
Transposition of Requirements of the Right to Assemble in the Legislation of Administrative Law in the Slovak Republic¹

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Abstract: Author of the study analyzes the transposition of requirements of the right to assemble in the legislation of administrative law in the Slovak Republic. He considers within his analysis the conditions set by the Convention for Protection of Human Rights and Fundamental Freedoms, by the Charter of Fundamental Rights and Freedoms, and by the Constitution of the Slovak Republic. In following paper he mostly builds on the arguments and on the doctrine presented by the European Court of Human Rights, Supreme Administrative Court of the Czech Republic, and the Constitutional Court of the Slovak Republic.

Key Words: Administrative Law; Assembly; Freedom; Right to Assemble; Transposition of Requirements; Municipality; Prohibition; Case Law; the Slovak Republic.

Introductory remarks

The current jurisprudence and the case law of administrative justice in the Slovak Republic emphasize the importance of the right to assemble. The legal framework of this right in the Slovak Republic can be found in the Article 28 of the Constitution of the Slovak Republic and in the Article 19 of the Charter of Fundamental Rights and Basic Freedoms. The Slovak Republic is also a member of the Council of Europe. Therefore, it also has to transpose the obligations arising from the Article 11 of the Convention on Protection of Human Rights and Fundamental Freedoms. The Act No. 84/1990 Coll. on the Right to Assemble (hereinafter as "the Act No. 84/1990 Coll.") transposes the requirements expressed in the acts of the constitutional and international laws mentioned above. The

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case law therefore stresses the need for the interpretation of this act in the light of the provisions of the above-mentioned documents. In general, the right to assemble does not require an authorization. Its performance is not conditional upon any prior permission issued by administrative authority. The holder of the right is therefore only obligated to notify the authority of the upcoming enjoyment of this right. It is a right that everyone has and which may be restricted only in exceptional cases. The content of the above-mentioned provisions is a fundamental rule of interpretation for the application of the provisions governing restrictions on the right of assembly under the Act No. 84/1990 Coll. The modern democracy represents the rule of the majority, with respect for minority rights. It must be prepared to the confrontation with minority views. The right to assemble also serves this presentation of opinions and ideas. Any restrictions on the right of assembly must be assessed with the utmost care and they must not effectively lead to a gradual fragmentation of the institute of assembly and the gradual displacement of uncomfortable minority views or opinions of public space and public debate. Such a caution is according to the case law always a good idea, not only in taking legal matter, but also in every situation in which public authorities examine the application of the legislation on the right to assemble.²

Under the Article 28 of the Constitution of the Slovak Republic "*The right to peaceful assemble is guaranteed. Conditions for exercising this right shall be laid down by law in the event of assemblies in public places, if such a measure is necessary in a democratic society to protect the rights and freedoms of others, public order, health and morals, property, or the security of the state. An assembly may not be made conditional on the issuance of an authorization by a state administration body.*". This provision of the Constitution of the Slovak Republic transposed the content of the Article 19 of the Charter of Fundamental Rights and Basic Freedoms under which "*The right of peaceful assembly is guaranteed. This right may be limited by law in the case of assemblies held in public places, if it concerns measures necessary in a democratic society for the protection of the rights and freedoms of others, public order, health, morals, property, or the security of the state. However, an assembly shall not be made to depend on the grant of permission by a public administrative authority.*". As for the membership of the Slovak Republic in the Council of Europe, the content of obligation connected with the right to assemble is expressed in the Ar-

² See *Decision of the Supreme Administrative Court of the Czech Republic Ref. No. 8 As 7/2008 [2009-08-31]*.

ticle 11 of the Convention on Protection of Human Rights and Fundamental Freedoms (hereinafter as "The Convention") under which "*Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 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.*". However, the performance of the right to assemble is also ruled by the Article 21 of the International Covenant on Civil and Political Rights under which "*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 (ordre public), the protection of public health or morals, or the protection of the rights and freedoms of others.*" Last but not least, the aforementioned right also reflects the Article 12 of the Charter of Fundamental Rights of the European Union pursuant to which "*Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union, and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests. Political parties at Union level contribute to expressing the political will of the citizens of the Union.*".

