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URGENT INTERIM OPINION ON ARTICLE I OF THE DRAFT ACT ON "SOME MEASURES TO IMPROVE THE SECURITY SITUATION IN THE SLOVAK REPUBLIC"

SLOVAK REPUBLIC

This Urgent Interim Opinion has benefited from contributions made by the members of the ODIHR Panel of Experts on Freedom of Assembly and Association.

Based on an unofficial English translation of the Draft Act.

OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw
Office: +48 22 520 06 00, Fax: +48 22 520 0605
www.legislationline.org

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The right to freedom of peaceful assembly has been recognized as one of the foundations of a democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs should be able to gather and interact peacefully with one another. States have a positive obligation to respect, protect and facilitate the exercise of the right to freedom of peaceful assembly, without discrimination. Effective protection of the right to freedom of peaceful assembly can help foster a culture of open democracy, enable non-violent participation in public affairs, and invigorate dialogue on issues of public interest.

The Draft Act on "Some Measures to Improve the Security Situation in the Slovak Republic" (Draft Act), introduced on 12 June 2024, proposes amendments to the Act No. 84/1990 on the Right to Assemble (1990 Act). These amendments aim to ban assemblies in certain locations, introduce new grounds for prohibiting an assembly or re-locating an assembly, and establish new offences against the right to assemble, while substantially increasing the proposed sanctions, among others.

The freedom to choose the location of an assembly is a key aspect of the exercise of the right to freedom of peaceful assembly and states have the duty to facilitate assemblies at the organizer's preferred location and within 'sight and sound' of the intended audience. The venue may indeed be paramount for the message of the assembly to reach the target audience. Any restrictions with respect to the location of an assembly must comply with the strict test provided under international instruments, and must have a basis in law, be in pursuit of one of the aims listed exhaustively in international instruments, be necessary and proportionate, and be non-discriminatory.

In this respect, blanket prohibition of all assemblies in specified locations as provided in Article I (2) of the Draft Act are problematic since they do not differentiate between different ways of exercising the right to freedom of assembly and preclude any consideration of the specific circumstances of each assembly. Therefore, they are not in line with the principle of proportionality which requires that the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference.

Moreover, assemblies organized in the vicinity of public institutions are likely to involve the peaceful manifestation of political speech or debate on questions of public interest, which enjoys enhanced protection under the European Convention of Human Rights (ECHR) and for which the state has a narrow margin of appreciation. The purported need to ensure undisturbed and smooth running of activities of state bodies, or to protect judicial independence cannot be regarded as a relevant or sufficient reason to impose a blanket ban on assemblies organized close to such institutions or bodies. As to the need to protect the right to privacy, some degree of disruption of private or family life must be tolerated if the essence of the right to peacefully assemble is not to be deprived of any meaning. Balancing the right to assemble and the rights of others should always aim at ensuring that

assemblies may proceed, unless they impose unnecessary and disproportionate burdens on others.

While heightened security may be required to ensure public order during assemblies at locations close to public institutions, or other locations designated for official meetings, or residence of high-level public mandate-holders, this is generally a policing rather than a regulatory issue and certainly falls short of justifying the proposed restriction.

It is therefore recommended that the blanket ban on all assemblies within 50 meters of government, parliament, courts and other public institutions, or other places designated for official meetings, or residence of high-level public mandate-holders, be deleted, and the management of security risks be left to the relevant law enforcement bodies, on a case-by-case basis, subject to judicial scrutiny and in line with international human rights standards. For the same reasons, the proposed new power of the municipality to prohibit all assemblies "in the vicinity" of the home of a person when this person's employment, profession or office is directly connected with the purpose of the assembly, is vaguely worded, likely to lead to disproportionate restrictions, and should therefore be reconsidered.

