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FROM CONSTITUTION TO STRASBOURG: ASSESSING FREEDOM OF ASSOCIATION IN UKRAINE AND FRANCE THROUGH THE COUNCIL OF EUROPE STANDARDS

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INTRODUCTION

Freedom of association stands as a principle of any pluralist democratic state, functioning as a vital mechanism for collective action, political representation, and the protection of individual interests. Within the broader European legal architecture, the definitive standard for this fundamental right is established by the Council of Europe. The operative legal guarantee is enshrined in Article 11 of the European Convention on Human Rights (ECHR), the comprehensive jurisprudence of which has established robust negative duties to refrain from interference and positive obligations to proactively ensure the effective enjoyment of the right.

This paper undertakes a critical assessment of how the right to freedom of association is legislated, implemented, and protected across two contrasting legal systems: France, representing a long-established Western European liberal democracy with deep-rooted civil society traditions, and Ukraine, a nation actively engaged in legal and administrative convergence with European standards following years of post-Soviet transition. This comparison provides a crucial lens through which to evaluate the practical challenges inherent in realizing constitutional rights when measured against the binding authority of Strasbourg.

To facilitate this assessment, the analysis is structured around four interconnected components. First, the paper examines the foundational national legal instruments, including Articles 36 and 37 of the Ukrainian Constitution, and the fundamental principles of the French legal framework (such as the 1901 Law), alongside main domestic legislation governing associations. Second, it analyses key ECtHR judgments, contrasting the bureaucratic failures highlighted in Ukrainian cases (Koretskyy and Others v. Ukraine, Trofymchuk v. Ukraine) with the French application of the proportionality test in matters of dissolution and financial regulation (Association des Anciens Élèves de l'ENSAE v. France, and Ayoub and Others v. France). Third, the paper incorporates relevant Council of Europe soft law, specifically Recommendation CM/Rec(2007)14, which provides non-binding guidance on the legal status of non-governmental organisations (NGOs).

By mapping the path "From Constitution to Strasbourg," this study aims to elucidate the discrepancies between national guarantees and the practical, enforceable requirements of the Convention, ultimately demonstrating that while the specific regulatory and administrative challenges differ, the uniform benchmark for effective associative freedom remains the demanding proportionality test of the ECtHR.

1. Constitutional Acts of France and Ukraine of the Freedom of Association

The 1996 Constitution of Ukraine includes several articles that do not directly regulate non-governmental organizations but are crucial for their establishment and operation. These are mainly articles in Section II, which protect personal, political, social, cultural, and environmental human rights: Article 34 (freedom of thought and speech), Article 35 (freedom of belief and religion), Article 38 (right to participate in managing state affairs), Article 39 (right to peaceful assembly without weapons, including meetings, rallies, marches, and demonstrations), Article 40 (right to submit individual or collective written appeals or personally address state authorities, local governments, and their officials), Article 44 (partly covering the right to strike), Article 49 (partly covering physical culture and sports, as well as organizations for people with disabilities), Article 50 (mainly the right to information about the environment, food quality, and household items, and the right to share this information), Article 54 (mainly freedom of creativity), and others.

Additionally, the Constitution of Ukraine includes two articles directly related to NGOs. First, Article 36. According to its Part 1, "Ukrainian citizens have the right to freedom of association in political parties and public organizations to exercise and protect their rights and freedoms and to satisfy political, economic, social, cultural, and other interests, except for restrictions established by law in the interests of national security, public order, public health, or the protection of the rights and freedoms of others.[1]" Currently, the Law of Ukraine "On Public Associations" contradicts this norm in two key aspects:

NGOs can be formed and joined not only by Ukrainian citizens but also by other individuals. This provision in the Law does not align with the Constitution but complies with European standards, such as Article 11 of the 1950 European Convention on Human Rights.

NGOs can operate not only to protect the rights and interests of their founders or members but also to benefit third parties who are not founders or members. Again, this provision contradicts the Constitution but aligns with

[1] Конституція України. *Відомості Верховної Ради України*. 1996. № 30. Ст. 142.

European standards, such as points 8, 10–14 of the Fundamental Principles on the Status of Non-Governmental Organisations in Europe, adopted on July 5, 2002, by participants of a multilateral meeting organized by the Council of Europe, along with its Explanatory Memorandum.

Part 2 of Article 36 focuses solely on political parties, and Part 3 on trade unions. Part 4 states that "no one may be forced to join any citizens' association or face restrictions for belonging or not belonging to political parties or public organizations," while Part 5 emphasizes that "all citizens' associations are equal before the law." The use of the outdated term "citizens' associations" in these parts of Article 36 raises concerns[2]. While the meaning is clear, updating this terminology during future constitutional amendments would be advisable to eliminate inaccuracies.

Article 37 of the Constitution, in Part 1, prohibits the establishment and activities of NGOs whose "programmatic goals or actions aim at eliminating Ukraine's independence, changing the constitutional order by force, violating the sovereignty and territorial integrity of the state, undermining its security, illegally seizing state power, promoting war or violence, inciting interethnic, racial, or religious hatred, or infringing on human rights and freedoms or public health." Part 3 of Article 37 states that "public organizations cannot have paramilitary formations," and Part 5 specifies that "the prohibition of citizens' associations is carried out only through a court decision." The same terminological concerns about "citizens' associations" apply to Article 37, but otherwise, it raises no significant issues.

Another negative trend that hinders aligning Ukraine's constitutional law with European standards is the specific mention of certain types of organizations in the Constitution, such as trade unions (Part 3, Article 36) and consumer organizations (Part 4, Article 42).

Based on the analysis of Articles 36 and 37, it can be concluded that NGOs in Ukraine are formed through the exercise of the collective right to freedom of association. This right is now recognized as an inalienable natural right of individuals and is traditionally classified as a personal right, both under Ukraine's Constitution and European human rights standards. This marks a significant step away from the Soviet past, when the right to form NGOs was considered a political freedom at the constitutional level.