The case law of the European Court of Human Rights

The major impact in shaping the content of the right to assemble had in particular the case law of the European Court of Human Rights which studied the mentioned right primarily in terms of the application of the principle of proportionality and adequacy of public interventions to this right. Therefore, the European Court of Human Rights on several occasions considered the use of the proportionality test in cases related to the right to assemble peacefully. The right of peaceful assembly is a fundamental right in a democratic society as well as the freedom of expression is one of the cornerstones of such a society. The Convention and Strasbourg jurisprudence guarantee the right of peaceful assembly to everyone who intends to convene or to participate in a peaceful assembly or in

a peaceful demonstration.³ The radical measures to suppress freedom of assembly and freedom of expression – because the national authorities do not like some of the expressions – prove under the case law the disservice to democracy and often threaten it. However, this does not apply in cases of incitement to violence and hatred, rejection of democratic principles, including equality of all people with dignity. The case law interprets the right to assemble in the light of Article 10 of the Convention.⁴ On the one hand, the European Court of Human Rights underlines its autonomous status and the jurisdiction absence to interfere with the content of the laws of Member States of the Council of Europe, but, on the other hand, it stresses that freedom of expression constitutes one of the most important bases of a democratic society and one of the conditions of its development and the development of each individual. The restriction of these rights may therefore lie in the cases provided for in the Article 10 (2) of the Convention.⁵ The freedom of assembly guarantees the events that may concern or cause offense to people who do not agree with the ideas, respectively requirements presented at the meeting. However, this does not necessarily constitute a reason for restricting the right of assembly.⁶ Strasbourg jurisprudence does not exclude that the program of a particular organization may hide aims and intentions different from those publicly proclaimed. The case law therefore stresses the need for verification of these facts with the help of the program or ideology of the organization with its actions.⁷ The factor of assessing

³ See *Case of Ezelin v. France* [1991-04-26]. Judgement of the European Court of Human Rights, 1991, Application No. 11800/85.

⁴ Under the Article 10 of the *Convention on Protection of Human Rights and Fundamental Freedoms* "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises. 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".

⁵ See *Case of Handyside v. the United Kingdom* [1976-12-07]. Judgement of the European Court of Human Rights, 1976, Application No. 5493/72.

⁶ See *Case of Plattform "Ärzte für das Leben" v. Austria* [1988-06-21]. Judgement of the European Court of Human Rights, 1988, Application No. 10126/82.

⁷ See *Case of United Communist Party of Turkey and Others v. Turkey* [1998-01-30]. Judgement of the European Court of Human Rights, 1998, Application No. 19392/92.

whether a program of the organization or the convener of the assembly have the characteristics prohibited by the legislation lies in the fact whether the person convening the meeting and the participants made a call for violence, rebellion, rejection of democratic values, the denial of basic human rights and freedoms, and the like.⁸ In cases where the assembly causes a situation inciting violence, hatred, and denial of democratic values protected by the rule of law, public authorities enjoy a greater degree of discretion. This is confirmed by the European Court of Human Rights in its case law.⁹ Strasbourg jurisprudence presents the view that proper application of Article 11 of the Convention contradicts the radical measures of a preventive nature. The use of measures causing interference with the right of assembly must therefore be at least supported by various clues pointing in particular to the fact that the organized meeting could contravene, respectively, the participants could abuse the meeting on activities that legislation prohibits. This fact points on those clues which justify the restriction of the right to assemble in a democratic society and rule of law. Therefore, the persons carrying out these activities and thus mainly promoting the ideas of discrimination based on racial, ethnic, or other reasons cannot successfully claim protection under Article 11 of the Convention as such protection would interfere with the content of the Article 17 of the Convention, under which "*Nothing in this Convention may be interpreted as implying for any State, group, or person any right to engage in any activity or to 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.*".¹⁰

The nature of the right to assemble and the admissibility of interferences to this right

The Constitutional Court of the Slovak Republic also argues with proportionality of the interference with the right to assemble. Therefore, the case law of this Court is based on the fact of the admissibility of interference with this right, but then it also examines its appropriateness. It is recognized that the right to assemble under Article 28 of the Constitution

⁸ See *Case of Freedom and Democracy Party (ÖZDEP) v. Turkey* [1999-12-08]. Judgement of the European Court of Human Rights, 1999, Application No. 23885/94.

⁹ See *Case of Incal v. Turkey* [1998-06-09]. Judgement of the European Court of Human Rights, 1998, Application No. 22678/93.

