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REPUBLIC OF ALBANIA
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Special Session

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Prot. **No.**
No. Doc. 202003159/4

Tirana ___/___/2021

Subject: *Recommendation for taking the necessary measures to change points 2, 5, 7 and 8 of Article 61 of the Regulation "On the conditions and rules for the occupation of public space in the Municipality of Tirana", approved by the Decision of the Tirana Municipal Council no. 130, dated 15.11.2018.*

MUNICIPAL COUNCIL
Tirana

Dear honorable council,

With the letter prot no. K2/I76-2., dated 20.11.2020, we have informed you that the institution of the People's Advocate over the last few years has considered several complaints and cases initiated by initiative regarding the constitutional right/freedom of assembly of citizens. The institution of the People's Advocate has also followed closely through the media the protests of citizens organized in different cities of the country during the period of the pandemic and the establishment of a state of natural disaster due to the spread of the infection by COVID-19.

At the end of their review, in some cases it was found that this right has not always been respected by the State Police bodies. The latter have not only not contributed to its realization, but have sometimes become an obstacle, infringing on this fundamental constitutional right of citizens. For these reasons, several recommendations have been made to the State Police bodies.

The right to freedom of peaceful assembly protects the ways in which people assemble together in public and private spaces.¹ This right has been recognized as one of the foundations of a democratic, tolerant and pluralistic society, in which individuals and groups of different backgrounds and beliefs can interact peacefully with each other. The right to freedom of peaceful assembly enables us to give voice to minority opinions and to make marginalized or underrepresented groups visible.

Effective protection of the right to freedom of peaceful assembly can also help foster a culture of open democracy, enable non-violent participation in public affairs and strengthen dialogue on issues of public concern. Assemblies can help hold public bodies and government officials accountable and thus promote good governance in accordance with the rule of law.

Legislation drafted in accordance with international human rights standards is vital for defining and limiting the powers and discretion of public authorities and law enforcement officials. At the heart of the interpretation of human rights standards lies the general principle that human rights shall be enjoyed without any discrimination.

In addition, the relevant state authorities should ensure that the general public has easy and practical access to reliable information about the gatherings, the relevant laws and regulations, as well as the procedures, the way the authorities operate in facilitating them.² Any decision to restrict or ban an assembly should be based on legislation that reflects applicable standards and clearly and transparently describes decision-making procedures. Anyone seeking to exercise the right/freedom of peaceful assembly should have access to a prompt and effective remedy against decisions that are alleged to be disproportionate, arbitrary, restrictive or unlawfully prohibitive of protest.

Please note that the freedom of assembly is provided for and guaranteed by the Constitution of the Republic of Albania, Part II "Basic human rights and freedoms", Chapter III "Political freedoms and rights", respectively in Article 47 where it is provided that:

*“1. Freedom of peaceful and unarmed assembly, as well as participation in them, is guaranteed.
2. Peaceful gatherings in squares and places of public transit are held according to the procedures provided by law”*

¹ *Guidelines on Freedom of Peaceful Assembly*, Doc. CDL-AD(2019)017, OSCE/ODIHR & Venice Commission, 8 July 2019.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

² *Ibid*, p.10, para. 26. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

Freedom of assembly and organization is also guaranteed by Article 11 of the European Convention on Human Rights, which expressly states that:

"1. Everyone has the right to freedom of peaceful assembly and association with others, including the right to form and participate in trade unions for the protection of their interests.

2. The exercise of these rights cannot be subject to restrictions other than those provided by law, and which are necessary in a democratic society, in the interest of national security or public safety, for the protection of order and the prevention of crime, for the preservation of health or morals, or for the protection of the rights and freedoms of others...".

As for the supremacy of the European Convention on Human Rights (ECHR) in our domestic law, articles 17 and 122 of the Constitution stipulate the following:

Article 17

"1. Limitations of the rights and freedoms provided for in this Constitution can only be imposed by law for a public interest or for the protection of the rights of others. The restriction must be proportionate to the situation that dictated it.

2. These restrictions cannot violate the essence of freedoms and rights and in no case can they exceed the restrictions provided for in the European Convention on Human Rights."

Article 122

"1. Every ratified international agreement forms part of the internal legal system as it is published in the Official Gazette of the Republic of Albania. It is directly applicable, except in cases where it is not self-executing and its implementation requires the issuance of a law. Changing, supplementing and repealing laws approved by the majority of all members of the Assembly for the effect of ratifying international agreements is done with the same majority.

2. An international agreement ratified by law takes precedence over the laws of the country that do not agree with it³.

3. Norms issued by an international organization have precedence, in case of conflict, over the law of the country, when the agreement ratified by the Republic of Albania for participation in that organization expressly provides for the direct application of the norms issued by it."

