

AMNESTY INTERNATIONAL PUBLIC STATEMENT

9 July 2020 EUR 25/2706/2020

GREECE: AMNESTY INTERNATIONAL STATEMENT ON BILL OF THE MINISTRY OF CITIZEN PROTECTION: ‘PUBLIC OUTDOOR ASSEMBLIES AND OTHER PROVISIONS’

On 29 June 2020, the Greek Minister of Citizen Protection tabled before Parliament a bill that would regulate public assemblies.¹ The bill has sparked a heated debate in the Parliament since it was presented, including for the several regulations that would unduly restrict the right to freedom of peaceful assembly.

Amnesty International has analyzed the proposed bill, and raises its serious concerns over several provisions that, if adopted, would constitute an unjustified interference with the right to freedom of peaceful assembly as it is guaranteed in international and regional treaties that Greece is part of, including the International Covenant on Civil and Political Rights (ICCPR) and the European Convention of Human Rights (ECHR). While this statement is not a comprehensive analysis of all provisions of concern, Amnesty International expresses its particular concern over provisions that relate to restrictions on the right to freedom of assembly including notification requirements that result to the dispersal of an assembly, the prohibition of simultaneous assemblies and the regulation of spontaneous assemblies. The organization also expresses its concern over the chilling effect of a provision establishing liability for the organizers of an assembly.

1. RESTRICTIONS ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

While international human rights law allows the exercise of the right to freedom of peaceful assembly to be subject to certain restrictions, any such restrictions are only permissible if they are provided by law, for the purpose of protecting certain limited public interests, and only when these are demonstrably necessary and proportionate to that purpose.

Restrictions on the right to peaceful assembly must be provided by law and formulated with sufficient clarity to enable people to regulate their conduct accordingly. Furthermore, restrictions must be necessary and proportionate, meaning that there must be a pressing social need, in order to protect a legitimate concern (national security or public safety, public order, the protection of public health or morals, and the protection of the rights of others). States have very narrow margins for justifying restrictions to this right, and therefore restrictions must be construed narrowly so that the rights are practical and effective, and do not become only theoretical or illusory. Any restrictions imposed which do not meet all elements of this “three-part test” constitute violations of the right.

Many assemblies, by their nature, involve a certain level of disruption to ordinary life or the rights of others, including disruption of traffic. Authorities must ensure that responses to such disruption are necessary and proportionate and do not lead to restrictions that put in jeopardy the right to freedom of peaceful assembly itself. Even neutral laws, for example those barring obstruction of traffic or commerce, may result in unlawful restrictions if applied without exception to peaceful assemblies such that the exercise of the right is treated as a criminal offence. Neither a hypothetical risk of public disorder nor the presence of a hostile audience are legitimate grounds for prohibiting a peaceful assembly.

The principles of necessity and proportionality require consideration of all relevant circumstances such as the nature, aims and location of the assembly, the impact on the legitimate concern protected and whether less restrictive means would suffice. The principle of proportionality requires that the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference. Reasonable alternatives should be offered if any restrictions are imposed on the time, place or manner of an assembly. As a general rule, assemblies should be facilitated within “sight and sound” of their target audience.

However, the bill contains several restrictions on assemblies and demonstrations that are not in accordance with international human rights law and fail to incorporate the principles of necessity and proportionality.

¹ See <https://www.hellenicparliament.gr/UserFiles/c8827c35-4399-4fbb-8ea6-aebdc768f4f7/11311408.pdf> .

1.1. NOTIFICATION REQUIREMENTS

Laws regulating the conduct of assemblies and demonstrations must ensure that they do not impose an authorization requirement before an assembly can take place. Nevertheless, Article 9 para 1(d) of the bill grants wide discretion to the competent authorities to dissolve assemblies where a notification was not made.² Also, under Article 3 (3), the competent police or coastguard authority has the discretion to proceed with the dissolution of a spontaneous assembly (see below) if participants do not adhere with the restrictions imposed on them, such as assembling in a specific part of the road and in case where they cannot conform with the obligation to appoint an organizer.

