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## RIGHT TO ASSEMBLY IN THE CONTEXT OF PUBLIC SAFETY: EUROPEAN APPROACH

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**Abstract.** This article focuses the attention to the right to peaceful assembly and the freedom of expression in the European region, basically, the region that is covered by the European Convention For the Protection of Human Rights and Fundamental Freedoms (hereinafter The European Convention on Human Rights, or the Convention), which was signed on 4 November 1950 in the scope of the Council of Europe. Without a broad guarantee of the rights to peaceful assembly and the right to freedom of expression protected by all governmental institutions and independent courts there could be no democratic country in full meaning of this word. The Article 11 of the Convention foresees that “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests”. The protection given by Article 11 extends to any assembly, notwithstanding its content, disseminated by any individual, group as long as it is peaceful. As a qualified right it is for the concerned persons to establish the activity that they wish to carry out or that is being restricted falls within the protection of Article 11 Paragraph 1 and that there has been an interference with it. The object of the research is the content of the right to peaceful assembly, the obligations of the states in respect of this right and possible derogations in the conditions of public safety protection. The objective of this research therefore is to disclose the scope of right to freedom of assembly foreseen in Article 11 of the European Convention on Human Rights and to discuss the possible circumstances in which a state may legitimately interfere with the exercise of the freedom of assembly.

**Key words:** human rights, freedom of assembly, restrictions of freedoms in modern society, public safety.

### INTRODUCTION

*Relevance of the Topic.* In the context of present political, economical and social situation in Europe and challenges which arise in democratic societies freedom of assembly is not only important right in itself, it is also one of the most important guaranties for protection of other fundamental rights (for example, freedom of expression). Without a broad guarantee of the rights to peaceful assembly and the right to freedom of expression protected by all governmental institutions and independent courts there could be no democratic country in full meaning of this word. Especially important these right are in the present situation of financial crisis, which evoke instability, pressure and sometimes negative or even aggressive tendencies in different societies, when the line between realization of freedom of expression,

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realized via the freedom of assembly, and necessity to protect public security, to prevent disorder and crimes is very undefined.

The European Convention on Human Rights (the Convention)<sup>1</sup> was signed on 4 November, 1950 in the scope of the Council of Europe. Almost all of the States Party to the Convention integrated the Convention into their national legislation. Therefore the Convention is binding on domestic courts and national public authorities. It could be stated that the Convention itself is the most specific expression by the member states of the Council of Europe of their profound belief in the values of democracy and justice, and respect for the rights and fundamental freedoms of people living in the modern society<sup>2</sup>. The direct application of the Convention means that each individual under jurisdiction of the Party State to the Convention may invoke it in case he/she considers the corresponding rights of the individual have been violated, and the domestic courts have an obligation to apply the Convention.

The Article 11 of the Convention foresees that “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests”. The protection given by Article 11 extends to any assembly, notwithstanding its content, disseminated by any individual, group as long as it is peaceful. As a qualified right it is for the concerned persons to establish the activity that they wish to carry out or that is being restricted falls within the protection of Article 11 Paragraph 1 and that there has been an interference with it. The burden then shifts to the state, which must then be able to justify their actions on the basis of legality, necessity, proportionality and non-discrimination. For Article 11 to apply the crucial feature in relation to an assembly or protest is that it is peaceful. Even if it turns violent, as long as its intent was peaceful, Article 11 is still engaged, and it may even apply when the assembly is illegal.

Therefore freedom of assembly may not be used as a mean of destruction of other fundamental rights, such as right to a private life, right to a fair trial or others. The Paragraph 2 of the Article 11 foresees some restrictions, which the state may impose in respect of this right (“No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health

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<sup>1</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953). ETS 5; 213 UNTS 221 (ECHR).

<sup>2</sup> *Introduction to European Convention on Human Rights*. Collected texts. Council of Europe, 1994.

or morals, or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state”). The balance between the scope of the right and its restrictions is of the most important issues of the implementation of the right itself.

It also should be stated that in various societies and cultural as well as historical traditions some rights could be understood differently, therefore it is of the primary importance to distinguish the social, religious, and other circumstances which could have impact on the context of the enforcement of the right to assembly. This is why the stress in this article shall be put on the European approach in respect to the right to a peaceful assembly. This could be explained by multicultural and multireligious environments in some regions of the world. Thus, “what it one culture taught as true and non-negotiable standards of conduct may in other cultures be understood merely as pieces of advice or recommendations”<sup>3</sup>. But in this case it always must be taken into consideration the relativity of human rights, as a western approach to human rights has to be adapted to local reality. And “it may be that realizing certain of the values of individualism is incompatible with realizing certain values of community”<sup>4</sup>. However, the numerous cases of the European Court on Human Rights indicates, that there is no clear understanding of states’ obligations in respect of the freedom of assembly.