It should also be noted that Articles 36 and 37 have not been interpreted by the Constitutional Court of Ukraine. As for European judicial practice related to these provisions, it is reflected in decisions of the European Court of Human Rights (ECHR) concerning violations of the 1950 European

[2] Конституція України у судових рішеннях / М. П. Орзіх, А. А. Єзеров, Д. С. Терлецький. К. : Юрінком Інтер, 2011. С. 83.

Convention on Human Rights. Article 11 of the Convention, titled “Freedom of Assembly and Association,” addresses these rights.

The combination of freedom of association and freedom of peaceful assembly in the Convention is logical, especially for NGOs. First, to establish an NGO, such as a public association, founders must hold a constituent meeting (Part 1, Article 9 of the Law of Ukraine “On Public Associations” of March 22, 2012). Second, the meetings of an NGO, which serve as its highest governing body, are essentially peaceful assemblies of its members. Therefore, when studying freedom of association, significant attention should be paid to freedom of assembly. However, when researching freedom of assembly, the need to analyze freedom of association depends on the case. For instance, when rallies or pickets are organized by political parties, NGOs, or religious organizations involving their members, the link between freedom of association and freedom of assembly is clear. But when a picket or rally is initiated by an “unorganized public,” such as workers of a company or residents of a neighborhood not united in a trade union or NGO, this link may be absent.

Thus, it is appropriate to discuss “freedom of assembly and freedom of association” together, as forming an association without holding meetings is impossible in Ukraine and most other countries.

The 1958 Constitution of France includes several provisions that do not directly address NGOs but are essential for their creation and activities[3]. These mainly come from the Declaration of the Rights of Man and of the Citizen of 1789, which is part of France's constitutional framework[4], as well as the Preamble to the 1946 Constitution. Key examples include Article 4 of the 1789 Declaration (freedom to do anything that does not harm others), Article 10 (freedom of opinion, including religious views), Article 11 (freedom to communicate thoughts and opinions), and principles from the 1946 Preamble on the right to strike, health protection, and cultural rights. These support NGOs by enabling free expression, assembly, and collective action in areas like social, environmental, and cultural issues.

In addition, France's constitutional framework recognizes freedom of association as a fundamental principle, though it is not explicitly stated in the 1958 Constitution's main text. The Constitutional Council affirmed this right in its landmark decision of July 16, 1971, drawing from the 1789 Declaration and 1946 Preamble[5], stating that freedom of association is essential to

[3] Constitution of France 1958. URL: https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf

[4] Declaration of the Rights of Man and of the Citizen 1789. URL: https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen

[5] Constitution of France 1946. URL: https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf

democracy and human rights. The primary law regulating NGOs is the Law of July 1, 1901, on the Contract of Association, which allows citizens and foreigners to form associations freely for non-profit purposes, such as cultural, sports, or humanitarian goals, with simple declaration requirements. This law aligns well with European standards, like Article 11 of the 1950 European Convention on Human Rights.

2. Laws on Associations in Ukraine and in France

The Law of Ukraine "On Public Associations": A Regulatory Shift Towards Civic Empowerment

The Law of Ukraine "On Public Associations"[6], formally adopted on March 22, 2012, and effective from 2013, represents a watershed moment in Ukrainian civil legislation. Its primary objective was to enact the constitutional right to freedom of association by dismantling the antiquated and highly restrictive regulatory model it replaced. The Law establishes a comprehensive legal and procedural framework designed to foster a robust and autonomous civil society sector, thereby aligning Ukraine's legal landscape with European standards for democratic governance and non-state actor participation.

Formal Definitions and Structural Differentiation

The statute clearly defines a Public Association (PA) as a voluntary, non-profit union of individuals and/or private law legal entities, formed to advance and safeguard rights, freedoms, and various public interests (e.g., social, economic, cultural, environmental). The crucial definitional constraint is the exclusion of profit generation as a primary objective. The Law mandates two distinct forms: the Public Organisation, whose membership and founders are exclusively physical persons (individuals), and the Public Union, which permits private law legal entities as its founders, with both entities and individuals eligible for membership. This structural distinction acknowledges the diversity of civil society and facilitates sectoral collaboration. Furthermore, the legislation grants PAs the flexibility to operate either with or without the status of a legal entity, though possessing this status designates the association as a non-entrepreneurial society subject to stricter accounting and reporting requirements.

Principles of Operation and Governance

The operational framework of PAs is anchored in core principles that underscore their democratic nature. These include the principle of voluntariness, which ensures that participation is entirely self-determined and that state bodies cannot leverage membership status to affect citizens' rights

[6] Про громадські об’єднання : Закон України від 22 березня 2012 р. Офіц. вісник України. 2012. № 30. Ст. 1097.

or privileges. Self-government guarantees internal autonomy, allowing PAs to independently determine their governance structures and activities as prescribed by their own Statutes. The Law notably eliminated mandatory territorial classifications, establishing the principle of a free choice of the territory for operation, empowering associations to scale their activities based on need rather than bureaucratic limits. Crucially, the absence of property interest strictly prohibits any distribution of the association's assets or income to its members or founders, reinforcing the non-profit mandate. Finally, the principles of transparency and publicity impose an obligation on PAs to ensure open access to information regarding their operations and financial status, promoting accountability to both members and the broader public.

Registration Process and Permitted Activities

The Law significantly streamlined the formation process by introducing a simplified, declarative registration procedure, moving away from the cumbersome permit system of the past. The requirement for founders is minimal-a minimum of two individuals for a Public Organisation or two private law entities for a Public Union. Registration is a process handled by the Ministry of Justice or delegated administrative centres, focused primarily on reviewing the compliance of the foundational documents, particularly the Statute, with the law. While restricted from being political parties, PAs are permitted to engage in broad public political advocacy to achieve their goals. A key provision allows PAs to conduct economic activities only as an auxiliary function, provided the revenue generated is exclusively used to fund the association's core non-profit statutory objectives. This balance between non-profit mission and operational sustainability is vital for the sector's long-term health and its active role in national life and international engagement.