The procedural rules that discipline or condition the exercise of this right are expressly defined in law no. 8773, dated 23.4.2001 "On gatherings", which also provides for exhaustive restrictions or prohibitions which cannot be exceeded in the exercise of the right of gathering. This law, which was issued on the basis and in the implementation of Article 47 of the Constitution, as it determines that every person has the right to organize and participate in a peaceful and unarmed assembly, also provides that the State Police guarantees and protects the right of any person to organize and participate in peaceful and

³ The ECHR was ratified by the Government of Albania with law nr. 8137, dated 31.07.1996.

unarmed assemblies. Stopping and dispersing a gathering is allowed only in the cases provided by law. From the reference to the content of the provisions of this law, it clearly results that the duties of the State Police in relation to gatherings are:

First, performing the actions and taking the necessary measures to guarantee the exercise of this right/fundamental constitutional freedom of citizens and the smooth running of the assembly.

Second, the prohibition of the exercise of this freedom/right is done only for limited cases which are clearly and exhaustively defined in the law. They cannot and must not violate the essence of freedoms and rights and in no case can they exceed the limitations provided for in the ECHR.

For the exercise of this right, the only requirement is to make a notification at a specified time to the police entities where some data related to the implementation of its duty as a guarantor of the exercise of this right/freedom are reflected, giving it time to take the necessary measures for the success of the gathering. Even the current law, in Article 7 provides for the right of citizens to hold emergency meetings in cases where there are urgent circumstances, which can be held without respecting the deadline provided in Article 5² of this law, but a written notification must be made which contains the elements defined in Article 5,⁴ point 2 of this law, as well as the reason of the emergency. In these cases, the announcement must be made immediately, but no later than 3 hours before the time of the rally.

The fact that the current law uses the term notification addressed to the Police Station for the development of the gathering and not a request is very important and significant in favor of exercising and guaranteeing this right/freedom by citizens. If in this law the term requests for the development of the assembly were foreseen, it is clearly understood that in order to make possible the exercise of this right/freedom, the approval of the police entity would be needed, as it was in the previous law. While the use of the term notification in the law means that the "decision" to exercise the right was taken by the notifying entity itself and the approval of the police entity is not required. This is exactly where the essential change brought by the law of 2001 "On Assemblies", to guarantee the real exercise of this basic constitutional right/freedom of citizens in a democratic country like

⁴ Article 5 of this law stipulates that:

1. *In the event of a gathering in public squares or walkways, the organizer and leader are obliged to notify the head of the police station in writing no later than three days before the date of the gathering.*
2. *The written notice must contain:*
 - a) *the identity and address of the leader and organizer of the gathering;*
 - b) *the purpose of the gathering;*
 - c) *date, place, start and end time of the rally and its itinerary (if any);*
 - ç) *the approximate number of participants and the number of people assisting in the smooth running of the gathering;*
 - d) *the persons who will speak at the meeting.*
3. *In case the written notice does not contain the elements provided for in point 2 of this article, it must be returned to the organizer and leader of the gathering for completion, who must resubmit it completed no later than 24 hours before the time when rally to take place.*

ours. If the announcers do not make the announcement with the data provided and required by law, the Chief of the Police Station has the legal right to communicate with the organizer to complete the data or to take a reasoned decision to prohibit the gathering in public squares or walkways or to change the place and time of its planned gathering. It is important to bring to attention that the positive spirit of the current law that is clearly reflected in its article 12,⁵ which foresees the development of gatherings in places open to the public without prior notification to the police according to the provisions of article 5.

We also clarify that the spirit of the law "On Assemblies" is also in accordance with the position of the Venice Commission on the right of assembly. Under international human rights law it is not necessary for domestic legislation to require prior notice of an assembly, but prior notice may enable state authorities to better ensure its peaceful nature and to establish arrangements to facilitate the assembly of protesters or to protect public order, public safety and the rights and freedoms of others. ***The determination of notification should never become a de facto authorization procedure. The procedure for providing prior notification to public authorities should not be burdensome or overly bureaucratic.*** Furthermore, the domestic legal framework should ensure that spontaneous protests can be held lawfully, and laws governing freedom of assembly should clearly exclude prior notification requirements for them.⁶

During the follow-up of this problem by our institution, some NGOs in their complaints presented or in the discussions held regarding the exercise of this right/constitutional freedom have raised their concerns about the obstacles created by article 61 of the Decision of the Tirana Joint Council no. 130, dated 15.11.2018 "Permit and permit granting procedures" (hereinafter VKB no. 130/2018) in the realization of this right/freedom. Specifically, point 2 of this article stipulates that:

"The entity that seeks to develop promotional, artistic and/or cultural, sports, social and/or municipal activities, political manifestations in the public spaces of the Municipality of Tirana must be provided with the relevant permit issued by the Municipality of Tirana".