*The Object of the Research* is the content of the right to peaceful assembly, the obligations of the states in respect of this right and possible derogations in the conditions of public safety protection.

*The Objective of this Research* therefore is to disclose the scope of right to freedom of assembly foreseen in Article 11 of the European Convention on Human Rights and to discuss the possible circumstances in which a state may legitimately interfere with the exercise of the freedom of assembly. To achieve the aim further *tasks* are settled:

1. to analyze the scope of right protected by Article 11 of the Convention on Human Rights;
2. to reveal the restrictions which may be invoked by the state, and to disclose circumstances when the state may legitimately interfere with the exercise of this right due to protection of public safety.

<sup>3</sup> Almqvist J., *Human Rights, Culture and the Rule of Law*. Oxford and Portland, 2005, p. 94.

<sup>4</sup> Griffin J., *On Human Rights*. Oxford University Press, 2008, p. 133.

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3. to discuss the case-law practice of European Court of Human Rights (further - the Court) in respect of prohibition of the right to peaceful assembly;

*Methodology of the Research.* In the course of reaching the objective of the research both theoretical and empirical methods of the scientific research were employed. The following research methods are used: analytical – critical and linguistic – the scope of the analyzed articles is determined and states’ violations due to improper implication or understanding of international law are revealed; while using the methods of systemic analysis and document analysis the cases-law practice and the doctrine of the Court has been analyzed, compared and evaluated.

## 1. CONTENT OF THE RIGHT TO ASSEMBLY

For as long as there have been governments there have been rules to restrict protest and dissent. Over the centuries the laws in this area have developed piecemeal, adapting to the prevailing attitudes and concerns of the governments and courts. This dynamic process reflects the struggle that lies at the heart of public order law - the natural tension between the amount of freedom one may demand as demonstrator and the amount of restriction permitted to impose for governments.

According to Article 11 „Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests”. Paragraph 2 of this article states that “No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or 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 on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.” In fact Article 11 guarantees two rights: right to a peaceful assembly or the right to protest, and the right to freedom of association and the right to form a trade union. Article 11 includes a positive obligation on the State to ensure that demonstrators are protected from counter-demonstrators trying to prevent their demonstration. However, it does not generally include a positive obligation on the State to ensure that the right to peaceful assembly is protected on private property (see *Appleby v United Kingdom*<sup>5</sup>). Right to

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<sup>5</sup> *Appleby v United Kingdom* (6 May 2003). A few persons were not allowed to publicly manifest against the building of the modern construction in the field former owned by the municipality and now owned by the

assembly is a qualified right. This means that an interference with the right can be justified. The circumstances in which an interference can be justified are similar to those which justify an interference with rights under Article 8<sup>6</sup>.

Article 11 also protects the freedom to associate with others, including the right to form or join a political party or other group or association, and the right to belong to a trade union. However, the right to join a trade union does not extend to police officers, soldiers and some other groups who work for the Government. There is no doubt that both of these rights are essential in the democratic society. Nevertheless, the main attention in this article shall be paid to the right to freedom of association expressing the particular opinion of the group of persons, as it is usually face the collision with public safety requirements and striving of the states to evade possible offensive acts or riots.

The right of assembly is also foreseen in all most important international human rights documents. The Universal Declaration of Human Rights<sup>7</sup> in Article 20 paragraph 1 of the Declaration declares: “Everyone has the right to freedom of peaceful assembly and association”. This provisions should be analyzed in connection to Article 19 (“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”), and Article 18 (“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”) of the Declaration. The

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commercial subject. The Court stated that: “That provision, notwithstanding the acknowledged importance of freedom of expression, does not bestow any freedom of forum for the exercise of that right. While it is true that demographic, social, economic and technological developments are changing the ways in which people move around and come into contact with each other, the Court is not persuaded that this requires the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property (government offices and ministries, for instance) (Para.47)”. In this case no violations of Articles 10 and 11 were found. [accessed 2011-09-29]

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=8&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionId=79409191&skin=hudoc-en>.

<sup>6</sup> Article 8:

„1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others ».

<sup>7</sup> Universal Declaration of Human Rights (adopted in 10 December, 1948). GA res. 217A (III), UN Doc A/810 at 71 (1948). [accessed 2011-09-29]. <http://www.un.org/en/documents/udhr/>.

International Covenant on Civil and Political Rights<sup>8</sup> intended to give legal force to the civil and political rights expressed in the Universal Declaration of human Rights, hence Article 21 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, the protection of public health or morals or the protection of the rights and freedoms of others“. In this international document it is also foreseen some restrictions in regard to public safety and the rights of others, for example, Article 19 indicates that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. [...] The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals”.

