

# More Protection for the Freedom of Assembly in Europe: Western Balkan Challenges

By Lena Hoffmann<sup>1</sup>

The freedom of assembly, a central aspect of democracy, is closely linked with the freedom of association. Both serve as a direct form of collective social, cultural and political expression. By assuming their political and civil right to assemble peacefully, the participation of individuals does not end with the elections. Instead, this essential form of direct democracy is the citizens' mouthpiece to participate in public debate, voice opinions, interests and beliefs, utter proposals and ideas and express objections and protest openly. It includes rallies, demonstrations, marches, sits-in, parades, picket lines, public conferences, indoor meetings, processions and other kinds of assemblies. Different interest groups benefit from its communicative purpose, ideally leading to peaceful coexistence and dialogue. It is a relevant tool for human rights defenders and serves as a public and collective manifestation of freedom of expression. The freedom of information and the emerging role of social media greatly impact the realization of freedom of assembly. It has become easier to communicate, mobilize a mass and organize an assembly. Additionally, online protest has become possible. It has impacted reporting and the state's response. The right to peaceful assembly has been vital to the gradual emergence of inclusive, pluralistic societies.

Freedom of Assembly promotes the development of healthy and flourishing democracies, which is why it is enshrined in several international conventions, like the European Convention of Human Rights<sup>2</sup> or the International Covenant on Civil and Political Rights,<sup>3</sup> all of which have been ratified by all 28 Member States of the European Union. Additionally, the Charter of Fundamental Rights of the European Union<sup>4</sup> and the Universal Declaration of Human Rights<sup>5</sup> guarantee that everyone has the right to freedom of assembly and association. Member states constitutionally guarantee their citizens' right to assemble peacefully, while laws concerning the procedures and level of protection differ within different legislations. Nevertheless, many well-drafted laws are not implemented and some European countries undermine the international human rights standards,

---

<sup>1</sup> The author is the research intern at the Lawyers' Committee for Human Rights YUCOM.

<sup>2</sup> *European Convention on Human Rights*, Council of Europe, 4 November 1950. Available at: [http://www.hrcr.org/docs/Eur\\_Convention/euroconv3.html](http://www.hrcr.org/docs/Eur_Convention/euroconv3.html).

<sup>3</sup> *International Covenant on Civil and Political Rights*, General Assembly, 16. Dezember 1966. Available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>4</sup> *Charter of Fundamental Rights of the European Union*, European Commission, 7. December 2000. Available at: [http://web.archive.org/web/20120207094208/http://www.eucharter.org/home.php?page\\_id=1](http://web.archive.org/web/20120207094208/http://www.eucharter.org/home.php?page_id=1).

<sup>5</sup> *Universal Declaration of Human Rights*, UN General Assembly, 10. December 1948. Available at: <http://www.un.org/en/documents/udhr/>.

because their revisions are poorly-drafted and contradict the international conventions. The EUs requirements are adequate legislation and mechanisms that safeguard this freedom, so that it can be enjoyed by everyone. Therefore, it is important to examine how the laws are implemented, as theory and practice are rarely coherent.

### The exception to the rule

The right freedom of assembly is often limited. Article 21 of the International Covenant on Civil and Political Rights states that “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.” According to the study “The Right to Freedom of Assembly”<sup>6</sup> limitations placed by authorities are often a subject of debate, as limitations generally translate into a restriction of the free exercise of this right. Restrictions should be exceptional and proportionate, the principle of presumption in favor of this right (*principio favor libertatis*) must rule and authorities must facilitate and protect peaceful assemblies. The European Court of Human Rights has emphasized that reasons for the restriction of this right must be “relevant and sufficient” and that the “a hypothetical risk of public disorder” at a peaceful assembly is for example not considered as such. Article 11(2) ECHR states that “national security or public safety, the prevention of disorder or crime, and the protection of health, morals, or the rights and freedoms of others” are the only legitimate reasons to forbid an assembly. Nevertheless, the state must guarantee that individuals with opposing ideas right to peaceful assembly is protected. According to the study mentioned above, assemblies are “too often regarded as a threat to political stability rather than its very lifeblood – an inconvenience to be controlled and managed, rather than a fundamental freedom to be protected and facilitated”, which is why some countries impose repressive mechanisms and restrictions, for example to guarantee “the free flow of traffic, the undisturbed working of state institutions, integrity of electoral process” or insisting on prior notification, instead of respecting the right to peaceful assembly.