According to the complainants, this provision has become an obstacle to the exercise of the right/freedom of assembly, as there have been cases where, although the State Police entity has been notified by the organizing entity about the assembly, the Municipality of Tirana has not approved the permit for the assembly of this activity.

⁵ Article 12 provides that:

1. *Gatherings in places open to the public are held even without prior notification of the police, according to Article 5 of this law.*

2. *The organizers of these gatherings can request the support of the police outside these countries, to avoid disturbances during or after the gathering.*

⁶ *Guidelines on Freedom of Peaceful Assembly*, Doc. CDL-AD(2019)017, OSCE/ODIHR & Venice Commission, 8 July 2019, f.10, parag. 25.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

They have also raised concerns about the deadline set in points 5 and 7 of Article 61 of VKB no. 130/2018, which stipulates that *the interested entity must submit the request at least 25 days before the date of the activity, and in urgent cases, 7 days before*. In addition to the above, point 8 of this article stipulates that *the deadline for reviewing the request is 7 days from the date of receipt of the application*.

In order to make it possible to examine this problem, we asked you to send us information regarding the reasons and legal causes of the discrepancies presented above between VKB Tirana no. 130, dated 15.11.2018 with law no. 8773, dated 23.04.2001 "On gatherings" (hereinafter law no. 8773/2001).

The Department of Licensing and Civil Status of the Tirana Municipality with the letter protocol no. 41192/1., dated 16.12.2020, among others, informed us that Decision no. 130, dated 15.11.2018 of the Municipal Council "For the approval of the regulation "On the conditions and rules of the occupation of public space in the Municipality of Tirana", has as its object the determination of the detailed conditions and procedures for the rules and conditions of the occupation/use of the public spaces in the Municipality of Tirana. Also, the purpose of this regulation is to manage the public spaces and not to stop gatherings, as the latter finds special regulation in the law no. 8773/2001.

Regarding the concern raised that the Article 61 of VKB no. 130/2018 contradicts the realization of the citizens' right to assembly, we were informed that the provisions of the aforementioned Article 61 are not intended to grant permission to exercise the constitutional right to assembly, but to protect the rights and interests of all subjects who wish to use the public space and develop an activity. This regulation has at its core the regulation of the process of occupying public space through equipping with a permit for the use of public space by the entities seeking to develop promotional, artistic and/or cultural, sports, social and/or community or political manifestations in the public spaces of the Municipality of Tirana, as well as taking measures in order to guarantee the rights and obligations arising from the provision of this permit, such as the management of requests for the use of the same public space, at the same time by different entities, coordination for a possible diversion of road traffic, changing the route of public transport lines, among others.

Regarding the deadlines provided in VKB no. 130/2018, for the filing of requests for permission to occupy public space for the exercise of the activities provided for in this act, two types of deadlines are defined, those under normal conditions and those under emergency conditions. This determination was made taking into consideration the setting of a reasonable deadline in order to carry out procedural actions within a sufficient time even in such possible cases, in which the public space where/when the gathering will take place, such as squares, streets, boulevards, sidewalks, etc., all or part of it, is already occupied by another subject, allowed to exercise one of the other legal forms of occupying public space.

In this letter we were also informed that, from the practices that the Municipality of Tirana has dealt with in urgent cases on the granting of the permit, the latter was issued within 24 hours from the day of making the request by the applicant, and in no case has the permit for the use of public space for the development of political and other manifestations been rejected by the Municipality of Tirana, thus not violating the guarantee of the right/freedom of assembly.

At the end of this letter, it is emphasized that the purpose of VKB no. 130/2018 is closely related to the management of public space and not to the violation of the constitutional right to organize peaceful assemblies. The Municipality of Tirana in each of its initiatives considers the principle of subsidiarity, in the essence of which the governance is as close as possible to the community, taking into account the importance and nature of the task, as well as the requirements of efficiency and economy.