Freedom of expression and Article 11 overlap in situations where groups express opinions by gathering and demonstrating with rights indicated in Article 10 of the Convention. Freedom of expression is one of the objectives of freedom of peaceful assembly. Article 10, Paragraph 1 declares: „Everyone has the right to freedom of expression. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by a public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises“. It is characteristic for Article 10 to protect expression which carries a risk of damaging the interest of others. The European Court of Human Rights stated that „information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society“ (*Handyside v. United Kingdom; Lingens v. Austria*<sup>9</sup>). Moreover, Article 10 protects not only the ideas and

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<sup>8</sup> International Covenant on Civil and Political Rights. Signed December 16, 1996. [accessed 2011-09-29] <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=131206&p\\_query=International%20Covenant%20on%20Civil%20and%20Political%20Rights&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=131206&p_query=International%20Covenant%20on%20Civil%20and%20Political%20Rights&p_tr2=2)>.

<sup>9</sup> *Handyside v. The United Kingdom* (7 December 1976). In this case the Court indicated that regarding such rights as protected under Articles 10 and 11 of the Convention “whoever exercises [...] these rights undertakes

information but also the form in which they are expressed. Almost all means of the production, distribution, communication, transmission of the information are protected under this article. Therefore in this context Article 10 has a very close connection to Article 11 (Right to Assembly) and freedoms protected by this article.

Peaceful assembly and the right to protest also includes the right to march as well as static gatherings and imposes obligation on the State to take peaceful and appropriate measures to protect peaceful protest<sup>10</sup>. Protest control should not discourage the protest itself. Article 11 imposes positive obligations upon the State to ensure that peaceful assembly and protest can be carried out. In the ruling of the case *Platform "ÄRZTE FÜR DAS LEBEN" v. Austria*<sup>11</sup> the Court declared, that "A demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11. Like Article 8, Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be". The same theory was confirmed in the case *Sørensen v. Denmark and Rasmussen v. Denmark*<sup>12</sup> ("The

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"duties and responsibilities" the scope of which depends on his situation and the technical means he uses. [accessed 2011-09-29].

<<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=79409729&skin=hudoc-en>>  
<<http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>>>; *Lingens v. Austria* (8 July 1986). [accessed 2011-09-29].

<<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=AUSTRIA&sessionid=79410492&skin=hudoc-en>>.

<sup>10</sup> *Case-law concerning Article 10 of the European Convention on Human Rights. 50<sup>th</sup> anniversary of the European Convention on Human Rights. 1950 – 2000*. Directorate General of Human Rights. Strasbourg, 2000

<sup>11</sup> *Platform "ÄRZTE FÜR DAS LEBEN" v Austria* (21 June, 1988). Platform "Ärzte für das Leben" is an association of doctors who are campaigning against abortion and are seeking to bring about reform of the Austrian legislation on the matter. In 1980 and 1982 it held two demonstrations which were disrupted by counter-demonstrators despite the presence of a large contingent of police.

[accessed 2011-10-02]  
<<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=AUSTRIA&sessionid=79410665&skin=hudoc-en>>.

<sup>12</sup> *Sørensen v. Denmark and Rasmussen v. Denmark* (11 January 2006). In this case the question of the right to form and to join trade unions is a special aspect of freedom of association was discussed, so in this sense the decisions is not directly linked to the object of this article, nevertheless the Court also indicated that „the notion

boundaries between the State's positive and negative obligations under Article 11 of the Convention do not lend themselves to precise definition. The applicable principles are nonetheless similar. Whether the case is analyzed in terms of a positive duty on the State or in terms of interference by a public authority which needs to be justified, the criteria to be applied do not differ in substance. In both contexts regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole”).

For Article 11 to apply the crucial feature in relation to an assembly or protest is that it is peaceful. Even if it turns violent, as long as its intent was peaceful, Article 11 is still engaged, as it was stated by the Court in the case *Christians against Racism and Fascism v. United Kingdom*<sup>13</sup>: “Freedom of peaceful assembly includes processions. It is a freedom capable of being exercised by those who intend to organize a peaceful assembly, and cannot be lost by virtue of the mere fact that a third party plans a violent counter-demonstration. [...] The legislation adopted by the United Kingdom for the prevention of disorder in connection with public processions while not excluding the possibility of imposing specific conditions for the holding of a particular demonstration, does not allow the prohibition of such demonstrations in an individual case. [...] A general ban of demonstrations can only be justified if there is a real danger of their resulting in disorder which cannot be prevented by other less stringent measures. In this connection, the authority must also take into account the effect of a ban on processions which do not by themselves constitute a danger for the public order. Only if the disadvantage of such processions being caught by the ban is clearly outweighed by the security considerations justifying the issue of the ban, and if there is no possibility of avoiding such undesirable side effects of the ban by a narrow circumscription of

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of personal autonomy is an important principle underlying the interpretation of the Convention guarantees. This notion must therefore be seen as an essential corollary of the individual's freedom of choice implicit in Article 11 and confirmation of the importance of the negative aspect of that provision“. [accessed 2011-10-02] <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=DENMARK&sessionId=79410965&skin=hudoc-en>>.

