

ENFORCEMENT OF FREEDOM OF ASSEMBLY IN LITHUANIA AND EUROPEAN UNION: LEGAL AND PRACTICAL ASPECTS

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***Abstract.** This article analyses implementation of freedom of assembly within Lithuania and in some other States of the European Union. Attention is paid to the differences in the implementation practices for this freedom while analysing probability of restriction of freedom of assembly in the light of legal, political and social factors. The article aims to substantiate that the quality of decision while adopting spreading ideas and expressed views during peaceful meetings, or adopting them later, or dismissing in general, is determined by the democratic society being formed in the state during a particular period. On the other hand, although physical restriction of diffusion of ideas while implementing freedom of assembly is legitimate, it should not become the main control tool, since the development of the state in this direction is absolutely opposite to the expansion of democratic ideas in the society. Legal education*

should become the priority area of the policy conducted by the state. Particularly since this priority provides the security for the spread of best practices in democratic states, thus laying the grounds for effective prevention of expression of illegal behaviour. Such illegal behaviour may occur in the form of incitement of hatred and aggression in respect of persons who have different faith, race, nation or sexual orientation.

The article substantiates that the real challenge faced by the modern democracy is security for practical implementation rather than the formal recognition and regulation of rights and freedoms. It has been found in practice that the implementation of freedom of assembly can be faulty restricted by the procedural justice. After evaluating experience of the States of the European Union and the way in which their national legal system is structured, the recommendations are made enabling a timely dispute settlement concerning the right of assembly, i.e., in order to prevent decision making process from becoming an obstacle for the implementation of freedom of assembly. It is pointed out that settlement of the dispute concerning the permission to hold a peaceful assembly after the date of the assembly is pointless and denies social importance of right of the assembly.

Keywords: *freedom of assembly, permission to hold a peaceful assembly, legal regulation of dispute settlement concerning the right of assembly, restriction of the freedom of assembly.*

Introduction

Today a modern, democratic state can no longer be imagined without generally accepted and effectively protected rights and freedoms (values). Development of democracy in a modern society is determined by new quality factors – rights and freedoms that are stipulated in international as well as national legislation become not only and not so much the subject of use than the subject of creation. A social phenomenon under observation in democratic states is their aim to publicly evaluate their significant social events and political decisions. Pluralist society starts to associate and organize itself when separation of members is common due to their aim to address their needs in an increasingly selfish way, since individuals are no longer capable to meet the interests related to both the state power and the society. Therefore persons organize assembly in order to make their own interests popular in the form attractive to the society and thus acquire its approval or to publicly evaluate social events or political decisions.

The increased demand for implementation of freedom of assembly within our society requires re-examining the limits and possibilities of its implementation as well as re-evaluating efficiency of such implementation in particular in States of the European Union. The article also examines the good practice of Western European countries, since the protection and implementation practices in Central and Eastern European are still in the stage of development.

Subject of the present research is legal regulation of the right of assembly, activities of state implementing authorities while carrying out control of the validity of assembly organized by persons and probability of restriction of the freedom of assembly.

By applying the analytic and systematic methods this article examines the social efficiency of censorship for the activities of public officials while they are carrying out the revision of assembly organized by persons and their knowledge which gets into the public domain. Legal regulation of the freedom of assembly, legal regulation of dispute settlement concerning the right of assembly and case-law are analysed by using comparative, analytic and logic methods in both national and international levels by revealing their challenges and submitting proposals.

1. The Essence of the Freedom of Assembly

Neither international nor national legislation clearly defines the assembly according to the content of the freedom of assembly. After carrying out an analysis of scholarly publications and jurisprudence¹ it can be stated that the right of assembly is being implemented in the cases when persons (individuals) arrive and get together in order to share ideas among themselves or with others, to influence others or to symbolically express their individual, yet mostly corresponding opinions in relation to group objectives. This means that such assembly takes place with the understanding of wilful participation therein being present. Another feature of assembly is the impermanence.

With the implementation of this freedom policy influencing changes in public opinion is frequently sought and quite often achieved. Therefore an absence of common objectives, common self-image and organization elements shows that a coincidental assembly of people should not be considered as the assembly in respect of the subject analysed in the article. This means that a coincidental assembly does not fall into the area of freedom of assembly as one of the most important area of legal protection of human rights. Such area is significant as far as theory is concerned, since it allows setting the boundary between public activities of a more individual nature and mass processes that are important to the society. Besides, it can become a methodological foundation in the way of monitoring, analysing and predicting them. In practical terms, it becomes important while starting actually implementing freedom of assembly as well as effectively distributing state resources in order to achieve secure implementation of this freedom.

The conception of freedom of assembly is not confined by the form of organized assembly (assembly in a particular place or procession with an irregular place), nor by the form of property where assembly takes place (in the territory belonging under the right to private property or in the territory governed by the state or by municipality),

1 *Europäische Grundrechte und Grundfreiheiten*. herausgegeben von Ehlersm D.; bearbeitet von Becker, U., et al. Berlin: De Gruyter Recht, 2003, p. 118; *Guidelines On Freedom Of Peaceful Assembly*. 2nd Edition. [interactive]. European Commission For Democracy Through Law (Venice Commission) Venice, 2010 [accessed on 08-03-2012]. <<http://www.venice.coe.int/docs/2010/CDL-AD%282010%29020-e.pdf>>.

nor by any other circumstances. All of the aforementioned aspects may determine the necessity to apply specific tools for the implementation of freedom of assembly, however, notwithstanding the organizational challenges, the essence of the freedom of assembly cannot be distorted, nor can the limitations be set, which are not compatible with the regulation of this freedom in international and national legislation.

The following two forms of implementation of freedom of assembly are defined both in legal doctrine and practices according to the possibility of implementation of subjective right: permissible and claimable². In the first case implementation of freedom of assembly depends on the institution that issues permission or on the will of the particular public servant. In the other case public authorities must provide persons with the possibilities (safety, order etc.) to use this freedom.

Efficiency of implementation of freedom of assembly is based on the right to receive and disseminate information and on the freedom of expression. This freedom is an efficient and necessary tool, if it encourages improvement of human personality, socialization, economic and cultural cooperation, which occurs in democratic states through the pluralism of opinions and common aspiration to operate together.