The other proposed grounds for prohibiting assemblies should be re-assessed or at the very least, more carefully circumscribed to ensure that they are strictly necessary and proportionate and do not unduly impact the exercise of this right. In particular, the legislator should reconsider the prohibition on grounds of "reasonable apprehension" that simultaneous assemblies may lead to clashes, introducing instead a standard of a real and serious risk of imminent violence that cannot be mitigated or prevented by means other than prohibition. The new power for a municipality to prohibit an assembly that may interfere with the right to privacy and peaceful enjoyment of the home should be re-assessed or at minimum, more strictly circumscribed to ensure that a prohibition may only be decided in circumstances where the proposed assembly would impose unnecessary and disproportionate burdens on others or create significant and imminent danger to public safety.

Similarly, the proposed amendment to Section 10 (3) of the 1990 Act introducing new grounds for a municipality to propose an alternative location for an assembly should be reconsidered while making it clear that assembly organizers should not be compelled or coerced to accept the proposed alternative.

The inclusion of new offences against the right to assemble that overlap with the existing ones may trigger legal uncertainty and confusion as to the applicable norms and possible sanctions. Moreover, the increase of the amount of the fines imposed for such offences also appears excessive and disproportionate. Together with the proposed amendment to the Criminal Act (Article VII (2) of the Draft Act) introducing the possibility to impose two-year prison sentences in case of failure to pay a fine, the contemplated amendments may have a chilling effect on the exercise of the right to freedom of peaceful assembly.

In light of the above, and as further elaborated in the text of the Urgent Interim Opinion, the proposed amendments to the 1990 Act relating to the right to freedom of peaceful assembly present serious deficiencies in terms of compliance with international human rights standards and OSCE human dimension commitments. The blanket prohibitions of all assemblies held in certain locations should be removed from the Draft Act, as should the proposal to impose custodial sanctions in case of non-payment of a fine. Other provisions of Article I of the Draft Act should be re-assessed and revised in light of the findings and recommendations of this Urgent Interim Opinion.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 14 June 2024, the Executive Director of the Slovak National Centre for Human Rights requested the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to review the Draft Act on "Some Measures to Improve the Security Situation in the Slovak Republic" (Draft Act),[1] with specific focus on Article I relating to the exercise of the right to freedom of peaceful assembly.
2. On 17 June 2024, ODIHR responded to this request, confirming the Office's readiness to prepare a legal analysis on the compliance of the Draft Act with international human rights standards and OSCE human dimension commitments, with specific focus on provisions relating to freedom of peaceful assembly.
3. Given that the Draft Act is to be adopted by the National Council of the Slovak Republic under the accelerated procedure,[2] ODIHR decided to prepare an Urgent Interim Opinion on the Draft Act.[3] This Urgent Interim Opinion does not provide a detailed analysis of all the provisions of the Draft Act but, as per the request, primarily focuses on the most concerning provisions relating to the exercise of the right to freedom of peaceful assembly. A more comprehensive and detailed analysis may follow, that may revisit some of the preliminary findings and recommendations contained in the Urgent Interim Opinion and offer a final assessment of the compliance of the proposed measures with international human rights standards and OSCE human dimension commitments. The absence of comments on certain provisions of the Draft Act should not be interpreted as an endorsement of these provisions.
4. This Urgent Interim Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[4]

II. SCOPE OF THE URGENT INTERIM OPINION

5. The scope of this Urgent Interim Opinion covers only the provisions of the Draft Act, submitted for review, that pertain to the exercise of the right to freedom of peaceful assembly. Thus limited, the Urgent Interim Opinion does not constitute a full and comprehensive review of the Draft Act nor of the entire legal and institutional framework regulating the exercise of the right to freedom of peaceful assembly in the Slovak Republic.

1 Available here: *Draft Act*, as introduced and endorsed by the Government on 12 June 2024 and submitted to the National Council of the Slovak Republic on the same day.

2 See *Decision No. 378* of the Interim President of the National Council of the Slovak Republic of 12 June 2024, sending the Draft Act for discussion by the Constitutional and Legal Committee, Committee for Finance and Budget, and Committee for Defence and Security, in accordance with the accelerated procedure; and the vote of the National Council of the Slovak Republic of 18 June 2024 in favour of the government's proposal for abbreviated legislative proceedings (print 363) as per Article 89 of the Act of the National Council of the Slovak Republic No. 350/1996 on the Rules of Procedure of the National Council (as of 1 January 2023). See also <Details of the Bill - National Council of the Slovak Republic (nrsr.sk)>.

