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Subject: *Recommendation on taking the necessary measures to respect the constitutional freedom of assembly even during the state of emergency.*

INTERMINISTERIAL COMMITTEE OF CIVIL EMERGENCIES
Tirana

GENERAL PROSECUTOR
Mr. Olsian Çela
Tirana

MINISTER OF HEALTH AND SOCIAL PROTECTION
Mrs. Ogerta Manastirliu
Tirana

GENERAL DIRECTOR OF STATE POLICE
Chief Executive Ardi Veliu
Tirana

Honorable,

During the last two years, in the Ombudsman's Office many complaints from various entities have been considered, as individuals and legal persons (NGOs, trade unions, students, groups of citizens, etc.) who have had allegations against the bodies of the State Police for not allowing the exercise of freedom of assembly. According to the complaining subjects, the refusal by the police bodies was made for various reasons, such as not notifying to the police bodies within the deadline provided by law, lack of identity or address of the organizer or the leader of the assembly, for not specifying in the notification the purpose of the assembly, the date, place, time of the beginning and ending of the assembly or its itinerary (if there is any), the approximate number of participants and the number of persons assisting in the process of the assembly, the identities of the persons who will speak at the assembly, etc.

Also during this period, the Ombudsman's Office has started to follow on its own initiative several cases made public in the media for obstructing the exercise of freedom of assembly, and has monitored almost all assemblies organized by Opposition Parties and groups of citizens, students organized in Tirana, the residents of "Unaza e Re", in the area of "Astiri" and in the area near "Bregu Lumit" in Tirana, who have protested respectively against Public Institutions of Higher Education for better conditions in universities, for the demolition of their buildings due to the implementation of the project's expansion of the "Unaza Re" and the extension of the Boulevard "Zogu i Pare".

From the review of these cases by our institution it was found that in some of them :

1. The notifications of the subjects for assemblies are refused due to unsuitable place requested for the gathering as it became an obstacle for the normal movement of the citizens and vehicles;

2. The responses of the police bodies to the fulfillment of the details, or the refusal of assemblies has been incorrect, but there are found inexistent reasons rejecting the notifications or giving responses by claiming that they did not meet the legal criteria by prohibiting the exercise of freedom of assembly of the citizens;

3. The heads of the police bodies (Commissariats' Chiefs) to whom these notices are addressed to, have not issued reasoned decisions for communication with the organizer or the leader of the assembly for possible prohibitions and restrictions or other conditions, including the number of persons who will assist in its performance, according to article 6/1/a of law "On Assemblies"¹, or banning all gatherings in particular locations or public spaces, or deciding the time and place of the assembly, according to article 8 of this law². In this way, the applicants' right to a fair legal process was violated, as they were denied from the right to appeal against the expected decision of the Chef of the Commissariat of Police, as provided in article 25 of the law "On assemblies";

4. The central and local structures of the State Police, mainly the Local Directorate of Tirana Police, have violated the principle of proportionality by exceeding the physical force exerted on citizens and throwing tear gas more than necessary, as well as in the closed premises.

For the abovementioned cases, there have been made recommendations to the General Directorate of State Police through which we have requested respecting by the structure of this body for freedom of assembly, free movement, the principle of proportionality, the right

¹ Article 6 of law no. 8773, dated on 23.4.2001, "On Assemblies", provides that:

"1. The Chief of the Police Commissariat, within 24 hours from receiving the request according to point 2 of article 5, or within 8 hours from receiving the request according to point 3, of article 5, of this law with a reasoned decision:

a) communicate to the organizer or the leader of the assembly the prohibitions and possible limitations or other conditions, including the number of persons who will assist in the performance of the assembly;

b) give a copy of the official order for the assignment of the police officer responsible for helping and monitoring the development of the gathering.

2. The Chief of the Police Commissariat notifies in writing the head of the local government and the prefect for the holding of the assembly".