The French Law of July 1, 1901: The Foundation of Associative Freedom

The French Law of July 1, 1901, relative to the contract of association (Loi relative au contrat d'association) is a piece of legislation that fundamentally established the principle of freedom of association in France[7]. Over a century old, it remains the primary legal instrument governing the vast majority of non-profit organisations in the country. This statute is distinguished by its highly liberal framework, contrasting sharply with the restrictive regimes that preceded it, thereby empowering citizens to pool their efforts for non-commercial purposes with minimal state interference.

Article 1 of the 1901 Law defines an association as a convention (agreement) by which two or more persons permanently pool their knowledge or activities for a purpose other than to share profits. This definition emphasises two critical legal characteristics: the contractual nature of the

[7] Loi relative au contrat d'association 1901. URL: https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006069570

association, meaning its validity is governed by general contract law principles, and the non-profit objective, making the prohibition of distributing financial benefits among members the fundamental distinction between an association and a commercial company. The term "permanently" highlights the long-term, ongoing nature of the members' commitment. Should an association's activities lead to a significant financial surplus that is not reinvested in its non-profit purpose, it risks being reclassified as a de facto commercial company by tax or judicial authorities.

The Law champions the principle of free formation: associations can be formed freely without prior authorisation or declaration. However, to acquire legal capacity (personnalité morale), which allows the association to contract, receive subsidies, open a bank account, or initiate legal action, the founders must undertake a simple declaration process. This declarative formality is made at the Préfecture (local government office) where the association's headquarters are located and includes furnishing the title, objective, address, and the names of the administrators, along with copies of the statutes. Legal personality is acquired upon the publication of an excerpt of the declaration in the Journal Officiel des Associations et Fondations d'Entreprise (JOAFE). This swift, non-discretionary process underscores the law's liberal spirit, as authorities cannot refuse registration, only challenge the legality of the association's purpose in court post-factum.

A key feature of the 1901 Law is the wide degree of organisational and contractual freedom granted to the founders. The Law is deliberately silent on the internal governance structures (e.g., the necessity of a Board of Directors, a President, or specific meeting requirements), leaving the definition of leadership bodies, their powers, and the rules for member admission and withdrawal entirely to the Statutes. This freedom ensures the association's structure perfectly matches its specific goals and membership. While the non-profit principle is absolute regarding the distribution of profits, associations are permitted to engage in economic activities that generate revenue, provided the profits are strictly and entirely reinvested to achieve the association's stated non-profit purpose. Furthermore, the Law provides avenues for associations to acquire greater rights, such as the capacity to receive donations and legacies, through a specific procedure leading to "recognition of public utility" (reconnaissance d'utilité publique), which subjects them to stricter state oversight. The ease of formation and the inherent operational flexibility have contributed immensely to the proliferation of a diverse and highly decentralised French civil society.

The enduring significance of the French Law of 1901 on the contract of association stems precisely from its initial, radical liberalism, making it highly adaptable to modern social and economic contexts. Despite its age, it remains

the backbone of a vibrant civil society, although it is not immune to contemporary criticism, particularly regarding the increasing state control and the complexity of financial regulations.

The 1901 Law's sustained relevance is deeply rooted in the fundamental democratic principles it enshrined:

– the core principle that an association can be formed by just two people without requiring any prior authorisation is immensely valuable. This low barrier to entry fosters spontaneity and allows citizens to rapidly address new social issues or collective interests, driving innovation in the social sector, particularly in areas like environmentalism or consumer rights. The formality of declaration is merely a condition for obtaining legal capacity, not for existence.

– by defining the association as a simple contract, the Law grants founders exceptional flexibility in drafting the Statutes, which serve as the internal rulebook. This self-governance allows groups to tailor their internal decision-making structures (e.g., General Assembly, Board, etc.) to their specific needs and size, which is a major advantage over the rigid structures mandated for commercial entities.

– the strict prohibition against the sharing of benefits among members remains the central legal safeguard of the non-profit model. This clear distinction from commercial activity has preserved the integrity of the sector, ensuring that associations, even those with substantial economic activity, serve a collective or public interest rather than private enrichment.

Modern Criticisms and Regulatory Challenges

While celebrated for its liberalism, the 1901 Law faces several points of criticism in the 21st century:

– the Law's simplicity becomes a drawback for large associations that manage substantial budgets, employ staff, and engage in significant economic activity. These organisations often find themselves subject to a patchwork of subsequent regulations (e.g., fiscal, social, and accounting obligations) that overlay the original text, leading to complexity. For instance, while the original law allows for cash-based accounting, large associations or those receiving public subsidies must comply with much stricter, company-like accounting rules.

– associations seeking the enhanced legal capacity of recognition of public utility (allowing them to receive donations and legacies) face a demanding and highly political administrative procedure. Critics argue this high-threshold status is exclusive, often favouring large, established, and centrally controlled non-profits, thus perpetuating inequality within the sector.

– a more recent criticism focuses on the introduction of mechanisms that are perceived as undermining the sector's autonomy. The 2021 law against

"separatism" notably introduced the "Republican Commitment Contract" (Contrat d'engagement républicain – CER), which associations must sign to qualify for public funding. Critics argue this contract creates a relationship of subordination rather than partnership, as it conditions vital public resources on adherence to state-defined principles, potentially stifling the freedom of expression and advocacy, particularly for associations that challenge government policy. This represents a modern tension between the liberal core of the 1901 Law and the state's desire for greater oversight of public funds and republican values.

3. Council of Europe standards and relevant case law of the European Court of Human Rights

The Council of Europe standard for the protection of associations is primarily established by Article 11 of the European Convention on Human Rights (ECHR). This article unequivocally guarantees "the right to freedom of peaceful assembly and to freedom of association with others," an indispensable right for the functioning of a democratic state. The jurisprudence of the European Court of Human Rights (ECtHR) interprets Article 11 broadly, imposing both negative and positive obligations on member states regarding non-profit organisations, political parties, and trade unions.

