

## The right of freedom of public assembly - constitutional aspects

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### Abstract

Freedom and human rights are in the focus of human rights. The protection of fundamental freedoms and human rights still remains the main challenge of consolidating democracy in some countries. In this regard the difficulties in protecting rights and freedoms are connected with individual freedoms as well as collective freedoms. The freedom of expression continues to be among the freedoms that define the level of democratic development in countries. In this respect the right to public assembly in many cases determines the degree of democratization of a country. The Republic of Kosovo on questions about guaranteeing and protecting the right to freedom of public assembly has set these entitlements in the Constitution of 2008, Article 43, freedom of assembly. The organization of public meetings is regulated by Law no. 03 / L-118 for public gatherings.

Even the international aspect of the right of public assembly presents a major challenge for the consolidation of democracy and the commitment of the state to guarantee and protect the fundamental human rights and freedoms.

**Keywords::** *Public rally, protest, demonstration, freedom, police.*

### Introduction

Usually the right of public assembly is manifested by organizing various protests to seek and express a collective dissatisfaction in relation to various developments in a state or society. In Kosovo there are different ways of implementing the right of freedom of public assembly. This paper aims to study the legal basis of the freedom of public assembly and access to state institutions regarding the organization of protests during the 14-th and 22-nd of January 2012 at “Merdare” and “Dheu i Bardhë” organized by “Vetvendosje Movement” about applying reciprocity measures between Kosovo and Serbia for Serbian goods entering the Kosovo market. In this paper I analyze the right of public assembly in a comparative method between Kosovo and Albania. This paper is compiled using the normative, analytical, historical, narrative and comparative method.

### The right of public assembly as a constitutional right for the citizens

The right of public assembly is addressed in legal, scientific and theoretical terms -, especially in raw texts as the constitutional right of law faculties in all universities. The right of public assembly as a fundamental right constitutes the basis of a democratic society. It includes public and private meetings in public places (Bajrami, 2011, 207). This right may also be known as freedom of assembly and public gathering. The freedom of public assembly can be understood as the right of citizens to freely assemble publicly and

express their opinions on the issues. The freedom of public assembly, which is known as political freedom is the right of citizens to gather in appropriate public places and to express their beliefs and attitudes regarding various political issues (Saliu, 2004, 228). The right to freedom of public assembly is important because it is often a condition for the exercise of other freedoms, such as the freedom of thought, teaching, worship and others. It is important to know when to get permission from the state institutions for a public gathering. Permission must be obtained in advance and must be notified to the law enforcement authorities, about the place and time of the public gathering (Themistocles, 2011, 401). The right of public assembly as a fundamental right of citizens and constitutional right that is guaranteed by all democratic constitutions. The Universal Declaration of Human Rights is an international act that guarantees the right to public assembly of all citizens, specifying that "Everyone has the right to freedom of peaceful assembly and association".<sup>1</sup> From this definition it appears that no distinction has been made between the right of public assembly and the gathering as a peaceful unification. In the European continent, the European Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the right to freedom of public assembly, determines that, "Everyone has the right to freedom of peaceful assembly and of association with others, including the right to establish unions with others and participation for the protection of his interests".<sup>2</sup> With this definition the Convention guarantees the right to a broader freedom of everyone to peaceful gatherings and other events, referring to the right of establishment of trade unions to defend their interests. The Convention sets out some other limitations associated with the exercise of the right to freedom of public assembly, determining that "the exercise of these rights may be subject to restrictions other than those prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the protection of public order and the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". This article shall not prevent the imposition of lawful restrictions in the exercise of these rights by members of the armed forces, the police or the state administration.<sup>3</sup> In constitutional terms, the right to freedom of public assembly is regulated by the Constitution of the respective states, and this freedom is part of other fundamental freedoms guaranteed by the Constitution.

The Constitution of Kosovo (2008), within the second chapter, defines this right as "freedom of assembly", specifying explicitly that "freedom of peaceful assembly is guaranteed. Each person is entitled to organize rallies, protests and demonstrations and the right to participate in them. These rights may be restricted by law, if necessary to ensure public order, public health, national security or the protection of the rights of others".<sup>4</sup> From this definition it appears that, in the context of freedom of public assembly, everyone has the

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<sup>1</sup>Universal Declaration of Human Rights, December 10 (1948), article 20, paragraph 1.

<sup>2</sup>Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11, paragraph 1.

<sup>3</sup>Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11, paragraph 2.