2. Legal Regulation of Implementation of the Freedom of Assembly

Freedom of assembly is provided for in international legislation in accordance with similar principles. For example, The Universal Declaration of Human Rights, Article 20 (1) says that “Everyone has the right to freedom of peaceful assembly and association”³; European Convention on Human Rights (ECHR), Article 11 (1) claims “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”⁴. A more thorough formulation is provided in the International Covenant on Civil and Political Rights, Article 21: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”⁵

Freedom of assembly is a first generation political right and allows a person to participate in political, public life of the state, influence state decision, to publicly evaluate them and publicly protest against them in an organized way⁶. It assists in development

2 *Lietuvos Respublikos Konstitucijos komentaras*. 1 dalis [Commentary of the Constitution of the Republic of Lithuania. Part 1]. Vilnius: Teisės institutas, 2000, p. 301.

3 UN Universal Declaration of Human Rights, GA Res. 217A(III), U.N. Doc.A/810 at 71 (1948).

4 European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 U.N.T.S. 222, E.T.S. No. 5 (entered into force 3 September 1953) [CPHRFF].

5 International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976) [ICCPR].

6 Vaišvila, A.; Mesonis, G. *Žmogaus teisės ir jų gintis* [Civil society and human rights division of authorities as an element of legal state]. Vilnius: Lietuvos teisės akademija, 2000, p. 11.

of civil society, which in return enables citizens to be more active members of political community. Article 36 of the Constitution of the Republic of Lithuania (hereafter – the Constitution) provides the citizens with right of assembling unarmed in peaceful meetings⁷. The Constitution also defines the limitation procedures and foundations of the right to assembly, i.e., may not be prohibited otherwise than by law and only when this is necessary to guarantee the security of the state or society, the public order, the health and morals of the people as well as rights and freedoms of other persons. European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11, Part 2, excludes similar foundations under which freedom of assembly may be restricted: “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.” It is directly reflected in the jurisprudence of the the European Court of Human Rights, where it is stated that “the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society”⁸. Freedom of assembly, as well as the freedom of expression, is one of the fundamental political rights, by courtesy of which members of society are able to freely express their opinion (to declare their interests) and participate in the political life of the state. Freedom of assembly helps to ensure the implementation of the freedom of expression.

It should be noted, that the system established on the basis of the European Convention for the Protection of Human Rights and Fundamental Freedoms is just a subsidiary system in respect of national human rights protection systems. The Convention does indicate any ways how the Convention should be implemented in the internal legal system, thus states choose their own ways that are most suitable to actualize the objectives of the Convention⁹.

Law on Meetings of the Republic of Lithuania (hereafter – the Law on Meetings) is intended to lay down conditions of ensuring the constitutional right of the citizens of the Republic of Lithuania to assembly unarmed in peaceful meetings and the procedure for protecting national security and public safety, public order, public health and morals, the rights and freedoms of other persons when organising meetings, as well as the liability for violations of this Law¹⁰. Thus this Law sets forth the legalization of the subjective right. *Resolution of 7 January, 2000 of the Constitutional Court of the Republic of Lithuania interpreted* that intervention of the state into the exercise of the freedom of

7 Lietuvos Respublikos Konstitucija, Lietuvos Respublikos piliečių priimta 1992 m. spalio 25 d. referendume. [Constitution of the Republic of Lithuania. Adopted by citizens of the Republic of Lithuania in the Referendum of 25 October 1992].

8 Case No. 38187/97, *Adali v. Turkey* [2005] ECHR, para 48.

9 Jočienė, D. Administracinės procedūros Lietuvoje: tam tikri aspektai Europos žmogaus teisių konvencijos požiūriu [Administrative justice in Lithuania: some aspects from the perspective of the European Convention on Human Rights]. *Lietuvos vyriausiojo administracinio teismo biuletėnis*. 2010, 19: 426, 427.

10 Lietuvos Respublikos susirinkimų įstatymas [Law on Meetings of the Republic of Lithuania]. *Official Gazette*. 1993, No. 69-1291; 2008, No. 75-2920.

assembly, as well as the other rights and freedoms of persons and citizens, is recognized as legitimate and necessary, provided that principle of restriction and proportionality for a legitimate objective is observed¹¹. It follows from what has been stated that freedom of assembly is subject to the obligation not to cause harm to the interest protected by the right of other persons and meeting this obligation is the prerequisite for the exercising of this freedom.

Meanwhile in Latvia the implementation procedures for assembly are regulated by the Constitution (Satversme) of Republic of Latvia. In the Constitution of the Republic of Latvia, Article 103 it is stipulated that “the State shall protect the freedom of previously announced peaceful meetings, street processions, and pickets.”¹² As we can see, conception of “peaceful meetings” is also provided for in the organic law of Latvia by laying down a condition “previously announced”, i.e., the announcement (in advance) has to be made prior to the assembly. Such condition is not provided for neither in the Constitution of the Republic of Lithuania, nor in the Constitutions of Estonia or Poland¹³. In accordance with the Constitution of the Republic of Lithuania “Citizens may not be prohibited or hindered from assembling unarmed in peaceful meetings” (Article 36)¹⁴, the Constitution of Estonia, Article 47, indicates that “Everyone has the right, *without prior permission*, to assemble peacefully and to conduct meetings [...]”¹⁵, following the Basic Law for the Federal Republic of Germany, Article 8, “All Germans shall have the right to assemble peacefully and unarmed without prior notification or permission”¹⁶, analogue regulation of freedom of assembly at the constitutional law level is also characteristic for other Western European states: Sweden¹⁷, France¹⁸, Belgium.¹⁹