3 Following the publication of the Urgent Interim Opinion, ODIHR may decide to carry out additional research, consultations and/or expert involvement. If, on this basis, ODIHR considers that significant changes need to be made to the preliminary legal analysis contained therein, then ODIHR will issue a Final Opinion on the Draft Act.

4 In particular, CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 29 June 1990, para. 9.2; and Charter of Paris for a New Europe (1990).

6. The Urgent Interim Opinion raises key issues and provides indications of areas of concern and is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments.

7. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*[5] (hereinafter "CEDAW") and the *2004 OSCE Action Plan for the Promotion of Gender Equality*[6] and commitments to mainstream gender into OSCE activities, programmes and projects, the Urgent Interim Opinion integrates, as appropriate, gender and diversity perspectives.

8. This Urgent Interim Opinion is based on an unofficial English translation of the Draft Act, which is attached to this document as an Annex. Errors from translation may result. Should the Urgent Interim Opinion be translated in another language, the English version shall prevail.

9. In view of the above, ODIHR would like to stress that this Urgent Interim Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in the Slovak Republic in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

10. The right to freedom of peaceful assembly has been recognized as one of the foundations of a democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs should be able to gather and interact peacefully with one another. The right to freedom of peaceful assembly can also help give voice to minority opinion and bring visibility to marginalized and under-represented groups. States have a positive obligation to respect, protect and facilitate the exercise of the right to freedom of peaceful assembly, without discrimination. Effective protection of the right to freedom of peaceful assembly can help foster a culture of open democracy, enable non-violent participation in public affairs, and invigorate dialogue on issues of public interest. Public assemblies can also help ensure the accountability of corporate entities, public bodies and government officials and thus promote good governance in accordance with the rule of law.

11. The right to freedom of peaceful assembly as elaborated by international human rights law features among the fundamental rights and freedoms in several core international and regional human rights documents, including Article 20 (1) of the Universal Declaration on Human Rights (UDHR),[7] Article 21 of the International Covenant on Civil and Political Rights (ICCPR),[8] Article 11 of the European Convention on Human Rights

5 *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Georgia acceded to the Convention on 26 October 1994.
6 See *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.
7 *Universal Declaration on Human Rights* (UDHR), adopted by General Assembly resolution 217 A on 10 December 1948.
8 *International Covenant on Civil and Political Rights* (ICCPR), adopted by UN General Assembly Resolution 2200A (XXI) on 16 December 1966. The Slovak Republic became a State Party to the ICCPR on 28 May 1993 by succession.

(ECHR),[9] Article 15 of the Convention on the Rights of the Child (CRC),[10] Articles 1 and 21 of the UN Convention on the Rights of Persons with Disabilities[11] and Article 12 of the EU Charter of Fundamental Rights.

12. The jurisprudence of the UN Human Rights Committee (UN HRC) as well as its General Comment no. 37 on Article 21 of the ICCPR[12] also offer authoritative interpretation of the nature and scope of the right to freedom of peaceful assembly. The various reports of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association provide also useful recommendations.[13] The case law of the European Court of Human Rights (ECtHR) provides additional guidance for Council of Europe Member States on how to ensure that their laws and policies comply with key aspects of Article 11 of the ECHR.[14]

13. Any restriction on the right to freedom of peaceful assembly must be compatible with the strict test set out in Article 21 of the ICCPR and Article 11(2) of the ECHR, requiring any restriction to be provided by law, to be in pursuit of one or more of the legitimate aims listed exhaustively in the treaty/convention,[15] to be necessary in a democratic society and to respect the principle of proportionality. In addition, the restriction must be non-discriminatory (Articles 2 and 26 of the ICCPR and Article 14 of the ECHR[16]).