¹⁰ See *Case of Glimmerveen and Hagenbeek v. the Netherlands* [1979-10-11]. Judgement of the European Court of Human Rights, 1979, Application No. 8348/78 and No. 8406/78.

of the Slovak Republic, respectively, according to Article 11 of the Convention is not an absolute right. The case law allows restrictions in a constitutionally consistent manner. It is possible to justify the interference or restriction of the fundamental right of peaceful assembly only if the restriction was prescribed by law, if it corresponds to certain legitimate aim, and if it is necessary in a democratic society to achieve the objective pursued. That means such a restriction is justified by the existence of a pressing social need and adequate (fair) balance between the means used and the aim sought (i.e. restriction is in accordance with the principle of proportionality). Freedom of assembly and the right to express opinions through it is one of the primary values of a democratic society. From the Constitution of the Slovak Republic results (as a further aspect of the definition of this basic right) the prohibition to condition the assembly of an "authorization" issued by a public authority.¹¹ Admissibility of interference with the right to assemble depends on the purpose of the meeting and by assessing whether the assembly calls or heads to direct or indirect threat to the relatively specifically defined rights (such as personal rights, political rights, or other rights) of relatively specifically defined individuals or social groups. The legislature therefore allowed the public authorities to intervene in this right, if the enforced assembly purpose leads to such an anticipated effect. When considering the admissibility of interference with this right, the case law is based on the principle of rational legislator under which the legislation is based on the expected standard status. This is in the optics of public interventions in the right of assembly the compliance of proclaimed purpose of notified meeting with its real purpose. In other words, when adopting the legislation on the right to assemble the legislature does not lead the public authorities within the process of assessing the interventions to the right of assembly to assume that the reported and actual purposes of meeting do not match. However, the case law in its points of view goes even further. The impact of the principle of rational legislator is reflected in the fact that if the notification and the actual purpose of the assembly do not match, the legislation does not direct the public authorities automatically to the result that the actual purpose of the assembly bases reason for its ban or that it leads to the violation of other constitutionally guaranteed rights. If the person convening the assembly in its notification pretends a certain reason or purpose of the assembly, this fact does not automatically mean

¹¹ See *Finding of the Constitutional Court of the Slovak Republic Ref. No. I. ÚS 193/03 [2004-03-30]*.

that the real reason of the meeting is contravening the requirements of the legislation. Therefore, the simulation of the real purpose of the assembly by its notification does not automatically base a reason for a decision on its prohibition issued by public authorities.¹²

Substantive reasons for the dissolution of the assembly

Under the Article 10 (1) of the Act No. 84/1990 Coll. "*The municipality to which the assembly was announced, prohibits it if notified purpose of the assembly is facing a challenge [...] a) denial or restriction of personal, political, or other rights of citizens because of their nationality, gender, race, origin, political or other opinion, religion and social status, or challenge to incitement to hatred and intolerance for these reasons; [...] b) of committing violence or gross indecency; [...] c) to violate otherwise the Constitution, constitutional acts, laws, and international treaties to which the Slovak Republic is bound and which take precedence over the laws of the Slovak Republic.*". Under the Article 12 (5) of the Act No. 84/1990 Coll. "*The assembly which has been notified and is not prohibited, may be dissolved by the manner set out in paragraph 1, if it significantly deviated from the announced purpose in such a manner that during the assembly circumstances that would justify its ban pursuant to Article 10 (1) occurred.*". In relation to the contents of this provision of the Act No. 84/1990 Coll. asks the case law the question under what conditions disposes the public authority the reason for the ban or dissolution of the assembly? In order to answer that question, the case law focused on the concept of "*challenge*". This concept is interpreted as an expression that encourages certain behaviours. In the case of these provisions of the Act No. 84/1990 Coll. the given expression must encourage to the denial or restriction of the rights of persons on the basis of differentiation according to their personal characteristics. The slogan calling itself does not have to necessarily bear characteristics of such challenges. The administrative justice therefore examines the acts or conducts of the assembly as a whole. It does not consider the act of convening a slogan for legally significant if its content does not encourage anyone to the factual action. However, it assesses differently the situation if such conduct is supported by related expressions consisting, for example, of wearing criminally punishable symbols on clothing of the participants gathered. Therefore, convening a slogan can meet the criteria of conduct prohibited by the Act No. 84/1990 Coll. if it is followed

¹² See *Decision of the Supreme Administrative Court of the Czech Republic Ref. No. 8 As 7/2008 [2009-08-31]*.