<sup>13</sup> *Christians against Racism and Fascism v UK (16 July 1980)*. The association called “Christians against Racism and Fascism” (CARAF) is an organization of several churches. They were planning to hold a procession during which it would pass in the streets of London. The procession was planned to draw the attention of public and so promote the aims of the organization. Although it was not a legal requirement to inform the police of the plans in the procession, CARAF nevertheless informed the City of London police. As a consequence Metropolitan Police had ordered a ban on all public processions in the London Metropolitan Police Area for a period of two months. The Court indicated that „A restriction of the freedom of peaceful assembly is necessary in a democratic society if the disadvantages which it brings about are outweighed by the security reasons which justified it and if there are no other less far reaching measures to avoid that risk. In this respect, examination of the circumstances in the case in point“. [accessed 2011-10-02] <<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=79411359&skin=hudoc-en&action=request>>

its scope in terms of territorial application and duration, can the ban be regarded as being necessary within the meaning of Article 11 (2) of the Convention”.

Article 11 may even apply when the assembly is illegal. In *Ezelin v. France*<sup>14</sup> it was held that the State's need to prevent disorder must not discourage people from making their beliefs known in a peaceful way. In that case the applicant was a lawyer, who attended a protest which then turned violent, and he was then reprimanded for breach of discretion by his professional body, and this sanction was held to be disproportionate and to amount to a chilling effect on his ability to peacefully protest. There is no interference with Article 11 if there is a requirement of prior notice and authorization for a march or a meeting, as long as the purpose behind such a requirement is not to frustrate the peaceful assembly. In case *Öllinger v. Austria*<sup>15</sup> the Court held, that “notwithstanding its autonomous role and particular sphere of application, Article 11 of the Convention must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of freedom of assembly and association enshrined in Article 11 [...]. In this connection it must be borne in mind that there is little scope under Article 10 Paragraph 2 for restrictions on political speech or on debate on questions of public interest. [...] The Court reiterates, that in regard with the restriction, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to

<sup>14</sup> *Ezelin v France* (26 April 1991). The Court indicated that “The protection of personal opinions, secured by Article 10 (art. 10), is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (art. 11)”. (Para. 37). [accessed 2011-10-02] <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=FRANCE&sessionid=79413319&skin=hudoc-en>>.

<sup>15</sup> *Öllinger v. Austria* (29 June 2006) The applicant, who is a member of parliament for the Green Party, notified the Salzburg Federal Police Authority that on All Saints' Day, 1 November 1998, from 9 a.m. until 1 p.m., he would be holding a meeting at the Salzburg municipal cemetery in front of the war memorial. The purpose of the meeting was to be to commemorate the Salzburg Jews killed by the SS during the Second World War. The applicant expected about six participants, who would carry commemorative messages in their hands and attached to their clothes. The applicant stated that no other means of expression (such as chanting or banners) which might offend piety or undermine public order would be used. The Salzburg Federal Police Authority, relying on section 6 of the Assembly Act and on Article 11 of the Convention, prohibited the meeting on the ground that it would endanger public order and security. The Court noted at the outset that the present case is one concerned with competing fundamental rights. The applicant's right to freedom of peaceful assembly and his right to freedom of expression have to be balanced against the association's right to protection against disruption of its assembly and the cemetery-goers' right to protection of their freedom to manifest their religion. The Court noted a number of factors which indicate that the prohibition in issue was disproportionate to the aim pursued. First and foremost, the assembly was in no way directed against the cemetery-goers' beliefs or the manifestation of them. Moreover, the applicant expected only a small number of participants. They envisaged peaceful and silent means of expressing their opinion, namely the carrying of commemorative messages, and had explicitly ruled out the use of chanting or banners. Thus, the intended assembly in itself could not have hurt the feelings of cemetery-goers. Moreover, while the authorities feared that, as in previous years, heated debates might arise, it was not alleged that any violent incidents had occurred on previous occasions. [accessed 2011-09-29]. <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=AUSTRIA&sessionid=79413366&skin=hudoc-en>>.

the legitimate aim pursued”. The Court also pointed, that ”On the one hand, the State is compelled to abstain from interfering with that right, which also extends to a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. [...] If every probability of tension and heated exchange between opposing groups during a demonstration was to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views. On the other hand, States may be required under Article 11 to take positive measures in order to protect a lawful demonstration against counter-demonstrations“ (also see *Plattform “Ärzte für das Leben”*, cited above, Para. 34).