At the end of the review of this important issue and the response sent by the Municipality of Tirana, which we presented above, we estimate that points 2, 5, 7 and 8 of article 61 of VKB no. 130/2018, which for the development of such an activity require obtaining a permit from the Municipality of Tirana, and the obligation of the interested entity to submit the request at least 25 days before the date of the development of the activity and in urgent cases 7 days before, as and the provision of a 7-day deadline for reviewing the request from the date of receipt of the application are in complete and open contradiction with the law no. 8773/2001, because:

a) as we stated above, this law does not provide for a request to be made by the interested entities for obtaining a permit for a gathering, but a notification about it taking place;

b) the announcement of the rally is made to the State Police entities and not to the municipality. Referring to Article 6/2 of Law no. 8773/2001 is the obligation of the Head of the Police Station to notify in writing the head of the local government and the prefect about the gathering;

c) this non-compliance has resulted in unnecessary concerns for the interested subjects and an illegal factual situation. It is evident that, although the State Police entity has approved the notification of the designated subject for the development of the gathering, in the meantime the Municipality of Tirana has not yet approved the permission for the development of this activity, while the date of its development has passed, infringing on this way the constitutional right/freedom of citizens to assemble.

ç) in the "Gatherings" law, the application and notice review deadlines are much shorter, starting from 3 hours for emergency gatherings to 3 days for other gatherings. While the deadline for reviewing the application is within 24 hours from the presentation of the notification.

d) although in your answer you express and emphasize that the Municipality of Tirana handled urgent cases on the granting of the permit and that the latter was issued within 24

hours from the day the applicant made the request, and that in no case, the provision of a permit for the use of public space for the organizing of political and other manifestations has been rejected, we think that even if it has been handled in this way, the content of this provision creates premises for the violation of the constitutional right/freedom of citizens to assembly, and for these reasons, it should be changed and improved at the nearest time.

dh) we are convinced that this problem was created because, during the preparation of the regulation, "On the conditions and rules of the occupation of public space in the Municipality of Tirana", the law no. 8773/2001 was not taken into consideration. This fact is also proven by the reference to the legal basis on which the issuance of this Regulation is based.

Despite the fact that from the information sent by the Municipality of Tirana it does not appear that it considers itself as an authorizing body of gatherings, but the obligation of the requesting subjects (organizers of the gathering) to obtain a permit to use the public environment fundamentally violates the nature of this right. The right to assembly is the right to express a political, cultural, etc. attitude. in public and in an organized manner.

We clarify that VKB no. 130/2018 is a sub-legal normative act. The by-laws cannot contradict the normative legal acts and cannot limit the rights granted and guaranteed by the Constitution, international acts ratified by the Albanian state and laws.

For these reasons, points 2, 5, 7 and 8 of Article 61 of VKB no. 130/2018 are in complete and open contradiction with Article 17 of the Constitution and Article 11 of the ECHR, which stipulates that limitations of the rights and freedoms provided for in this Constitution can only be imposed by law for a public interest or for the protection of the rights of others. The restriction must be proportionate to the situation that dictated it. These restrictions cannot violate the essence of freedoms and rights and in no case can exceed the limitations provided for in the European Convention on Human Rights.

The restrictions imposed on basic human rights and freedoms such as freedom of assembly cannot exceed the limitations provided for in the ECHR interpreted through the European Court of Human Rights, with the condition that these restrictions are proportionate to the situation has caused the need for their deployment. The state has the discretion to ascertain the necessity of limiting one or several rights in accordance with the circumstances that dictate this need, keeping in mind to what extent it is necessary to continue with the restrictions in an effort to overcome the state of emergency.⁷

For these reasons, we estimate that this provision of the Regulation "On the conditions and rules of the occupation of public space in the Municipality of Tirana", approved by

⁷ With the verbal note of the Permanent Mission of RSH to the Council of Europe, dated March 31, 2020, the Albanian state, in accordance with Article 15/3 of the ECHR, has notified the Secretary General of the Council of Europe of the derogation from certain rights provided by articles of the Convention, due to the state of the epidemic. Meanwhile, the deadline for which the derogation was made has fallen and currently it has lost its legal force.

the Decision of the Tirana Municipal Council no. 130, dated 15.11.2018 is illegal in the sense of the provisions of Article 109 of the Code of Administrative Procedure⁸ and makes the administrative act partially illegal. Referring to Article 113 of this Code,⁹ it must be changed and improved by you in order to guarantee the freedom of assembly.

The Tirana City Council, in fulfillment of its legal mission, has the right to make decisions on the approval of administrative acts within the framework of good governance and increasing the well-being of the residents of this city. But these acts should not violate the essence of the rights and freedoms of citizens. We appreciate that the exercise of the right/freedom of assembly cannot be subject to restrictions other than those provided for in Article 11/2 of the ECHR and in Article 8 of the special law "On Assemblies", which are necessary in a democratic society, in the interest of national security and public safety, for the protection of order and the prevention of criminality or for the protection of the rights and freedoms of other persons.

