Protection of Human Rights and Fundamental Freedoms states that the exercise of this right shall not be subject to any restrictions except those prescribed by law and necessary in a democratic society in the interests of national or public security, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. This article does not prevent the introduction of legal restrictions on the exercise of these rights by persons who are part of the armed forces, police or administrative bodies of the state [3].

The common requirements for a restriction in these two articles are: the imposition of restrictions in accordance with law (or are prescribed by law), necessity in a democratic society and the existence of interests such as protection of health, morality, protection of rights and freedoms of other persons. Such interests as state or public security and public order do not coincide with interests like national or public security and to prevent riots or crimes as provided for in the European Convention. If we can say about national and state security that these concepts are synonymous and are perceived by states in their own way, then the concept of public order is obviously broader than the prevention of riots or crimes. Also, the concept of public order may not coincide with, or may not be covered by, the constitution of a specific state, in this case it will lead to a situation where the ECtHR or other courts will have to determine whether a specific restriction or prohibition met not only the goals defined by national legislation, but also the goals provided by international acts. For example, since the Constitution of Ukraine mentions only “restriction” of such a right, it can only take place in the interests of national security and public order, while there is nothing to say about the protection of morality and health [4].

In contrast, the broadest range of interests for limitation can be found: in the Basic Law of Estonia, which states that this right can be limited in the cases provided for by law and according to the procedure in order to ensure state security, public order and morals, safety of traffic and assembly participants, including to prevent the spread of infectious diseases [5]; and in the Constitution of the Republic of Cyprus, which states that the exercise of this right may be subject only to those restrictions established by law and which are absolutely necessary only for the security of the republic or the constitutional order, or public safety, or public order, or public health, or for public morals, or for the protection of the rights and freedoms guaranteed to a person by this constitution, regardless of whether that person participates in an assembly or not [6]. Such a range of interests for limitation could be found as well in the constitutions of Latvia, Poland, Romania, Slovakia.

Finally, it is necessary to say about the concept of “prohibition” and the bond between the prohibition and the restriction of the right to freedom of peaceful assembly. In general, according to the general rule, it is considered that no right can be prohibited, only limited, but in cases clearly established by law. At the same time, we have already seen a purely theoretical inconsistency between the terms and goals of limiting (in the broadest sense) the right to freedom of peaceful assembly. But it is necessary to deal with the prohibition of the right to freedom of peaceful assembly both at the level of constitutions and at the level of special legislation, taking into account modern realities.

Prohibition refers to the total ban of assembly under certain conditions, while restriction is a partial limitation that regulates the time, place and manner of assembly in order to ensure public order, safety and the protection of the rights of others.

If you refer to Art. 39 of the Constitution of Ukraine, one can notice the absence of the concept of “prohibition” as such, it is mentioned only about a possibility of restriction of such right, but exclusively by the court [4]. On the one hand, it would be logical to assume that then there should be no talk of a prohibition at all, and that in Ukraine this right can only be restricted. But on the other hand, it is possible to approach this issue from the point of view of both linguistic fea-

tures and the already established socio-political order in states, in the constitutions of which the wording "prohibition or ban" is not perceived as a violation of citizens' rights, but on the contrary – is perceived as a completely acceptable norm of the basic law formed by time. For example, the Constitutions of Greece, Denmark, Spain, Italy, and Lithuania mention the possibility of "banning" peaceful assemblies.

As a result, after analyzing the relevant provisions, we can conclude from this that there are the following approaches to the prohibition of the right to freedom of peaceful assembly, which are embodied in the national legislation of various countries:

1) prohibition of specific types of peaceful gatherings, for example – outdoor gatherings (Article 11, Constitution of Greece [7]; Article 79, Constitution of Denmark [8]);

2) ban based on a reasoned decision of the police (Article 11, Constitution of Greece [7]);

3) ban by the competent authority on the holding of an assembly in the presence of reasonable assumptions about violations of public order, for example on the holding of an assembly in a public place and demonstrations (Article 21, Constitution of Spain [9]);

4) prohibition by an administrative body, if any justified necessity to ensure public safety and order (Article 17, Constitution of Italy [10]);

5) prohibition of "ban" (Article 35, Constitution of Lithuania [11]).

There are still other cases for the prohibition of the right to freedom of peaceful assembly, but which were not originally laid down in the meaning of the articles of the constitutions or taken into account in the national legislation.

First of all, there were prohibitions of this right during the Covid-19 Pandemic. In general, Article 57 of the Polish Constitution guarantees the freedom of assembly, but allows for its limitation by statute [12]. The Constitutional Tribunal has indicated that such limitations cannot be established solely through executive ordinances without a statutory basis. During the pandemic, the Polish government imposed various restrictions on assemblies through ordinances, which the courts have found to be unconstitutional [13, p.52].

The District Court's ruling in Rzeszów, II W 539/20, declared that the Council of Ministers' legislation prohibiting the organizing of meetings was in violation of the proportionality principle outlined in Article 31(3) of the Constitution. Without considering the severity of the SARS-CoV-2 virus danger or the potential effects of concurrently imposed restrictions, bans, and directives, the ordinance outright prohibited all assembly. Thus, the ban on exercising one of the constitutionally guaranteed fundamental rights was created without taking into account whether alternative concurrently implemented measures would not be adequate to accomplish the desired goal in terms of protecting the public's health.

