WHEN AND HOW CAN ASSOCIATIONS BE DISSOLVED?

European Center for Not-for-Profit Law

PERMISSIBLE LIMITATIONS ON FREEDOM OF ASSOCIATION UNDER INTERNATIONAL HUMAN RIGHTS LAW

Dissolution must be based on strong legal grounds and compliant with human rights standards.

Dissolution presents an extreme restriction on the freedom of association that must have concrete, firm legal grounds and satisfy a number of conditions. These conditions stem from the national legislation and constitution, as well as the international human rights obligations, including those based on the European Convention on Human Rights.

Dissolution must be proven necessary and not target dissent or punish for individual actions.

Any restriction on the right to freedom of association, including dissolution, must be strictly necessary in a democratic society and proportional to the prescribed legitimate aim. The principle of necessity in a democratic society requires that there be a fair balance between the interests of persons exercising the right to freedom of association, associations themselves and the interests of society as a whole.[1] The need for restrictions shall be carefully weighed and be based on compelling evidence, they restrictions must be based on the particular circumstances of the case, and no blanket restrictions shall be applied.[2] They should only be applied in cases where the breach gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles. In general, any penalty of dissolution or prohibition of an association may never be used as a tool to reproach or stifle its establishment and operations or engagement on sometimes controversial issues. In addition, the individual acts of founders or members of an association, when not acting on behalf of the association, lead only to their personal liability for such acts not a dissolution of the organisation.

[1] The OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association. https://www.osce.org/files/f/documents/3/b/132371.pdf

[2] Ibid.

Dissolution must always be a measure of last resort.

Associations must be given the opportunities to rectify the situation before dissolution is applied. The European Court of Human Rights emphasized that the dissolution of the association, as a form of sanction, must remain an exceptional nature and the reasons for it also have to be clearly 'relevant and sufficient'.[3] Such circumstances are likely to be very rare indeed and would cover only situations in which the association undertook anti-constitutional activities or repeatedly failed to desist from other illegal conduct after appropriate warnings and opportunities to rectify such failings.[4]

Only courts should apply dissolution as a measure.

Involuntary termination of an association, which may take the form of dissolution or prohibition, can only be decided by an independent and impartial court.[5]

[3] ECtHR, Vona v. Hungary (Application no. 35943/10, judgment of 9 July 2013). Tebieti Mühafize Cemiyyeti and Israfilov v.. Azerbaijan, no. 37083/03, 8 October 2009. Paragraph 74 of Recommendation CM/Rec(2007)14 requires 'compelling evidence' that the admissible grounds for involuntary dissolution have been met.

[4] Sanctions and liability in respect of NGOs, Expert Council on NGO Law, OING Conf/Exp (2011) 1 http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680306eb5

[5] See also: Special Rapporteur on the rights to freedom of peaceful assembly and of association report to the Human Rights Council (A/HRC/20/27)

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