² Article 8 provides that:

"When there are motivated reasons that holding an assembly in a public square or crossings poses a real risk to national security, public safety, for the prevention of crime, for the protection of health or morals or for the protection of the rights and freedoms of others and the risk can not be prevented by less restrictive measures, the Chief of the Police Commissariat may suspend the perform of the assembly or decide the time and place of the assembly".

to information and the provision of necessary services and facilities to citizens by these bodies³.

The European Union Enlargement Report for Albania for 2019 in the chapter on fundamental rights explicitly states that freedom of assembly and association are expressly provided for in the Constitution and legislation on assembly and are generally in line with international standards and the Framework Rules of ODHIR on the right to peaceful assembly. Nevertheless, the law on rallies does not seem to address the issue of spontaneous assemblies and counter-protests. During the reporting period the right to assemblies was generally guaranteed, however incidents were recorded in several protests and political demonstrations⁴.

On the other hand, after the declaration of the state of the world pandemic on March 11, 2020 by the World Health Organization, a number of acts⁵ were approved by the competent state authorities to take special administrative measures in accordance with the situation, which led to the restriction of some fundamental constitutional and legal rights and freedoms.

The proclamation of this situation in our country caused the cessation of general social activity and the restriction of economic activity. As a result, this situation has affected the standard of living and well-being of citizens, especially some social categories in need.

Despite this situation, the Ombudsman's Office has continuously performed its duty in fulfillment of its constitutional mission, to protect and guarantee the fundamental rights and freedoms of Albanian and foreign citizens residing in the territory of the Republic of Albania as well as the identification of various cases of non-compliance or non-guarantee of fundamental human rights, to the extent that they are unlimited or unrestricted by normative acts issued for this purpose.

³ 1. Recommendation sent to GDSP for: 1. *"Taking the necessary measures for the preparation of the models, as "Notification addressed to the Police Commissariat for the holding of the assembly in squares or public crossings" and "Notification addressed to the Police Commissariat for the holding of an urgent assembly in the squares or public crossings" by notifying entities, its publication on the Website of the General Directorate of State Police in order to be accessible to citizens and create the possibility of on-line application by them.* 2. *Taking the necessary measures for the preparation of a model, as "Administrative decision to communicate with the organizer or leader of the assembly about possible prohibitions and restrictions or other conditions, including the number of persons who will assist in its progress", according to article 6/1/a of the law "On assemblies" and "Administrative decision on prohibiting the assembly in public space or crossings, or in determining the time and place where the assembly will take place", according to article 8 of this law".*

2. Recommendation sent to GDSP for: *"Taking measures for a fair attitude and appropriate implementation of law no.8773, dated on 23.4.2001, "On Assemblies", not to prohibit or restrict the organization or participation of citizens in peaceful gatherings for the purpose of respecting and protecting fundamental human rights and freedoms, both that of assembly and that of free movement".*

3. Recommendation sent to GDSP for: *"1. Application of the legal principle of proportionality when tear gas is used by police officers; 2. Analysis of the cases by the responsible authorities for the use of tear gas and in the Local Directories of Police".*

⁴ EU Progress Report on Albania, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>, page.10

⁵ Normative acts no. 3, dated on 15.3.2020, of the Council of Ministers, "On taking special administrative measures during the period of infection caused by COVID-19", as amended, DCM no. 243, dated on 24.03.2020, "For declaring a state of natural disaster", the issuance of a series of normative acts by the Inter-Ministerial Committee of Civil Emergencies as the highest body for coordination and organization of the actions of the state institutions and private entities, as well as financial and material resources for coping with natural disasters due to the epidemic caused by COVID-19, as well as by some ministers mainly the Minister of Health and Social Protection.

In this context, we have closely followed through the media the protests of citizens organized in different cities of the country during the pandemic period and the establishment of the state of natural disaster due to the spread of infection by COVID-19. Through assemblies they have expressed their concerns and made them public to attract attention and sensitize public opinion.

According to the media, in some cases the protests were organized by employees of private enterprises due to the fact of not receiving the "war salary", in certain cases by employees of private or state-owned enterprises due to dismissal, in a number of cases by residents who have had homes' damaging problems from last year's earthquakes. While in various cases the protests were organized by civil society activists and several citizens due to restrictive measures imposed by state authorities during this pandemic period.