<sup>4</sup>The Constitution of the Republic of Kosovo, Chapter II, the rights and fundamental freedoms, Article 43.

right of freedom to organize protests and demonstrations and everyone has the right to participate in these events. The Constitution of the Republic of Kosovo, defines the restriction of this freedom by law, in cases when there is a need to ensure public order and protect human rights. The Limitation of certain rights and fundamental freedoms in the Constitution of the Republic of Kosovo expressly provide that, "Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society" (Article 55, paragraph 2). This definition brings some kind of restriction in a constitutional and democratic sense.

In terms of restricting certain rights and fundamental freedoms, the Constitution defines several tasks to public institutions in the case of such restrictions by explicitly defining that, "In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation" (Article 55, paragraph 4). The Constitution guarantees no denial of rights guaranteed in the case of their limitations. In this sense, it appears that, the restriction is a temporary measure prohibiting the exercise of certain rights. This is a constitutional guarantee of the fundamental rights and freedoms.

The Constitution of the Republic of Albania (1998) recognizes the freedom of public assembly, explicitly defining that: "Freedom of peaceful assembly without arms, as well as the participation in them is guaranteed. Peaceful gatherings in squares and places of public passage are in conformity with the law".<sup>5</sup> Even the constitution of the Republic of Albania expresses the principle of limitation of human rights and fundamental freedoms, but this can only be done by law. Unlike the Constitution of the Republic of Kosovo, the Constitution of the Republic of Albania expressly provides that restrictions may not exceed the limitations which are provided by the European Convention on Human Rights. The limitation of rights and fundamental freedoms is explicitly defined in the Constitution of the Republic of Albania as: "limitation of the rights and freedoms stipulated in this Constitution may be imposed by law in public interest or for the protection of the rights of others. The restriction must be proportionate to the situation that has dictated it. These limitations may not infringe the essence of freedoms and rights and in no case may exceed the limitations provided in the European Convention on Human Rights".<sup>6</sup> The Constitution of the Republic of Macedonia recognizes the freedom of public gatherings, which determines the right to public assembly. The Constitution expressly stipulates that right, by determining that "Citizens have the right to peacefully assemble and express public protest without prior announcement and without special permission. Use of this right may be limited in terms of war and state of emergency".<sup>7</sup> The Constitution of the Republic of Macedonia in contrast to the Constitution of the Republic of Kosovo and Albania has a written language that defines the right of public assembly and determines

<sup>5</sup>Article 1 of Law no. 03/L-118 for public gatherings.

<sup>6</sup>Article 17 of the Constitution of the Republic of Albania.

<sup>7</sup>Article 21 of the Constitution of the Republic of Macedonia.

that the citizens have the right to public assembly without any notice or special permission.

### **The legal basis for the realization of the right to public gatherings in Kosovo**

The law for public gatherings fulfilled the realization of freedom of expression through the right to public gatherings, specifying that “this law regulates the right to public gatherings, free speech in public gatherings, protests, deadline of registration and duties and responsibilities of the organizers”.<sup>8</sup> This Article recognizes the right to freedom of speech in public gatherings, right to protest, right of public events, but also identifies some limitations of the organizers of public gatherings, such as the deadline of registration and duties and their responsibilities. This law recognizes several types of public gatherings. Regarding the right to public assembly, who can participate in public meetings, specifically provided that “every citizen of the Republic of Kosovo regardless of sex, race, color, language, religion, nationality, economic, financial, educational, social and political opinion or any other personal circumstance, has the right to organize and participate in public gatherings, according to rules set by this law. This Law didn't stipulate any clarification about the age of those who must participate in a public meeting. In this sense, the right of public assembly can include all citizens without any distinction of age. On one hand, this can be a positive aspect for the realization of freedom acceptance, but on the other I think that the maximum age for public assembly should be restricted and implied in this article up to maturity (18 years of age). Public gatherings are classified by the law for public gatherings into several types, such as rallies; manifestations; marches; protests; public celebrations; quiet commemorations; manifestations and events of similar nature where participants express freely and peacefully their views on issues of interest. As public gatherings are considered also the character of the cultural, sporting, humanitarian, religious and entertainment shows.<sup>9</sup> In this sense, this law should include age limitations for demonstrations, because even practice has shown that the participation of young people (children) in a demonstration has been detrimental to their health as well as their personality.

### **Restricting the right to public gatherings**

The right to public gatherings may be limited, but as a constitutional right cannot be denied. Such restrictions are generally associated with rights and fundamental freedoms or policy issues of the constitution. The Constitution of the Republic of Kosovo provides such a restriction, the Constitution of the Republic of Albania also defines such a restriction. Even the language of both constitutions determines that such restrictions can only be made by law.