- 11 Lietuvos Respublikos Konstitucinio Teismo 2000 m. sausio 7 d. nutarimas „Dėl Lietuvos Respublikos susirinkimų įstatymo 6 straipsnio 2 dalies atitikimo Lietuvos Respublikos Konstitucijai“ [The Constitutional Court of the Republic of Lithuania, 7 January 2000, Ruling on the compliance of Part 2 of Article 6 of the Republic of Lithuania Meetings Law with the Constitution of the Republic of Lithuania]. *Official Gazette*. 2000, No. 3-78.
- 12 The Constitution (Satversme) of the Republic of Latvia (adopted by the Constitutional Assembly of Latvia on 15 February 1922) [interactive]. [accessed on 08-03-2012]. <<http://www.satv.ties.gov.lv/?lang=2&mid=8>>.
- 13 The Constitution Of The Republic Of Poland of 2nd April, 1997 [interactive] As published in *Dziennik Ustaw* No. 78, item 483 [accessed on 10-03-2012]. <<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>>.
- 14 Lietuvos Respublikos Konstitucija, Lietuvos Respublikos piliečių priimta 1992 m. spalio 25 d. referendume. [Constitution of the Republic of Lithuania. Adopted by citizens of the Republic of Lithuania in the Referendum of 25 October 1992].
- 15 Constitution of the Republic of Estonia [interactive]. Adopted by a referendum held on 28 June 1992 [accessed on 18-02-2012]. <<http://www.president.ee/en/republic-of-estonia/the-constitution/index.html>>.
- 16 Basic Law for the Federal Republic of Germany [interactive]. (Promulgated by the Parliamentary Council on 23 May 1949), (as Amended by the Unification Treaty of 31 August 1990 and Federal Statute of 23 September 1990) [accessed on 06-03-2012]. <<http://www.constitution.org/cons/germany.txt>>.
- 17 *The Constitution of Sweden. The Fundamental Laws and the Riksdag Act*. Stockholm: Sveriges Riksdag, 2004, p. 64.
- 18 Déclaration des droits de l’Homme et du citoyen, 26 août 1789 [interactive]. (Declaration of the Rights of Man and the Citizen) Approved by the National Assembly of France, August 26, 1789 [accessed on 06-03-2012]. <http://www.constitution.org/fr/fr_drm.htm>.
- 19 The Belgian Constitution [interactive] Belgian House Of Representatives 2009 (Publication contains the text of the Constitution as coordinated on 17 February 1994, including the further revisions) [accessed on 06-03-2012]. <<http://legislationline.org/documents/section/constitutions>>.

Thus a permissible form of the implementation of the right to assembly is more common and is usually regulated by a separate legislation, mostly by the law.

3. Activities of Public Officers while Controlling the Legality of Assembly Organized by Persons

When an assembly is organised by gathering a crowd, the emerging conflict must be suppressed by two rights – the right to publicly express ideas and the right to public order and peace²⁰. For this purpose, it is stipulated in the Article 5 of the Law on Meetings, that place of meetings (itinerary of processions), time and any other procedure of organisation thereof with the head of an executive body of the municipal council or a representative authorised by him. A notification about organisation of a meeting must be submitted by organizers or their representatives not later than 5 working days prior to the date of holding of a planned meeting. Such notification must be considered not later than within 3 working days from its receipt and not later than 48 hours before the beginning of a meeting. The notification is considered by the head of the executive body of the municipal council or a representative authorised by him, with participation of a representative of the police. During its consideration possibilities of organisation of a meeting at the indicated time and the indicated place are discussed. Organizers of a meeting or their authorised representatives may participate in the discussion.

Head of the executive body of the municipal council, responsible for the control of the implementation of the freedom of assembly, may refuse to issue such certificate if when organising a meeting state security or public safety, public order, people's health or morals or the rights and freedoms of other persons may be violated. In accordance with the Article 13 of the Law on Meetings, an appeal against the refusal to issue a certificate concerning the coordinated place, time and form of a meeting can be addressed to an appropriate local court within 10 days of the adoption of the decision. The court must examine such application not later than within 3 days. Therefore the law intends that the emerged dispute concerning the restricted right of assembly is addressed in an ordinary court. However, the obligation to consider the notification about the organisation of a meeting not later than 48 hours before the beginning of a meeting does not ensure the right to appeal the refusal to issue the certificate, as well as the tangibility of the right to assembly.

Article 13 of the Law on Meetings, Street Processions, and Pickets in Latvia defines that the organiser of the meeting must submit an application to the municipality, where the intended event is going to be held²¹, i.e., meetings, street processions or pickets not earlier than 4 months and not later than 10 days till the planned event²². If there are no

20 Barendt, E. *Freedom of speech*. Oxford University Press, 2005, p. 290.

21 Jei renginys vyksta kelių savivaldybių teritorijoje tokiu atveju prašymas/pareiškimas pateikiamas visoms savivaldybėms [If meeting is held in territory of several municipalities, then the application must be put forward to all administrations of municipalities.]

22 Likums "Grozījumi likumā "Par sapulcēm, gājieniem un piketiēm"(“LV”, 76 (3652), 11.05.2007.) [Amendment on the Law on Meetings, Processions and Pickets of the Republic of Latvia] [interactive]. [accessed on 23-02-2012]. <<http://www.likumi.lv/doc.php?id=157003>>.

reasonable possibilities to be aware of the occasion during which the planned event takes place earlier than 10 working days before its commencement, the application concerning the organised event has to be submitted at as early a stage as possible, but not later than 24 hours before the commencement of the event.

Article 12 of the Law on Meetings, Street Processions, and Pickets in Latvia also provides certain exceptions, when there is no need to submit such application to the municipality while organising a meeting or procession for instance, if the meeting is closed or if an open meeting is organised in premises or if the meeting, procession is organised by the state or municipal institutions, however, the law provides that an application is submitted in any case if processions or pickets interrupt the movement of transport and pedestrian traffic.²³

Part 1 of the Article 16 of the Law on Meetings, Street Processions, and Pickets in Latvia provides that the local government officials have a possibility to prohibit the organised event, but the local government can prohibit the organised event on those cases, when it is determined that organisation of the peaceful meeting could endanger rights of other people, the democratic structure of the state, public safety, welfare or morals. The local government has a right to take such a decision not later than 5 days before the commencement of the event. If the application was submitted not later than 24 hours before the commencement of the relevant event, the local government has a right to take the decision due to the prohibition of the planned event not later than 6 hours before the planned event.²⁴

Implementation of freedom of assembly in Germany is regulated extremely explicitly, by determining not only the form of the assembly and other organisational aspects, but also particular penalties for the restriction of such right by endangering the participants of the assembly.²⁵ In Poland, according to the Law on Assemblies²⁶, the organiser of a public assembly shall notify the commune authorities so that the notification is delivered no later than 3 but no earlier than 30 days before the planned date of the assembly. The commune authority has the right to prohibit a public assembly, if: the purpose or fact of holding of that assembly is against this Act or violates the provisions of penal law or the holding of that assembly may pose a threat to the life or health of individuals or to property of considerable value.

