



## The Right to Freedom of Peaceful Assembly and its Implementation in Albania

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### Abstract

The freedom of assembly is one of the fundamental freedoms declared in a series of international legal documents and sanctioned in the domestic law of many states. In recent years, under the influence of economic, social, and political circumstances or those related to the pandemic, this freedom has been a tool in the hands of citizens or different entities to organize together and voice their concerns and grievances. In addition to the progress made in Albania, in practice, in many cases, problems have been identified in guaranteeing the exercise of the freedom of assembly of citizens by public authorities due to a lack of understanding of the purpose of the law or the lack of training of State Police employees in regards to taking measures for the management of gatherings. In addressing freedom of assembly in this paper, the methodology based on the assessment of the legal framework has been taken into consideration, as well as the challenges arising in the implementation of this right in an Albanian context. The sources of information are based on the reports of various institutions inside and outside Albania, on the legal framework that regulates the freedom of assembly, as well as on concrete situations of the organization of assemblies and emerging problems. The paper in conclusion reflects some recommendations in the context of improving legal guarantees as well as the taking of measures by public authorities in Albania in the exercise of freedom of assembly.

**Keywords:** freedom, assembly, convention, jurisprudence, assembly law, public authorities

## 1. Introduction

### 1.1 Meaning of the right to freedom of peaceful assembly and its guarantee in the domestic legal framework

"Freedom of assembly is not a privilege granted by the government, but a natural right of the people." - Martin Luther King Jr.<sup>1</sup>

One of the pillars of a democratic, diverse, and tolerant society, where people and groups with various opinions and origins can coexist peacefully, is the right to freedom of peaceful assembly. We can express minority viewpoints and make underrepresented or marginalized groups visible thanks to this freedom.

Effective protection of the right to freedom of peaceful assembly can also help foster a culture of open democracy, enable non-violent participation in public affairs and strengthen dialogue on issues of public concern. Assemblies can help hold public bodies and government officials accountable and thus promote good governance in accordance with the

<sup>1</sup> Martin Luther King Jr., "Stride Toward Freedom: The Montgomery Story", 1958.

rule of law.<sup>2</sup>

An "assembly" means the intentional gathering of a number of individuals in a publicly accessible place for a common expressive purpose. This includes planned and organized assemblies, unplanned and spontaneous assemblies, static and moving assemblies. An assembly can be entirely "peaceful" even if it is "unlawful" under domestic law.<sup>3</sup>

The relevant state authorities must make sure that the general public has convenient and simple access to reliable information regarding the gatherings, the applicable rules and regulations, as well as the procedures, and the way the authorities facilitate them. The responsibility to safeguard extends to defending event planners and attendees from people or groups attempting to violate their right to freedom of peaceful assembly.

In order to enable each individual to assess whether his actions may violate the law, and to know the possible consequences of any such violation, legal provisions covering freedom of peaceful assembly should be sufficiently clear. For defining and limiting the discretion and powers of public authorities and law enforcement officers based on legislation that reflects applicable standards and plainly and transparently outlines decision-making processes, it is essential that legislation be drafted in accordance with international human rights standards.

Anyone seeking to exercise the right/freedom of peaceful assembly should have access to a prompt and effective remedy against decisions that are alleged to be disproportionate, arbitrary, restrictive or unlawfully prohibitive of protest.

According to the Albanian legal framework, the freedom of assembly is provided for and guaranteed by the Constitution of the Republic of Albania, respectively in Article 47<sup>4</sup> where it is provided that:

*"1. Freedom of peaceful and unarmed assembly, as well as participation in such assembly is guaranteed.*

*2. Peaceful assembly in public squares and public places are held in conformity with the law".*

*Freedom of assembly and organization is also guaranteed by Article 11 of the European Convention on Human Rights,<sup>5</sup> (ECHR) which expressly states that:*

*"1. Everyone has the right to freedom of peaceful assembly and association with others, including the right to form and participate in trade unions for the protection of their interests. 2. The exercise of these rights cannot be subject to restrictions other than those provided by law, and which are necessary in a democratic society, in the interest of national security or public safety, for the protection of order and the prevention of crime, for the preservation of health or morals, or for the protection of the rights and freedoms of others..."*