We have also been informed by the media that in some instances during the protests the State Police authorities have intervened and escorted the organizers and some participants in the protest to the district police station, and then the referral of procedural materials to the prosecution bodies for criminal offenses "Organizing and participating in illegal gatherings and demonstrations" and "Disruption of public order", provided by Articles 262 and 274 of the Criminal Code. Such cases have been identified in the cities of Tirana, Fier and Vlora. While in some circumstances, there was no information provided on the reaction of the State Police and what actions were taken by its authorities in relation to the organizers and participants in the protests.

To enable the assessment of these cases as well as the behavior of the authorities of the State Police regarding their treatment, taking into account the fact that the right of citizens to assembly is a fundamental constitutional right, with the letter no. K2/I18-2 prot., dated on 18.05.2020 to the General Director of the State Police we requested the submission of information regarding the position held by the State Police in cases of protests in various cities of the country during the period of the declaration of the pandemic and the state of natural disaster in the country. We also asked them to inform us how they were assessed, what procedural actions were taken toward the organizers and participants in the protests and whether the same standard was applied in all cases.

The General Director of the State Police with letter no. 3144/1 prot., dated 02.06.2020, among others informed us that: *"Based on Article 7 "Special measures", of law no.15/2016 "For the prevention and control of infections and infectious diseases", letter "dh", point 6.1 of DCM n. 243, dated on 24.03.2020 "For declaring a state of natural disaster", normative Act no. 3, dated on 15.3.2020, of the Council of Ministers "For taking special administrative measures during the period of infection caused by COVID-19", as amended, Order of the Minister of Health and Social Protection no. 132, dated 08.03.2020 "For closing public and non-public activities and canceling indoors or outdoors mass gatherings", as amended, article 242/a of the Criminal Code, as amended, prohibition of conducting public activities, such as gatherings, assemblies and protests indoors and outdoors.*

Despite the above legal provision, during the duration of COVID-19 pandemic, there are identified the occurrence of some gathering and assemblies/protests in open and closed areas for the public in some cities of the country and specifically:

- 27 cases of gatherings / assemblies and protests in open and closed areas for the public.

- In 21 cases, proceeded and referred to the prosecution authorities for criminal prosecution for “Disruption of public order”, “Organizing and participating in illegal assemblies”, provided by Articles 262 and 274 of the Criminal Code.

- In 6 cases, gatherings for which no procedural actions have been performed and referrals to the prosecution (mainly occurred in Vlora city by fruit and vegetable market sellers, fashion sector workers “Maks Shoes”, etc), in which safety measures against COVID-19 have been fulfilled and the dispersal of all persons participating after their representative has met officials of Tax authority, Municipality institution and Prefect of Vlora.

- 4 cases of illegal gatherings / assemblies / protests which were accompanied by disobedience and opposition of State Police employees, for which arrests / detentions of leaders, organizers and other participating persons were made (in the jurisdiction of LPD Tirana).

- There are 17 cases of gatherings, assemblies / protests for which criminal proceedings have been conducted in the free condition of the leaders, organizers and other persons.

- In two cases, the organizers of gatherings, assemblies and parades in open places to the public, in the city of Tirana have addressed a request / official notification LPD Tirana for the development of these activities, for which the structures of LPD Tirana have returned an official response by informing the conditions in which our country has encountered (the COVID-19 situation) and the legal acts prohibiting the development of these activities.

- Despite the official communication with the organizers of these activities for their prohibition and non-development, the persons have gathered and carried out illegal activities, for which the relevant escorts and procedural actions have been carried out for free criminal prosecution of the organizers / leaders of these activities.

- In all cases, the State Police has reported the illegality of conducting such activities in the conditions of the COVID-19 pandemic, has called for a ban on the activity and the dispersal of participants. In cases where the organizers and participants have not obeyed the orders and requests of the State Police authorities, it has intervened to stop the activity, disperse the participants, perform procedural actions and refer them to the prosecution body”.