---

<sup>6</sup> “The Right to Freedom of Assembly in the Euro-Mediterranean Region”, Euro-Mediterranean Human Rights Network, 2013. Available at: <http://www.euromedrights.org/eng/2013/11/27/the-right-to-freedom-of-assembly-in-the-euro%E2%80%91mediterranean-region/>.

In the case of *Bukta and Others v. Hungary*, the police had dispersed a peaceful assembly due to the lack of a prior notification. The ECHR found that Hungary had violated article 11 of the European Convention. Even though the Hungary's Right of Assembly Act<sup>7</sup> requires that the authorities should be informed at least three days in advance the ECHR found that it was a disproportionate restriction of a peaceful assembly, as there was no illegal conduct of the participants.

#### Limitations as a threat to freedom of assembly

These limitations are partly a reaction to the increase in demonstrations and other forms of assembly that has been evident since the beginning of the economic crisis in 2008. According to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, many Member States see more than ten demonstrations a day within their countries. Increased activism should be protected, so that individuals have the opportunity to benefit from and enjoy their constitutional right, but in the aftermath of 9/11 European authorities have time and again transformed the individuals right to protest into a possible threat that is met with a forceful response: mass arrests, unlawful detentions and the illegal use of force, such as other state interference like denials of permits, the imposition of administrative hurdles and the persecution and prosecution of protesters lead to the criminalization of protest movements.

Limitations and forceful state interference, have proved to be a threat to the right to freedom of assembly. The study "Muzzling dissent: Freedom of Assembly under Threat"<sup>8</sup>, names numerous examples of typical and problematic arguments for these limitations in the EU, some of which have been regarded violations of the right to assemble in specific cases by the respective constitutional courts of a nation. Restrictions have been placed due to the prevention of possible disruption of traffic, to protect the undisturbed operation of parliament or other state institutions, based on the content of an assembly, or public opposition to it. Restrictions related to occupations and assemblies on privately owned property, such as blanket legislative prohibitions on assemblies at particular times and/or places, border controls, emergency laws and "kettling" and containment by the police force are imposed on a regular basis. The time frame for notice requirements has been set unrealistically by some Member States and result in a great bureaucratic hassle that has made a

---

<sup>7</sup> The Right of Assembly Act, Republic of Hungary, 1989. Available at: <http://www.legislationline.org/documents/action/popup/id/5353>.

<sup>8</sup> "Muzzling dissent: Freedom of Assembly under Threat, in the Euro-Mediterranean region Part II Practices", Euro-Mediterranean Human Rights Network, 2014. Available at: <http://www.euromedrights.org/eng/2014/12/10/muzzling-dissent-freedom-of-assembly-under-threat-in-the-euro-med/>.

direct responses of the public in form of spontaneous assemblies difficult. The great variety of notifying authorities six hours before a public “meeting” in Finland and seven day beforehand in Estonia show how dispersed the regulations are. The fines when breaching laws in connection with the right to assemble are high, in Spain up to 60,000€ for example. On the other hand, law enforcement forces, are often not held accountable when violating the right to assemble. Data of participants at protests is collected and monitored, which has led to activists losing their jobs, like in cases in France (2010) or has had influence on recruitment decisions of companies, like a case in the UK (2014).

EU countries have unlawfully restricted their citizens rights to assemble peacefully in numerous ways, thereby violating a human right guaranteed by their respective constitutions and international conventions. The study “Muzzling dissent: Freedom of Assembly under Threat” names crucial recommendations, calling upon Member States to review legislation; be open for dialogue with assembly organizers; end arbitrary arrests at peaceful demonstration; end judiciary and administrative harassment of citizens; guarantee protection to those who assemble peacefully; prevent the use of excessive force and other human rights violations by law enforcement officials; implement proper regulation regarding the use of “less lethal” weapons; train law enforcement authorities in the use of force and anti-riot weapons accordingly and hold executive forces accountable for violations of human rights, to improve the overall condition of freedom of peaceful assembly in the European Union.