The ECtHR views the right to associate as a fundamental and comprehensive right that extends beyond mere formation. The Court has established that genuine and effective respect for this freedom entails several key dimensions:

Member states bear a negative obligation to refrain from undue interference with an association's operation. However, the ECtHR has also identified a positive obligation on the state, which requires domestic authorities to take reasonable and appropriate measures to ensure that the rights guaranteed under Article 11 can be enjoyed effectively. This includes providing an effective legal framework that enables the acquisition of legal personality through a non-arbitrary registration process. The freedom to associate is deemed "illusory" if it does not include this right to form a legally recognised body.

The protection afforded by Article 11 is not limited to the founding members but extends to the association itself as a legal entity and covers its entire life cycle and all its legitimate activities. The Court's case law establishes that the right encompasses necessary practical corollaries, such as the ability of trade unions to engage in collective bargaining and the negative freedom of association-the right of an individual not to be compelled to join a particular body. Furthermore, the ECHR framework ensures that associations,

even those with controversial or dissenting goals, are protected, provided their aims are pursued peacefully and democratically.

Proportionality Test for Restrictions

As a qualified right, the freedom of association is subject to restrictions, provided they adhere to the strict three-part test set forth in Article 11, paragraph 2. Any interference must satisfy the requirements of legality and necessity:

1) Prescribed by Law: The restriction must be clearly stipulated in domestic law.

2) Legitimate Aim: The interference must be strictly for one of the enumerated purposes: national security, public safety, prevention of disorder or crime, protection of health or morals, or the protection of the rights and freedoms of others.

3) Necessary in a Democratic Society: This requirement demands that the measure be proportionate to the legitimate aim pursued, responding to a "pressing social need." The member state is afforded a limited "margin of appreciation," but the Court retains ultimate authority to assess whether the restriction is justified.

In practice, the ECtHR has determined that the dissolution of a political party or an NGO-the most severe restriction-is only justifiable in exceptional circumstances, specifically when the organisation incites violence, racial hatred, or poses a direct and verifiable threat to the fundamental principles of democracy. Mere political dissent or the desire to suppress controversial but peaceful goals is insufficient to justify such an extreme measure.

Part 2 of Article 11 of the Convention allows restrictions on these freedoms, stating that “the exercise of these rights 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 safety, 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 also permits lawful restrictions on these rights for members of the armed forces, police, or state administration[8]. Therefore, the Convention’s authors view freedom of association and freedom of assembly as closely linked, with identical restrictions.

This perspective should also guide the analysis of ECHR case law: when examining decisions on freedom of association, it is useful to consider related cases on freedom of assembly. According to S. V. Shevchuk, ECHR case law

[8] Волкова Д. Є. Право на об’єднання в громадські організації в конституційних актах України XX століття. *Наук. вісник Ужгород. нац. ун-ту. Серія: Право*. 2013. Вип. 21. Ч. 1., т. 1. С. 128.

is a law of principles[9]. Thus, if principles are articulated in ECHR decisions or other Council of Europe documents, they are considered European standards for NGOs. If not, they are not regarded as such. Under the Law of Ukraine "On the Execution of Decisions and Application of the Practice of the European Court of Human Rights" of February 23, 2006, Ukrainian courts must apply ECHR case law as a source of law.

However, only a few ECHR decisions specifically or primarily concern NGOs. Scholars often highlight the case of Koretskyy and Others v. Ukraine (2008) as the only significant ECHR case involving Ukraine's NGOs. In fact, there are two relevant decisions:

– Koretskyy and Others v. Ukraine (2008);

– Trofymchuk v. Ukraine (2011).

In Koretskyy and Others v. Ukraine (2008), the applicants tried for nearly two years to register an NGO but eventually gave up, liquidated it, and appealed to the ECHR. The ECHR found that the state's interference with the applicants' rights was unlawful, violating Article 11, and awarded each applicant €1,500 in non-pecuniary damages.

This landmark judgment delivered a crucial interpretation of Article 11 of the Convention, specifically addressing how prolonged administrative obstruction constitutes a fundamental violation of the freedom of association. The case centered on a group of applicants who sought to establish an NGO with the objective of promoting public legal awareness and protection of citizens' rights.

The substantive violation in Koretskyy did not arise from an official, formal prohibition of the association by the Ukrainian State, but rather from a cumulative sequence of bureaucratic obstacles that amounted to a de facto denial of the right to associate. Over a period approaching two years, the applicants repeatedly submitted their statutory documents to the Ministry of Justice, only to face continuous refusals and demands for minor, often repetitive, amendments. This iterative and seemingly endless registration process effectively prevented the association from obtaining legal personality and commencing its planned activities. Ultimately, exhausted by the administrative ordeal and the lack of finality, the applicants were compelled to liquidate the unregistered entity and appeal to Strasbourg.

In its reasoning, the ECtHR affirmed that the protection afforded by Article 11 includes the positive obligation on contracting states to ensure that the legal framework governing associations is not merely theoretical, but practical and effective in its application. The Court found that the persistent delays and the Ministry's failure to grant registration within a reasonable

[9] Шевчук С. В. Судова правотворчість у контексті застосування принципів права. Вісник Акад. правових наук України. 2012. № 4 (51). С. 64.

timeframe-or provide a clear, final refusal that could be easily challenged-constituted a significant and disproportionate interference with the applicants' rights. Although the interference was based on legislative provisions regarding registration formalities, the application of those laws was so arbitrary and excessive that it failed the Article 11 test for being "necessary in a democratic society." The state's actions prevented the group from operating as a legal entity and accessing the benefits associated with registered status, effectively undermining the very essence of the freedom of association.

The ruling is highly significant for reinforcing the principle that administrative run-around and bureaucratic obstruction are equivalent to a formal prohibition when they prevent an association from functioning effectively. By awarding each applicant €1,500 in non-pecuniary damages, the Court tangibly demonstrated that states are accountable for the psychological distress and effort wasted due to excessively arbitrary or protracted registration procedures, thus strengthening the procedural safeguards essential for a healthy civil society.