While the Local Police Directorate (LPD) Tirana with letter no. 4065/1 prot., dated 12.06.2020 among others informed us that:

“With the letter dated 04.05.2020 of the lawyer Altin Goxhaj it was announced that on 6 - 7 May 2020, at 12:00 o'clock, an assembly would be held in the Square “Skënderbej”. The purpose of the assembly was against the dictatorship, the economic bankruptcy of Albania and the house arrest of Albanians.

LDP Tirana with letter no. A153 / 1 dated 04.05.2020 has returned a response to the organizer based on letter “a” of article 6 of law no. 8773, dated 23.04.2001 “On assemblies”, to stop the gathering requested by him at 12:00 on the dates 06-07 May 2020 in the place specified in the request, as in the letter “dh”, point 6.1 of DCM no. 243, dated 24.03.2020 “For declaring a state of natural disaster”, due to the Covid-19 epidemic, assemblies, demonstrations and strikes are banned. The organizer was also informed and reminded that for actions contrary to the law, the organizer, the leader of the assembly and the participants in the assembly, will bear administrative and criminal responsibility., in the implementation of the letter “a”, article 24 of law no. 8773, dated 23.04.2001 “On assemblies”, as well as Article 262 of the Criminal Code “Organizing and participating in illegal assemblies”.

For this gathering LPD Tirana based on the Standard Working Procedure has drafted the Plan of Measures no. A-152/2 prot., dated 06.05.2020 "For taking measures, not allowing the gathering and the development of the protest called by a group of citizens on 07.05.2020, at 12:00, at the Square "Skënderbej".

Also in this letter LPD Tirana informed us about the measures taken to prevent the spread of COVID-19, in Police Stations, either by staff, or by persons escorted to the premises of police stations and specifically:

"Accompaniment of persons in escort rooms is provided by police means respecting the Standard Working Procedure for "Technical rules of escort in the premises of the State Police", approved by the Order no. 938, dated 24.07.2019 of the General Director of the State Police. Police officers were wearing protective masks.

Pursuant to normative act no. 3, dated 15.3.2020, of the Council of Ministers, "For taking special administrative measures during the period of infection caused by COVID-19", as amended, LPD Tirana from 13.03.2020 took measures by equipping police officers with breathing masks, plastic gloves as well as disinfected all indoor and outdoor areas, premises, offices, operating rooms, escort / security rooms and mobile service vehicles.

Disinfection is currently ongoing in all areas of LPD Tirana and at the Police Stations by the economic operator that has entered into the contract with LPD Tirana, with frequency of disinfection 1 time in 7 days".

Attached to the information, LPD Tirana also sent us photocopies of letter no. A153/1 dated 04.05.2020, with subject: "On the prohibition of gathering according to your announcement dated 04.05.2020" addressed to the lawyer Altin Goxhaj, as well as the Measures' Plan no. A-152/2 prot., dated 06.05/2020 "For taking measures to prevent the gathering and development of the protest called by a group of citizens on 07.05.2020, at 12:00, at the Square "Skënderbej".

In the both abovementioned answers submitted to our institution by the General Directorate of State Police and the Local Police Directorate of Tirana evidences the fact that based on the normative Act no. 3, dated 15.3.2020, of the Council of Ministers "For taking special administrative measures during the period of infection caused by COVID-19", as amended; letter "dh", point 6.1 of DCM no. 243, dated 24.03.2020 "For declaring a state of natural disaster"; the Order of the Minister of Health and Social Protection no. 132, dated 08.03.2020 "For closing public and non-public activities and canceling mass gatherings in closed or open places", as amended, the prohibition of conducting public activities, such as gatherings, assemblies and protests in closed and open places.