by behaviour and expressions of the participants gathered on their clothing in the form of symbols supporting and promoting groups suppressing fundamental rights and freedoms.¹³ Therefore, the case law considers the mentioned conduct as a ground for dissolution of the assembly. To assess the situation whether the municipality may prohibit the meeting pursuant to § 10 (1) of the Act No. 84/1990 Coll. is important, whether the meeting organizer represents an ideology or whether he is a member of a group that proclaims ideas and takes the attitude apparent irreconcilable with preservation of the rights and freedoms of all people, particularly of the right to existence and equal status of ethnic and racial minorities guaranteed by the Constitution of the Slovak Republic, respectively, by the Charter of Fundamental Rights and Freedoms.¹⁴ For example, the decisive factor is the fact that the organizer of the meeting is an entity that represents a movement aimed at suppressing human rights and freedoms and preaching ethnic and racial hatred against different groups of people. The case law is able to form an opinion about these conclusions independently without the expertise. Criteria as "*memory, tolerance, and the ability to recognize the essence of life, characterized by plurality, abundance, and diversity*" are sufficient for forming an opinion about the case.

¹³ Under the Article 421 of the *Act No. 300/2005 Coll. Criminal Code, as amended* "(1) Any person who supports or makes propaganda for a group of persons or movement which, using violence, the threat of violence or the threat of other serious harm, demonstrably aims at suppressing citizens' fundamental rights and freedoms shall be liable to a term of imprisonment of one to five years. [...] (2) The offender shall be liable to a term of imprisonment of four to eight years if he commits the offence referred to in paragraph 1 [...] a) in public, [...] b) in the capacity of a member of an extremist group, [...] c) acting in a more serious manner, or [...] d) under a crisis situation.". Under the Article 422 of the *Act No. 300/2005 Coll. Criminal Code, as amended* "(1) Any person who publicly demonstrates, in particular by using flags, badges, uniforms, or slogans his fellow feelings towards a group of persons or movements which, using violence, the threat of violence or the threat of other serious harm, demonstrably aim at suppressing citizens' fundamental rights and freedoms shall be liable to a term of imprisonment of between six months and three years. [...] (2) The same sentence as referred to in paragraph 1 shall be imposed on any person who, in the commission of the offence referred to in paragraph 1, uses altered flags, badges, uniforms, or slogans carrying the appearance of being genuine.".

¹⁴ Under the Article 3 of the *Charter of Fundamental Rights and Freedoms* "(1) Everyone is guaranteed the enjoyment of her fundamental rights and basic freedoms without regard to gender, race, color of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status. [...] (2) Everybody has the right freely to choose his nationality. It is prohibited to influence this choice in any way, just as is any form of pressure aimed at suppressing a person's national identity. [...] (3) Nobody may be caused detriment to her rights merely for asserting her fundamental rights and basic freedoms".

The use of measure to dissolve the assembly under the Act No. 84/1990 Coll. and under the case law is under no circumstances a sanction, but the act which is similar in nature to immediate intervention. The case law argues with this similarity, especially when the meeting creates the space for criminal activities in such an extent that excludes taking an action against any individual offenders and criminals and that excludes real possibility to perform police intervention, because of the large number of members of the assembly and because of the other duties that the policemen may have when overseeing the conduct of such meeting in accordance with the Act No. 171/1993 Coll.¹⁵

Formal reasons for the dissolution of the assembly

The case law derives the formal grounds for dissolution of the assembly from the wording of Article 12 (1) of Act No. 84/1990 Coll., under which *"If the assembly takes place, although it was forbidden, deputy of the municipality asks the person convening the assembly to end it promptly. If the person convening the assembly makes no effective measures to dissolve the participants peacefully, the deputy shall notify the participants that the assembly is dissolved and asks them to scatter peacefully. The notification shall state the grounds for dissolution and warning on the consequences of failure to comply with this call and it should be done in a way understandable to the participants and in a way that the participants of the assembly could familiarize themselves with it."*

According to the case law this legal wording prohibits the deputy to dissolve the assembly without a prior call for a peaceful end of the assembly. The deputy must therefore wait whether the person convening the assembly takes the necessary steps to ensure that the participants scatter peacefully and finishes the assembly. The case law therefore sees several possibilities of the termination of the assembly. Firstly, the assembly can be completed under the direction of person convening it. Secondly, it can lead to the dissolution of the assembly on the call of the deputy and a police officer can also intervene who can under the Act No. 84/1990 Coll. proceed to dissolve the assembly in the absence of the deputy of the municipality.¹⁶ Therefore, the municipality deputy or the

¹⁵ Compare *Decision of the Supreme Administrative Court of the Czech Republic Ref. No. 5 As 25/2009 [2010-02-25]*.