The difference between advance notifications and authorisations has been elucidated by different international human rights mechanisms. The UN Human Rights Committee is clear that advance notice requirements are only legitimate to the extent that they allow states to plan to adequately facilitate assemblies, and should serve no other purpose (such as of advance authorisation).³

Failure to notify the authorities of the intention to assemble must not be used as a purported justification for dispersal. The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has, for example, stressed that states should not impose prior-authorisation requirements for the exercise of fundamental freedoms.⁴ Similarly, the OSCE Guidelines on Freedom of Peaceful Assembly state that assembly is a fundamental right, and it should “be enjoyed without regulation insofar as is possible” and “those wishing to assemble should not be required to obtain permission to do so”.⁵

1.2 REGULATION OF SPONTANEOUS ASSEMBLIES

Laws regulating the exercise of the right to peaceful assembly must ensure that, when specifying the notification requirements, these do not put at risk the possibility of spontaneous assemblies. Spontaneous assemblies are generally regarded as those organized in response to some occurrence, incident, other assembly or speech, where the organizer – if there is one – is unable to meet the legal deadline for prior notification, or where there is no organizer at all.⁶

Numerous regional and international bodies have addressed spontaneous assemblies and require states to equally protect the right to freedom of assembly when these occur. The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has stipulated as best practice that states adopt legislation actively allowing for the “holding of spontaneous assemblies, which should be exempted from prior notification”.⁷ The OSCE similarly recommends that advance notification laws “should explicitly provide for an exception from the requirement where giving advance notice is impracticable” and that “authorities should always protect and facilitate any spontaneous assembly so long as it is peaceful in nature”.⁸

Amnesty International is concerned that, while Article 3 (3) of the Bill allows for spontaneous public outdoor assemblies that have not been notified to the authorities, it also sets broad requirements that are open to arbitrary interpretation by the competent authorities and can limit excessively the right to freedom of peaceful assembly. In particular, spontaneous assemblies should be allowed to continue if there are no pressing needs that would justify its dispersal or any other restriction.

1.3. SIMULTANEOUS ASSEMBLIES AND COUNTERDEMONSTRATIONS

The bill also imposes undue restrictions on simultaneous assemblies and counterdemonstrations. Article 7 (1) (c) provides that public outdoor counterdemonstrations can be prohibited if another demonstration with an opposing aim

² In an amendment introduced in the final draft of the bill, the dispersal of an assembly requires the agreement of a prosecutor. In urgent cases of disturbance of public order where the police or coastguard decides the dispersal of the assembly and a prosecutor is not present, the bill requires his/her immediate notification. In cases of dispersal of spontaneous assemblies, the bill requires the immediate notification of the prosecutor (Articles 10 (3) and 3(3) of the Bill). See https://www.hellenicparliament.gr/UserFiles/7b24652e-78eb-4807-9d68-e9a5d4576eff/%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7_%CE%9D%CE%A3_%CE%A3%CF%85%CE%BD%CE%B1%CE%B8%CF%81%CE%BF%CE%AF%CF%83%CE%B5%CE%B9%CF%82_6-7-2020_1.pdf

³ *Kivenmaa v. Finland*, Human Rights Committee (1994) UN Doc. CCPR/C/50/D/412/1990, para 9.2.

⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, (2012), para. 28.

⁵ OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2010, para. 30.

⁶ OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2010, para. 126.

⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, (2012), paras. 29, 91.

⁸ OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2010, para. 5.7.

takes place in the same or nearby area and at the same time.⁹ Prohibiting an assembly is the strictest restriction, and should only be the last resort when all other alternatives have failed.

Under international human rights law and standards, the duty to facilitate assemblies applies equally to simultaneous assemblies and to counterdemonstrations.¹⁰ Police must, so far as is possible, seek to accommodate simultaneous assemblies. Where this is not possible due to the size of the expected assemblies and the available space, a reasonable solution should be sought that allows both assemblies to achieve their respective objectives to the greatest extent possible. The proposed solution sought by the authorities should not afford preferential treatment on the basis of the purpose or content of the respective assemblies.