It was stressed in the District Court for Łódź-Śródmieście's ruling in case number. IV W 455/20 that the act was not socially detrimental because the persons in the crowd were standing apart and wearing face masks. In this instance, the defendants' acts could not have caused an epidemic to spread since they did not constitute a threat; thus, they did not in any way impede the prohibition's goal.

In opinion of the District Court for Warsaw-Śród-mieście, VW 2519/20, the prohibition set out in the ordinance concerns only the organization of assemblies, thus it does not ban participation in any assembly. Thus, the regulations are addressed to public authorities and not to citizens participating in assemblies [13, p.157].

To sum up, the courts ruled that the government cannot completely ban assemblies without considering less restrictive measures that still protect public health. The courts have emphasized that the ordinances only prohibited the organization of assemblies, not participation in them. Therefore, citizens could still participate in assemblies, even if they were not officially organized. So, it was concluded that the government's actions violated the constitutional principles of individual trust in the state, legal certainty, and the rule of law, as extraordinary circumstances do not justify disregarding the Constitution.

Secondly, there are prohibitions due to the changes in legislation (provoked by political changes). For instance, in Indonesia depriving public organizations of the status of association of legal entities, as provided for in the revised Law on Public Organizations (UU No. 16/2017), is a criminalization of the freedom of assembly and expression of views, does not

correspond to the principle of the rule of law and even contradicts the principle of the rule of law, and may also lead to repressive actions and dictatorship [14].

In Zimbabwe Justice Makarau's decision in the DARE case would be a turning point in Zimbabwe's human rights system. The DARE case makes a significant contribution to the legislative and constitutional interpretation of human rights in Zimbabwe. The court in this case showed courage and made a decision that will be unpopular among the ruling class. The ruling has long relied on repressive legislation to suppress dissent and mass protests amid Zimbabwe's civil and political instability. The decision in the DARE case led to the repeal of the infamous Public Order and Safety Act. This, without a doubt, was a positive development. However, this law was replaced by another draconian law – MOPO. The provisions of the Criminal Procedure Code in the part that concerns the criminalization of gatherings without a permit are unconstitutional. Such amendments to the national legislation are another attack on the rights and freedoms of citizens guaranteed by the 2013 Constitution [15].

And finally, there are prohibitions in a wartime, like in Ukraine. Currently, one of the special laws is in force in Ukraine – the Law of Ukraine "On the Legal Regime of Martial Law", according to which the military command together with the military administrations receive additional authority – the ability to prohibit the holding of peaceful meetings, rallies, marches and demonstrations and other mass events [16]. In fact, such a rule enables authorized persons to respond quickly to possible threats, which, by the way, are also taken into account by the courts when imposing restrictions on the exercise of such a right. That is, such a ban, as well as restrictions, must be properly justified by the command and administration and have a legitimate purpose, namely: prevention of riots or crimes, protection of public health or protection of the rights and freedoms of other people.

Conclusions. The study has confirmed that the right to freedom of peaceful assembly is one of the cornerstones of a democratic society, and its guarantee is a prerequisite for the exercise of other rights and freedoms. The ECHR case law has developed clear criteria for the permissibility of state interference: restrictions must have a legal basis, pursue a legitimate aim (such as the protection of security or health) and be proportionate (not excessive) to that aim. Failure to comply with the principle of proportionality leads to a violation of the Convention – for example, a complete ban on mass assemblies without sufficient justification was assessed by the ECtHR as a disproportionate restriction of the right.

Comparative analysis has shown that national constitutions formulate freedom of assembly in different ways: from a laconic declaration of the right without specification to detailed provisions listing the grounds for its restriction. In some countries (e.g., Ukraine, Germany), the law requires only notification of an assembly and allows for ex post restrictions by a court or administrative decision in certain cases. In other states (e.g., some countries with a permit system), prior approval or permission is required, and the absence of such permission formally makes the assembly unlawful, which is effectively a ban on the assembly. The differences in terminology – 'restriction' vs. 'prohibition' – are reflected in law enforcement practice: where the law uses the concept of prohibition, the authorities tend to prevent unwanted assemblies from taking place, while the concept of restriction is associated with setting conditions for their holding, without denying the possibility of exercising the right itself.

Emergency circumstances (pandemic, martial law) have tested the flexibility of legal guarantees of freedom of assembly. Legislative approaches ranged from the introduction of quantitative restrictions (e.g., participant limits, social distancing) to temporary outright bans on mass events. Some states have officially derogated the right to assembly at the international level for the duration of a state of emergency, recognising the impossibility of fully ensuring it during a crisis. At the same time, even in emergency situations, the principle of proportionality remains important: restrictions should not be longer or more severe than is objectively necessary. Practice shows that, as the situation normalises, rights should be restored in full, and overly broad prohibitions should be cancelled or mitigated.

The main contribution of this study to human rights theory and practice is the systematisation

of approaches to understanding and restricting the freedom of peaceful assembly. The findings have implications for law enforcement: they emphasise that authorities, when planning interventions in the conduct of assemblies, should act within the law and weigh each restriction against its necessity. A clear distinction between permissible restrictive measures and impermissible prohibitions will facilitate the proper implementation of Article 11 of the Convention in the national legal order. In a state of emergency, developing clear criteria for restricting assemblies will help to avoid arbitrary decisions and preserve public confidence. Thus, striking a balance between security requirements and fundamental freedoms is achievable, provided that the rule of law and European human rights standards are respected.

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