¹⁶ Under the Article 12 (2) of the Act No. 84/1990 Coll. on the Right to Assemble, as amended *"In the absence of a representative of the municipality, the assembly referred to in paragraph 1 may also be dissolved in way mentioned there by the police officers on duty."*

member of the Police Force of the Slovak Republic cannot avoid the obligation of the initial call for peaceful end to the assembly and dissolve it automatically. The notice on the dissolution of the assembly without a prior call for the peaceful termination creates the breach of the conditions under the Act No. 84/1990 Coll. The case law does not consider the previous communication of the municipality with the person convening the assembly to be relevant call previous to the dissolution of the assembly. Such a communication does not meet the criteria established by the Article 12 (1) of the Act No. 84/1990 Coll. Furthermore, if the municipality or the member of the Police Force of the Slovak Republic follow the procedure according to the Article 12 (1) of the Act No. 84/1990 Coll., the content of their responsibilities is to wait and to give the person convening the assembly a reasonable time to adopt measures to end the meeting. The power to dissolve the assembly may the municipality or the member of the Police Force of the Slovak Republic use subsequently in the event that the person convening the assembly does not take any steps towards a peaceful termination of the assembly. On the other hand, the case law assesses the particularity of the case that is the intensity of the breach of the obligation imposed to the municipality, respectively, to the members of the Police Force of the Slovak Republic under the Act No. 84/1990 Coll. and the severity of actions of person convening the assembly and the participants under the Article 10 (1) of the Act No. 84/1990 Coll. Therefore, the failure to follow the procedure under the Article 12 (1) of the Act No. 84/1990 Coll. may not reach such intensity that would establish the reason to annul the decision on the dissolution of the assembly before the court.¹⁷

Adequacy of interferences to the right of assembly

Besides the conditions contained in Article 10 and Article 12 of the Act No. 84/1990 Coll., on the dissolution of the assembly the Article 19 of the Charter of Fundamental Rights and Freedoms and the Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms require also other criteria for the interference to the right of assembly. In particular, the measures used must be foreseen by law. The first requirement for intervention is a situation defined by the Article 10 (1) of the Act No. 84/1990 Coll. The purpose of the second condition is that the interference to the right of assembly shall follow at least one of

¹⁷ Compare *Decision of the Supreme Administrative Court of the Czech Republic Ref. No. 5 As 25/2009 [2010-02-25]*.

the objectives laid down by law. In order to achieve it, the public authority may restrict the right of assembly.

Such an objective is undoubtedly under the case law the protection of the rights and freedoms of other people, especially ethnic, religious, or sexual minorities. The legislation ensures through this method the implementation of equality in the constitutional sense, the right not to be discriminated, but also the right not to be subject to hate speech, hate expressions, and hate behaviour. Case law is based on the fact that hate expressions attack human dignity. The conflict between the right to assemble, respectively, the right to express opinions freely in the assembly and the right in which interest of the public authority may limit the performance of the freedom to assemble solves the case law through the search for balance. Therefore, the case law in such cases to resolve the dispute between two constitutional rights applies the proportionality test and evaluates the necessity of interference of public authority to the rights of assembly and freedom of expression.¹⁸

Limitation of traffic in the municipality of the assembly

The Article 10 (3) of the Act No. 84/1990 Coll. establishes the cases of restrictions to the right to assemble, according to which "*The municipality may prohibit the assembly if it shall be organized in the place where it could limit the necessary traffic and supply and such limitation would be contrary to the interests of the population, if the assembly could be possibly organized without undue difficulty elsewhere and if it would not defeat the announced purpose of the assembly.*". The municipality may therefore justify a ban on the assembly by the restriction of the traffic contrary to the interests of the population. However, to support these claims the municipality must under the case law present the relevant evidence. For example, the restrictions on the right to assemble may not the public authority justify by insufficient capacity of the pavement surfaces.

In accordance with the case law of the Supreme Administrative Court of the Czech Republic this obstacle is not so severe that it could lead to the decision suppressing the right of assembly. In fact, the person convening the assembly may organize the transition of the assembly through the crossings with the cooperation of the police department. Therefore, according to the case law the municipality does not necessarily need to

¹⁸ Compare *Decision of the Supreme Administrative Court of the Czech Republic Ref. No. 5 As 25/2009 [2010-02-25]*.

switch off the traffic lights. The case law compares such a case with similar situations that occur, for example with high traffic or with mass arrivals and departures of onlookers from and to stadiums. From the perspective of the case law these situations do not require the adoption of emergency measures. Therefore, the municipality must prove the allegation of a serious impact of the assembly on the traffic.¹⁹

