



THE RIGHT TO PEACEFUL ASSEMBLY IN NORTH MACEDONIA

A PRACTICAL GUIDE

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INTRODUCTION

This Guide was prepared by the Macedonian Young Lawyers Association (MYLA) and it aims to provide an overview of modalities for realization of the right to peaceful assembly in North Macedonia. The guide is written primarily for citizens who have no knowledge or have only limited knowledge of the right to peaceful assembly. It addresses the most common questions raised by organisers and participants in assemblies in the country.

The Practical Guide consists of four chapters:

I THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY EXPLAINED –

this chapter includes an explanation of what peaceful assembly is, the different assembly types and how this right is regulated in the international and local legal framework.

II RESTRICTIONS ON FREEDOM OF ASSEMBLY –

the second chapter covers the legitimate grounds for imposition of certain limitations of the freedom of assembly and the types of limitations that can be imposed.

III RESPONSIBILITIES OF THE ORGANIZERS AND PARTICIPANTS –

the assembly organizers and participants should follow certain legal obligations which are explained in detail in this chapter.

All information in the Guide is based primarily on the applicable legal framework in North Macedonia, as well as the relevant international standards.

The information is given in language which is simple and easy to read in order to be understandable by non-lawyers. Should you have questions in regards to this topic please do not hesitate to contact the Macedonian Young Lawyers Association on 02-3220-870 or at contact@myla.org.mk.

NOTE FROM THE AUTHOR AND EDITOR

This Guide is designed to provide the assembly participants and organizers in North Macedonia an overview of the legislative rules of both participating and organizing an assembly. It is intended to be informational and easy to understand. However, it should be considered that the domestic law regulating the freedom of assembly is not fully harmonized with international standards. The decision to include both international standards and the Macedonian regulations which are in collision make certain parts of this Guide seem contradictory and confusing.

This was the only way to provide comprehensive information and to highlight the need for harmonization of the domestic regulation. It is important to know that in cases of collision the international law the country committed to has supremacy. The Macedonian Young Lawyers Association will advocate for the necessary legislative changes aiming for full harmonization of the domestic laws with the international standards.



I THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY EXPLAINED

1. What is freedom of assembly?

Freedom of assembly ensures that people can gather and meet, both publicly and privately. Assemblies can be platforms to advocate for change, to raise awareness about relevant issues such as human rights, socio-economic rights, or any other issue.¹ In many cases, peaceful assemblies do not pursue controversial ideas or goals and cause little or no disruption. The aim might indeed be, for example, to commemorate a national day or celebrate the outcome of a sporting event.²

¹ Human Rights House's statement on their web page: <https://humanrightshouse.org/we-stand-for/freedom-of-assembly/>

² International Covenant on Civil and Political Rights, Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21) *, September 2020

2. What defines a “peaceful” assembly?

Peaceful assemblies are sometimes used to pursue ideas or goals that are somehow contentious, and their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity. However, the right to “peaceful assembly”, does not cover a demonstration where the organisers and participants have violent intentions. The guarantees of freedom of peaceful assembly therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society. The peaceful intentions of organizers and participants in an assembly should be presumed, unless there is convincing evidence of intent to use or incite violence.³ According to the Law on Public Gatherings, the participants must not carry weapons and generally harmful objects, as well as alcoholic beverages and narcotic drugs during the assembly.⁴

3. What are the different types of assemblies?

Peaceful assemblies can take place outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They fall under the right to freedom of assembly whether they are stationary, such as pickets, or mobile, such as processions or marches.⁵

4. What is a digitally-mediated assembly?

A digitally-mediated assembly is a gathering of more than one person for specific purposes that takes place either through the support or by means of digital communication technologies: e.g., via mobile phones, internet services

³ Ibid

⁴ Law on Public Gatherings (“Official Gazette of the Republic of North Macedonia” nos. 55/1995, 19/2006, 66/2007 and 152/2015 and “Official Gazette of the Republic of North Macedonia” no. 31/2020). Decision of the Constitutional Court of the Republic of Macedonia U. no. 31/2006 dated 1 November 2006, published in the “Official Gazette of the Republic of Macedonia” no. 119/2006, Article 5

⁵ International Covenant on Civil and Political Rights, Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21) *, 17 September 2020

or social media. In a nutshell, we can categorise digitally-mediated assemblies as:

- **Digitally-enabled:** taking place in physical spaces but facilitated by digital technologies (in particular by the Internet), because they are previously discussed, organised and/or promoted through them;
- **Digitally-based:** taking place in an entirely virtual space (usually the Internet);
- **Hybrid:** with elements of both. For example, they are organised via social media and take place both in physical spaces and online or they started in physical spaces but are continuing online or vice versa, etc.⁶

5. Are digitally-mediated assemblies also protected by the international human rights standards?

Yes. The protection of the right to peaceful assembly also extends to remote participation in, and organization of, assemblies, including online only. Therefore, associated activities that happen online or otherwise rely on digital services are also protected.⁷



6. How many persons constitute an assembly which is accorded protection?

According to the international law, the right to peaceful assembly and protest is an individual right exercised collectively by everyone and its exercise is not tied to fulfilling a quota.⁸ However, the Law on Public Gatherings acknowledges as an assembly only the gathering of more than 20 people. According to this law, public gatherings of more than 20 citizens is the gathering in an open or enclosed space for the purpose of fulfilling entertaining, cultural, religious, humanitarian, social, political, economic, sports or similar interests of the citizens, organized by reason of public expression of opinion or protest.⁹ This is contrary to the international standards the country committed to. A need for legislative changes is evident since this is a clear limitation of the right with no inherent justification.