In case of prohibition of public assembly, a decision should be delivered to the organiser within 3 days of the notification date, but no later than 24 hours before the planned starting date of the assembly. An appeal should be lodged within 3 days of the

23 *Ibid.*

24 *Ibid.*

25 Gesetz über Versammlungen und Aufzüge (Versammlungsgesetz) Ausfertigungsdatum: 24.07.1953 Versammlungsgesetz in der Fassung der Bekanntmachung vom 15. November 1978 (BGBl. I S.1789), das zuletzt durch Artikel 2 des Gesetzes vom 8. Dezember 2008 (BGBl. I S. 2366) geändert worden ist. [interactive]. [accessed on 10-02-2012]. <<http://www.gesetze-im-internet.de/versammlg/BJNR006840953.html>>.

26 Ustawa z dnia 5 lipca 1990. Prawo o zgromadzeniach. Dz.U. 1990 Nr. 51 poz. 297. [Act of 5 July 1990 Law on Assemblies]. [interactive]. [accessed on 10-02-2012]. <<http://isap.sejm.gov.pl/DetailsServlet?id=W DU19900510297>>.

date of delivery of the decision. Furthermore, the lodging of appeal does not stop the execution of the decision. The decision resulting from examination of an appeal should be delivered to the organiser within 3 days of the date of delivery of the appeal.

It should be noted that the established legal regulation aims to encourage addressing to local government institutions with an application to permit organisation of assembly. Besides, the actual implementation of freedom of assembly within states is getting aggravated, since responsible officers are increasingly often refusing to issue certificates permitting the organisation of assembly. Meanwhile society is getting more active in evaluating social events in public, as well the decisions taken by the public authorities. Within Lithuania, a refusal to issue a certificate to the organiser regarding the agreed place, time and form of the assembly is usually based on a formal motive – possible endangerment of national and public security, public order, people’s health of even lives, as well as possible damage to property, inability of the police to ensure public order and public security, i.e., rewriting the formulation of the Law (Part 2 of the Article 1 of the Law on Meetings). It is not indicated in what way and how the threat can occur and on what ground the conclusion is drawn. Without specifying the facts based on which the conclusion was made regarding the threat of violation of public order and public security, an *a priori* statement as such cannot be considered as motive. Therefore the requirement of the Part 1 of the Article 12 of the Law on Meetings is not met, i.e., motivation of decision. The Resolution of 4 April, 2011 of the Supreme Court of Lithuania, adopted in the civil proceedings No. 3K-3-144/2011, interpreted that declaratory specification of values and objectives protected by law cannot be considered as justifying the social need for restriction of freedom of assembly²⁷. According to the practice of the European Court of Human Rights, the aspect of the existence of the threat (by restriction of the values protected by the democratic society) has to be based on an acceptable evaluation of important facts; decisions of national institutions have to be based on motivated actual conclusions, rather than presumptions; the threat in question has to be big enough in order to apply such a drastic measure as prohibition of the occurrence²⁸.

Subject to the decision is not properly motivated, it is usually the case that courts allow appeals of the applicants by recognizing that there was no ground to refuse to issue the certificate, yet this right remains unimplemented as the decision of committee to not issue the certificate can be taken not less than 48 hours formed in the governmental institution. Therefore after considering the application in the court, its meeting is rather related to the recognition of the violation of the freedom of assembly and not the aid while implementing it.

27 Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus 2011 m. balandžio 4 d. nutartis civilinėje byloje pagal pareiškėjų VŠĮ Žmogaus teisių stebėjimo instituto ir VŠĮ Lygių galimybių plėtros centro ieškinį atsakovui Vilniaus miesto savivaldybės administracijai dėl atsisakymo išduoti pažymėjimą taikiam susirinkimui ir eitynėms (bylos Nr. 3K-3-144/2011). [The Supreme Court of Lithuania, Civil division, 4 April 2011, decision in civil case *Human Rights Monitoring Institute and Center for Equality Advancement v. Administration of Municipality Government City of Vilnius* (Case No. 3K-3-144/2011)].

28 Case No. 35082/04, *Makhmudov v. Russia* [2007] ECHR. Case No. 4916/07, 25924/08, 14599/09, *Alekseyev v. Russia* [2010] ECHR.

5. Hearing of Litigation Concerning the Implementation of the Right of Assembly

In many states the dispute concerning the implementation of the right to assembly is considered in courts, yet in many cases it is necessary to exploit the possibility to settle the dispute in extrajudicial institutions. For example, in Poland refusal of the local government institution to issue a permit for an assembly can be appealed to Voivode and his decision - directly to the Supreme Administrative Court. Meanwhile in Netherlands final decision is taken by the mayor.²⁹ In Latvia, once the local authorities refuse to accept the application its decision can be appealed to the Regional Administrative Court, yet a cassation appeal can be submitted regarding the decision of this court to the Department of Administrative Proceedings of the Senate of the Supreme Court.³⁰

Within Lithuania, a refusal to issue a permit for the organisation of an assembly is appealed in an ordinary court. Since the proceedings for application are not clearly defined, the case-law forms in two ways. Some judges assume that the refusal to issue a certificate should be considered after the judicial proceedings of disputes, since the dispute emerged due to the right, while the others think that non-contentious proceedings should be employed.³¹

A person is free to choose the way he wants to protect his rights. The fact, that by addressing to the court after the Article 13 of the Law on Meetings a person expects the court to finish considering the case during the term specified therein, and the time during which he can implement his subjective right is critical for him, approves that if the Appellate Court recalls the orders of the Court of First Instance, by which the question was resolved with simplified proceedings of the process, if the applicants are absent in the legal hearing when the case is re-considered³², if the applicant is obliged by the court to address according to the procedure of judicial proceedings of disputes, the shortcomings of the determined plaint are not eliminated³³. The party refuses the

29 Public Assemblies Act of 20 April 1988. Bulletin of Acts and Decrees 157, containing provisions concerning the exercise of the right to profess a religion or belief and of the right of assembly and demonstration, as last amended by Act of Parliament of 22 June 1994, Bulletin of Acts and Decrees 573 [interactive]. [accessed on 10-02-2012.]. <<http://legislationline.org/documents/action/popup/id/4703>>.