The municipality must justify the conclusion on the serious limitations of transport, for example with the help of different opinions. The general conclusion of the municipality may be that the assembly line runs along the busy roads of the city, respectively, the municipality is not sufficient for a decision banning the announced meeting. Under the case law the municipality has to consider a number of factors, in particular the expected number of participants of the assembly. But important is also the fact whether the assembly will be held on the workday or during the weekend. The frequency of traffic in the municipality, respectively, in the city depends on such fact. In addition, the municipality must also take such facts into account when deciding on the prohibition of the assembly. Moreover, the case law states that in this case the possibility of switching traffic route plays also an important role. All this must be reflected in the grounds of the decision banning the announced assembly. Due to the application of the principle of proportionality in limiting or interfering with the rights of assembly the municipality must therefore exercise its necessary discretion, especially in terms of understanding and due care. Therefore, the case law takes a clear position. It considers to be inadmissible to restrict the fundamental political right of exclusively and only on a precautionary basis and in anticipation of possible obstruction. Even if the municipality performs a reasonable limit of that right, it has a legal obligation to propose the person convening the assembly the organization in

¹⁹ This finding has also been proclaimed by the case law from the Thirties of the previous century when in the decision of September 13th, 1933, the Supreme Administrative Court of the Czechoslovak Republic said that "*If the authority reaches to the conclusion that the proposed assembly threatens public safety and welfare, within the banning of assembly it cannot limit itself to the disclosure of prohibition, the but it is obliged to provide specific facts upon which it came to this conclusion.*". Therefore, according to the case law the actual statement of administrative decision cannot convince the addressee of the decision about the correctness of the decision, unless the public authority can justify it properly. Therefore, the case law stresses the obligation for public authorities when intervening to the fundamental rights to describe "properly" the essence of the case and its legal and factual considerations within the decision. Compare *Decision of the Supreme Administrative Court of the Czech Republic Ref. No. 4 Ads 23/2004 [2006-01-26]*.

a better place or on a more appropriate route, or in more convenient time.²⁰

Incompleteness of the notice on the planned assembly

There is a special case on which the case law reacts. It is a prohibition of the assembly by the municipality due to the incompleteness of the submitted notification on the planned assembly. This case is regulated by the Article 5 of the Act No. 84/1990 Coll. The issue of legal perfection of the notice on the planned assembly is under the case law relevant only at the moment of submission to the municipality. If the municipality acts with the person convening the assembly in a way that it fails to notice the defects of the notification, it cannot object these defects before the court. In our opinion, it is one of the cases when the case law considers such a situation as one of the cases in which the impact of the principle of legitimate expectations is capable to overwhelm the principle of legality, because the person convening the assembly may legitimately expect that his notification has been submitted free of defects and that the assembly has been announced in a legally established manner. In fact, the municipality must in the occurrence of defects proceed under the Article 5 (5) of the Act No. 84/1990 Coll. It shall warn the person convening the assembly about the defects of the submission and determine a reasonable time to eliminate them. Only then it may decide on the ban of the assembly for the reasons set e.g. in the mentioned Article 10 (1) of the Act No. 84/1990 Coll. From our point of view, the reasonable time limit for the municipality to announce the defects of the notification will depend on the time limit set in the Article 5 (1) and in the Article 11 (1)²¹ of the Act No. 84/1990 Coll., because the person convening the assembly is bound by the time limits determined in those provisions of the mentioned act. The legislature also established the municipality the obligation to decide on the ban of the assembly within a reasonable time – not later than three days after submission of a valid notification – so the municipality shall not rule out the performance of the right of assembly. If the municipality does not remind the person convening the assembly on the defects of the notification, the person convening the assembly has a right to be-

²⁰ Compare *Decision of the Supreme Administrative Court of the Czech Republic Ref. No. 1 As 30/2009 [2009-04-15]*.