It is time to call to attention the state's obligations stemming from Article 15/2 of the Constitution, which stipulates that, "The entities of public power, in fulfilling their duties, must respect basic human rights and freedoms, as well as contribute to their realization". In this context, public authorities are required, not only not to become an obstacle to the exercise of freedom of peaceful assembly of citizens, but on the contrary, they must contribute to facilitating and protecting the exercise of the right to freedom of peaceful assembly. This duty should be reflected in the legislative framework, as well as relevant regulations and law enforcement practices.¹⁰

The European Court on Human Rights (ECHR) in its practice has considered that notification, and even authorization procedures for a public event do not normally violate the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take measures reasonable and appropriate to

⁸ Article 109 "Illegality of the administrative act"

An administrative act is illegal if:

- a) the public body that issued it acted with a lack of competence;*
- b) it is the result of the violation of the provisions related to the administrative procedure;*
- c) is contrary to the provisions that regulate the form or mandatory elements of the administrative act;*
- ç) it was issued in the absence of authorization by a law, according to point 2, article 4, of this Code;*
- d) it is contrary to the substantive law;*
- dh) it is the result of discretion exercised illegally; or*
- e) it is not in accordance with the principle of proportionality.*

⁹ Article 113 "Procedure and consequences of annulment and repeal"

- 1. An administrative act can be annulled or repealed, mainly by the public body that has the authority to issue the act, by its superior body or by another body expressly provided by law.*
- 2. The annulment of an administrative act has consequences for the past, while the annulment of the administrative act has consequences only for the future. Cancellation and annulment can be partial or total.*
- 3. Cancellation or revocation is done with a new written act, which cancels, repeals, changes or completes the first act.*

¹⁰ *Guidelines on Freedom of Peaceful Assembly*, Doc. CDL-AD(2019)017, OSCE/ODIHR & Venice Commission, 8 July 2019.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

guarantee the normal development of any assembly, meeting or other gatherings.¹¹ Organizers of public gatherings must act in accordance with the rules governing this process, respecting the regulations in force. Advance notice serves not only the purpose of reconciling the right to assembly with the legitimate rights and interests including the freedom of movement of others, but also the purpose of preventing disorder or crime. Even in the case where no prior notice of protest has been given, this technical element must not in any way violate the essence of the right to exercise the freedom of assembly.¹²

Whereas, the European Union Enlargement Report for Albania for the year 2019, in the chapter on fundamental rights, expressly provides that the freedom of assembly and organization are expressly provided for in the Constitution and the legislation for assemblies and are generally in line with international standards as well as ODHIR Framework Rules on the Right to Peaceful Assembly. Despite this, the assembly law does not appear to address the issue of spontaneous assemblies and counter-protests. During the reporting period, the right to assembly was generally guaranteed, however incidents were recorded in some political protests and demonstrations.¹³

For the above, the People's Advocate, following the performance of the constitutional and legal mission *in the role of promoter of the highest standards of human rights and freedoms in the country*, based on Article 63/3 of the Constitution, which provides that: "*The People's Advocate has the right to make recommendations and propose measures when it notices a violation of human rights and freedoms by the public administration*"; as well as Article 24/b of Law no. 8454 dated 04.02.1999 "For the People's Advocate", amended, which provides that: "*When the People's Advocate notes that it is the content of the law or other normative acts and not their implementation that creates premises for violation of human rights, recognized by the Constitution or other laws, has the right:*

b. to propose to the administration entities the change or improvement of by-laws; failure to consider the proposal within 30 days results in the suspension of the force of by-laws that cause violations of rights and freedoms."

WE RECOMMEND:

1. Taking the necessary measures to change and improve items 2, 5, 7 and 8 of Article 61 of the Regulation "On the conditions and rules for the occupation of public space in the Municipality of Tirana", approved by the Decision of the Tirana Municipal Council no. 130, dated 15.11.2018.

2. Drafting of new provisions should be done in accordance with Article 11 of the ECHR, Article 17 of the Constitution and Law no. 8773, dated 23.04.2001 "On gatherings".

¹¹ See, *Sergey Kuznetsov against Russia*, no. 10877/04, § 45, 23 October 2008.

¹² See, *Éva Molnár against Hungary*, 7 October 2008, request no. 10346/05.

¹³ EU Progress Report for Albania, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>, p.10

For the position you will take and the measures you will take in implementation of this recommendation, please notify us within the legal term of 30 days provided for in Article 22 of the law "On the People's Advocate", as amended.

Trusting in your understanding and cooperation,

THE COMMISSIONER

Ermonela Ruspi

Drafted: S. Nushi

Sent with our letter no. K2/I76-4 prot., dated 30.04.2021