In Trofymchuk v. Ukraine (2011), the case had an indirect connection to freedom of association. Kateryna Trofymchuk initiated the formation of a trade union at KTP "Komunenerhiya" and organized a picket to defend workers' rights to unpaid wages at the bankrupt Rivneteplokomunenergo. She was reprimanded for arriving late to work after the picket and, following a prior reprimand for safety violations, was dismissed for repeated failure to perform duties. Trofymchuk challenged her dismissal in court, but the Rivne City Court rejected her claim twice, and neither appellate nor cassation courts overturned the decision. The ECHR examined whether her dismissal was genuinely due to labor violations or retaliation for her activism. The Court found no evidence that her freedom of association (forming or joining a trade union) was restricted, but it identified interference with her freedom of peaceful assembly. However, the ECHR concluded that the action was a strike, not a picket, and lacked evidence that Trofymchuk balanced her rights with her employer's interests, so no violation of Article 11 was found.

In conclusion, Articles 36 and 37 of Ukraine's Constitution, which directly address the formation and operation of NGOs, do not fully align with European human rights standards, including the 1950 European Convention on Human Rights. The ECHR cases Koretskyy and Others v. Ukraine (2008) and Trofymchuk v. Ukraine (2011) highlight practical challenges in realizing the constitutional right to freedom of association in Ukraine.

The two cases below demonstrate the ECtHR's scrutiny of French law and administrative practice, particularly concerning the registration, dissolution, and financial rights of associations and trade unions under the umbrella of Article 11 of the ECHR.

The ECtHR's interpretation of Article 11, particularly in cases involving France, defines the strict limits of state intervention concerning associations. Following the principle established in Sidiropoulos (1998) that the right to form a legal entity is inherent to the freedom of association, and the distinction regarding financial advantages confirmed in Association des Anciens Élèves de l'ENSAE (2012), the Court has also addressed the core issue of dissolution and the state's use of force.

The Ayoub and Others v. France (2009) case is significant because it directly examined the French government's power to dissolve associations whose members engage in violence and public disorder, and whether this power, as applied, met the demanding "necessary in a democratic society" test under Article 11(2).

The case involved several far-right associations that were dissolved by decrees of the French Council of Ministers under Article L. 212-1 of the Internal Security Code. The dissolution was justified by the domestic authorities on the grounds that these groups were of a paramilitary nature and had been involved in violent acts, public order disturbances, and threats of violence against individuals and property. The associations appealed the dissolution, arguing that the measure violated their freedom of association.

The ECtHR found no violation of Article 11. The Court's analysis emphasised the following points:

– legitimate aim: the dissolution pursued the legitimate aims of preventing disorder and crime and protecting the rights and freedoms of others.

– necessity and proportionality: the Court acknowledged that the dissolution of an association is a drastic measure requiring the most convincing and compelling reasons. However, the ECtHR stressed that democracy cannot be reduced to a question of means; it requires respect for its fundamental rules. Since the applicants' associations:

– displayed a paramilitary character (demonstrated by uniforms, military training, and hierarchical structure).

– were systematically linked to violent and unlawful acts aimed at intimidating opponents and disrupting public order.

– limited margin of appreciation: while the state has a limited margin of appreciation in this area, the Court found that the French authorities had established a sufficient factual basis to conclude that the associations' activities posed a clear and present danger to the democratic order. The dissolution was thus deemed a proportionate and necessary measure to prevent violence and protect democratic institutions.

The Ayoub judgment confirms that while the freedom of association protects dissenting or non-conformist groups, that protection is forfeited when the group abandons the fundamental democratic principles of peaceful and

non-violent means. It validates the state's ability to act decisively against groups that pose a genuine threat to public safety and the rights of others.

Association des Anciens Élèves de l'École Nationale de la Statistique et de l'Administration Économique (ENSAE) v. France (2012) – Financial Constraints and Association Rights.

This case, which directly involved a French association, focused on the state's decision to withdraw a tax exemption-a fiscal advantage-due to the association's commercial activities, and whether this withdrawal amounted to an interference with the freedom of association.

The applicant, the alumni association of the national school of statistics (ENSAE), had operated for decades with tax-exempt status as a non-profit. However, its significant commercial activities, such as publishing and operating a paid employment service, led the French tax authorities to revoke the exemption, applying corporate taxes instead. The association argued that this action threatened its financial viability and therefore violated its right to association under Article 11.

The ECtHR found no violation of Article 11, reasoning that:

1. The withdrawal of a fiscal advantage (tax exemption) did not prevent the association from existing, operating, or pursuing its non-profit goals. The association remained free to carry out all its activities, albeit under a different tax regime.

2. Financial benefits are generally considered privileges granted by the state, and their withdrawal, when justified by national tax law (i.e., due to excessive commercial activity), does not constitute an interference with the right to associate. The imposition of taxes necessary to ensure fair competition with commercial enterprises was deemed a proportionate measure.

This ruling clarifies the distinction between the fundamental right to associate and the right to financial benefits. It confirms that a state may regulate the commercial and fiscal aspects of an association's operation to ensure fairness without violating the core human right guaranteed by Article 11, provided the measure is non-discriminatory and proportionate.

4. Council of Europe Soft Law on NGOs: Recommendation CM/Rec(2007)14 and the Fundamental Principles

The Council of Europe has developed important guidelines to support NGOs. These standards aim to create a strong legal environment for NGOs, allowing them to operate freely while respecting democratic values. Below, I explain the two main ones you mentioned: Recommendation CM/Rec(2007)14 and the Fundamental Principles on the Status of Non-Governmental Organisations in Europe. Both build on Article 11 of the

European Convention on Human Rights, which protects freedom of assembly and association.