While the procedural rules that discipline or condition the exercise of this right are expressly defined in law no. 8773, dated 23.4.2001 "On Assemblies", which also provides for exhaustive restrictions or prohibitions which cannot be exceeded in the exercise of the right of gathering. In this law, as it determines that *every person has the right to organize and participate in a peaceful and unarmed assembly,*<sup>6</sup> also provides that the State Police guarantees and protects the right of any person to participate in and organize peaceful and unarmed assemblies. Stopping and dispersing a gathering is allowed only in the cases provided by law.<sup>7</sup> From the reference to the content of the provisions of this law, it clearly results that the State Police in relation to gatherings have competences performing the actions and taking the necessary measures to guarantee the exercise of this right/fundamental constitutional freedom of citizens. On the other hand, these structures can prohibit the exercise of this freedom or disperse a gathering only for limited cases which are clearly and exhaustively defined in the law. They cannot and must not violate the essence of freedoms and rights and in no case can they exceed the limitations provided for in the ECHR.

For the exercise of this right, the only requirement for the interested entity is to make a notification<sup>8</sup> at a specified time to the police entities where some data related to the implementation of its duty as a guarantor of the exercise of this freedom are reflected, giving it time to take the necessary measures for the success of the gathering. Even the current law, in Article 7 provides for the right of citizens to hold emergency meetings in cases where there are urgent

<sup>2</sup> Guidelines on Freedom of Peaceful Assembly, Doc. CDL-AD(2019)017, OSCE/ODIHR & Venice Commission, 8 July 2019, pg.4, paragraph 1, 2.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

<sup>3</sup> Guidelines on Freedom of Peaceful Assembly, Doc. CDL-AD(2019)017, OSCE/ODIHR & Venice Commission, 8 July 2019, pg.8, paragraph 18,19.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

<sup>4</sup> Part II, "Fundamental human rights and freedoms", Chapter III "Political rights and freedoms".

<sup>5</sup> Law no.8137, date 31.7.1996 "On the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms", Official Gazette No.20, date 12.08.1996.

<sup>6</sup> Article 1 of the law No. 8773, date 23.04.2001 "On Assemblies".

<sup>7</sup> Ibid, article 3 of the law.

<sup>8</sup> The freedom to assembly is currently not subject to any formalities for approval by police structures, as provided for in the previous law no. 8145, dated 11.9.1996 "On the right of assembly", which was abrogated by law no. 8773, dated 23.04.2001 "On Assemblies".

circumstances, which can take place without respecting the deadline provided in Article 5<sup>9</sup> of this law, but a written notification must be made, containing the elements defined in Article 5, point 2 of this law, as well as the reason of the emergency. In these cases, the notification must be made immediately, but no later than 3 hours before the time of the rally.

The fact that the law uses the term "notification" addressed to the Police Station for the hold of the gathering and not "a request" is very important and significant in favor of exercising and guaranteeing this freedom by citizens. So, the "decision" to exercise this freedom was taken by the notifying entity itself and the approval of the police entity is not required. On the contrary, it cannot be considered as such and loses the meaning and purpose of being included in these important normative acts, seriously undermining its practical exercise. If the announcers do not make the announcement with the data provided and required by law, the Chief of the Police Station has the legal right to communicate with the organizer to complete the data or to take a reasoned decision to prohibit the gathering in public squares or walkways or to change the place and time of its planned gathering. It is important to bring to attention that the positive spirit of the current law that is clearly reflected in its article 12,<sup>10</sup> which foresees the hold of assemblies in places open to the public without prior notification to the police according to the provisions of article 5.

## 2. Implementation in Albanian Practice of the Right to Freedom of Assembly and Related Issues

The right to freedom of peaceful assembly is related to other civil and political rights, such as that right to freedom of association, expression, etc., and is of particular importance, given the expressive nature of the assembly which impacts public opinion.