Bearing in mind the right to peaceful assembly, protected by Article 11, it should be noted that Article 17 will also be relevant to peaceful assembly<sup>16</sup>. Protesters cannot rely upon their Article 11 rights in order to destroy the Convention rights of others. The Article 15 of the Convention also indicates situations when the state may derogate from strict requirements of the protection of the right to assembly<sup>17</sup>. States may not restrict the dissemination of opinions and indoctrinate its citizens by any means of one-sided information. Thus the freedom to hold opinions consists not only of the right of every individual to form, have and hold an opinion, but also to communicate one’s opinion to others in private and public context.

## **2. RESTRICTIONS OF THE RIGHT TO ASSEMBLY IN THE PRACTICE OF EUROPEAN COURT OF HUMAN RIGHTS**

The Paragraph 2 of the Article 11 foresees conditions and requirements, when the right to assembly may be restricted: “No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or 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 on the exercise of these rights by

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<sup>16</sup> Article 17 states:

„Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention”.

<sup>17</sup> Article 15 states:

“1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.”

members of the armed forces, of the police or of the administration of the state.” In order to take a decision under this requirement any court must apply the principle of proportionality and to decide whether the aim was proportional with the means used to achieve that aim. Bearing in mind that Article 11 of the Convention is directly linked to the rights foreseen in Article 10, the restrictions of this right (right of expression), foreseen in the Convention<sup>18</sup>, may be also considered for better understanding of the restrictions, which may be imposed by the state in respect of public safety, but may not exceed measures “necessary in democratic society”.

In this context Article 10 of the Convention protects the contents of an opinion as well as the form in which it is expressed, as can be seen in the case *Hashmann and Harrup v. United Kingdom*<sup>19</sup>, dealing with the applicants having been imposed a binding-over order as “hunt saboteurs” for having disrupted a fox hunt by blowing a hunting horn to protest against fox hunts in the UK (“The Court recalls that proceedings were brought against the applicants in respect of their behavior while protesting against fox hunting by disrupting the hunt. It is true that the protest took the form of impeding the activities of which they disapproved, but the Court considers nonetheless that it constituted an expression of opinion within the meaning of Article 10 [...]. The measures taken against the applicants were, therefore, an interference with their right to freedom of expression”). Sanctions against walking in front of a person who was armed with a gun, thus preventing him from firing at a grouse shoot or standing under the bucket of a mechanical digger to protest against the construction of a motorway are equally interferences with free expression, was decided by the Court in case *Steel and others v. United Kingdom*<sup>20</sup>. “The Court recalls that the first and second applicants were arrested while protesting against a grouse shoot and the extension of a motorway respectively [...]. It is true that these protests took the form of physically impeding the

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<sup>18</sup> Article 10, Paragraph 2: „The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

<sup>19</sup> *Hashmann and Harrup v. The United Kingdom*. (25 November 1999) [accessed 2011-09-29]. <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=79413366&skin=hudoc-en>>.

<sup>20</sup> *Steel and others v. The United Kingdom*. (23 September 1998). Approximately sixty protestors took part in a protest against a grouse shoot on Wheeldale Moor, Yorkshire. During the morning, the protestors attempted to obstruct and distract those taking part in the shoot. [accessed 2011-09-29]. <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=8&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=79414264&skin=hudoc-en>>.

activities of which the applicants disapproved, but the Court considers nonetheless that they constituted expressions of opinion within the meaning of Article 10 [...]. The measures taken against the applicants were, therefore, interferences with their right to freedom of expression”.

Restrictions „necessary in democratic society” imply the existence of a “pressing social need” to pursue the specific aim. In case *Observer and Guardian v. United Kingdom*<sup>21</sup> the Court held that “The adjective “necessary”, within the meaning of Article 10 Paragraph 2, implies the existence of a “pressing social need”. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts”. In case *Lombardo and others v. Malta*<sup>22</sup> the Court settled a test according which the pressing social need is evaluated: “The Court must weigh a number of factors in the balance when determining the existence of a pressing social need and reviewing the proportionality of the measure complained of. In examining the particular circumstances of the case, the Court will take the following elements into account: the position of the applicants, the position of the plaintiff in the defamation proceedings, the subject matter of the publication and the qualification of the contested statement by the domestic courts. The test of necessity requires the Court to determine whether the interference corresponded to a “pressing social need”, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient. In assessing

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<sup>21</sup> *Observer and Guardian v The United Kingdom*. (26 November 1991) The applicants in this case are (a) The Observer Ltd, the proprietors and publishers of the United Kingdom national Sunday newspaper Observer, Mr Donald Treford, its editor, and Mr David Leigh and Mr Paul Lashmar, two of its reporters; and (b) Guardian Newspapers Ltd, the proprietors and publishers of the United Kingdom national daily newspaper The Guardian, Mr Peter Preston, its editor, and Mr Richard Norton-Taylor, one of its reporters. They complain of interlocutory injunctions imposed by the English courts on the publication of details of the book Spycatcher and information obtained from its author, Mr Peter Wright. The Court in regard with the right to freedom of expression and freedom of peaceful assembly stated, that these principles are of particular importance as far as the press is concerned. Whilst it must not overstep the bounds set, inter alia, in the "interests of national security" or for “maintaining the authority of the judiciary”, it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog”. The adjective “necessary”, within the meaning of Article 10 para. 2, implies the existence of a “pressing social need”. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a “restriction” is reconcilable with freedom of expression as protected by Article 10. [accessed 2011-09-29].