Recommendation CM/Rec(2007)14 on the Legal Status of Non-Governmental Organisations in Europe: A Comprehensive Framework for Civil Society

The Recommendation CM/Rec(2007)14 on the Legal Status of Non-Governmental Organisations in Europe, adopted by the Council of Europe's Committee of Ministers on October 10, 2007, stands as a pioneering international instrument designed to shape national legislation concerning NGOs[10]. As the first document of its kind, it establishes a clear set of minimum standards to guide member states in fostering an enabling environment for NGOs, recognizing their indispensable role in nurturing civil society and strengthening democratic principles. This framework responds to the diverse challenges faced by NGOs across Europe, where varying legal systems and political climates can either empower or restrict their activities. By providing a unified approach, the Recommendation seeks to harmonize national practices with the fundamental principles of freedom of association enshrined in Article 11 of the 1950 European Convention on Human Rights (ECHR). Its comprehensive guidelines cover the creation, operation, funding, and oversight of NGOs, ensuring they can thrive as vital components of pluralistic societies.

The core of Recommendation CM/Rec(2007)14 lies in its commitment to simplifying the process of establishing NGOs. It emphasizes that individuals and groups should be able to form NGOs without excessive bureaucratic hurdles, advocating for a straightforward declaration process rather than requiring prior state approval. This approach ensures that citizens can exercise their right to associate freely, whether for cultural, social, environmental, or other non-profit purposes. The Recommendation stresses that registration procedures must be transparent, timely, and free from arbitrary obstacles, allowing NGOs to quickly gain legal recognition. This principle is particularly significant in countries where complex or discriminatory registration processes have been used to suppress civil society initiatives. By setting a clear standard, the Recommendation encourages states to remove unnecessary barriers, thereby fostering an inclusive environment where diverse voices can contribute to public discourse.

Once established, NGOs must enjoy full legal personality, a cornerstone of the Recommendation's framework. This legal status grants NGOs rights comparable to those of other entities, such as the ability to own property, enter

[10] Рекомендація Комітету Міністрів Ради Європи державам-членам щодо правового статусу неурядових організацій у Європі № CM/Rec(2007)14. (неофіц. переклад). URL: http://www.minjust.gov.ua/0/23578

contracts, and engage in legal proceedings. Such provisions ensure that NGOs can operate effectively, whether managing resources, collaborating with partners, or defending their interests in court. The Recommendation underscores that NGOs should be treated equally under the law, without discrimination based on their objectives or activities. This equality is crucial for enabling NGOs to pursue their missions, whether they focus on human rights advocacy, environmental protection, or community development. By guaranteeing these rights, the Recommendation aligns with the broader democratic principle that civil society organizations should operate independently, free from undue state influence or favoritism.

Another critical aspect of Recommendation CM/Rec(2007)14 is its emphasis on the financial autonomy and operational freedom of NGOs. It explicitly states that NGOs should have the right to seek funding from any legitimate source, including domestic and foreign donors, without facing discriminatory restrictions. This provision is vital in contexts where governments impose limits on foreign funding to curb the influence of NGOs critical of state policies. The Recommendation also protects the right of NGOs to engage in advocacy, education, and research, even when their views challenge official government positions. This freedom is essential for NGOs to act as watchdogs, holding authorities accountable and contributing to public debates on issues like human rights or social justice. By safeguarding these activities, the Recommendation reinforces the role of NGOs as catalysts for democratic engagement and societal progress, ensuring they can operate without fear of retaliation or censorship.

The Recommendation also addresses the sensitive issue of NGO oversight and dissolution, advocating for strict limits on state interference. It stipulates that only a court, through a fair and transparent judicial process, can dissolve an NGO, and only for serious reasons, such as engaging in illegal activities that threaten public order or national security. This judicial safeguard prevents arbitrary closures by governments, which have been a concern in some Council of Europe member states. The Recommendation calls on states to avoid excessive monitoring or control, ensuring that oversight mechanisms are proportionate and do not undermine the independence of NGOs. This balance reflects the principles of necessity and proportionality outlined in the ECHR, particularly in Article 11, which allows restrictions on freedom of association only when they are lawful and necessary in a democratic society.

Accompanying the Recommendation is an explanatory memorandum that provides a detailed rationale for its provisions, linking them to the case law of the ECtHR. This memorandum clarifies how the standards align with ECHR principles, drawing on landmark cases that address violations of freedom of association. For example, it references cases where states have imposed unjust

restrictions on NGOs, helping to contextualize the need for clear legal protections. The memorandum serves as a practical guide for governments and NGOs, offering insights into how the standards can be implemented in diverse national contexts. It also underscores the Recommendation's role as a tool for advocacy, enabling NGOs to challenge restrictive laws by citing a recognized European framework.

The Recommendation has had a significant impact, particularly in countries where civil society faces legal or political challenges. NGOs and legal experts frequently cite it to oppose restrictive legislation, such as laws limiting foreign funding or imposing burdensome reporting requirements. In countries like Russia and Hungary, where anti-NGO measures have been enacted, the Recommendation has served as a benchmark for assessing compliance with European standards. The Council of Europe's Expert Council on NGO Law, established to monitor implementation, regularly references CM/Rec(2007)14 in its country reviews, offering recommendations to align national laws with these standards. These reviews highlight both progress and setbacks, encouraging member states to strengthen their legal frameworks for NGOs.

The ongoing relevance of Recommendation CM/Rec(2007)14 lies in its adaptability to contemporary challenges. As new issues emerge, such as digital activism or the impact of anti-terrorism laws on NGOs, the Recommendation provides a flexible framework to address them. The Expert Council's recent reports, including those from 2020 to 2024, have expanded its application to cover online activities and the misuse of financial regulations, like those from the Financial Action Task Force (FATF), which can inadvertently harm NGOs. By remaining responsive to these trends, the Recommendation continues to serve as a vital tool for protecting civic space across Europe, ensuring that NGOs can operate freely and contribute to democratic societies.