In the context of addressing this issue we are referring to the normative acts on which the positions of the State Police are based for the prohibition of gatherings, assemblies, protests, etc., during the period of declaring a state of natural disaster due to COVID-19 infection and specifically:

1. In the normative Act no. 3, dated 15.3.2020, of the Council of Ministers "For taking special administrative measures during the period of infection caused by COVID-19", amended, in article 3, point 2 thereof it is provided that:

"Entities or individuals who organize public and non-public activities, such as sports, cultural activities and conferences, or indoors or outdoors mass gatherings, such as concerts, gatherings and public hearings, shall be punished by a fine of 5,000,000 (five million) ALL for the organizers and the prohibition of the activity".

2. In the DCM no. 243, dated 24.03.2020 "On the declaration of the state of natural disaster", point 6.1, letter "dh", it is provided that:

"Public institutions to ban assemblies, demonstrations and strikes;"

3. In the Order of the Minister of Health and Social Protection no. 132, dated 08.03.2020 "For closing public and non-public activities and canceling mass gatherings in closed or open places", amended, point 2, provides that:

"Ordering: the cancellation of mass gatherings in closed or open places such as concerts, gatherings and public hearings...."

From the acts cited above, we elect the Normative Act no. 3, dated 15.3.2020, of the Council of Ministers "For taking special administrative measures during the period of infection caused by COVID-19", as amended, which was subsequently approved by law by the Assembly within the time limit provided by the Constitution and which is the act with the highest force of these three acts.

From the content of this provision it is clearly understood that during the duration of the pandemic period in our country caused by COVID-19 ***mass gatherings are prohibited in closed or open places, such as concerts, gatherings and public hearings***, which means that non-mass gatherings indoors or outdoors, such as concerts, rallies and public hearings, are not prohibited.

Whereas, with Order no.132, dated 8.3.2020, the Minister of Health and Social Protection has ordered the closure of public and non-public activities such as sports activities, cultural activities and conferences, as well as the cancellation of mass gatherings in open or closed areas such as concerts, gatherings and public hearings.

From the legislative technique point of view, this administrative act is not clear enough, as it seems to aim at restricting, prohibiting or annulling some rights related to public activities and gatherings in closed and open places. It has been drastically interpreted by the Albanian authorities as a total and absolute ban on the exercise of the rights restricted by it. The restrictions imposed by this administrative act continue to apply even nowadays, when more than 4 months have passed since the beginning of the epidemic situation in our country.

We bring to your attention that during the period of the pandemic, gatherings were held, such as meetings, public hearings, etc., massive or not and with security measures by various public administration authorities such as ministers, mayors, etc., which were made public even in the media. The purpose of their organization has been related to taking protective measures against COVID-19, for the development of the economy through tourism, various public projects, promotions, etc. Meanwhile, activities or concerts were organized with a reduced number of participants / artists in open spaces in different cities of the country. We clarify that so far we do not have any information of the spread of the infection COVID-19⁶ in these activities and especially in those organized in open places. On the other hand, gatherings or protests of ordinary citizens as a means to realize their right to express their dissatisfaction and opinions are not allowed, despite guaranteeing of the rules of social distancing from their part.

As a result of the above, we consider that the above-mentioned normative acts have been unfairly and incorrectly understood, interpreted and implemented by the structures of the

⁶Letter of the Institute of Public Health with No.496/1 prot, dated 29.04.2020 "Guidelines on working at/out of office for the administration" (COVID-19).

State Police. As a result, they have obstructed and violated the exercise of a constitutional freedom of citizens, such as the right of assembly.

The illegal attitudes held in these cases by the police authorities seriously damage the image of the State Police and the public trust in this authority, which are necessary in the successful performance of its law-enforcement mission to maintain public order and security.

The Ombudsman's Office expresses its stance regarding the exercise of the right / freedom of assembly by citizens as one of the fundamental human rights and freedoms. We draw your attention to the fact that the freedom of assembly is provided and guaranteed by the Constitution of the Republic of Albania, Part II "The fundamental human rights and freedoms", Chapter III "Political rights and freedoms", respectively in Article 47 which provides that:

- "1. Freedom and unarmed participation in peaceful gatherings is guaranteed.*
- 2. Peaceful gatherings in public squares and places are held in conformity with the law".*

Freedom of assembly and association is also guaranteed in Article 11 of the European Convention on Human Rights, which explicitly states that:

"1. 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.