<<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=79414264&skin=hudoc-en>>.

<sup>22</sup> *Lombardo and others v. Malta*. (24 April 2007). [accessed 2011-09-29]. <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=MALTA&sessionid=79414876&skin=hudoc-en>>.

whether such a need exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not however unlimited, but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10<sup>6</sup>.

The justifications for restricting both the right to peaceful assembly and freedom of expression are more extensive than in any of the other qualified rights. Those circumstances usually are:

- national security,
- territorial integrity,
- public safety,
- prevention of disorder or crime,
- protection of health or morals,
- protection of the reputation or rights of others.

Unique of all the Convention rights, Article 11 specifically imposes duties and responsibilities upon those seeking to rely on the right. This is in recognition of the powerful nature of the right and an acknowledgement that there can be no freedom of expression without responsibility. This list of possible grounds for restricting the right to assembly is exhaustive. Domestic authorities may not legitimately rely on any other ground that falls outside the list provided in Paragraph 2 of the Article 11. One of the most representative cases of the European Court of Human Rights is the case *Stankov and The United Macedonian Organization Ilinden v. Bulgaria*<sup>23</sup>. In this case the Court reiterated that the number of

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<sup>23</sup> *Stankov and The United Macedonian Organization Ilinden v. Bulgaria*. (2 October 2001) The United Macedonian Organisation Ilinden is an association based in south-western Bulgaria (in an area known as the Pirin region or the geographic region of Pirin Macedonia). Mr Boris Stankov is a Bulgarian citizen, at the relevant time he was the chairman of a branch of the applicant association. The main activity of the applicant association was the organization of celebrations to commemorate historical events of importance for Macedonians in Bulgaria. Over an unspecified period it published a newspaper. In 1990 Ilinden applied for, but was refused, registration. National courts found that the applicant association's aims were directed against the unity of the nation, that it advocated national and ethnic hatred, and that it was dangerous for the territorial integrity of Bulgaria. During a few years (from 1990 till 1997), the supporters of the Ilinden organization, held a few unsanctioned meetings and had some conflicts with local police. The applicants submitted that the ban on meetings organized by them in commemoration of certain historical events, and the attitude of the authorities at the relevant time were aimed at suppressing the free expression of ideas at peaceful gatherings. As such they amounted to an interference with their rights under Article 11 of the Convention, seen against this background as *lex specialis* in relation to Article 10 of the Convention. They contended that the interference had not been "prescribed by law" as the lack of registration of their association, which had been relied upon by the mayors, was not among the grounds justifying a prohibition of demonstrations. Furthermore, they rejected as groundless the Government's assertion that the gatherings organized by them had posed a threat. They had been entirely peaceful: their purpose had been to commemorate historical events considered as an important part of the history

exceptions to freedom of expression and assembly, contained in Articles 10 and 11 (the protection of national security and territorial integrity, the protection of the rights and freedoms of others, guaranteeing public order in the local community and the prevention of disorder and crime), is exhaustive. The definitions of those exceptions are necessarily restrictive and must be interpreted narrowly.

The Court stressed, that freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. Restrictions of this right may be only as prescribed by the Convention, and the expression “necessary in a democratic society” implies that the interference corresponds to a “pressing social need” and, in particular, that it is proportionate to the legitimate aim pursued. One of the principal characteristics of democracy is the possibility it offers of resolving a country’s problems through dialogue, without recourse to violence, even when those problems are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a group solely because it seeks to debate in public the situation of part of the State’s population and to find, according to democratic rules, solutions capable of satisfying everyone concerned (also see *United Communist Party of Turkey and Others v. Turkey*<sup>24</sup>, Para.27, 57). The inhabitants of a region in a country are entitled to form associations in order to promote the region’s special characteristics. The fact that an association asserts a minority consciousness cannot in itself justify an interference with its rights under Article 11 of the Convention. An essential factor to be taken into consideration is the question whether there has been a call for the use of violence, an uprising or any other form of rejection of democratic. Where there has been incitement to violence against an individual or a public official or a sector of the population, the State authorities enjoy a wider margin of appreciation when examining the need for an interference with freedom of expression.