Subsequently, under the influence of economic, political, and social circumstances or recently those related to the pandemic and the lack of transparency of decision-making by state authorities, this freedom has been a tool in the hands of citizens to organize together and to give voice to their grievances and concerns. It is more necessary for citizens to be encouraged to use their rights, but also to remind the institutions of their legal obligations to respond to these requests, which essentially reflects the democratic capacity of society in general.

Under international human rights law, it is not necessary for domestic legislation to require prior notice of an assembly, but prior notice may enable state authorities to better ensure its peaceful nature and to establish arrangements to facilitate the gathering of protesters or to protect public order, public safety and the rights and freedoms of others. The procedure for providing advance notification to the public authorities should not be overly bureaucratic. Furthermore, the domestic legal framework should ensure that spontaneous assemblies can lawfully be held, and laws regulating freedom of assembly should clearly explicitly exempt such assemblies from prior notification requirements<sup>11</sup>.

In Albanian practice, have been identified problems in many cases, in guaranteeing citizens' practicing of freedom of assembly by public authorities due to a lack of understanding of the purpose of the law or lack of training of State Police officers in relation to taking measures for gathering management.

From various entities, such as citizens, NGOs, trade unions, students, etc., there have been claims against the

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<sup>9</sup> Article 5 of this law stipulates that:

1. In the event of a gathering in public squares or walkways, the organizer and leader are obliged to notify the chief of the police station in writing no later than three days before the date of the assembly.

2. The written notice must contain:

a) the identity and address of the leader and organizer of the assembly;  
b) the purpose of the assembly;  
c) the date, place, beginning and end time of the assembly and its itinerary (if there is any);  
d) the approximate number of the people who will attend the assembly and those who will support the organizer;  
e) list of people that will give speeches during the assembly.

3. In the event that the written notice does not contain the elements provided for in point 2 of this article, it is returned for completion to the organizer and leader of the assembly, who must resubmit the completed one no later than 24 hours before the time when the gathering will take place.

<sup>10</sup> In article 12 of this law is defined that:

1. Assemblies in places open to the public are held even without prior notification of the police, according to Article 5 of this law.  
2. The organizers of these assemblies can request the support of the police outside these countries, to avoid disturbances during or after the gathering.

<sup>11</sup> Guidelines on Freedom of Peaceful Assembly, Doc. CDL-AD(2019)017, OSCE/ODIHR & Venice Commission, 8 July 2019, pg.10, paragraph 25.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

State Police bodies for not allowing their practicing, being rejected or hindered by the latter for various causes<sup>12</sup>. The obstruction of the practice of the freedom of assembly of civil society activists and various citizens due to the restrictive measures imposed by the state authorities during the period of the pandemic due to the Covid-19 virus has also been made public in the media. For these cases, the People's Advocate as a constitutional institution in defense of freedoms and human rights has made several recommendations to the central and local institutions of the public administration for the removal of obstacles and the creation of facilitating conditions for citizens, regarding the practicing of freedom of assembly by citizens as one of the basic human rights and freedoms.<sup>13</sup>

Article 15/2 of the Constitution of the Republic of Albania stipulates that, "*The bodies of public power, in fulfillment of their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realization*". In this context, public authorities are required not only not to become an obstacle to the exercise of freedom of peaceful assembly of citizens, but on the contrary, they must contribute to facilitate and protect the right to freedom of peaceful assembly. This duty should be reflected in the legislative framework, as well as relevant regulations and law enforcement practices.

A positive step regarding this freedom is the Constitutional Court's decision to abolish the phrase "*without first obtaining permission from the competent body according to special provisions*" in the first paragraph of Article 262 of the Criminal Code; and the obligation of the Assembly of the Republic of Albania to fulfill the legal norm from the date of the announcement of the decision of the Constitutional Court no. 24 dated 04.05.2021 until its entry into force, 6 months after publication in the Official Gazette<sup>14</sup>. But, until now, the provision has not been fulfilled.