#### Addressing freedom of assembly in Western Balkans

Other parts of Europe also have difficulties when ensuring their citizens right to assembly. The International Lesbian, Gay, Bisexual, Trans & Intersex Association states on their website that “although freedom of assembly is guaranteed by law in all Western Balkan countries, this right is either not exercised due to the existing climate of hostility in the countries or is denied by the local authorities. When LGBT people do take actions and try to exercise their fundamental rights of assembly and association, these attempts are met with hate speeches and violence.” Naturally, minorities often have the biggest hurdle to enjoy their rights, which is why it is especially important to guarantee their protection. Instead, minorities are often discriminated against. An excellent example are the Pride Parades, where individuals celebrate gay pride and culture and protest for equal rights. The LGBT communities have had great problems to carry out the parades, that are

held once a year in several major cities, in the Western Balkans. Freedom House states that the governments often banned the parades in recent years, due to the great security threat, as many counter-demonstrators try to disrupt the demonstration with excessive violence. Instead of facilitating and protecting the events, the response to violent threats was limiting the right of assembly. There were many attacks on the LGBT community at numerous events all over the Balkans. In Albania bicycle rides against homophobia in 2011 and 2012 were met with attacks of teenagers with smoke bombs. According to Human Rights Watch, a LGBT cultural event in Bosnia and Herzegovina was stormed by masked intruders in 2014, who attacked violently thereby shouting homophobic insults. People were injured and evacuated, but no one was arrested nor was the attack condemned by the authorities afterwards. The police forces were absent during the attack, although it was agreed that they should be there to safeguard the event, oddly they did not show up at the agreed time.

Many Pride Events were met with attacks by anti-gay mobs and extreme violence against participants and the police. In 2011 the Croatian Pride Parades in Split was met by 10,000 violent counter-demonstrators throwing stones, in 2012 the security was improved significantly, 900 police officers were protecting the 500 marchers according to Reuters. In 2012 the biggest Pride Parade with approximately 15,000 people was held according to Freedom House, the same year in which Croatia joined the EU. In 2014 the demonstration was also held peacefully with heavy security.

During the first Pride Week in Skopje, Macedonia in 2013 there was no march due to security risks after attacks and violence. In Montenegro the first Parade in Budva (2013) was cut short, due to escalation. Several of the 40 marchers were injured by 200 counter-protesters who were shouting "kill the gays". As a reaction, security was beefed up at the Podgorica Event, where 2,000 police officers secured the march and dozens of attackers were arrested. Consequently, the 2014 Pride events were held very successfully, with support of the government and 1,800 police officers safeguarding them, according to Balkan Insight.

Slovenia, a very positive example, held a peaceful Pride Parade in 2013, where 600 people marched with the theme 'Freedom and Solidarity are a Same-Gender Couple'. The march was led by the Slovenian president. In 2014 it was also held successfully. Serbia on the other hand, has a more controversial history of Pride Parades. In 2009 there was no explicit ban, nevertheless the location was changed last minute and the authorities stated it was not possible to secure the event,

which resulted in last minute cancellation. After the the excessive outbreak of violence in 2010, the Parades of 2011, 2012 and 2013 were banned instead of coming up with reasonable plan on how to guarantee safety and condemning violence against the LGBT community. The Constitutional Court in Serbia confirmed that the ban of the Pride Parade 2009/2011 where a violations of the Serbian Constitution (violation Article 54) according to Civil Rights Defender. In 2014 the Pride Parade was finally held without major incidents. The Baseline Study “The Situation of Human Rights Defenders in Serbia”<sup>9</sup> heavily criticizes the authorities. “Extremist nationalistic organizations threatened with violence in case the Pride went ahead, to which the law enforcement authorities reacted by prohibiting the event instead of providing for the security of its participants.” The right to freedom of assembly of the LGBT community was perpetually undermined, even though the situation is gradually improving.