2. 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....".

Restrictions imposed on fundamental human rights and freedoms such as freedom of assembly may not exceed the limitations set forth in the European Convention on Human Rights⁷ (ECHR) interpreted by the European Court of Human Rights (ECHR), set as a condition that these restrictions be proportionate to the situation which has given rise to the need for their imposition. The state has the discretion to ascertain the necessity of restricting one or several rights according to the circumstances dictating this need, keeping in mind to what extent it is necessary to pursue the restrictions in an attempt to overcome the state of emergency⁸.

In its practice, the ECHR has considered the notification and even authorization proceedings, of a public event do not normally infringe the substance of the law under Article 11 of the Convention as long as the purpose of the proceedings is to allow the authorities to take reasonable and appropriate action to ensure the normal conduct of any assemblies, meetings or other gatherings⁹. The organizers of public gatherings must act in accordance with the rules governing this process by respecting the regulations in force. Prior notice serves not only for the purpose of coordinating the right of assembly with legitimate rights and interests,

⁷ Article 17 of the Constitution of the Republic of Albania.

⁸ With the verbal note of the Permanent Mission of the Republic of Albania to the Council of Europe, dated March, 31, 2020, the Albanian state, in accordance with Article 15/3 of the ECHR, has informed the Secretary General of the Council of Europe for the derogation from certain rights provided by articles of the Convention, due to the state of the epidemic. Meanwhile, the deadline for the derogation has time-limits and currently it has lost its legal force.

⁹ See, *Sergey Kuznetsov v. Russia*, no. 10877/04, § 45, October, 23, 2008.

including the freedom of movement of others, but also for the purpose of preventing riots or crime. Even in the absence of a prior notice of protest, this technical element must in no way violate the essence of the right to exercise freedom of assembly.¹⁰

Procedural rules that discipline or condition the exercise of this right are explicitly defined in law no. 8773, dated 23.4.2001 "On assemblies", which also provides for exhaustive restrictions or prohibitions which can not be exceeded in the exercise of the right of assembly. This law stipulates that, everyone has the right to freedom of peaceful and unarmed participation in assembly, also provides that the State Police guarantees and protects the right of every person to organize and participate in peaceful and unarmed assemblies. Prohibition and dispersal of a gathering is allowed only in cases when it is provided in law. With the reference to the content of the provisions of this law it clearly results that the responsibilities of the State Police in relation to assemblies are:

First, actions to guarantee the exercise of this fundamental constitutional freedom of citizens and;

Second, the prohibition of exercising this freedom / right is placed only for limited cases and clearly defined in law.

For the exercise of this right, notification should, therefore, only be required where its purpose is to enable the state to put in place necessary arrangements to facilitate and guarantee freedom of assembly. Even the current law in article 7 provides the right of citizens to hold urgent assemblies in cases where there is an urgent significance, which can take place without respecting the time-limits provided in article 5¹¹ of this law, but it is obligatory to make a written notification which contains the elements defined in article 5, point 2 of this law, as well as the reason for urgency. In these cases the notification must be made immediately, but not later than 3 hours before the time of the assembly.

The fact that in the current law the term notification is used to the Commissariat of Police for the holding of the assembly and not a request is very important and significant in favor of the exercise and guarantee of this right / freedom by citizens. If this law would provide for the term request for holding a rally, it is clearly understood that in order to exercise this right / freedom, the approval of the police body would be required, as it was in the previous law. While the use in law of the term notification, means that the "decision" to exercise the right has been taken by the notifying entity itself and does not require the approval of the police authority. This is the fundamental change the new law "On assemblies" brought, in guaranteeing the real exercise of this fundamental constitutional right/freedom of citizens in a democratic country as ours. If the organizers do not make the notification with the data

¹⁰ Sww, *Éva Molnár v. Hungarisë*, October, 7, 2008, request no. 10346/05.