7. What is the legal framework which regulates the freedom of assembly in North Macedonia?

Freedom of peaceful assembly is guaranteed by the Constitution of North Macedonia: "The citizens have the right to gather peacefully and to express public protest without prior announcement and special approval. The exercise of this right may be restricted only during states of war and emergency."¹⁰ Constitutional provisions, however, cannot provide for specific details or procedures. Consequently, the Law on Public Gatherings is dealing with public assemblies in addition to constitutional guarantees. Additional laws that cover some of the issues related to the right to assembly in North Macedonia are: the Criminal Code, the Law on Labour Relations, the Law on Police, the Law on Misdemeanours against the Public Order and the Law on Defence.

Domestic laws regulating freedom of assembly must be interpreted and implemented in conformity with the international instruments ratified by North Macedonia. The universal and regional standards concerning freedom

⁸ International Covenant on Civil and Political Rights, Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21) *, September 2020

⁹ Law on Public Gatherings, Article 2

¹⁰ Constitution of North Macedonia ("Official Gazette of the Republic of North Macedonia" no. 52/1991)

of assembly mainly derive from two legal instruments: The International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as well as the optional protocols thereto.

8. What it is not considered a public assembly according to law?

According to the Law on Public Gatherings, the following shall not be considered public assembly:

- religious ceremonies held in spaces intended for religious purposes;
- regular folk ceremonies;
- burial processions;
- gatherings in spaces where the free access is closed due to consideration of trade unions issues;
- regular gatherings of cultural and entertaining or sports nature which the organizer, within the framework of its activity, organizes in enclosed spaces intended for that purpose; and
- Regular gatherings, meetings, seminars, forums of representatives of state bodies, organizations or other legal entities while exercising their competence, that is, the activity, gathering of political parties and alike, in enclosed spaces.



II RESTRICTIONS ON THE FREEDOM OF ASSEMBLY

9. When is the organizer obliged to stop the holding of the assembly?

The legitimate grounds for restrictions are prescribed by the relevant international and regional human rights instruments, and these should neither be supplemented by additional grounds in domestic legislation nor loosely interpreted by the authorities.¹¹ According to the national law, the organizer shall be obliged to stop the holding of the assembly if the life and health, security and personal safety of the people and property are jeopardized¹²

¹¹ OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Peaceful Assembly – second edition, Warsaw/Strasbourg 2010 available at: <https://www.osce.org/files/f/documents/4/0/73405.pdf>

¹² Law on Public Gatherings, Article 4

10. Is there any restrictions concerning the place of the assembly?

According to the law, peaceful assembly may be held in any place that is appropriate for such purpose, except:

- next to healthcare institutions, in a manner which obstructs the access of ambulance vehicles and disturbs the peace of the patients,
- next to kindergartens and schools while being attended by children, and
- on highways and national roads, in a manner which jeopardizes the traffic.¹³

11. Does the right of peaceful assembly apply during states of emergency and armed conflict?

The State may derogate from the right of peaceful assembly during a properly declared *state of emergency*. However, the ordinary restrictions on the right of peaceful assembly referred to above should usually be sufficient to allow people to continue to enjoy the right. During an *armed conflict*, the use of force related to participants in assemblies remains regulated by the rules of law enforcement. Civilians in an assembly are protected from being targeted under the rules of international humanitarian law unless and only for such time as they take a direct part in hostilities.¹⁴

Similarly, the Constitution of North Macedonia provides that the exercise of the right to peaceful assembly may be restricted only during states of war and emergency.

12. Can law enforcement officials use force during an assembly?

Yes, the use of force is possible if a legitimate law enforcement purpose justifies it. However, even then, the use of force must be only the minimum force necessary in order to de-escalate the situation. Once the need for any use of force has passed, such as when a violent individual is safely

¹³ Ibid, Article 2-a

¹⁴ Human Rights Committee General Comment No. 37 on the right of peaceful assembly, article 21 of the ICCPR

apprehended, no further resort to force is permissible. Law enforcement officials may not use greater force than is proportionate under the circumstances to disperse an assembly, prevent a crime or to pursue the lawful arrest of offenders.¹⁵

13. Can law enforcement officials disperse assemblies?

Law enforcement officials may disperse an assembly only as an ultimate measure where the assembly is no longer peaceful, or where an imminent threat of serious violence cannot be reasonably addressed with less intrusive measures such as targeted arrests. Domestic law must set out the conditions for dispersing assemblies and only a duly authorised official may order a dispersal.¹⁶

According to the national law, the Ministry of Interior shall stop the public gathering in cases when it is directed towards:

- jeopardizing the life, health, security, personal safety and property of the citizens;
- committing or encouraging the commission of criminal offenses defined by law; and
- jeopardizing the environment.