Under these conditions, Article 262 "Organization and participation in illegal gatherings and demonstrations" continues to treat the organization of gatherings and demonstrations of people in squares and places of public transit as conditional on the approval of the permission of the police body. As a result, the prosecutor's office prosecuted protesters for the criminal offense provided for in this article, when this article is completely contrary to the domestic legal framework, international acts and the purpose of the law "On Assemblies".

Regarding the freedom of assembly and the problems created by the state during its exercise, the European Court of Human Rights (ECtHR) has a broad jurisprudence. In the case of *Eva Molnar v. Hungary*, the ECtHR is clearly in favor of its exercise. In this case the applicant complained before the ECtHR that the policy had all peaceful demonstrations in which she had participated only because of her prior notices, thus violating Article 11 of the Convention. According to the Court, *the lack of prior notice can never serve as a legitimate basis for crowd dispersal..... Prior notice serves not only the purpose of reconciling the right to assembly with the legitimate rights and interests including the freedom of movement of others, but also the purpose of preventing disorder or crime. Even in the case where no prior notice of protest has been given, this technical element must not in any way violate the essence of the right to exercise the freedom of assembly.*<sup>15</sup>

Even in the case of *Bukta and others v. Hungary*, the ECtHR found that Hungary had violated Article 11 of the Convention because the police bodies had dispersed a peaceful assembly on the grounds that it had been held without prior notice from the organizers. According to this decision, *although the police were acting under Hungary's 1989 Act on Assembly Affairs, which requires the police to be informed of a rally at least three days in advance and gives the police the authority to disperse a rally that takes place without prior notice, the ECtHR ruled that a decision to disperse a peaceful assembly solely because of the organizers' failure to comply with a notice requirement, without any illegal conduct by the participants, is a disproportionate restriction on the right to conduct a peaceful assembly provided for by*

12 The refusal was made for reasons such as: not making the notification to the police bodies within the deadline provided by the law; for lack of identity or address of the organizer or leader of the gathering; not reflecting in the notification the purpose of the gathering, the date, the place, the start and end time of the gathering or its itinerary (if any); the approximate number of participants and the number of people assisting in the smooth running of the gathering, the identity of the persons who will speak at the gathering, etc.

13 Rekomandim i Avokatit të Popullit me datë 18.07.2018, drejtuar Drejtorisë së Përgjithshme të Policisë së Shtetit.  
<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20p%C3%ABrgatitjen%20dhe%20vendosjen%20n%C3%AB%20Website%20e%20Policis%C3%AB%20s%C3%AB%20Shtetit%20t%C3%AB%20modelar%C3%ABve%20n%C3%AB%20zbatim%20t%C3%AB%20ligjit%20E2%80%9CP%C3%ABr%20tubimet%20E2%80%9D.pdf>  
Rekomandim i Avokatit të Popullit me datë 07.10.2020 drejtuar, Prokurorit të Përgjithshëm, Ministrisë të Shëndetësisë dhe Mbrojtjes Sociale, Drejtorit të Përgjithshëm të Policisë së Shtetit dhe Komitetit Ndërmisor të Emergjencave Civile.  
<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20marjen%20e%20masave%20t%C3%AB%20nevojshme%20p%C3%ABr%20respektimin%20e%20liris%C3%AB%20kushtetuese%20t%C3%AB%20tubimit%20edhe%20gjat%C3%AB%20gjendjes%20s%C3%AB%20jasht%C3%ABzakonshme.%20.pdf>

14 Decision of Constitutional Court no. 24 date 04.05.2021, Official Gazette no.87, date 7.6.2021.

15 See, *Éva Molnár against Hungary*, 7 October 2008, request no. 10346/05.

Article 11 of the Convention.<sup>16</sup>

This Court in its practice has considered that notification, and even authorization procedures for a public event do not normally violate the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take measures reasonable and appropriate to guarantee the normal development of any assembly, meeting or other gatherings.<sup>17</sup>

While referred disproportionate use of force and escalation of situation in relation to the protests which took place in December 2020 in Albania, the Council of Europe Commissioner for Human Rights, in the statement has expressed her concern. Among other things, she has been stated that: *"The response to the COVID-19 pandemic does not give authorities 'carte blanche' to use force when policing assemblies, ..... It is crucial to ensure that police officers operating in the context of demonstrations receive specialized training in the negotiated management of assemblies and the proportionate use of force..... The Albanian authorities must show restraint in policing demonstrations and ensure thorough, independent and effective investigations into all allegations of excessive use of force,"*<sup>18</sup>.