¹¹ Article 5 of this law provides that:

1. In the case of a demonstration in squares or places of public passage, the organizer and director are obligated to notify the chief of the commissariat of police in writing no later than three days before the date of holding the demonstration.

2. A notification in writing should contain:

a) the identity and address of the director and organizer of the demonstration;

b) the purpose of the demonstration;

c) the date, place, hour of starting and ending of the demonstration and its itinerary (if there is one);

ç) the approximate number of participants and the number of persons helping in the conduct of the demonstration;

d) the persons who will speak at the demonstration.

3. If the written notification does not contain the elements contemplated in point 2 of this article, it is returned to the organizer and director of the demonstration to be completed. They shall submit it again, completed, no later than 24 hours before the time when the demonstration will be held.

provided by law, the Chief of the Commissariat of Police has the legal right to communicate with the organizer for fulfilling them or to make a reasoned decision to prohibit the conducting of the mass in public squares or crossings, or offering another place and time. It is important to note that the positive spirit of the current law is clearly reflected in Article 12¹², where it is foreseen the holding of gatherings in open places to the public without prior notification of the police according to its article 5.

In addition to the provisions cited above, referring to Article 15/2 of the Constitution which provides that, “*The bodies of public power, in fulfilment of their duties, shall respect the fundamental right and freedoms, as well as contribute to their realization*”, as well as article 2 of law no. 108/2014 “On State Police” that provides that: “*The mission of the State Police is to maintain public order and security, to protect high state personalities and objects of special importance, to guarantee the implementation of the law, in accordance with the Constitution and international acts, while respecting human rights and freedoms*”, the Ombudsman's Office estimates that the public authorities are required not only not to become an obstacle to the exercise of freedom of assembly of citizens, but on the contrary should contribute to its realization.

Also, the method used by the police to discourage participants by dispersing the protest is an important factor in assessing the proportionality of the intervention. The ECHR considered it a violation of Article 11 of the European Convention for the police to disperse a peaceful assembly on the grounds that it had been held without prior notice by the organizers.¹³ According to the decision of this Court, although the police were acting in accordance with domestic law (a law which required the police to be informed of a assembly at least three days in advance and also gave them the authority to disperse a assembly taking place without prior notice), the decision to disperse a peaceful assembly solely because of the absence of the organizers to comply with a requisite prior notice, without any illegal conduct on the part of the participants, might amount to a disproportionate restriction on their right to hold a peaceful assembly provided for in Article 11 of the Convention.

In the concrete case of the protests in a state of pandemic, the observance of the principle of proportionality in limiting the measures taken would require the revision of the administrative act or its implementation in such a way that the restriction of rights is neither absolute nor complete. In any case, the restrictions imposed must be closely related to coping with the situation to prevent the spread of the disease, and in no case can they be construed as a total annihilation of the law. On the contrary, the measures taken should be at least as less harmful as possible on restricted rights.

Another problem identified is that in some cases even journalists and reporters were detained and accompanied by applying the status of reporter of the event with that of the participating organizer.

¹² Article 12 provides that:

1. Demonstrations in please open to the public are also held without preliminary notification to the police according to article 5 of this law.
2. The organizers of these demonstrations may ask for the support of the police outside of these places, to avoid irregularities during or after the conduct of the demonstration.

¹³ See, *Bukta and others v. Hungary*, no. 25691/04

Absolute restriction of the right of citizens to gather in search of their rights, such as gatherings, it was a proportionate measure at the time of taking a number of other measures in the higher public interest, but, in order to guarantee the observance of this principle even today, it must be reviewed the way of enforcing the restriction or prohibition.

In this sense, a correct approach even in compliance with the Constitution and international instruments in the field of human rights would be the revision of this measure, allowing the right of exercising of assembly, under the guarantee of the law-enforcement authorities, as it is in fact realized in many other restrictive measures.