14. The requirement that any restrictions on assemblies be 'prescribed by law' not only requires that the restriction should have an explicit basis in domestic law, but also refers to the quality of the law in question.[17] Such law must be sufficiently clear and precise to enable an individual to assess whether or not his or her conduct would be in breach of the law and to foresee the likely consequences of any such breach.[18]

15. The test of 'necessary in a democratic society' means that any restriction imposed on the right to peaceful assembly, whether set out in law or applied in practice, must meet a "pressing social need",[19] be proportionate to the legitimate aim pursued and the reasons justifying it must be relevant and sufficient.[20] The requirement to meet a "pressing social need" also means that a restriction must be considered imperative, rather than merely 'reasonable' or 'expedient'.[21] The means used should be proportionate to the aim pursued, which also means that where a wide range of interventions may be suitable, the

9 *Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 11, signed on 4 November 1950, entered into force on 3 September 1953. The ECHR was ratified by the former Czech and Slovak Federal Republic on 18 March 1992 and following the decision of the Committee of Ministers of the Council of Europe, at the 496th meeting of the Ministers' Deputies, on 30 June 1993, the Slovak Republic is considered a State Party to the ECHR as from 1 January 1993.

10 *UN Convention on the Rights of the Child* (CRC), adopted by General Assembly resolution 44/25 of 20 November 1989. The Slovak Republic became a State Party to the CRC on 28 May 1993 by succession.

11 *Convention on the Rights of Persons with Disabilities* (CRPD), adopted by General Assembly resolution 61/106 of 13 December 2006. The Slovak Republic ratified the CRPD on 26 May 2010.

12 UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, CCPR/C/GC/37, 17 September 2020.

13 All the reports are available here. See in particular UN Human Rights Council, *Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016 (Joint Report of UN Special Rapporteurs (2016)).

14 See the *Caselaw Guide on Article 11 of the ECHR*, prepared by the Registry of the European Court of Human Rights (ECtHR) (updated 29 February 2024).

15 i.e., national security, public safety, public order (*ordre public*) for Article 21 ICCPR or the prevention of disorder or crime for Article 11 (2) of the ECHR, the protection of public health or morals, and the protection of the rights and freedoms of others.

16 The Slovak Republic has signed on 4 November 2000 the Protocol 12 to the ECHR but has not yet ratified it.

17 *Guidelines on Freedom of Peaceful Assembly*, ODIHR-Council of Europe's European Commission for Democracy through Law (Venice Commission), 3rd ed., 2019, para. 98.

18 See, for example, ECtHR, *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, 25 November 1999; *Gillan and Quinton v. the United Kingdom*, no. 4158/05, 12 January 2010; *Kudrevičius and Others v Lithuania* [GC], no. 37553/05, 15 October 2015. See also *Guidelines on Freedom of Peaceful Assembly*, para. 23.

19 This means that a restriction must be considered imperative, rather than merely 'reasonable' or 'expedient': ECtHR, *Chassagnou v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, 29 April 1999.

20 See, for example, ECtHR, *Taranenko v. Russia*, no. 19554/05, 15 May 2014.

21 *Guidelines on Freedom of Peaceful Assembly*, para. 131.

least restrictive or invasive means must always be used.[22] In addition, restrictions must not impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.[23] In particular, any restriction in the manner of assembly should not render the effective communication of the message of the assembly difficult or even impossible.[24]

16. OSCE participating States committed to respect the right to freedom of peaceful assembly as stated in the 1990 Copenhagen Document.[25] Further OSCE commitments regarding the right to peaceful assembly also include the 1990 Charter of Paris for a New Europe[26] and the Helsinki 2008 Statement from the Ministerial Council.[27] ODIHR and its Panel of Experts[28] in consultation with the Council of Europe's European Commission for Democracy through Law (Venice Commission) have also developed joint *Guidelines on Freedom of Peaceful Assembly*,[29] which are based on international and regional treaties, case-law and other documents related to the protection of human rights as well as the practice in other democratic countries adhering to the rule of law. These Guidelines provide useful guidance for developing and implementing national legislation on the right to freedom of peaceful assembly in accordance with international standards and OSCE human dimension commitments.