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of the Macedonian people. The gatherings, which normally lasted about three hours, had always commenced with texts being read out, and had proceeded with poems, music and songs. The Government doubted the applicants’ intention to hold “peaceful” demonstrations, there allegedly being evidence that some of the organization’s members had been armed. It was further emphasised that members of the applicant association had never been prevented from visiting the historical sites in question provided that they did not carry posters or other material containing threats against the unity of the nation, the country’s territorial integrity or the rights of others. The applicants’ freedom of assembly was thus intact. [accessed 2011-10-02] <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=8&portal=hbkm&action=html&highlight=BULGARIA&sessionid=79414974&skin=hudoc-en>>.

<sup>24</sup> *United Communist Party of Turkey and Others v. Turkey* (30 January 1998) [accessed 2011-10-02] <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=5&portal=hbkm&action=html&highlight=TURKEY&sessionid=79441098&skin=hudoc-en>>.

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Hence, when can restrictions on right to assembly be made? Summarizing the practice of the European Convention of Human rights, it could be stated, that this is the standard test to justify or make lawful any interference with the right to respect for freedom of assembly. In relation to all but political expression the Court has accepted that there is a wide margin of appreciation. Any restriction on civil and political rights must be prescribed by law. Any restriction on expression must have a basis in domestic law, which may include applicable rules of international law, statute and common law. The law must also be adequately accessible, although highly complex and technical laws in relation to broadcasting across frontiers can require the help of advisers in order for them to be explained. The restriction must be justified by one of the aims recognized under the European Convention. The restriction must be shown to be “necessary in a democratic society”. Any qualification to rights cannot be applied in a discriminatory fashion. The Court examines and decides in each particular case whether interference exists, looking at the restrictive impact on the exercise of the right to assembly of the specific measure adopted by the national authorities. Basically, the Court established a legal standard that any borderline case, the freedom of the individual must be favorably balanced against State’s claim of overriding interest<sup>25</sup>. States interference may be seen as any form of interference coming from any authorities exercising public power or duties, or being in the public services.

There also are some actions that may be taken by police officers when they perform their supervision and inspection of the peaceful assembly. The police do not have a general power to stop and search members of the public. All their powers to stop and search derive from various statutes. So when they stop and search a protester they must always specify on what grounds they are conducting the search<sup>26</sup>. A breach of the peace is not in itself a criminal offence, but a police officer or any other person have a power of arrest where there are reasonable grounds for believing a breach of the peace is taking place or is imminent. For a breach of the peace to occur, there must be an act done or threatened which harms a person, or his property in his presence, or which puts a person in fear of such harm. Something which merely distresses or offends someone will not normally amount to a breach of the peace. Anyway, in the dispersal of unlawful but non-violent assemblies the police officers are to

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<sup>25</sup> Rzeplinski A. *Restrictions to the expression of opinions or disclosure of information on domestic or foreign policy of the state*. Budapest, 1997.

<sup>26</sup> *Your Rights. The Libert Guide to Human Rights* [accessed 2011-09-29].

<http://www.yourrights.org.uk/yourrights/the-right-of-peaceful-protest/other-police-powers-to-restrict-right-to-protest.html>.

avoid the use of force or, where this is not practicable, they are to restrict the use of force to the minimum<sup>27</sup>. In the dispersal of violent assemblies law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. However it must be recognized that violent assemblies differ in the numbers of people involved, in the degree of violence manifested, sometimes it is not possible to distinguish between those who do pose the threat and those who do not, so it could be argued that the only way to reduce the threat is to disperse assembly, and that the only way to disperse the assembly is to use firearms. Obviously there are a lot of disputed issues in such practice, therefore it is of a great importance to be profoundly aware of the content and the scope of the right to assembly as for the law enforcement officials, as well as for other public-active persons.

## CONCLUSIONS

The democratic political process and the development of the consciousness of the society are not possible without a right to assembly, which is essential in modern societies. Freedom of assembly is an essential right in itself as well as a component of other rights protected by the Convention, such as the freedom of expression. For Article 11 to apply the crucial feature in relation to an assembly or protest is that it is peaceful. Article 11 may even apply when the assembly is illegal. In numerous cases of the European Court of Human Rights it was held that the State's need to prevent disorder must not discourage people from making their beliefs known in a peaceful way.

Unique of all the Convention rights, Article 11 specifically imposes duties and responsibilities upon those seeking to rely on the right. This is in recognition of the powerful nature of the right and an acknowledgement that there can be no freedom of expression without responsibility. Therefore there is no interference with Article 11 if there is a requirement of prior notice and authorization for a march or a meeting, as long as the purpose behind such a requirement is not to frustrate the peaceful assembly.