30 Likums "Grozījumi likumā "Par sapulcēm, gājieniem un piketiēm"(“LV”, 76 (3652), 11.05.2007.) [Amendment on the Law on Meetings, Processions and Pickets of the Republic of Latvia] [interactive]. [accessed on 23-02-2012]. <<http://www.likumi.lv/doc.php?id=157003>>.

31 Petkuvienė, R.; Atraškevičiūtė, A. Problems and Possible Solutions to Enforcement of Freedom of Assembly. *Jurisprudence*. 2011, 18(4): 1627.

32 Vilniaus miesto apylinkės teismo 2011 m. liepos 27 d. nutartis civilinėje byloje Nr. 2-11436-600/2011 pagal ieškovo partijos „Socialistinis liaudies frontas“ skundą atsakovui Vilniaus miesto savivaldybės administracijai dėl sprendimo atsisakyti išduoti leidimą organizuoti susirinkimą pripažinimo neteisėtu [Case No 2-11436-600/2011, *Party of the People's Socialist Front v. Administration of Municipality Government city of Vilnius* [2011] 1st Vilnius City District Court].

33 Vilniaus miesto apylinkės teismo 2011 m. vasario 3 d. nutartis civilinėje byloje Nr. 2-2955-430/2011 pagal pareiškėjo partijos „Socialistinis liaudies frontas“ skundą dėl Vilniaus miesto savivaldybės administracijos sprendimo atsisakyti išduoti susirinkimo organizatoriui Socialistiniam liaudies frontui partijai pažymėjimą dėl suderintos susirinkimo vietos, laiko ir formos pripažinimo neteisėtu ir įpareigojimo atlikti veiksmus

protection of its right if a court requalifies the dispute. It is obvious that the legal conflict emerging in this way is virtually insoluble.

According to the Part 1 of Article 265, and Part 4 of the Item 4 of the Article 270 of the Code of Civil Procedure of the Republic of Lithuania³⁴ the court is obliged to determine, which law should be applied and to evaluate legal validity of the requirements on its basis. This decision has also to be related to the requirement provided in the Part 1 of the Article 3 of the Code of Civil Procedure of the Republic of Lithuania, to interpret and apply laws and other legal acts in accordance with the fundamentals of justice, reasonableness and good faith. Thus the court has to consider the dispute in such way that the decision made would be fair and to choose such legal norms of the process, which would let to make the decision on time and ensuring the possibility to enforce the freedom of assembly. Effective guarantee of the right to peaceful assembly was emphasized by the Supreme Administrative Court of Lithuania as a value. In Resolution of 7 May, 2010, adopted in the administrative proceedings No. AS⁸²²-339/2010, the Court stated, that the state, by guaranteeing “democratic pluralism, holds a positive obligation to ensure an effective exercise of the right to the peaceful assembly to all, as well as persons with unpopular point of view or the ones belonging to minorities. The essential condition for the effective exercise of the freedom of assembly is the presumption of legitimacy, which is denied by officially refusing to sanction the assembly, as well as deterring persons belonging to minorities from participation in the assembly. There is no way the freedom of assembly can avoid adverse effects, when the legal measures for the protection of this right are applied only after the date of the assembly”³⁵. Moreover, the Court emphasized that the appeal has to be considered in such way that its enactment procedures would not restrict the freedom of assembly.

The Resolution of 25 May, 2010 of the Supreme Court of Lithuania, adopted in the civil proceedings No. 3K-3-233/2010, interpreted that each subjective right has social value to the extent to which we can implement it and to which it is possible to meet material and spiritual needs of the subject of the right³⁶. Thus the courts have to take care that a person who lives in a democratic society could implement his subjective right to participate in a peaceful assembly and to freely express his opinion and views. European Court of Human Rights describes democratic society as pluralistic, tolerant and broadminded³⁷, and this idea must be retained. A problem of the standardization of

[Case No 2-2955-430/2011, originated in an application lodged with the 1st Vilnius City District Court by applicant Party of the People’s Socialist Front [2011].

- 34 Lietuvos Respublikos civilinio proceso kodeksas [Code of Civil Procedure of the Republic of Lithuania]. *Official Gazette*. 2002, No. 36-1340.
- 35 Lietuvos vyriausiojo administracinio teismo biuletenis [Bulletin of the Supreme Administrative Court of Lithuania]. 2010, No. 19, p. 371.
- 36 Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus 2010 m. gegužės 25 d. nutartis civilinėje byloje pagal ieškovės B. M. D. ieškinį atsakovei R. T. ir atsakovės priešieškinį (counterclaim) ieškovei dėl nuosavybės teisių įgyvendinimo (civilinė byla Nr. 3K-3-233/2010) [The Supreme Court of Lithuania, Civil division, 25 May 2010, decision in civil case *B. M. D. v. R. T.* (Case No. 3K-3-233/2010)].
- 37 Case No. 7601/76, *Young, James and Webster v. United Kingdom* [1981] ECHR; Case No. 25088/94, 28331/95, 28443/95 *Chassagnou and others v. France* [1999] ECHR.

conduct continuously arises in a pluralistic society and is usually ignored by generalizing autonomy and particularism of persons. Yet autonomy in individual personalities is meant to inevitably cease existing and they start moving the opposite direction, i.e., towards adjustment of the opposite interests and a search for overlaps and such quest culminates in reciprocal trades, compromises, agreements (with mutual advantage) proving grounds for not only sporadic, but also collective actions³⁸. As an instance that performs the functions of the administration of justice, the courts have to ensure that the interest of individual personality would be heard, since only the civil society is able to decide, whether to accept it, accept later or reject it.

It follows from what has been stated that an ordinary court, while considering a dispute arising due to implementation of the right to assembly, should follow the Article 582 of the Code of Civil Procedure of the Republic of Lithuania, which provides a possibility to effectively and fundamentally settle the dispute without violating the legal procedures set forth by the law. It should be noted that Part 1 of the Article 582 of the Code of Civil Procedure of the Republic of Lithuania states that proceedings may be considered following the procedures laid down in the Section XXXIX, notwithstanding that the dispute arises due to the right. Settlement of the dispute in accordance with the judicial proceedings of disputes would take too long and would not meet the requirements of the Article 13 of the Law on Meetings, and its settlement after the date of the assembly is pointless and denies social importance of right of the assembly.