17. A wide range of different public gatherings fall within the scope of freedom of peaceful assembly, including planned and organized assemblies, unplanned and spontaneous assemblies, static assemblies (such as public meetings, 'flash mobs', sit-ins and pickets), and moving assemblies (including parades, processions, and convoys).[30] The presumption in favour of (peaceful) assemblies includes an obligation of tolerance and restraint towards peaceful assemblies in situations where legal or administrative procedures and formalities have not been followed.[31]

18. The right to freedom of peaceful assembly complements and intersects with other civil and political rights, including the right to freedom of expression (Article 19 of the ICCPR and Article 10 of the ECHR), the right to freedom of association (Article 22 of the ICCPR and Article 11 of the ECHR), the right to participate in public affairs (Article 25 (a) of the ICCPR) and the right to vote (Article 25 (b) of the ICCPR and Article 3 of Protocol No. 1 to the ECHR). Moreover, the right to freedom of peaceful assembly may overlap with the right to manifest one's religion or belief in community with others.[32] Recognizing the interrelation and interdependence of these different rights is vital to ensuring that the right to freedom of peaceful assembly is afforded practical and effective protection.

22 *Guidelines on Freedom of Peaceful Assembly*, para. 131.
23 UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 36.
24 *Guidelines on Freedom of Peaceful Assembly*, para. 148.
25 CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 29 June 1990, para. 9.2, whereby OSCE participating States reaffirmed that *"(9.2) everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standard*"; and Charter of Paris for a New Europe (1990), where they affirmed that "*without discrimination, every individual has the right to (…) freedom of association and peaceful assembly*".
26 Adopted by the meeting of heads of state or government of the CSCE, 21 November 1990 (preamble).
27 Adopted by the sixteenth Helsinki Ministerial Meeting on 4 and 5 December 2008 (p. 5).
28 See <ODIHR Panel of Experts on Freedom of Assembly and Association>.
29 See *Guidelines on Freedom of Peaceful Assembly*, ODIHR-Venice Commission, 3rd ed., adopted at the Venice Commission Session on 21-22 June 2019, and further edited as of 15 July 2020.
30 *Ibid.*, *Guidelines on Freedom of Peaceful Assembly*, para. 44.
31 *Ibid.*, *Guidelines on Freedom of Peaceful Assembly*, para. 21. See also UN Human Rights Committee, *General comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)*, para. 44.
32 See e.g., European Court of Human Rights (ECtHR), *Barankevich v. Russia*, no. 10519/03, 26 July 2007.

19. Freedom of peaceful assembly should be enjoyed, as far as possible, without (or with minimal) regulation,[33] unless there is a need for special protection. Moreover, states have a positive duty to respect, protect and facilitate the exercise of the right to freedom of peaceful assembly and this duty should be reflected in the legislative framework and relevant law enforcement and other regulations and practices.[34] States must promote an enabling environment for the exercise of the right to peaceful assembly without discrimination, and should regulation be considered necessary,[35] put in place a legal and institutional framework within which the right can be exercised effectively.[36] This also means that public authorities are required to remove all unnecessary legal and practical obstacles to the exercise of the right to freedom of peaceful assembly.[37]

2. Background

20. The right to peaceful assembly is guaranteed by Article 28 (1) of the Constitution of the Slovak Republic. Article 28 (2) of the Constitution further states that *"[t]he conditions under which this right may be exercised shall be provided by a law in cases of assemblies held in public places, if it is regarding measures necessary in a democratic society for the protection of the rights and freedoms of others, for the protection of public order, health and morals, property or of national security. An assembly shall not be subject to a permission of a body of public administration*."

21. The existing Act No. 84/1990 on the Right to Assemble (1990 Act) was adopted in 1990 and has been amended four times since then, the last time being in 2016.[38] The Draft Act was introduced in the session of the Government on 12 June 2024 and was adopted and submitted to the National Council of the Slovak Republic on the same day. It was immediately assigned for discussion to the relevant committees for adoption pursuant to the accelerated procedure.[39] The Draft Act was adopted in first reading by the National Council on 20 June 2024 (77 votes in favour, 60 votes against and 13 abstentions).[40] On the same day, the Draft Act was assigned to the Committee for Defence and Security as the lead Committee and was also sent to the Constitutional Law Committee and the Committee for Finance and Budget.[41] While the latter approved the Draft Act, the Constitutional Law Committee did not discuss it, and on 20 June 2024, the Committee for Defence and Security adopted a joint report proposing some amendments to the Draft Act,[42] some of which, although not adopted, are further referred to in the text of this Urgent Interim Opinion with a view to inform the parliamentary work (see also comments on the lawmaking procedure in Sub-Section 7 *infra*).