In addition, the Ministry of Interior shall stop the public gathering in case when its holding is contrary to the international agreements that provide for an obligation for uninterrupted flow of traffic.¹⁷

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Law on Public Gatherings, Article 6



III RESPONSIBILITIES OF THE ORGANIZERS AND PARTICIPANTS

14. Is a prior notification and/or permission required?

Peaceful assemblies are often organized in advance, allowing time for the organizers to notify the authorities to make the necessary preparations. However, spontaneous assemblies, which are typically direct responses to current events, whether coordinated or not, are equally protected under article 21.¹⁸

According to national law, prior notification is not a mandatory obligation for organizers. However, the law provides the possibility for prior notification of the Ministry of Interior for security reasons. The notification shall be submitted in the regional unit of the Ministry of Interior where the assembly takes place, 48 hours before the start of the assembly at the latest. The organizer shall

¹⁸ Human Rights Committee General Comment No. 37 on the right of peaceful assembly, article 21 of the ICCPR

include the following data in the notification: the purpose of holding the assembly; the place and time of the assembly; the organizer of the public gathering; the measures that the organizer has taken in terms of unobstructed organization and course of the assembly; and the data on organizing a security service.

15. Is there a legal obligation to employ commercial stewards?

The Macedonian jurisdiction requires obligation for the organizer to maintain peace and order at the public gathering and to provide a security service. In addition, the law provides the possibility for the organizer to request from the Ministry of Interior the police to maintain the public order and in such case, the organizer shall bear the costs.¹⁹

According to international standards, the holding of assemblies should never be made contingent on the ability of organizers or participants to hire stewards, as this would constitute an excessive interference with their freedom of peaceful assembly (and would essentially curtail the organization of assemblies by those unable to pay). In addition, organizers should not be required to pay for the facilitation of peaceful assemblies by the state. State authorities should not make the policing or facilitation of a peaceful assembly contingent on the payment of the respective costs by the organizers.²⁰

16. Are foreigners in North Macedonia allowed to organize public assemblies?

Everyone has the right of peaceful assembly: citizens and non-citizens alike. It may be exercised by, for example, foreign nationals, migrants (documented or undocumented), asylum seekers, refugees and stateless persons.²¹

However, the national law provides that the foreigners may call for and hold assembly provided that they report it and obtain an approval from the

¹⁹ Law on Public Gatherings, Article 4

²⁰ European Commission for Democracy through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Guidelines on Freedom of Peaceful Assembly (3rd edition), Strasbourg/Warsaw, July 2020 available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)

²¹ International Covenant on Civil and Political Rights, Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21) *, 17 September 2020

Ministry of Interior. A requirement to apply for permission from the authorities undercuts the idea that peaceful assembly is a basic right and is not permissible and represent discrimination of foreigners.

17. Are the organizers and participants of assemblies accountable for injuries or damage caused during the assembly?

In general, organisers and participants may be held accountable only for injuries or damage caused by their own unlawful conduct. In exceptional cases, organizers might be held accountable for injuries or damages that they did not cause where they could reasonably have foreseen and prevented them.

Organizers and stewards have a responsibility to make reasonable efforts to comply with legal requirements and to ensure that their assemblies are peaceful, but they should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so. The organizers should not be liable for the actions of individual participants or of stewards not acting in accordance with the terms of their briefing. Instead, individual liability should arise for any steward or participant if they commit an offence or fail to carry out the lawful directions of law-enforcement officials. In no circumstances should the organizers of a lawful and peaceful assembly be held liable for disruption caused by others.²²

Nevertheless, the Law on Public Gatherings provides that the public gathering organizer shall be obliged to compensate for the possible damage done during the public gathering.²³ This is not in conformity with the international standards.

18. Is prevention or disturbance of assembly a criminal offence?

Yes. The Criminal Code of North Macedonia provides that whosoever by force, serious threat, and fraud or in any other manner prevents or disturbs calling up or organizing peaceful public assembly, shall be fined or sentenced

²² OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Peaceful Assembly – second edition

²³ Law on Public Gatherings, Article 7

to one year of imprisonment. If the crime is committed out of hate or by an official person by abusing his official position or authorization, he/she shall be sentenced to imprisonment of three months to three years.

19. Who protects the right to peaceful assembly in North Macedonia?

The Ombudsman promotes and protects the constitutional and legal rights in North Macedonia. Anyone may file a complaint to the Ombudsman if he/she assesses that his/her right to assembly has been infringed. The Ombudsman may initiate a procedure on his/her own initiative if he/she assesses that the right to peaceful assembly has been breached.

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