6. Matter of Jurisdiction of the Litigation Concerning the Right of Assembly within Lithuania

The determination of jurisdiction is discretion of the legislator. In accordance with the Article 13 of the Law on Meetings, the local court is assigned to examine the validity of the refusal to issue the certificate. The applicant addresses to the court by appealing the decision of the municipal administration. In the Item 2 of the Part 1 of the Article 15 of the Republic of the Law on Proceedings of Administrative Cases is stipulated that the Administrative Courts adjudicate in cases concerning the legality of ordinances adopted and acts performed by the entities of municipal administration, also the lawfulness and justifiability of the entities' refusal to perform acts within their remit or delay in the performance³⁹. Therefore, in terms of pure logic, the appeal concerning a refusal to issue a certificate regarding agreed place, time and form of the assembly should be considered in the Administrative Courts. However, the Law on the Meetings was adopted prior to the establishment of the Administrative Courts and a law regulating their jurisdiction was adopted. Article 13 of the Law on Meetings was not amended after the establishment of the Administrative Courts. It follows from what has been stated that

38 Vaišvila, A. *Teisinis personalizmas: Teorija ir metodas* [Legal Personalism: Theory and Method]. Vilnius: Justitia, 2010, p. 154–158.

39 Lietuvos Respublikos administracinių bylų teisenos įstatymas [Law on the Proceedings of Administrative Cases]. *Official Gazette*. 1999, No. 13-308; 2000, No. 85-2566.

the legislator has not paid proper attention to the rational and logical amendment of the arrangement of norms in the legal system in due time.

The way of the settlement of disputes provided in the Law on Meetings should be considered as an imperfection of the juridical technique of the legislation, since it lays grounds for its contradictory implementation and interpretation, by stipulating complicated exercise of the right for a person. Following the actual practice of the restriction while addressing to courts due to the implementation of the freedom of assembly, the applicants appeal the decisions of the municipal administration both in local courts and regional administrative courts. Notwithstanding the violation of specific jurisdiction set forth by the law, the courts examine appeals by evaluating the importance of the right⁴⁰.

While examining an appeal concerning a refusal to issue a certificate, the courts are continuously raising a question of jurisdiction and their practice is inconsistent and unstable. Disputes arising among the courts sue to the jurisdiction procrastinate the examination of proceedings. By reacting to the actual circumstances, the Resolution of 5 January, 2011 of the Special Chamber of Judges interpreted that the appeal concerning a refusal to issue a certificate regarding agreed place, time and form of the assembly should be examined in the local court, i.e., in the ordinary court, however, considering that Administrative Court had the information about the proceedings for longer than the period of 3 days as set forth by the *Article 13 of the Law on Meetings*, it pointed out that the referral of the proceeding to the ordinary court is no longer expedient and the examination of the proceedings should be finished in Administrative Court.

The established legal regulation due to appeal in the case of a refusal to issue a certificate is irrational and does meet the systematic requirement, since the refusal to issue a certificate is appealed to the ordinary court and the requirement to recall the permit to organize an assembly should be appealed to the Administrative Court. In this case requirements arising from the same relation have to be examined in the courts of different jurisdiction. In any case, the noncompliance with juridical technique of the legislation, which cause disputes among the courts, affects the duration of the proceedings and an unduly long judicial procedures are not justified, since the protection of human rights becomes ineffective. During the proceedings against Lithuania, European Court of Human Rights has repeatedly stated regarding the overly long judicial procedures that the validity of the duration of the proceedings examination should be evaluated in the

40 Vilniaus apygardos administracinis teismo 2011 m. birželio 13 d. sprendimas administracineje byloje Nr. I-812-142/2011 pagal pareiškėjų Lietuvos profesinių sąjungų konfederacijos, Lietuvos darbo federacijos ir Lietuvos profesinės sąjungos „Solidarumas“ skundą dėl sprendimo panaikinimo ir įpareigojimo atlikti veiksmus atsakovei Vilniaus miesto savivaldybės administracijai [Case No I-812-142/2011, originated in an application lodged with the Vilnius Regional Administrative Court by applicants Lithuanian Trade Union Confederation, Lithuanian Labour Federation and Lithuanian Trade Union „Solidarumas“ [2011]]; Vilniaus miesto apylinkės teismo 2011 m. vasario 24 d. sprendimas civilinėje byloje Nr. 2-6061-728/2011 pagal ieškovo Lietuvos profesinių sąjungų konfederacijos ieškinį atsakovei Vilniaus miesto savivaldybės administracijai dėl atsisakymo išduoti leidimą dėl susirinkimo vietos ir laiko [Case No 2-6061-728/2011, *Lithuanian Trade Union Confederation v. Administration of Municipality Government city of Vilnius* [2011] 1st Vilnius City District Court].

context of the circumstances and considering the complexity of the proceedings, as well as the behavior of the applicant and relevant state institutions⁴¹.

According to the statistics⁴² provided by the European Court of Human Rights (ECHR) regarding the resolution adopted against the States of European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – Convention), in respect of the Convention violation subject, resolutions due to overly long judicial procedures comprise the biggest part of the resolutions adopted against Lithuania (see Figures 1 and 2).

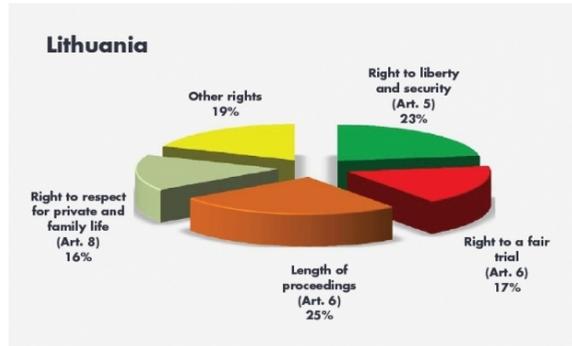


Figure 1. Lithuania (according to the subject of violation since joining the Convention until 2010)

Statistical data of all 47 states that ratified the Convention are provided for comparison purposes:

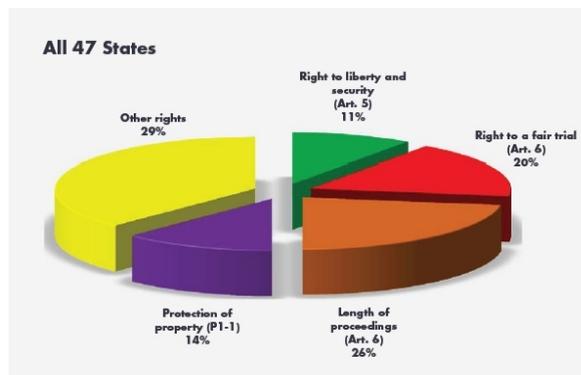


Figure 2. All 47 states of Convention (according to the subject of violations)

41 Žr., pvz., Case No. 12278/03, *Padalevičius v. Lithuania* [2009] ECHR; Case No16013/02, *Četvertakas and others v. Lithuania* [2009] ECHR.