33 *Guidelines on Freedom of Peaceful Assembly*, para. 21. However, the measures taken by the authorities and interfering with the right to freedom of assembly should always have a legal basis under domestic law and the law should be accessible to the persons concerned and formulated with sufficient precision (see ECtHR, *Vyerentsov v. Ukraine*, no. 20372/11, 11 April 2013, para. 52).
34 See *Guidelines on Freedom of Peaceful Assembly*, para. 22.
35 In line with the principle of necessity to legislate, whereby state intervention by legislation should only take place where state action is necessary and other, non-legislative interventions are not feasible or unlikely to have a successful outcome, see ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (16 January 2024), Principle 4.
36 UN Human Rights Committee, *General comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)*, para. 24.
37 *Guidelines on Freedom of Peaceful Assembly*, para. 76.
38 Act No. 84/1990 on the Right to Assemble, as amended by Act No. 175/1990, Act No. 515/2003, Act No. 468/2007, Act No. 445/2008 and Act No. 125/2016.
39 See Decision No. 378 of the Interim President of the National Council of the Slovak Republic of 12 June 2024, sending the Draft Act for discussion by the Constitutional Law Committee, Committee for Finance and Budget, and Committee for Defence and Security, in accordance with the accelerated procedure; and the vote of the National Council of the Slovak Republic of 18 June 2024 in favour of the government's proposal for abbreviated legislative proceedings (print 363) as per Article 89 of the Act of the National Council of the Slovak Republic No. 350/1996 on the Rules of Procedure of the National Council (as of 1 January 2023).
40 See also <Details of the Bill - National Council of the Slovak Republic (nrsr.sk)>.
41 See <nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=549293>.
42 Available at <nrsr.sk/web/Dynamic/DocumentPreview.aspx?WFTID=NRDK&MasterID=304544>.

22. The Draft Act covers a broad range of topics ranging from the right to assemble (Article I) to amendments to the Offences Act and to the Criminal Act (Articles II and VII), the salary of certain constitutional mandate-holders of the Slovak Republic (Article IV), the police forces (Article V) and the protection of classified information (Article VI), electronic communications (Article VIII), among others. Article I of the Draft Act which seeks to amend the 1990 Act aims to restrict the possible locations where assemblies may take place and to introduce new grounds for prohibiting an assembly, or re-locating an assembly. The Draft Act, if adopted, would also introduce new offences against the right to assemble and substantially increase the proposed sanctions. Pursuant to Article VII of the Draft Act, proposed amendment to Article 348 of the Criminal Act would introduce the possibility to impose a two years of imprisonment for the failure "*without serious reason, to comply with an obligation to pay a fine or similar penalty of a pecuniary nature imposed by a decision of a public authority in at least a small amount*" (new point (m)).

3. Blanket Prohibition of Assemblies in Certain Locations and Freedom to Choose the Location and Manner of an Assembly

23. The proposed amendments to Section 1 of the 1990 Act would introduce a blanket prohibition of assemblies within 50 meters from the permanent residence of the President, a building where the National Council or government regularly meet, the permanent seats of the Constitutional Court of the Slovak Republic or the general court (except if the regulation provides otherwise),[43] or where such constitutional bodies deliberate or otherwise exercise their functions, and certain other public buildings.[44] It is noted that the existing provision already prohibits gatherings within a radius of 50 meters from the buildings of the National Council or places where it deliberates (existing Section 1 (5) of the 1990 Act).