#### Violations of peaceful assemblies

There have been a number of other restriction and violations of the freedom of assembly in Balkan Countries. Some are similar to the limitations and violations that are still present in the EU countries. Generally speaking, the human rights standards are still less advanced, even though some countries have signed international conventions and are making an effort to improve the realization of these rights and standards. Freedom House has rated individual countries very differently. In Slovenia and Montenegro the government apparently respects freedoms of assembly and association, while in other countries there have been several violent incidents. In Albania (2011) a corruption scandal forced the resignation of Deputy Prime Minister Ilir Meta and triggered opposition protests, during which four demonstrators were shot and killed, several journalists were assaulted during the protests and the police reportedly beat and detained civilians in its immediate aftermath. There were no major consequences for the unlawful violence of the police. Demonstrations since 2011 have been relatively peaceful. In Bosnia and Herzegovina there have been cases of intimidation and violence against human rights defenders in the last years, which the European Commission criticized as a restriction to the freedom of assembly and association.

Croatia banned public gatherings near Croatian state institutions in 2005. In September 2010, peaceful demonstrations on Varsavska Street were disrupted by arrests and police

---

<sup>9</sup> Toth, Orsolya, “The situation of Human Rights Defenders in Serbia”, YUCOM, 2011. Available at: [http://en.kucaljudskihprava.rs/wp-content/uploads/2012/12/Baseline-study-final-Nov-2012\\_1.doc](http://en.kucaljudskihprava.rs/wp-content/uploads/2012/12/Baseline-study-final-Nov-2012_1.doc).

interventions, which limited fundamental human right. These restrictions were not prescribed by law and the obligation to secure and protect peaceful assembly was not given, as amnesty pointed out. In Kosovo there was violence during protests in 2011 concerning the northern conflict with Serbia. In 2012 the police forcefully dispersed a border demonstration organized by Vetëvendosje over the government's refusal to enforce an opposition resolution to embargo Serbia. In June 2013 force, including pepper spray, was used by police officers on protesters demonstrating against the parliament's approval of the April deal with Serbia.

In Macedonia riots in Skopje (2013) between ethnic Macedonians and ethnic Albanians, who clashed with each other and with the police. At least 22 people were injured and 18 were arrested during the unrest. Although this example does not fall under the category of a peaceful assembly, authorities have to make greater effort to secure demonstrations and de-escalate situations, rather than adding to the violent disruptions during an assembly and negatively impacting the situation. Serbia prohibited the demonstration on the International Day Against Fascism, Racism, Antisemitism and Xenophobia in 2009 to approach the parliament, even though they initially had authorization to do so. Limitations and restrictions made by the government were often not proportionate, the use of violence by police forces unlawful and not legitimate.

### Freedom of Assembly in Serbia

In Serbia the freedom of assembly is guaranteed by Article 54 of the constitution. The Public Assembly Act<sup>10</sup> clarifies further procedures and mechanism. The Comparative Study "Freedom of Peaceful Assembly in Europe Study"<sup>11</sup> analyzes the legal framework, such as its implementation in Serbia. In its conclusion it states "All in all, Freedom of Assembly is protected in Serbia. There are, however, numerous restrictions of the freedom which are not all compatible with its scope under Art. 10 ECHR." The Public Assembly Act is congratulated as an important step to improving the legal protection of the right to assembly. Problems regarding the LGBT community are addressed and the importance of measures taken to improve the situation is emphasized, so that events do not have to be canceled due to security threats in the future. The authors express their hope that the further development will lead to the establishment of new rules concerning freedom of assembly.

---

<sup>10</sup> Public Assembly Act, Republic of Serbia, 1992. Available at: <http://www.legislationline.org/topics/country/5/topic/15>

<sup>11</sup> *Freedom of Peaceful Assembly in Europe Study*, Venice Commission, May 2014. Available at: [http://www.venice.coe.int/files/Assemblies\\_Report\\_12March2014.pdf](http://www.venice.coe.int/files/Assemblies_Report_12March2014.pdf).