Application in Ukraine

In Ukraine, Recommendation CM/Rec(2007)14 offers a valuable framework for strengthening the legal environment for NGOs, though challenges remain in aligning national practices with its standards. While Articles 36 and 37 of the 1996 Constitution guarantee freedom of association, the outdated term "citizens' associations" and restrictions limiting NGO membership to Ukrainian citizens conflict with the Recommendation's call for inclusive formation and equal treatment, as seen in cases like Koretskyy and Others v. Ukraine (2008), where registration barriers violated ECHR standards. The Law of Ukraine "On Public Associations" (2012) partially addresses these issues by allowing non-citizens to form NGOs and operate for third-party benefits, aligning with CM/Rec(2007)14, but further constitutional

updates and consistent judicial enforcement are needed to fully meet these European benchmarks, especially amid ongoing decentralization and European integration efforts.

Application in France

In France, the legal framework for NGOs, primarily governed by the Law of July 1, 1901, closely aligns with Recommendation CM/Rec(2007)14, particularly in its simple declaration-based registration and recognition of legal personality. However, recent laws, such as the 2021 Law to Strengthen Respect for Republican Principles, have introduced stricter oversight, raising concerns about potential misalignment with the Recommendation's emphasis on minimal state interference, as seen in ECtHR cases like Cissé v. France (2002), where disproportionate restrictions on assembly were criticized. France's robust civil society benefits from the Recommendation's principles, but ongoing vigilance is needed to ensure that security-driven measures do not undermine the autonomy and funding rights of NGOs, especially those critical of state policies.

Fundamental Principles on the Status of Non-Governmental Organisations in Europe: A Cornerstone for Civil Society Empowerment

The Fundamental Principles on the Status of Non-Governmental Organisations in Europe, adopted on July 5, 2002, during a multilateral meeting organized by the Council of Europe in Strasbourg, represent a foundational framework designed to strengthen the role of NGOs in democratic societies[11]. Emerging from extensive consultations among governments, NGOs, and legal experts, these principles were formally endorsed by the CoE's Committee of Ministers in 2003, signaling a collective commitment to fostering vibrant civil society across Europe. Comprising 23 concise principles, the document serves as a guiding beacon for member states to create legal environments that enable NGOs to operate freely and effectively. Rooted in the core values of the 1950 European Convention on Human Rights, particularly Article 11 on freedom of assembly and association, the Fundamental Principles articulate a vision where NGOs are recognized as essential partners in advancing democracy, human rights, and public participation. Their non-binding, soft-law nature makes them a flexible tool for inspiring national reforms, encouraging states to align their legal systems with European standards while respecting diverse political and cultural contexts.

[11] Фундаментальні принципи щодо статусу неурядових організацій в Європі (Прийнято учасниками багатосторонньої зустрічі, організованої Радою Європи), Страсбург, 5 липня 2002 р. URL: http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=994_209&p=1282279540530744

At the heart of the Fundamental Principles is the affirmation of freedom of association as a universal right. The document emphasizes that individuals, whether citizens or non-citizens, should be able to form or join NGOs for non-profit purposes without facing undue state interference. This freedom is crucial for enabling NGOs to pursue a wide range of objectives, from environmental protection to social justice, without the threat of arbitrary restrictions. The Principles clarify that any limitations on this right must be strictly justified, such as to protect public order or the rights of others, and must comply with the proportionality standards set by the ECHR. This focus ensures that NGOs can emerge organically from the needs and aspirations of communities, fostering grassroots initiatives that reflect diverse societal interests. By prioritizing accessibility, the Principles encourage states to adopt simple and inclusive processes for establishing NGOs, avoiding complex bureaucratic hurdles that could stifle civil society development.

Equally significant is the emphasis on ensuring that NGOs enjoy equal treatment under the law. The Fundamental Principles advocate for NGOs to have the same legal rights and responsibilities as other entities, such as businesses or public institutions. This includes the ability to acquire legal personality, own property, enter contracts, and access judicial remedies. Such provisions are vital for enabling NGOs to function effectively, whether they are organizing community projects, advocating for policy changes, or providing humanitarian aid. The Principles stress that NGOs should not face discrimination based on their goals, activities, or affiliations, ensuring they can operate on a level playing field. This commitment to equality reinforces the democratic principle that all organizations, regardless of their focus, contribute to a pluralistic society where diverse voices are heard and respected.

Independence is another cornerstone of the Fundamental Principles, reflecting the need for NGOs to operate autonomously from state control. The document explicitly states that no one should be compelled to join an NGO or face penalties for choosing not to participate. This protection is critical in contexts where governments may pressure individuals to align with state-approved organizations or discriminate against those involved in critical or dissenting NGOs. The Principles also call for safeguards against excessive state oversight, ensuring that NGOs can define their missions and activities without fear of political interference. This independence empowers NGOs to serve as watchdogs, holding governments accountable and advocating for marginalized groups, thereby strengthening democratic governance and public trust in civil society.

The Fundamental Principles also address the balance between transparency and autonomy in NGO operations. While recognizing the

importance of accountability, the document advocates for minimal regulatory requirements, such as basic financial reporting, to ensure public trust without burdening NGOs with excessive controls. This approach prevents states from using transparency as a pretext to suppress NGOs, a concern in some European countries where restrictive laws have targeted civil society. The Principles encourage governments to consult NGOs when drafting laws that affect them, fostering a collaborative relationship between state authorities and civil society. This participatory approach ensures that legislation reflects the practical needs of NGOs, enhancing their ability to contribute to policy-making and societal development.

As a soft-law instrument, the Fundamental Principles are not legally binding but have significantly influenced subsequent CoE frameworks, notably Recommendation CM/Rec(2007)14 on the Legal Status of Non-Governmental Organisations in Europe. They also complement earlier documents, such as the 1986 European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124), which remains relevant for cross-border NGO activities. The Principles' impact extends beyond their text, as they have inspired national reforms and served as a reference for NGOs challenging restrictive laws in countries like Russia, Hungary, or Turkey. The CoE's Expert Council on NGO Law frequently uses the Principles in its annual reviews to assess member states' compliance, offering recommendations to address gaps in legal protections. These reviews highlight the Principles' role as a practical tool for advocacy, helping NGOs navigate complex legal landscapes.