24. The Explanatory Report[45] accompanying the Draft Act explains that the proposed amendments have been introduced in response to the existing security situation and, with respect to the provisions on assemblies, mainly because "*the conditions for exercising the right to assemble [are not] sufficiently formulated to ensure that the assemblies themselves take place in a constitutionally compliant manner*". The Explanatory Report further elaborates on some of the reasons for introducing the new restrictions to the exercise of the right to freedom of peaceful assembly, including the need to ensure "*the conditions for the undisturbed and smooth running of the activities of these state bodies*", "*limit the possibilities of interference or pressure on the independence of the judiciary*" and the "*protection of the fundamental right to privacy and undisturbed enjoyment of the home*".

25. At the core of the right to freedom of peaceful assembly is the ability of the assembly participants to choose the place where they can best communicate their message to their desired audience.[46] The freedom to choose the location of the assembly is a key aspect of the exercise of this right and states have the duty to facilitate assemblies at the

43 In the case of the Constitutional Court of the Slovak Republic, Section 242 of Act No. 314/2018, as amended, provides: "*Assemblies within a radius of 100 meters from the buildings of the Constitutional Court and from the places where the Constitutional Court holds hearings are prohibited*."

44 Including *"(e) an object provided by the Ministry of the Interior of the Slovak Republic for the needs of the President of the Slovak Republic, the President of the National Council of the Slovak Republic and the Prime Minister of the Slovak Republic pursuant to a special regulation".*

45 Available at: <nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=548663>.

46 See *Guidelines on Freedom of Peaceful Assembly*, para. 147. See also, for example, UN Human Rights Committee, *Turchenyak et al. v. Belarus*, CCPR/C/108/D/1948/2010 and Corr.1, 24 July 2013, para. 7.4: "*The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience."* See also e.g., ECtHR, *Sáska v. Hungary*, no. 58050/08, 27 November 2012, para. 21.

organizer's preferred location and within 'sight and sound' of the intended audience.[47] The venue may indeed be paramount for the message of the assembly to reach the target audience.[48] In addition, given the importance of freedom of peaceful assembly in a democratic society, assemblies should be regarded as an equally legitimate use of public space as other, more routine uses of such space.[49]

26. As underlined in the ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, "*Assemblies should be able to effectively communicate their message and must therefore be facilitated within 'sight and sound' of their target audience unless compelling reasons (that conform with the permissible justifications for imposing limitations under Article 21 ICCPR or Article 11(2) ECHR) necessitate a change of venue*". Hence, any restrictions with respect to the location of an assembly must comply with the strict test provided under international instruments, requiring any restriction to have a basis in the law of the country where it is imposed (test of legality), to be in pursuit of one of the aims listed exhaustively (test of legitimacy), to be the least intrusive measure possible among those effective enough to reach the designated objective (test of necessity and proportionality) and be non-discriminatory.

27. Blanket legal restrictions banning all assemblies in specified locations are problematic since they do not differentiate between different ways of exercising the right to freedom of assembly and preclude any consideration of the specific circumstances of each assembly.[50] Therefore, they are not in line with the principle of proportionality which requires that the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference.[51] Additionally, blanket bans on certain location may interfere significantly with the ability to hold assemblies within sight and sound of the intended audience, which as mentioned above is a fundamental aspect of the right to freedom of peaceful assembly.

28. As noted in previous ODIHR opinions, the prohibition on assemblies in the immediate vicinity of residences of public mandate-holders or public buildings of the parliament, executive or judiciary, or other places where they regularly meet or otherwise exercise their functions, poses a particular concern, since public institutions top the list of preferred assembly locations in almost any State, and areas surrounding them are appropriate for public speech and peaceful protests.[52] In many instances, the planned location around public buildings may be crucial for the purpose of the assembly, since the demands that the participants intend to voice may be related to, and addressed to, the President, the Parliament, the government or other specific public bodies or institutions.[53] In this respect, the privileged protection under the ECHR of political speech, debate on questions of public interest and the peaceful manifestation of opinions on such matters should be underlined, which means that the authorities have a narrow margin of