²¹ According to the Article 11 (1) of the Act No. 84/1990 Coll. on the Right to Assemble, as amended "On the prohibition of the assembly (Article 10) or on the time of its termination (Article 9) decides the municipality immediately, but no later than three days from the time of receiving a valid notification."

lieve that his notification has been submitted in accordance with the requirements laid down by law and that it includes all legal requirements, that is that such notification is a valid and perfect notification under the Act No. 84/1990 Coll. He also has a right legitimately believe that the time limit of three days to ban the assembly on the grounds under the Article 10 of the Act No. 84/1990 Coll. has started. The announcement of defects of the notification shall not be general and it shall not only announce to the person convening the assembly that he has not fulfilled the requirements under the Article 5 (2) or (3) of the Act No. 84/1990 Coll. The municipality must precisely define the content wherein the defect of the notification lies. Otherwise, the municipality cannot use such objection in the phase of the judicial review of a decision prohibiting the assembly. The municipality as a compulsory subject should take into account these defects of the notification. Therefore, the municipality cannot subsequently propose the court to take into account aspects which it failed to consider when deciding on the prohibition of the announced assembly. The case law strictly denies the argument that the time limit of three days provided by law for the decision prohibiting the assembly is an instructive time limit. This time limit is a legal deadline and the municipality when deciding on the prohibition of the assembly shall not exceed it. The case law builds this argument on the wording of the Article 19 of the Charter of Fundamental Rights and Freedoms. If the mentioned time limit was an instructive period of time, the municipality would not have the strict obligation not to exceed it and could decide on the prohibition at a later date which would prevent the effective realization of the right to assemble and the nature of this procedure would come closely to the regime of permission. Such a mechanism is prohibited by the Constitution of the Slovak Republic, but also by the Charter of Fundamental Rights and it is banned within the performance of this right. The allowance to perform the right of assembly and freedom of expression is a principle of the rule of law. Therefore, the case law interprets the possibilities to prohibit them restrictively.

The case law perceives similarly “the spirit” of the Act No. 84/1990 Coll. that the legislature has clearly set up in a way favouring the convenor of the assembly and, on the other hand, it has limited discretion of the municipality in reasons and time limit to decide on the prohibition of the assembly. This setting of rights and obligations considers the case law to be fully understandable and corresponding substantially to the notification principle. Furthermore, this expression shall also allow the municipi-

pality in most cases to “decipher” the real reasons for planning the assembly which, in fact, may contravene the requirements of the Act No. 84/1990 Coll. Therefore, according to the case law the essence of deciding on the prohibition of the assembly lies in the fact that administrative practice shall not lead to a restrictive setting of “filters” which in their effect shall not prevent the implementation of the constitutionally guaranteed right. Any decision issued by the municipality after the expiry of the three-day time limit is therefore in terms of the case law an unlawful decision. The case law amends to this fact that the decision of the municipality on the prohibition of the assembly is also another legal protection under the Article 36 of the Charter of Fundamental Rights and Freedoms. If the municipality rules out this protection by breaching the prescribed deadline, it would also prevent the person convening the access to court under identical provisions of the Charter of Fundamental Rights and Freedoms.²²

At the same time, the case law considers similarly the obligation under the Article 11 (3) of the Act No. 84/1990 Coll. according to which bounds the law the court in reviewing a decision of the municipality prohibiting the assembly by the time limit of three days to decide. No court shall frustrate the legality of the assembly which was formerly banned due to non-compliance to the limit of three days according to the Article 11 (3) of the Act No. 84/1990 Coll. In the case of the assembly of unrepeatable event and the person convening the assembly filed a timely notification of the assembly and the municipality also decided in time, then the court’s decision after the event can be dramatically smaller, sometimes perhaps to zero importance. The supplementary decision may still have its legal meaning, but it cannot fulfill the principle of the presumption of legality of the assembly.²³ The case law stresses the obligation of public authorities, in particular courts in the revision of decisions prohibiting the assemblies that they must respect the principles of fairness of the proceedings against the parties while respecting the spirit and essence of the right of assembly. Those requirements also express

²² See *Decision of the Supreme Administrative Court of the Czech Republic Ref. No. 2 As 17/2008 [2008-02-21]*.

²³ See *Finding of the Constitutional Court of the Slovak Republic Ref. No. II. ÚS 348/09 [2010-02-16]*.

warranty of speed of decision making on the realization of the right to assemble.²⁴

Conclusion

The freedom of assembly or right of assembly promote and protect human rights through peaceful protest or expression of views. States have a responsibility to ensure that people are able to demonstrate peacefully and to express their views without facing threats, intimidation, or violence.²⁵ Therefore, the jurisprudence and the case law have created a strict manual presenting the legal grounds for restricting the performance of the right of assembly. It includes the legitimate grounds for restriction, public space, content-based restrictions, time, place and manner restrictions, and sight and sound. The legitimate grounds for restriction are prescribed in international and regional human rights instruments. These should not be supplemented by additional grounds in domestic legislation. Then also assemblies are legitimate users of public space as commercial activity or as the movement of vehicular and pedestrian traffic. This must be acknowledged when considering the necessity of any restrictions. Assemblies are also held for a common expressive purpose and, thus, they aim to convey a message. Restrictions on the visual or audible contents of any message should face a high threshold and they should only be imposed if there is an imminent threat of violence. A wide spectrum of possible restrictions that do not interfere with the message communicated is available to the regulatory authority. Reasonable alternatives should be offered if any restrictions are imposed on the time, place, or manner of an assembly. And, finally, the public assemblies are held to convey a message to a particular target person, group, or organization. Therefore, as a general rule, assemblies should be facilitated within "sight and sound" of their target audience.²⁶

