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Freedom of Association versus Freedom of Assembly

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Abstract: Freedom of assembly occupies an "eminent place" in the system of international acts aimed at the protection of human rights. In this sense, we mention that freedom of association and freedom of assembly are instruments of expression, of collective opinion and as such, due to their role in the existence and development of a democratic society, they assign a central place in establishing the democratic framework of state governance.

Freedom of association and freedom of assembly outline the essence of democracy which resides in its ability to resolve issues through public debate.

The protection of freedom of assembly targets precisely this exchange of ideas and the collective manifestations of social and political activity.

Freedom of assembly covers both private and public assemblies. In this sense, states have a positive obligation to protect those who exercise this freedom against the violence of counter-demonstrators. For this purpose, the states have a wide margin of appreciation of the necessary measures.

Keywords: *freedom of assembly; freedom of association; human rights; right to peaceful assembly; right to join an association.*

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I. Introduction

Freedom of association is the right to form, join and refuse to join an association. Enshrined as a right that is part of civil and political rights, the freedom of association that also involves the right of assembly represented one of the fundamental human rights not only from the perspective of legal regulations but also from the evolutionary perspective of society.

The right to assembly ranks among the essential elements that generate state democracy. In this context, freedom of assembly is a fundamental right with a social and political character. It is part of the broad category of "public liberties", which also includes freedom of expression or the right to association. Through its recipients, freedom of assembly is a subjective, individual right belonging to the natural person. At the level of the European Union, the Charter of Fundamental Rights of the European Union provides in art. 12 that every person has the right to freedom of peaceful assembly. The regulation of this right at the international level shows the importance enjoyed by freedom of assembly as a fundamental human right.

II. Preamble to the international legal framework on freedom of association and assembly

The right to association develops its direction especially in the public sphere because the forms of association are of public law and are based on freedom of association and not contact, which is the legal basis of private law companies. The promotion and defense of the interests of different groups of inhabitants of a state or even the government of the state itself in a democratic manner, would be almost impossible without the existence of the right of association. Thus, the forms of association can be classified into three categories, depending on the goals they pursue and the means to be used to achieve the goals pursued.

In legal literature, a distinction is made between freedom of assembly and the right of association. Thus, the meetings assume participants who do not have the status of permanent membership or accepted according to a predetermined procedure, while the association assumes a group of people brought together by membership, between which there are permanent ties. Also, the meetings do not aim to achieve a permanent goal but of a concrete one, declared at the time of their deployment. The association assumes the

establishment of a permanent purpose, determined from the moment of its establishment, purpose declared by the act of establishment or organization.

The right to association was defined in the Universal Declaration of Human Rights by art. 20 para. 1, which confirms that "*Everyone has the right to freedom of assembly and peaceful association*" (United Nations, 1948), a phenomenon that allows the individual to join any form of organization, party or body of association through which to impose his will to participate in the activity public and political status.

The document is an inevitable prelude to the following international legal acts that enshrine freedom of association in the category of social rights. From a general perspective, although it is not considered to be an international treaty that would imply some legal consequences in case of its violation, being conceived as a "common ideal achieved for all peoples and nations" (African Commission on Human and Peoples' Rights, 2017a; 2017b). Over time, this became a reference document towards which the states tend and according to which the way in which human rights are respected in different states of the world is verified, its provisions being later taken over and expanded in different international treaties.

The Universal Declaration of Human Rights allowed for a classification regarding the rights and freedoms that define it: civil rights - the right to life, freedom and security of the person, private and family life, inviolability of the home, secrecy of correspondence, honour and dignity, free movement, marriage and family formation, peaceful assembly; political rights – the right to asylum, citizenship, elections; economic rights – the right to property, equal pay for equal work; procedural rights – the right to be a subject of law, the right to effective recourse, to a fair trial; social rights – social insurance, work, the right to establish trade unions, the right to rest and free time, to a decent standard of living, insurance in case of illness, unemployment, widowhood, old age, the right to education (United Nations, 1948).

Adopted in 1948, by Resolution 217 A during the third session of the General Assembly of the United Nations Organization, the Universal Declaration of Human Rights opened the way for the phenomenon of guaranteeing and individualizing human rights, a goal that will be taken over and multiplied by new international regulations (United Nations, 1948). Free association comes in the context where modern society imposes itself through freedom of assembly, civic demonstrations fully exercise this right in the economic, social or even political space.