States are compelled to justify any interference in this right. Domestic authorities may not legitimately rely on any other ground that falls outside the list provided in Paragraph 2 of the Article 11. The test of “necessity in a democratic society” requires always to determine whether the interference complained of corresponded to a “pressing social need”. The States

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<sup>27</sup> Crawshaw R., Cullen S., Williamson T. *Human Rights and Policing*. Boston, 2007, p. 150.

have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision. In particular, it always must be considered whether the measure taken was “proportionate to the legitimate aims pursued”. States are compelled to abstain from interfering with that right, which also extends to a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. If every probability of tension and heated exchange between opposing groups during a demonstration was to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views. On the other hand, States may be required under Article 11 to take positive measures in order to protect a lawful demonstration against counter-demonstrations.

The conclusion can be made that interference should be always looked at in the light of the case as a whole, including the content of the remarks and the context in which they were made. According to Article 11 Paragraph 2 of the Convention, an interference may be justified if it is prescribed by law, pursues one of more of the legitimate aims referred to in Paragraph 2 and is “necessary in a democratic society” for achieving such an aim or aims. In many cases it is the “necessity in a democratic society” test which is not met. There should be a “pressing social need” to restrict the freedom of assembly and any restriction should be “proportionate to the legitimate aim pursued”. The reasons adduced by the authorities to justify it must be “relevant and sufficient”.

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## SUSIRINKIMŲ LAISVĖ VISUOMENĖS SAUGUMO KONTEKSTE: EUROPINIS POŽIŪRIS

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### Santrauka

Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencija, pasirašyta 1950 m., tapo itin svarbiu žmogaus teisių apsaugos mechanizmu visose Europos Tarybos šalyse narėse. Europos žmogaus teisių konvencijos (toliau –Konvencija) 11 straipsnis įtvirtina, kad „Kiekvienas turi teisę į taikių susirinkimų laisvę, taip pat laisvę jungtis į asociacijas kartu su kitais, įskaitant teisę steigti profesines sąjungas ir stoti į jas, kad būtų ginami savi interesai“. Straipsnyje taip pat numatyti ir apribojimai, kurie gali būti taikomi valstybės įgaliotų institucijų ar pareigūnų: „Naudojimuisi šiomis teisėmis netaikomi jokie apribojimai, išskyrus tuos, kuriuos nustato įstatymas ir kurie yra būtini demokratinėje visuomenėje dėl valstybės saugumo ar visuomenės apsaugos, siekiant užkirsti kelią viešosios tvarkos pažeidimams ar nusikaltimams, apsaugoti žmonių sveikatą ar moralę arba kitų asmenų teises ir laisves. Šis straipsnis nekliaudžia įvesti teisėtų naudojimosi šiomis teisėmis apribojimų asmenims, tarnaujantiems ginkluotosiose pajėgose, policijoje ar valstybės tarnyboje“. Be abejo, susirinkimų laisvė tiesiogiai susijusi su teise laisvai reikšti nuomonę viešai ir susirinkimuose, Konvencijos 10 straipsnis numato, kad kiekvienas turi teisę laisvai reikšti savo mintis ir įsitikinimus, nepaisant valstybės sienų ir netrukdamas valstybės pareigūnams. Neginčytina, kad tarp nuomonės reiškimo laisvės bei susirinkimų laisvės pagal Konvencijos 11 straipsnį yra neatskiriamas ryšys, todėl yra prasminga, nagrinėjant teisės į taikius susirinkimus apribojimus, remtis ir Europos žmogaus teisių teismo praktika saviraiškos teisės ribojimo atžvilgiu.

Šio straipsnio tikslas – išanalizuoti teisės į susirinkimus praktinio taikymo aspektus bei visuomenės saugumo nulemtus ribojimus, atskleisti šios teisės turinį bei apribojimų analizę Europos žmogaus teisių teismo praktikoje, ypatingą dėmesį skiriant sąvokos “apribojimų, būtinų demokratinėje visuomenėje”, aiškinimui. Nepaisant to, kad ši teisė laikomas viena iš svarbiausių demokratinės visuomenės pagrindų, ji nėra absoliuti. Valstybė Konvencijos dalyvė turi teisę apriboti šią laisvę, tačiau gali tai daryti tik laikydamasi pačioje Konvencijoje nustatytų sąlygų. Jei valstybė, apribodama susirinkimų laisvę, nesilaiko minėto straipsnio 2 dalyje numatytų sąlygų ir reikalavimų, tokie valstybės veiksmai gali būti kvalifikuojami kaip Konvencijos pažeidimas. Teisėtų apribojimų atvejai turi būti numatyti įstatyme ir galimi tik tada, kai jie yra būtini demokratinėje visuomenėje.

**Reikšminiai žodžiai:** saviraiškos laisvė, žodžio laisvė, teisių suvaržymai modernioje visuomenėje, visuomenės saugumas.

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