²⁴ See *Decision of the Supreme Administrative Court of the Czech Republic Ref. No. 3 As 19/2007 [2007-10-10]*.

²⁵ See The Right to Peaceful Assembly. In: *Human Rights House Network* [online]. 2015 [cit. 2015-03-23]. Available at: http://humanrightshouse.org/HRHN/Why_The_right_to_peaceful_assembly/index.html.

²⁶ See BELYAEVA, N., Th. BULL, D. GOLDBERGER, M. HAMILTON, N. JARMAN, M. S. KHAIDEROVA, S. OSTAF, V. POGHOSYAN, A. VASHKEVICH and Y. A. ZHOVTIS. *Guidelines on Freedom of Peaceful Assembly*. 2nd ed. Warsaw; Strasbourg: Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, 2010, p. 18. ISBN 978-92-9234-785-7.

References

- Act No. 300/2005 Coll. Criminal Code, as amended.*
- Act No. 84/1990 Coll. on the Right to Assemble, as amended.*
- BELYAEVA, N., Th. BULL, D. GOLDBERGER, M. HAMILTON, N. JARMAN, M. S. KHAIDAROVA, S. OSTAF, V. POGHOSYAN, A. VASHKEVICH and Y. A. ZHOVTIS. *Guidelines on Freedom of Peaceful Assembly*. 2nd ed. Warsaw; Strasbourg: Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, 2010. 160 p. ISBN 978-92-9234-785-7.
- Case of Ezelin v. France* [1991-04-26]. Judgement of the European Court of Human Rights, 1991, Application No. 11800/85.
- Case of Freedom and Democracy Party (ÖZDEP) v. Turkey* [1999-12-08]. Judgement of the European Court of Human Rights, 1999, Application No. 23885/94.
- Case of Glimmerveen and Hagenbeek v. the Netherlands* [1979-10-11]. Judgement of the European Court of Human Rights, 1979, Application No. 8348/78 and No. 8406/78.
- Case of Handyside v. the United Kingdom* [1976-12-07]. Judgement of the European Court of Human Rights, 1976, Application No. 5493/72.
- Case of Incal v. Turkey* [1998-06-09]. Judgement of the European Court of Human Rights, 1998, Application No. 22678/93.
- Case of Plattform "Ärzte für das Leben" v. Austria* [1988-06-21]. Judgement of the European Court of Human Rights, 1988, Application No. 10126/82.
- Case of United Communist Party of Turkey and Others v. Turkey* [1998-01-30]. Judgement of the European Court of Human Rights, 1998, Application No. 19392/92.
- Charter of Fundamental Rights and Freedoms.*
- Convention on Protection of Human Rights and Fundamental Freedoms.*
- Decision of the Supreme Administrative Court of the Czech Republic Ref. No. 8 As 7/2008* [2009-08-31].
- Decision of the Supreme Administrative Court of the Czech Republic Ref. No. 5 As 25/2009* [2010-02-25].

*Decision of the Supreme Administrative Court of the Czech Republic Ref.
No. 4 Ads 23/2004 [2006-01-26].*

*Decision of the Supreme Administrative Court of the Czech Republic Ref.
No. 1 As 30/2009 [2009-04-15].*

*Decision of the Supreme Administrative Court of the Czech Republic Ref.
No. 2 As 17/2008 [2008-02-21].*

*Decision of the Supreme Administrative Court of the Czech Republic Ref.
No. 3 As 19/2007 [2007-10-10].*

*Finding of the Constitutional Court of the Slovak Republic Ref.
No. I. ÚS 193/03 [2004-03-30].*

*Finding of the Constitutional Court of the Slovak Republic Ref.
No. II. ÚS 348/09 [2010-02-16].*

The Right to Peaceful Assembly. In: *Human Rights House Network* [online]. 2015 [cit. 2015-03-23]. Available at: http://humanrights-house.org/HRHN/Why_/_The_right_to_peaceful_assembly/index.html.

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