The consecration of this right is also expressed in the American geographical space by the American Convention of Human Rights (art. 15).

The development of human rights through the expansion of international documents represents one of the most important conquests in the legal field of the 20th and 21th centuries, and Latin America undoubtedly played a prominent role in this normative and jurisprudential evolution.

The primary influence of the Spanish school, represented by Francisco de Vitoria, Francisco Suárez and Bartolomé de las Casas, the ideas of the French Revolution, spread by Francisco de Miranda and Simón Bolívar, the American Revolution and its Virginia Declaration of June 12, 1776, the constitutions of the Latin-Americans states, who, following the example of Mexico in 1917, proclaimed economic, social and cultural rights in unison - are just a few examples of this ancient tradition in the field of human rights, which stretches across the entire continent, from north to south (Ghidirmic, 2021.)

The contouring of the rights and freedoms of the person returned to the centre of the concerns of the American states at the end of the 1950s, under the impetus of the civil conflicts in Cuba and the Dominican Republic (González, 2009, p.104) In August 1959, following a resolution adopted during the Vth Consultative Meeting of Ministers of Foreign Affairs, the OAS General Assembly will approve the establishment of the Inter-American Commission on Human Rights (2019), an independent body with a purely consultative role, charged with the mission of promote respect for individual liberties on the American continent.

Adopted in Bogota on May 2, 1948, the American Declaration of the Rights and Duties of Man (Inter-American Commission on Human Rights, 1948)is the first international instrument of a general character in the field of fundamental rights (Steiner & Alston, 2000, p.868).

It preceded by more than seven months the famous Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations on December 10, 1948. The original purpose of its main craftsman - the Inter-American Juridical Committee - was to draft a document that would compel the signatory states to ensure the proper application of standards in the field of human rights protection. Although lacking a binding framework, this Declaration proved to be the cornerstone of the inter-American regional system for the protection of human rights, a system that would develop in a rather empirical manner until the end of the 1960s.

As such, the legal force of the Bogota Declaration is reflected by art. 29(d) of the American Convention on Human Rights, which prohibits *expressis verbis* any interpretation of conventional provisions likely to limit or

remove the effects of the Declaration (American Convention of Human Rights, art.29). In other words, the 1969 Convention assigns to the Bogota Declaration a position equivalent to its own within the normative hierarchy of the inter-American system of human rights protection. In conclusion, the acceptance of the policy of protecting and guaranteeing human rights on the American continent includes a troubled history but which has a positive evolution of mandatory imposition of the Declaration through the Convention.

In this context art. 15 of the Convention certifies an enshrined right, the freedom of association and peaceful assembly that resides in a series of "traditional" rights from 1789. The "natural, imprescriptible and sacred" rights, originating from Enlightenment philosophy and the French revolutionary movement, they seem to have acquired, in the meantime, a concrete dimension, and the juxtaposition of civil and political liberties and socio-economic rights starts towards a new conceptual paradigm that justifies the relationship between individual authority and the state.

Another document that captures freedom of association and assembly is the International Covenant on Civil and Political Rights (United Nations, 2020).

The first sentence of Article 21 of the International Covenant on Civil and Political Rights states that: *"The right to peaceful assembly is recognized"*. This right is provided in similar terms in other international and regional instruments (art. 20 (1) (United Nations, 1948), and its content has been developed by monitoring instruments, through which their opinions, final observations, resolutions, judicial decisions (Organization for Security and Cooperation in Europe (OSCE, 2019), have created a guaranteed environment of human rights and freedoms, in addition to of international law, in this framework the vast majority of states recognize this right in their national constitutions.

Later, from a historical point of view, the idea is taken over by the European Convention on Human Rights, an international document which, through art. 11, states that *"1. Every person has the right to freedom of peaceful assembly and freedom of association, including to constitute with others unions and to join unions to defend his interests. 2. The exercise of these rights cannot be subject to other restrictions than those provided by law which, in a democratic society, constitute measures necessary for national security, public safety, the defence of order and crime prevention, the protection of health, morals or rights and the liberties of others. This article does not prohibit legal restrictions to be imposed on the exercise of these rights by members of the armed forces, the police or the state administration."* Establishing and guaranteeing the right to free association and assembly allows the individual to become a

justified instrument by association to an organization, to participate in political activities even to influence the exercise of power within the state.