Counterdemonstrations should be allowed within sight and sound of the initial assembly.¹¹ However, counterdemonstration should not seek to impede participants from the initial assembly from fully enjoying their right to freedom of peaceful assembly. Accordingly, it is the police's duty to protect the main assembly from any unlawful interference by counterdemonstrators,¹² including from violent acts or acts that seek to impede the holding of the initial assembly. Violent intentions among counterdemonstrators should not be used as a justification to prohibit or disperse the initial assembly.¹³

Further, under Article 7(2) of the bill the competent authorities have a discretion, but not an obligation, to suggest alternative areas where the assembly can take place.¹⁴ While it has been reported that an amendment of the provision has been introduced to turn the discretion of competent authorities into an obligation (albeit limited), it is essential that the bill clarifies that counterdemonstrations can take place within sight and sound of the initial demonstration, while protecting both assemblies from violence or other unlawful interference.

2. LIABILITY OF ORGANIZERS

Amnesty International is concerned that organizers of an assembly can be held liable for the actions of individual participants in an assembly, and not only prosecuted where there is sufficient evidence that they themselves committed a recognizable criminal act. Article 13 (2) of the bill provides that the assembly organizer is responsible for the compensation of those who have suffered harm to their life, physical integrity and property by the participants. While organisers can be absolved from such responsibility if they have notified promptly about the assembly taking place and prove that they have adhered to all regulations, such as cooperation with the competent authorities and appointment of individuals that can provide support in the guarding of the assembly, the provision still remains vague and discretionary, and it can be left open to abuse. Moreover, it appears that organizers of spontaneous assemblies, when there is one, would not be absolved from being held liable to compensate for offences committed by participants as they may not be able to fulfil the requirement of prompt notification.

The European Court of Human Rights has found that penalties imposed on an organiser are unlawful when the state is unable to prove an individual's responsibility for the crimes they are accused of. In this regard, the Court held that sanctions against organisers cannot be imposed "so long as the person concerned does not himself commit any reprehensible act on such an occasion".¹⁵ Also as noted by the OSCE: "Organizers of assemblies should not be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so. The organizers should not be liable for the actions of individual participants or for the actions of non-participants or agents provocateurs..."¹⁶

⁹ In an amendment introduced in the final draft of the bill, Article 10 (1) requires the full agreement of a judge when the competent authorities decide the prohibition of an assembly. The agreement is considered tacit if the judge does not send it to the authorities - at the latest - 24 hours before an assembly starts see https://www.hellenicparliament.gr/UserFiles/7b24652e-78eb-4807-9d68-e9a5d4576eff/%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7_%CE%9D%CE%A3_%CE%A3%CF%85%CE%BD%CE%B1%CE%B8%CF%81%CE%BF%CE%AF%CF%83%CE%B5%CE%B9%CF%82_6-7-2020_1.pdf

¹⁰ Report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/35/28/Add.1, para. 69.

¹¹ Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 14.

¹² Plattform "Ärzte für das Leben" (Doctors for the Right to Life) v. Austria, (10126/82) European Court of Human Rights Chamber (1988), para. 32.

¹³ Christian Democratic Party v. Moldova (No. 2), (25196/04) European Court of Human Rights Fourth Section, (2010), para. 23.

¹⁴ Article 7 (3) of the Bill.

¹⁵ *Ezelin v. France* (11800/85), European Court of Human Rights (1991), para. 53.

¹⁶ OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2010, para. 4.2.

While the organization notes as a positive step, the removal of provisions imposing criminal sanctions to participants failing to comply with restrictions or participating in a prohibited assembly¹⁷, it remains seriously concerned of the chilling and deterrence effect that the provision on the organizers' liability might have upon the right to freedom of peaceful assembly.

Amnesty International is concerned that the very short time-frames provided for the voting of the bill did not ensure a broad process of deliberation in consultation with human rights defenders and civil society organizations. The organization strongly urges the Members of the Parliament to ensure that all the bill's provisions are brought in line with Greece's obligations under international human rights law so that they guarantee the widest protection of the right to freedom of peaceful assembly.

¹⁷ Article 13 (1) and (3) of the initial draft of the Bill.