

CHALLENGES & RECOMMENDATIONS

SERBIA

on Freedom of Assembly

RESTRICTIONS ON THE LOCATION OF ASSEMBLY



Restrictions on the location of assembly envisaged by the Law are vague and abstract, not subject to proportionality.

Issue



International standard

Existing limitations on the location of an assembly are in conflict with international standards, and it is recommended by the Venice Commission and the OSCE/ODIHR report on Monitoring of Freedom of Peaceful Assembly¹ that no blanket bans on the location of public assemblies should exist.² Blanket restrictions, such as prohibiting all assemblies at specific locations, are not in accordance with the principle of proportionality.



How it should be implemented?

The site and time of assemblies should not be restricted for specific locations and time. The Venice Commission explicitly stipulates that the burden of proof for restrictions on time and place for holding a particular assembly lies on the state (responsible bodies), and that restrictions need to be proportional to the situation.

CUMULATIVE FINES



The law stipulates a **cumulative fine for not complying with relevant legal requirements of a legal entity, the responsible person in the legal entity and organizers or leaders of assembly**, which affects the deterrence of organizing public assemblies.



Such obligations on the organizers do not correspond with international standards and represent a disproportionate interference with the freedom of assembly. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association states:

*“Assembly organizers and participants should not be considered responsible (or held liable) for the unlawful conduct of others... [and, together with] assembly stewards, should not be made responsible for the maintenance of public order”.*³



The liability of organizers should be reassessed and revised in the law, in accordance with the international standards and law should be amended to change disproportionate fines for organizers of assembly.



DECISIONS ON BANNING WITHOUT LEGAL REASONING



Decisions on banning public assemblies are issued by authorities without legal reasoning, regardless of who is organizing the assembly.



Article 6 of the European Convention on Human Rights states that the right to a reasoned decision is rooted in a more general principle embodied in the Convention, which protects an individual from arbitrariness; the domestic decision should contain reasons that are sufficient to reply to the essential aspects of the party's factual and legal – substantive or procedural – argument.⁴



The law should be amended to include procedural rules for protection of freedom of assembly both in administrative procedure and administrative dispute.

BAN ON PARALLEL, POLITICALLY SENSITIVE ASSEMBLIES



Politically sensitive assemblies scheduled at the same time (i.e. demonstration and a counterdemonstration) are usually both banned, without legal reasoning, regardless of the goals and messages of the organizers, citing security risks.

Such actions by the police constitute a violation of international human rights standards. The fact that peaceful assembly could be misused by third persons as a pretext for violence does not give the state the right to ban peaceful assemblies.⁵

The police should be well educated on the legislative framework and the restrictions it allows. Police should always put in place appropriate measures to ensure that all assemblies and counter-demonstrations can take place as desired by the organisers.



¹OSCE/ODIHR Report *Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States*, December 2014, available at: <http://www.osce.org/odihr/132281?download=true>, p. 8

² Compilation of Venice Commission opinions concerning Freedom of Assembly, CDL 2012, p.21, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2012\)014rev2-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2012)014rev2-e)

³ United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. (2012). *Best practices related to the rights to freedom of peaceful assembly and of association*, para. 31. /HRC/20/27.

See more in the OSCE/ODHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly* Second Edition 2010; recommendation 5.7

⁴ European Court for Human Rights (*Ruiz Torija v. Spain*, §§29-30)

⁵ The ODIHR and Council of Europe's Venice Commission *Guidelines on Freedom of Peaceful Assembly*, <http://www.osce.org/odihr/73405?download=true>;

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