

## Conclusions of the summary report on the courts' jurisprudence in cases related to the right to freedom of assembly

In January 2015 the President of the Curia set up a jurisprudence-analysing working group for examining the courts' jurisprudence in right to freedom of assembly-related cases. The task of the working group was to identify unsettled issues having arisen in the context of the adjudication of police authorities' application of freedom of assembly-related laws, judicial interpretations, and the determination by the Constitutional Court of related constitutional complaints, as well as to provide guidance to the legislature in the preparation of potential amendments.

The jurisprudence-analysis covered court decisions that were delivered between 2010 and 2015. Judges and other experts were involved from the Curia and the lower courts, as well as from the Constitutional Court, the Office of the Parliamentary Commissioner for Fundamental Rights, the Ministry of Justice, the Budapest Police Headquarters and the Helsinki Committee. In the first phase of the work a Problems Chart was created then, in the second phase, issues and areas requiring a more thorough and detailed examination were determined. Finally, in the third phase, a summary report was drafted on the basis of the findings of the analyses and of the observations of the members of the working group.

The summary report has examined the two key elements of the right to freedom of assembly, namely prior notification, which is a prerequisite for the holding of an assembly, and the peaceful dispersal of an assembly, which formally puts an end to an assembly that has been actually held. The working group has also examined the judicial interpretation of the substantive and procedural rules governing these two legal institutions of the right to freedom of assembly.

As to the issue of prior announcement, the working group has pointed out that to prohibit a demonstration merely on the basis of the prior notification would constitute a limitation of the fundamental right at issue, therefore such prohibition can only be made on grounds prescribed by the law. In view of the "prescribed by law" requirement as contained in the international documents, the case law of the international courts and the decisions of the Constitutional Court, the right to freedom of assembly may only be restricted on the grounds specified in Act No. III of 1989 on the right to assembly (henceforth: Assembly Act.) No prior restriction may be imposed by invoking either another fundamental right enshrined in the Fundamental Law or any other international treaty provision. Without amending the Assembly Act no prior prohibition may be imposed on an assembly either on the ground that it propagates totalitarian ideas or with a view to protecting the private life of public figures and of the persons living in their neighborhood.

The working group has proposed to reexamine the Assembly Act from this aspect, and has recommended that it would be expedient to supplement the Act with a public-order clause and to determine a time frame within which prior notification of a planned assembly may be given.

The Fundamental Law of Hungary protects peaceful assemblies. Upon an analysis of the related court practice the working group has emphasized that an assembly's being unpeaceful may, in itself, in the absence of the circumstances specified in the Assembly Act, not give rise to a lawful dispersal of an assembly. The working group has also proposed to the legislator to

specify in the Assembly Act the precise legal content of the notion of *unpeaceful*, and thereby to further clarify the “prescribed by law” requirement.

In examining the judicial interpretation of the relevant procedural rules laid down in the Assembly Act and in other laws, the working group has identified several sub-issues to be dealt with by the legislator. The working group has proposed that the legislature should harmonise the procedural rules governing the exercise of the right to assembly with the general procedural rules and should, in line with the principles of legal clarity and legal certainty, tailor those rules to the special features of the exercise of fundamental rights.

The working group has also examined the courts’ practice on personality rights lawsuits related to dispersals of assemblies. As to the special situation in which a case is heard both by a civil court and an administrative court, the working group has proposed to the legislature that a final administrative court judgment establishing the lawfulness of a police measure should be made binding on the civil court. Thereby in cases having the same facts both subjective and objective legal protection would be ensured.