The right to peaceful association is an important right in itself because it allows the individual to join groups towards which they have a series of spiritual, political, economic affinities or even common principles. The association played a decisive role in the political exercise, allowing the development of political pluralism, a tool applied in the exercise of power. Peaceful demonstrations can influence some political decisions, and this fact demonstrates that association and assembly are two activities that sometimes complement each other and escalate the same goal.

The related recognition offered by the right to association in relation to the right to assembly, creates the possibility to ensure the natural person the possibility of integration in a vast space on many levels, economic, political or social.

The specialized literature on human rights has assumed the responsibility of bringing to attention two aspects with reference to the rights granted to collectives, namely: the right to association and the right to assembly.

Under this context we will try to establish the common denominator that defines these rights.

III. Connections between the right of association and the right of assembly

The term *association* implies the voluntary grouping of some people to achieve a common goal. The notion of "freedom of association" refers to the right to establish a group or organization that pursues certain goals, or to affiliate with them. It does not concern the right to enjoy the company of other people or to participate in social activities with other people.

For an association to fall under the protection provided by art. 11 of the European Convention on Human Rights, it must act as a private law entity. The term "association" is imposed in the orchestration of decisions through associations, sometimes even governing decisions.

The decisions of the Court have demonstrated that the freedom of association and the effect outlined by the exercise of this right, influence the democratic degree of a state (European Court of Human Rights, 2004a).

Citizens' participation in the democratic process is largely obtained through membership of associations within which they can integrate and pursue common objectives collectively, the essence of the phenomenon

being concretely defined by the political plurality of the state (European Court of Human Rights, 2006a).

Thus, the establishment of an association for the purpose of expressing and promoting the identity of a minority can be essential for it, helping it to preserve and defend its rights. The preservation of ethnic identity in the context of a current of global uniformity is an important and exclusive desire for such associations.

Although the exercise of the right to freedom of association may involve a number of rights provided by the Convention, there is a particularly close relationship between art. 11, art. 9 and art. 10 of the Convention.

The protection of personal opinions, provided by art. 9 and art. 10 of the Convention, in the form of freedom of thought, conscience and religion, as well as freedom of expression, is also one of the goals of freedom of association.

The freedom of association allows the establishment of the legal entity, therefore it gives the possibility for these entities to get involved through its members in governance activities, in the exercise of the power of a state. Political plurality, which is the basic principle of the democratic space, is also achieved on the basis of the competition of legal entities - the political parties based on the right of appropriation.

The right to freedom of association does not include the right to become a member of a particular association (European Court of Human Rights, 1985) nor the right to hold a particular position within an association (European Court of Human Rights, 2004b).

But removing a member from the association by violating the statute is an act of violation of the right to association. It is also relevant that the freedom of association is connected with the freedom of choice, the member of an association buys into it from his own convictions without being coerced or forced in certain ways.

The notion of personal autonomy is an essential corollary of the person's freedom of choice, he cannot freely dispose of his freedom of choice or freedom of action if he is faced with limits.

Any interference with the right to freedom of association must pursue at least one of the legitimate purposes set out in paragraph 2 of Article 11: national security or public safety, the defence of order or the prevention of crime, the protection of health or morals, and the protection of the rights and freedoms of others. Exceptions to freedom of association must be interpreted narrowly so that their enumeration is strict and the

definition of these exceptions is necessarily concise without leaving room for interpretation.

States generally have the right to impose on organizations applying for their official registration the obligation to fulfil reasonable legal aspects, this option is always subject to the condition of proportionality (European Court of Human Rights, 2011).

The refusal of a state to accept or register an association constitutes a radical measure and the effect is to prevent the association from starting any activity. Under another context, the state cancels the right to free association. In balance with the refusal, the state must ensure that the purpose and activities of an association comply with the rules provided by the legislation.

In the case of derogation by an association from legal formalities in the context of the purpose of its establishment, the intention of the states may also include the right to intervene in the exercise of the right to freedom of association, subject to the requirement that the interference be proportionate (European Court of Human Rights, 2009).

Although the right to association does not exclude any form of association, the most common types of association are found in formations such as: political parties, minority associations and religious associations, as key actors in a democratic society.