42 European Court of Human Rights. Statistics on judgments by States [interactive]. [accessed on 29-10-2011]. <http://www.echr.coe.int/NR/rdonlyres/E6B7605E-6D3C-4E85-A84D-6DD59C69F212/0/Graphique_violation_en.pdf>.

Such indicator virtually equals the general amount (%) of all resolutions adopted by the ECHR during the same period against all 47 states that ratified the Convention.

In the proceedings when the refusal of the executive body of the municipal council to issue a certificate is appealed, the court considers if the limitation procedures and foundations of the right to assembly as set forth by the Constitution were complied with. After inspecting the decision of the executive body of the municipal council and recognizing the refusal as illegal, the court sanctions the assembly and obliges to issue the certificate, thus ensuring the implementation of the freedom of assembly. Hereby the court takes over the control of the validity of assembly organized by persons from the executive bodies of the municipal council, since with the help of the courts these persons implement the subjective right, and the state guarantees its implementation by exercising the positive commitment.

Therefore, under the valid legal regulation being present, according to which the appeal concerning a refusal to issue a certificate should be examined in the local court, and according to the consequences of the settlement of the dispute, it should be considered that the appeal due to the implementation of the right to assembly should be examined in accordance with the procedures set forth in the Section XXXIX of the Code of Civil Procedure of the Republic of Lithuania, i.e., a simplified procedure is applied while examining proceedings in a non-contentious judicial process, which allows to ensure a timely the protection of rights. The law provides the court with a possibility to choose the form and procedures for the examination of proceedings, so that the person's objective while addressing to the court would be achieved.

7. Concerning the Probability of Restriction to Gather in Peaceful Assembly

Principles of prohibition cannot be validated more than the objectives that are sought by the government while regulating the implementation of this right, since then freedom of self-expression is denied⁴³. Local government officers who are responsible for guarantying the implementation of the Law on Meetings, must be aware of the practice of Court of Human Rights and that during the decision-making processes of the national authority institution they have to provide a particular estimation (evaluation) of the extent of potential disorder, in order to determine the resources required to neutralize the risk of conflicts. If the state is aware of a possible violence outbreak while implementing the freedom of assembly, it should engage the prosecution apparatus rather than prohibiting the event⁴⁴. Thus, according to the established legal regulation and legal interpretation practices it is quite clear that the right to organize assembly can be restricted; the only option available is to apply it.

43 Alexander, L. *Is There a Right of Freedom of Expression?* Cambridge University Press, 2005, p. 13.

44 *Alekseyev v. Russia*, *op cit*.

While speaking about the limits of freedom of opinion in a democratic state, R. Račinskas states that the inhibition of the spread of some actual prejudicial ideas by utilizing legal acts essentially hinders them to find allies⁴⁵. He also agrees with the fact the easiest way is to repel, marginalize and condemn. It follows from what has been stated that it is necessary to encourage legal education of the society by publicly explaining the maleficence of the spreading ideas and revealing the real intentions of aggressive, negative, xenophobic or anti-Semitic people, so that they would not be able to attract and organize a significant part of society around themselves. Prohibition to gather in peaceful assembly by seeking to prevent the free expression of one's beliefs (the freedom provided the Part 1 of the Article 25 of the Constitution) is not an effective measure. It is always the case that possibility for the persons with deviant behavior to openly express their ideas is not harmful. They usually reveal themselves better in an assembly and then it is possible to thoroughly examine their intentions, behavior and carry out an analysis on the ways they can attract certain people and affect their behavior, what kind of information is found attractive by the society and how it can be affected by the information. Therefore, it's not only possible to discover and register a new legal phenomenon, but also to reveal it, i.e., to explain the reasons and ways of its occurrence, its structure and to form a regularity of the link between cause and effect. By acquiring such knowledge we can predict the recurrence of the phenomenon in the future, as well as the measures allowing to avoid prejudicial consequences. Such knowledge provides a significant assistance to the legislator, since on its basis it is possible to identify, without having to deal with an open and large-scale conflict, which area should be regulated in a particular way, and state institutions, by having scientifically evaluated data and being aware of the problematic areas, can start carrying out propaganda along with the media and thus encouraging to choose the right behavior, as well as formation of particular values. Besides, analysis of various voluntary organizations and their relevant aspects allows revealing the development, structure and expression of the civil society⁴⁶.

It should be noted again that pluralism within society allows to avoid leveling of the society members and the major part of people with different needs and values are able to find a proper place in the society.⁴⁷ Even deviation can encourage integration of the society, unification against violators and to push society towards positive evolutions and progress. Competition of ideas presumes the establishment of the best, most efficient and most beneficial products of culture⁴⁸. It is worth agreeing with G. Aleknonis that the participants of social communication space (i.e., all the citizens) have the right to be aware of and get acquainted with the knowledge that is produced and distributed by the

45 Samoškaitė, E. R. Račinskas: ksenofobų ir antisemitų visada bus, svarbu, kad jie nepritrauktų rėmėjų [There Will Always be Xenophobes and Anti-semites, it's Important That They do not Attract Supporters] [interactive]. [accessed on 2011-08-12]. <<http://www.delfi.lt/archive/article.php?id=43484091>>.

46 Salamon, M. L.; Sokolowski, S. W. Institutional Roots of Volunteering: Toward a Macro-Structural Theory of Individual Voluntary Action. In: Dekker, P.; Halman, L. (eds.) *The Values of Volunteering: Cross-Cultural Perspective*. N. Y.: Kluwer Academic / Plenum Publishers, 2003, p. 75.

47 Šimašius, R. Teisinis pliuralizmas [Legal Pluralism]. *Filosofija. Sociologija*. 2002, 1: 54–55.