Whereas, in the European Union enlargement reports for Albania, in the following in the chapter on fundamental rights, it is evident that the freedom of assembly and organization is expressly provided for in the Constitution and legislation for assemblies and are broadly in line with international standards as well as with in line with Guidelines on Freedom of Peaceful Assembly of the OSCE/ODIHR. Despite this, the law on Assemblies does not address the right to spontaneous assemblies and counter-assemblies.<sup>19</sup>

On the other hand, the fact of the dispersal of dozens of protests as well as the detention and arrests of hundreds of protesters by the police for organizing or participating in protests is stated in these reports.<sup>20</sup> In many cases, the actions of the police have been criticized by civil society organizations and Ombudsperson, who have argued that they were not carried out in line with domestic law and international practices.<sup>21</sup>

### 3. Some Recommendations in the Framework of Improving Guarantees in the Exercise of Freedom of Assembly

The exercise of the right to freedom of assembly cannot be subject to restrictions other than those provided for in the Constitution of Albania, in Article 11/2 of the ECtHR and in Article 8 of the particular law "On Assemblies", which are necessary in a democratic society, in the interest of national security and public safety, for the protection of order and the prevention of criminality or for the protection of the rights and freedoms of other persons.

In fulfillment of international standards and those established by the Jurisprudence of the ECtHR, one of the challenges for guaranteeing the freedom of assembly is the improvement of the legal framework by providing for the organization of spontaneous assemblies and counter-assemblies.

In this context, the relevant structures must take the necessary measures to make concrete proposals to enable changes in law no. 8773, dated 23.4.2001 "On Assemblies", to guarantee the right to spontaneous assemblies as well as counter-assemblies in accordance with recommendations and international acts.

Also, competent state structures should take proactive measures for the continuous training of police officers to respond effectively to the welfare of gatherings, both announced in advance and those that are organized spontaneously. The use of force by these structures must be the last resort and in any case in accordance with all the rules and legal

<sup>16</sup> See, *Bukta and others against Hungary*, no. 25691/04.

<sup>17</sup> See, *Sergey Kuznetsov against Russia*, no. 10877/04, § 45, 23 October 2008.

<sup>18</sup> Statement, Commissioner Dunja Mijatovic, Strasbourg 16.12.2020.

<https://www.coe.int/en/web/commissioner/-/albanian-authorities-must-prevent-further-police-violence-and-uphold-the-right-to-freedom-of-peaceful-assembly>

<sup>19</sup> Albania Report, Communication on EU Enlargement Policy 2019, 2020, 2021.

Albania 2019 Report, European Commission, Strasbourg 29.05.2019, pg.27.

<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>

Albania 2020 Report, European Commission, Strasbourg 06.10.2020, pg. 32.

[https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/albania\\_report\\_2020.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/albania_report_2020.pdf)

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<https://neighbourhood-enlargement.ec.europa.eu/system/files/2021-10/Albania-Report-2021.pdf>

<sup>20</sup> Ibid, (Albania Report, Communication on EU Enlargement Policy 2019, 2020, 2021)

<sup>21</sup> Albania 2022 Report, European Commission, Strasbourg 12.10.2022, pg.32.

<https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>

procedures provided for. Unnecessary or disproportionate sanctions for the behavior of citizens during assemblies may prevent their organization in the future and have a discouraging effect on the participants in them, indirectly constituting a violation of the freedom of peaceful assembly.

A great importance for guaranteeing the principle of legal security regarding the right to freedom of assembly is that the public authorities take measures as soon as possible to amend/repeal the first paragraph of Article 262 of the Criminal Code in order to complete the legal provision, pursuant to decision no. 24, dated 04.05.2021 of the Constitutional Court.

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