Restrictions on the right to public gatherings under this law could be: “ in cases when public gatherings are used to incite, violence, hatred -ethnic, religious, or other incentive situations prohibited by law”. The law for public gatherings has also implied a general provision which states that state authorities are granted the possibility to prevent a public

<sup>8</sup>Article 1 of Law no. 03/L-118 for public gatherings.

<sup>9</sup>Section 3 of Law no. 03/L-118 for public gatherings.

gathering, unless this law has not foreseen otherwise.<sup>10</sup> Generally there are some practices that include exceptions during the political parties' election campaigns.

In Kosovo, the law for public gatherings foresees a warning obligation for holding public meetings. The language used in this law notes that "the announcement for a public gathering should be made not later than seventy-two (72) hours prior to the public gathering". In this sense, the Kosovo Police should inform the organizers about the permission or prohibition of public assembly no later than forty-eight (48) hours prior to the public gathering. In case of silence within 48 hours, the public authorities consent the holding of public meeting. In cases of public assembly, according to legal regulations, the organizer is obliged to make a notification, containing: purpose; place; date and time of the public gathering; duration of the peaceful public gathering; data on the leader of the public gathering; the number of caregivers and the approximate number of participants.<sup>11</sup> The law for public gatherings categorically prohibits holding public meetings on the premises within a public institution.

In cases where a public assembly can be prevented, the Kosovo Police has the legal authority to take such action. Responsibility is required by the organizers of public assembly. The law stipulates that: "the organizer must take all the necessary measures to maintain law and order in the public gathering". From this definition, I come to the conclusion that the entire responsibility of organizing a public rally falls on the organizer of public assembly on the one hand, and on the other hand on the Kosovo Police which can cooperate to maintain order and to take the necessary measures against persons who act contrary to law.

### **The legal basis for public gatherings in Albania**

In the Republic of Albania, the legal basis for holding public gatherings is law no. 8145, dated 11.9.1996 on the right of assembly. Unlike the Republic of Kosovo that names the law for public gatherings, the law of the Republic of Albania is labeled as the law on the right to assembly. In regard to naming, it appears that the law definition in the Republic of Albania is more accurate and understandable, because it relates directly to one of the rights, such as the right to public gatherings, or to the constitutional freedom for the right to public assembly. The legal definitions and language are quite the same in both laws. The Law on the right of assembly states that: "All citizens in Albania have the right to public gatherings, without discrimination, sex, race, color, language, religion, ethnicity, economic-, financial-, educational-, social-, political beliefs, ancestry or any other personal circumstances."<sup>12</sup> The age limitation and legal definitions of the law on the right of assembly in Albania are the same as in Kosovo. The Albanian law defines that with rally are understood gatherings, rallies, meetings, processions and marches, in which participants express freely and peacefully their views on the issues that concern them. Article 4 and 5 of the Albanian law foresee: "for gatherings in public places, organizers are forced to seek written permission from the head of police station, in whose territory the

<sup>10</sup>Article 4 of Law no. 03/L-118 for public gatherings.

<sup>11</sup>Article 4 of Law no. 03/L-118 for public gatherings.

<sup>12</sup>Article 1 of Law no. 8145, dated 11.9.1996.

meeting will take place no later than 72 hours”. On the other hand gatherings in stadiums, theaters, and other public facilities do not need written permission from the police. In other aspects both laws follow different legal principles with the same goal.

### **Case of protests on 10 February 2007**

The right to protest is guaranteed by the constitution and laws, but also with international acts. There are certain situations when during the protest and the realization of the right to protest, or demonstrated by a certain group regarding any possible injustice, in some cases the use of force is experienced by the authorities responsible to maintain order and public peace.