“The Joint Opinion on the Public Assembly Act of Serbia”<sup>12</sup> analyses this Act in terms of its compatibility with relevant international and regional standards and OSCE Commitments, and in light of Article 54 of the constitution of Serbia which guarantees the citizens of the state, the right to assemble peacefully. §54 “Citizens may assemble freely. Assembly held indoors shall not be subjected to permission or registering. Gathering, demonstrations and other forms of assembly held outdoors shall be reported to the state body, in accordance with the law. Freedom of assembly may be restricted by the law only if necessary to protect public health, morals, rights of others or the security of the Republic of Serbia.” The Public Assembly Act is criticised as infringing the fundamental right to assembly. Therefore several recommendations to improve the legal framework are made, so that it complies with international conventions and the Serbian constitution. The title should be changed to “Law on Freedom of Peaceful Assembly”; the notification of an assembly should provide for exceptions, allowing for spontaneous assemblies, instead of requiring permission; the notification period should be reasonable; the law should apply to everyone, including non-citizens, minorities and aliens; there should be no restrictions considering the time and place; bans and limitations should only be placed due to a threat to public safety or danger of imminent violence; individuals disrupting the assembly with hate speech and violence should be held accountable, not the entire assembly; organizers should not be responsible for financing and public order and decisions on the legality of the ban should be made available before the scheduled event. Further analysis and the recommendations are given in more detail in “The Joint Opinion on the Public Assembly Act of Serbia”. The Constitutional Court of Serbia has declared the Public Assembly Act unconstitutional on the 9 April 2015, but postponed the publication of the decision in Official Gazette for six months in order to allow the Serbian Parliament to draft and adopt the new Act on Freedom of Assembly in the given time.

#### Future goals

---

<sup>12</sup> Joint Opinion on the Public Assembly Act of Serbia European Commission for Democracy Through Law (Venice Commission) and the OSCE/ODIHR, 18. October 2010. Available at: <http://www.osce.org/serbia/73335?download=true>



The second edition of “The Guideline on Freedom of Assembly”<sup>13</sup> emphasises that the “expression of diverse, unpopular or minority opinions” are “crucial to creating a tolerant and pluralistic society in which groups with different beliefs, practices or policies can exist peacefully together”. Assemblies should be protected, even if they “annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties”. The presumption should always be in favor of holding the assembly. The state should put in place the mechanisms and security measures that allow and protect the assembly, restrictions and laws must be coherent with the European Convention of Human Rights, proportionate and non-discriminatory. It clarifies that notification periods should not be unnecessarily lengthy and not be transformed into a permit, in order to protect spontaneous assemblies. Simultaneous and counter demonstrations should be protected and facilitated by the state. Costs and providing security should be a matter of the authorities, not of the organizers. Time and place should only be met with restrictions when really necessary and appropriate alternatives should be suggested. The importance of freedom of assembly, accurate legislation and proper implementation, which coincide with international conventions on human rights, is stressed.

There is much to work to improve the realization of the freedom of assembly. Authorities have to ensure that assemblies can be held, without escalations of violence and protect and respect the freedom of expression, association and assembly, instead of limiting peaceful assemblies with restrictive mechanisms. “The Handbook on Monitoring Freedom of Peaceful Assembly”<sup>14</sup> refers to the right to assemble as a cornerstones of democracy and pluralism. “Rule of the people” is the direct translation of democracy. Therefore, state limitations to restrict this valuable mouthpiece that allows citizens to take part in public debate, should be the absolute exception. Citizens should be able to take to the street, like a duck takes to water - which will benefit the development of healthy and flourishing democracies, due to active and engaged citizens.

---

<sup>13</sup> Guideline on the Freedom of Assembly (Second Edition), OSCE/ODIHR, 2010. Available at: <http://www.osce.org/odihr/73405?download=true>

<sup>14</sup> “Handbook on Monitoring Freedom of Peaceful Assembly”, OSCE/ODIHR, 2011. Available at: <http://www.osce.org/odihr/82979?download=true>.