48 Šlapkauskas, V. *Teisės sociologijos pagrindai* [Basics of the Sociology of Law]. Vilnius: Mykolo Romerio universitetas, 2004, p. 362.

market. However, he also pays attention that quantity of knowledge in the information market does not ensure quality⁴⁹.

It was found that participation in the activities of voluntary organizations is not related to the creation of “public goods” and can provide benefits for several private persons only⁵⁰. These persons publicly declare their ideas during the organized meetings in order to make their own interests popular in the form attractive to the society and thus acquire its approval. It can be recognized as one of the socialization measures.

Conclusions

1. The quality of decision while adopting spreading ideas and expressed views during peaceful meetings, or adopting them later, or dismissing in general, is determined by the democratic society being formed in the state during a particular period. On the other hand, although physical restriction of diffusion of ideas while implementing freedom of assembly is legitimate, it should not become the main control tool, since the development of the state in this direction is absolutely opposite to the expansion of democratic ideas in the society.

2. Freedom of assembly is a first generation political right and allows a person to participate in political, public life of the state and assists in formation of civil society, which in return enables citizens to be more active members of political community. In essence, Western European states utilize similar legal regulation measures in order to ensure the implementation of freedom of assembly.

3. The conception of freedom of assembly is not restricted by the form of organized assembly (assembly in a particular place or procession with a changing place), nor by the form of property where assembly takes place (in the territory belonging under the right to private property or in the territory governed by the state or by municipality), nor by any other circumstances. All of the aforementioned aspects may determine the necessity to apply specific tools for the implementation of freedom of assembly, however, notwithstanding the organizational challenges, the essence of the freedom of assembly cannot be distorted, nor can the limitations be set, which are not compatible with the regulation of this freedom in international and national legislation.

4. The state has its positive obligation to provide a possibility to express opinion, spread ideas while organizing peaceful assembly without the risk of violence and to allow assembly as widely as possible. As an instance that performs the functions of the administration of justice, the courts have to ensure that the interest of individual personality would be heard, since only the civil society is able to decide, whether to accept it, accept later or reject it.

49 Aleknonis, G. *Naujoji cenzūra* [The New Censorship]. Vilnius: Mykolo Romerio universitetas, 2011, p. 35, 38.

50 Žiliukaitė, R.; Ramonaitė, R.; Nevinskaitė, L.; Beresnevičiūtė, V.; Vinogradnaitė, I. *Neatrasta galia. Lietuvos pilietinės visuomenės žemėlapis* [Undiscovered power: a map of civil society in Lithuania]. Vilnius: Versus Aureus, 2006, p. 34.

5. The term, during which the right to organize a peaceful assembly can be implemented, is one of the essential condition of the protection of human rights. If the court considers the proceedings for too long and takes decision after the date of assembly, the protection of the right itself makes no sense socially. Under such conditions satisfying of the appeal is rather related to the recognition of the violation of the freedom of assembly and not the aid while implementing it.

6. Society has the right to be aware of and get acquainted with all the information and all the knowledge that is produced and distributed by the market, since that is the only way to presume the establishment of the best and most beneficiary products of culture that allows the development of both the society and the law. The system of democratic society does not require to prohibit, but to destroy it though legal education by publicly explaining the maleficence of the spreading ideas and revealing the real intentions of aggressive, negative, xenophobic or anti-Semitic people, so that they would not be able to attract and organize a significant part of society around themselves.

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SUSIRINKIMO LAISVĖS ĮGYVENDINIMAS LIETUVOJE IR EUROPOS SAJUNGOJE: TEISINIAI IR PRAKTINIAI ASPEKTAI

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Santrauka. Straipsnyje analizuojamas susirinkimo laisvės įgyvendinimas Lietuvoje ir kai kuriose kitose Europos Sąjungos valstybėse. Atkreipiamas dėmesys į skirtingą šios laisvės įgyvendinimo praktiką, analizuojamas susirinkimo laisvės ribojimo galimumas atsižvelgiant į teisinius, politinius ir socialinius veiksnius. Siekiama pagrįsti, kad sprendimo, priimant skleidžiamas idėjas ir reiškiamas nuomones taikių susirinkimų metu arba priimant jas vėliau, ar apskritai atmetant, kokybė priklauso nuo valstybėje konkrečiu laikotarpiu susiformavusios demokratinės visuomenės. Kita vertus, fizinis idėjų sklaidos suvaržymas įgyvendinant susirinkimų laisvę, nors ir legitimus, neturėtų tapti pagrindine kontrolės priemone, nes valstybės raida šia linkme yra visiškai priešinga demokratinių idėjų plėtrai visuomenėje. Teisinis švietimas turėtų tapti prioritetine valstybės vykdomos politikos sritimi. Juo labiau, kad šis prioritetas – tai gerosios demokratinių valstybių patirties sklaidos garantas, sudarantis pagrindą veiksmingai neteisėto elgesio apraiškų prevencijai. Neteisėto elgesio, kuris pasireiškia neapykantos ir agresijos kitokio tikėjimo, rasės, tautos arba lytinės orientacijos asmenims kurstymu.

Straipsnyje pagrindžiama, kad šiuolaikinės demokratijos iššūkiu valstybei tampa ne formalus teisių ir laisvių pripažinimas ir reglamentavimas, bet praktinio įgyvendinimo užtikrinimas. Praktika rodo, kad procedūrinis teisingumas gali ydingai riboti susirinkimų laisvės įgyvendinimą. Įvertinus Europos Sąjungos šalių patirtį bei nacionalinės teisės sistemos ypatumus, teikiamos rekomendacijos, įgalinančios ginčą dėl teisės organizuoti susirinkimą išspręsti laiku, t. y. kad sprendimo priėmimo procesas netaptų kliūtimi įgyvendinti susirinkimų laisvę. Nurodoma, kad ginčo dėl teisės organizuoti taikų susirinkimą išsprendimas po susirinkimo datos yra beprasmiš, paneigiantis susirinkimo teisės socialinį reikšmingumą.

Reikšminiai žodžiai: *susirinkimų laisvė, teisė organizuoti taikius susirinkimus, ginčo dėl susirinkimo teisės sprendimo teisinis reguliavimas, susirinkimų laisvės ribojimas.*

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