During the protests on 10-th of February 2007, organized by the “Vetvendosje” Movement, to oppose the Comprehensive Proposal for the Kosovo Status Settlement, at some point there was an intervention of the police together with UNMIK (United Nations Mission in Kosovo) forces against protesters. As a consequence, two participants were killed and several others were seriously injured. (Report of the Ombudsman ex officio no. 008/2007 concerning the events that occurred during the protest movement “Vetvendosje”, dated 10.2.2007). The report of the Ombudsman analyzed the event in detail with the aim if any property rights and fundamental freedoms were violated from UNMIK and Kosovo Police. Ombudsman’s report addresses also the question of whether international principles and international acts are violated, in relation with the exercise of human rights and fundamental freedoms. Regarding the handling of protests on 10.2.2007, Ombudsman’s report addresses the question of whether there was a violation of the right to life because two people were killed and whether there is a violation of international instruments for the protection of human rights, such as the Convention of European Human Rights. The report, addresses also as analogy the jurisprudence of European Court of Human Rights (ECHR) in Strasbourg such as: ECHR Decision of 28.3.2000, Kilic against Turkey; ECHR Decision of 8.7.1999, Cakini against Turkey; ECHR Decision of 6.7.2005, Nachova and others against Bulgaria.

The analysis of the report noted that the report is designed professionally and as such the sources and materials are handled professionally. The report draws several conclusions and recommendations for UNMIK and Kosovo Police, but such conclusions and recommendations were ignored by UNMIK and Kosovo Police and the protests of 10.2.2007 still remain unsolved.

### **Case protests of 14.1.2012 in “Merdare” and 22.1.2012 in “Dheu i Bardhë”**

By analyzing the Ombudsman report on protests of 14.1.2012 in “Merdare” and 22.1.2012 in “Dheu i Bardhë” connected with the implementation of reciprocity measures emerges that such protests are a result of the non-fulfillment of the last. (Report of ex-officio Ombudsman, no. 28/2012, concerning protests of 14.1.2012 in “Merdare” and 22.1.2012 in “Dheu i Bardhë”). “Vetvendosje” movement had warned through a media conference on 5.1.2012 that they were going to organize protests on 14.1.2012 in “Merdare” to prevent the entry of Serbian goods in the Kosovo market. Such notification can be considered a

warning for the state institutions. The organizers of the protest have disregarded the rules of protest and met police to explain in detail the purpose of the protests. This protest required the implementation of “reciprocity measures” approved by the Assembly of the Republic of Kosovo on the 7-th and 8-th of December 2011, but until the day of the protest, no concrete action was taken by the Kosovo state institutions in the implementation of these measures. Analyzed in the context of the right to public assembly, as a fundamental and constitutional right of citizens to express their discontent about any action of public institutions, it emerges that such protest are in compliance with the human rights and freedoms, while in terms of the time implementation, the protest was against the law for Kosovo law for public gatherings.

The organizers of the second protest of 22.1.2012 didn't require permission from the state police, because of the bad treatment they received in the first protest of 14.1.2012. To their concern, this action was against Article 6 of the law for public gatherings, about the notice of legal procedures and communication with the public security organs. The law does not exactly specify any permission to conduct a public gathering, but it specifies the exact time notification of protest “before the police”.

## Conclusions

Concerning the right of public assembly as a fundamental constitutional right of citizens there have been many studies and theoretical analysis as well as practical ones to treat certain cases of violation of citizens' right in peaceful public gathering by the state. Both cases showed that the Republic of Kosovo has multiple instances for the use of the right of public assembly to express dissatisfaction with the action of state institutions or grievances of any particular social process. Both protests of 14.1.2012 and 22.1.2012 organized by the “Vetvendosje” Movement opposed the entry of Serbian goods in the market of the Republic of Kosovo, because they required the implementation of the reciprocity measures by the government of Kosovo which were approved by the Assembly. The second protest didn't respect the law for public gatherings and escalated with an excessive use of force by the Kosovo. In this case, it appears that police disregarded the rules set by law that analyses that when the protest is peaceful, the intervention of police is unnecessary. Even the official report of the Ombudsman explained that there was failure from both sides (protesters and police) in respecting the rules laid down in the law for public gatherings.

## References

- Bajrami, A. (2011). The constitution of the Republic of Kosovo. Pristina.
- Martines, T. (2011). Constitutional Law. London.
- Saliu, K. (2004). Constitutional Law, Book I, fourth edition. Pristina.
- Universal Declaration of Human Rights, December 10, 1948.
- Convention for the Protection of Human Rights and Fundamental Freedoms.
- The Constitution of the Republic of Kosovo.
- The Constitution of the Republic of Albania.
- The Constitution of the Republic of Macedonia.
- Law no. 03/L-118 for public gatherings in the Republic of Kosovo.
- Law no. 8145, dated 11.9.1996 for the right to assembly in the Republic of Albania.
- Organization of the United Nations General Assembly Resolution 59, December 14, 1946.
- Ex-officio report Ombudsperson, no. 28/2012, concerning events in protests on 14.1.2012 and 22.1.2012.