The enduring relevance of the Fundamental Principles lies in their adaptability to emerging challenges. Since their adoption, issues such as digital activism, restrictions on foreign funding, and the impact of anti-terrorism measures have posed new threats to NGOs[12]. The Principles provide a flexible framework to address these concerns, advocating for protections that allow NGOs to operate online and access diverse funding sources. Recent CoE reports, including those from 2020 to 2024, have built on the Principles to address issues like the misuse of financial regulations (e.g., Financial Action Task Force rules) that can inadvertently harm NGOs. By emphasizing consultation and proportionality, the Principles remain a vital guide for ensuring that NGOs can thrive in an evolving global context, contributing to democratic resilience and human rights protection.

The Fundamental Principles have also fostered a broader culture of partnership between states and civil society. By encouraging governments to view NGOs as allies rather than adversaries, the document promotes dialogue

[12] Волкова Д. Є. Міжнародні стандарти створення громадських організацій. *Актуальні проблеми держави і права : зб. наук. пр*. О., 2012. Вип. 64. С. 89.

and cooperation. This approach is particularly important in addressing contemporary issues, such as migration or climate change, where NGOs often play a critical role in delivering services and advocating for vulnerable populations. The Principles' call for inclusive policy-making processes ensures that NGOs have a voice in shaping laws that affect them, reinforcing their status as key stakeholders in democratic governance. This collaborative model has inspired additional CoE initiatives, such as the 2017 Code of Good Practice for Civil Participation, which further elaborates on how NGOs can engage in public decision-making.

Application in Ukraine

In Ukraine, the Fundamental Principles provide a critical benchmark for enhancing NGO legislation, particularly in light of Articles 36 and 37 of the 1996 Constitution, which guarantee freedom of association but use outdated terminology and limit membership to citizens, conflicting with the Principles' inclusive approach[13]. While the 2012 Law "On Public Associations" aligns with the Principles by allowing non-citizens to form NGOs and pursue broader societal goals, as seen in cases like Koretskyy and Others v. Ukraine (2008), registration barriers and inconsistent judicial practices highlight the need for further reforms to fully embrace the Principles' emphasis on equal treatment and independence, especially as Ukraine advances toward European integration and decentralization.

Application in France

In France, the Fundamental Principles are largely reflected in the liberal framework of the 1901 Law on Associations, which facilitates easy formation and grants NGOs legal personality, aligning with the Principles' call for accessibility and equality. However, recent measures, such as the 2021 Law to Strengthen Respect for Republican Principles, introduce stricter oversight that risks clashing with the Principles' emphasis on minimal state interference, as evidenced in Cissé v. France (2002), underscoring the need to balance security concerns with the autonomy and participatory rights of NGOs in France's robust civil society.

CONCLUSIONS

In conclusion, this assessment has traced the trajectory of the right to freedom of association from its constitutional enunciation in Ukraine and France to its application through the binding and authoritative jurisprudence of the European Court of Human Rights (ECHR). This study demonstrates

[13] Мішина Н.В. «Кодекс зебри» як модельна схема інкорпорації європейських стандартів прав людини. *Актуальні проблеми правознавства : науковий збірник юридичного факультету Тернопільського національного економічного університету*. Тернопіль : Вектор, 2013. Вип. 3. С. 117.

that while robust constitutional and legislative frameworks exist in both nations-such as the French 1901 Law and Articles 36 and 37 of the Ukrainian Constitution-the true measure of effective associative freedom is determined by the strict standards set in Strasbourg.

The comparative analysis highlighted a fundamental divergence in the type of challenges faced by each state. In Ukraine, cases like Koretskyy revealed systemic flaws in the state's positive obligations. Excessive administrative and bureaucratic obstruction was found to be functionally equivalent to a prohibition, underscoring that a nominal constitutional right is meaningless without prompt and non-arbitrary implementation procedures. Furthermore, the Trofymchuk case underscored the difficulty of distinguishing between protected collective action and unprotected unlawful labor disruption.

Conversely, the French jurisprudence primarily concerned the application of proportional restriction. The Ayoub judgment confirmed that the dissolution of an association, despite being the most severe restriction, is justifiable only when the group's activities represent a demonstrable and violent threat to democratic order, thereby strictly limiting the State's margin of appreciation. Meanwhile, the ENSAE decision clarified that the withdrawal of non-fundamental state benefits, like tax exemptions, does not typically interfere with the core right to exist under Article 11.

Both national experiences are guided by the Council of Europe's supplementary standards, particularly Recommendation CM/Rec(2007)14, which consistently advocates for clear, accessible, and non-discriminatory legal frameworks. Therefore, the essential finding is that the demanding three-part proportionality test embedded within Article 11(2) acts as the continuous, non-negotiable benchmark for all member states. It compels states not only to possess the right laws, but to apply them in a manner that is genuinely necessary, proportionate, and reflective of a pluralist democratic society.

SUMMARY

This paper conducts a critical comparative analysis of the right to freedom of association in Ukraine and France, assessing its implementation against the definitive standards established by the European Convention on Human Rights (ECHR). The study investigates the complex interplay between national constitutional guarantees, domestic legal frameworks, and the comprehensive jurisprudence of ECHR Article 11. Findings reveal a significant divergence in the challenges faced by the two states regarding compliance with European human rights standards. Ukraine primarily struggles with systemic failures in fulfilling its positive obligations, where bureaucratic obstruction, as illustrated by Koretskyy v. Ukraine, functions as

an effective denial of the right to associate. Conversely, France's case law, including Ayoub v. France, focuses on the strict application of the proportionality test for severe restrictions, such as the dissolution of violent groups. The analysis confirms that Council of Europe soft law, alongside the ECHR, reinforces the necessity of clear and non-discriminatory legal frameworks for non-governmental organisations. Ultimately, the research concludes that the demanding three-part proportionality test embedded within ECHR Article 11(2) acts as the continuous, non-negotiable benchmark, compelling all member states to ensure the effective and functional protection of associative freedom.

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