Following this obligation and to create facilities for citizens to exercise their constitutional and legal rights, but also to unify the position of the State Police, prosecution and judicial bodies in such cases, competent state authorities should improve the normative acts that regulate freedom of assembly, in order to be conducted even in cases of pandemics or the declaration of a state of natural disaster. During the process of preparing these acts, it should be taken into consideration such aspects as: the place it will be conducted, closed or open, the area, the number of the participants, the protective measures against the spread of the infection, the important principle of proportionality, etc.

In this regard, we bring to attention the positive international attitude and experience.

The United Nations Special Rapporteur on Freedom of Assembly and Association has called on all Member States to ensure that measures taken against COVID-19 do not infringe on freedom of assembly and association¹⁴. The recommendation addressed to the member states lists ten basic principles and guidelines that states should take into account to ensure respect for this right and the involvement of civil society and other actors as partners in coping with the crisis that each country is going through¹⁵.

Among the positive experiences of European countries in this aspect we can mention Germany, which during the pandemic period has allowed the conduction of gatherings and assemblies up to a limited number of participants while maintaining physical distance during these situations. The German Constitutional Court has ruled on the right of persons to protest, if they obey the rules of maintaining physical distance in order to prevent the spread of COVID -19 infection highlighting that a general ban on rallies would be unconstitutional and that coronavirus pandemic-related health concerns are not grounds for a general ban on protests.¹⁶

With reference to the subject above, the Ombudsman's Office ensuing the fulfillment of the 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 Ombudsman's Office has the right to make recommendations and to propose measures when he observes violations of human rights and freedoms by the public administration*"; as well as Article 21/b of law no. 8454 dated 04.02.1999 "*On Ombudsman's Office*", amended, which provides that: "*The Ombudsman's Office makes recommendations on how to remedy*

¹⁴COVID-19 restrictions should not stop freedom of assembly and association, says UN expert <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25792&LangID=E>

¹⁵ States responses to Covid 19 threat should not halt freedoms of assembly and association" – UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>

¹⁶ Federal Constitutional Court, April 15, 2020 – 1 BvR 828/20 https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/rk20200415_1bvr082820.html

the infringement to the Administrative organ that in his judgment has committed the violation of rights and freedom.”,

RECOMMEND¹⁷:

1. Taking the necessary measures for the immediate cessation of the current practice of the structures of the State Police for not allowing non-mass gatherings in closed or open places, such as assemblies and public hearings, organized by various entities during the period of the pandemic and declaring a state of natural disaster.
2. Taking the necessary measures by the relevant structures to make concrete proposals to the bodies that have the right of legislative initiative to enable changes in law no. 8773, dated 23.4.2001 “On assemblies”, to guarantee the right to spontaneous rallies as well as counter-demonstrations in accordance with international recommendations and acts.
3. Taking the necessary measures by the structures of the State Police to guarantee the right to practice the profession and report of the events by journalists present at assemblies or other activities of this nature.
4. Taking the necessary measures by the public power structures to improve the normative acts in force that regulate freedom of assembly in order to guarantee this constitutional right even in period of pandemics and declaring a state of natural disaster, by respecting the relevant health protocols.
5. Preparing and approval of guideline by the General Prosecutor's Office, in cooperation with HPC and HJC for the unification of the practices of the prosecution bodies and those for criminal prosecution and adjudication of criminal offenses “Organizing and participating in illegal manifestations”, provided by Article 262 of the Criminal Code.
6. Taking of immediate measures by the General Prosecutor's Office for the preparation of concrete proposals addressed to the competent structures in order to amend Article 262 of the Criminal Code in accordance with the spirit of the Constitution of the Republic of Albania, the European Convention on Human Rights and the current practice of the European Court of Human Rights.

For the position you will take towards this recommendation and the measures that will be taken for its implementation, please let us know within the legal deadline of 30 days, as provided in article 22 of law no. 8454 on 04.02.1999 “On Ombudsman’s Office”.

While hoping on your understanding and cooperation,

OMBUDSMAN

ERINDA BALLANCA

¹⁷ The recommendations are not necessarily addressed to all the institutions to which this document is directed to.