Any associational formation is fully functional when community members exercise their right to peaceful assembly.

The right to assembly is connected with the right of association by art. 11, as a material phenomenon of the association, without taking into account the typology of the meeting or its theme, the thing itself being determined by the identification of the association that undertakes the realization of the meeting.

Considered somewhat equivalent, the "right to assembly" should not be approached in a minimal manner (European Court of Human Rights, 2015).

Although it is connected to the right of association, the right to meet does not reflect the consistency and weight shown by the first by the simple fact that meetings are a spontaneous action that is not based on the identification of an effect and leaves it to the free will to happen or not that effect.

Although the main purpose of art. 11 is to protect the right to participate in a peaceful political demonstration and the democratic process, the limitation of art. 11 to this type of meeting would constitute an unacceptably restrictive interpretation of this article, just as the limitation of

art. 10 to the expression of a political opinion would constitute too strict an interpretation of this provision. Consequently, the right to participate in the meeting according to the ECHR jurisprudence cannot be limited, the term meeting includes a wide palette such as: religious, political, ethnic meetings, etc., all transferring to the social-economic sphere.

The right to assembly is based on the type of meeting, namely meetings that are organized or meetings that occur spontaneously as dictated by political or governmental events. Peaceful meetings or violent meetings are also part of this classification.

In this sense art. 11 of the Convention only protects the right to freedom of "peaceful assembly", a notion that does not include a demonstration whose organizers and participants have violent intentions. Therefore, the guarantees provided for in art. 11 applies to all assemblies, except those whose organizers and participants have such intentions, incite acts of violence or otherwise deny the foundations of a democratic society.

A meeting vitiated by isolated acts of violence is not considered a violent meeting, so that it does not benefit from the protection provided by art. 11. A person has the right to freedom of peaceful assembly even in the event of sporadic acts of violence or other crimes committed by other persons during the demonstration, if the person in question maintains peaceful intentions and behaviour (European Court of Human Rights, 1991).

The assumption that people with violent intentions and not the members of the organizing association - participate in the demonstration cannot, in itself, determine the cancellation of this right.

Access to the "freedom of assembly" generates positive and negative obligations towards the states where they take place (European Court of Human Rights, 2006b). States should ensure and guarantee this right.

In the event of a counter-demonstration, the law enforcement teams, the state, must exercise their obligation to protect the members of any association that exercises the right to assembly through forms of peaceful demonstrations (European Court of Human Rights, 2012).

The unconditional ban of a counter-demonstration is an extreme measure that requires special justification, especially when the demonstration in question concerns a matter of public interest.

The right to freedom of assembly is not absolute; it may be subject to restrictions, in accordance with paragraph 2 of article 11. An interference with the exercise of this right must not constitute an absolute prohibition, *de jure* or *de facto*, but may consist of various other measures taken by the authorities. Thus, we are talking about interference in the sense in which the

authorities prohibit the support of certain slogans or do not allow meetings to be held on the set date, or do not allow certain members to participate in these meetings for specific reasons.

Other types of restrictions pertain to actions such as: coordinating the popular mass, dispersing the crowd, arresting the participants. These limitations are primarily aimed at the participants in the meetings, that is, people who actually participate in them, those who intend to participate in them, or those who have participated in such meetings in the past. Repressive measures and sanctions can be related either to the violation of the rules regarding the conduct of meetings, or to the specific crimes committed during them.

The level and degree of severity of the sanctions are applied in accordance with the assessment of the proportionality of an interference in relation to the intended objective.

Connecting the two freedoms we find that they work simultaneously and the effect they emanate in society is related to the collective will and state authority. It is important that the exercise of this right to freedom of peaceful assembly and freedom of association evolves concurrently with the provisions of the authorities.

IV. Conclusions

Although the freedom of peaceful assembly and the freedom of association work in conjunction, they are social, autonomous rights that are differentiated by the fact that the meetings involve participants who do not have the status of permanent membership or accepted according to a predetermined procedure, while the association involves a group of people brought together by membership, between which there are permanent links.

Also, meetings do not aim to achieve a permanent goal but a specific one, while associations establish a precise goal in a certain direction from the moment of establishment. The association requires identification through a constitutive act that follows a series of procedures to produce effects, the meetings to be held based on ad hoc established rules.

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