47 See *Guidelines on Freedom of Peaceful Assembly*, paras. 22 and 82.
48 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 22.
49 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 62.
50 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 133. See also UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 38, which states that *"[b]lanket restrictions on peaceful assemblies are presumptively disproportionate*"; Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, of 4 February 2016, para. 30: "*To this end, blanket bans, including bans on the exercise of the right in specific places […], are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly*"; and Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (Funding of associations and holding of peaceful assemblies), A/HRC/23/39, 24 April 2013, para. 63: *"…blanket bans, are intrinsically disproportionate and discriminatory measures as they impact all citizens willing to exercise their right to freedom of peacefully assembly*".
51 See *Guidelines on Freedom of Peaceful Assembly*, para. 29.
52 See e.g., *Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peacefully, with Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic*, ODIHR-Venice Commission, 22 October 2008, para. 26.
53 See e.g., ECtHR, *Mustafa Hajili and Others v. Azerbaijan*, nos. 69483/13 and 2 others, 6 October 2022, para. 65.

appreciation in restricting political speech and its peaceful manifestation.[54] In its caselaw, the ECtHR underlined that the absolute nature of a ban on holding public events in the vicinity of certain public institutions, for instance courts, was so broadly drawn that it could not be considered compatible with the Article 11 (2) of the ECHR.[55]

29. It is noted that the Explanatory Report accompanying the Draft Act refers to the purported need to ensure the undisturbed and smooth running of activities of state bodies, and with respect to courts, the importance of protecting judicial independence to justify the introduction of such limitations. With respect to the first argument, the caselaw of the ECtHR makes it clear that the objective "*to secure the unimpeded work and movement of the MPs […] cannot be regarded as a relevant or sufficient reason*".[56] With respect to court proceedings, while an individual ban on holding a peaceful assembly in the immediate vicinity of court buildings may serve a legitimate interest, namely that of protecting the judicial process *in a specific case* from outside influence, or ensuring that *in the given case*, the orderly administration of justice is not disrupted, thereby protecting the rights of the parties to the said judicial proceedings, the ban should however be tailored narrowly to achieve that interest, based on an assessment of the specific circumstances, and cannot amount to a general prohibition formulated in absolute terms.[57] In this respect, it is noted that the newly proposed amendments to the Draft Act suggested by the Committee for Defence and Security on 20 June envisage to limit the prohibition related to general courts to cases where the purpose of the assembly is related to the decision-making activities of the court (see also Sub-Section 4.1 below).

30. The Explanatory Report accompanying the Draft Act also mentions the "*protection of the fundamental right to privacy and undisturbed enjoyment of the home".* The protection of the rights and freedoms of others is listed under Article 21 of the ICCPR and Article 11 (2) of the ECHR as one of the potential legitimate aims for restricting the right to freedom of peaceful assembly. However, some degree of disruption with respect to the right to respect private and family life must be tolerated if the essence of the right to peacefully assemble is not to be deprived of any meaning and a high threshold should be reached before a violation of Article 8 of the ECHR can be established.[58] Moreover, balancing the right to assemble and the rights of others should always aim at ensuring that assemblies may proceed, unless they impose unnecessary and disproportionate burdens on others.[59] Where the right to respect for private life guaranteed by Article 8 of the ECHR comes into conflict with freedom of expression, the ECtHR has considered criteria for the balancing exercise including: whether the expression contributed to a debate of general interest; the public status of the person subjected to the statement; the prior conduct of the person who is the subject of criticism; the content, form and the consequences of the expression/publication; the severity of the sanctions.[60] Similar

54 *Ibid.* ECtHR, *Mustafa Hajili and Others v. Azerbaijan*, para. 66. See also ECtHR, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018, para. 133.

55 See e.g., ECtHR, *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, 7 February 2017, where the Court found a violation, stating that the absolute nature of the ban on holding public events in the vicinity of court buildings; *Kakabadze and Others v. Georgia*, no. 1484/07, 2 October 2012, paras. 88-91, where the ECtHR stated that there was no "relevant" and "sufficient" reasons provided for the blanket ban on holding events at certain locations, including the court building, especially when it was sometimes essential to hold a public event near a court building, for example if its aim was to promote the independence of the judiciary; see also *Sergey Kuznetsov v. Russia*, no. 10877/04, 23 October 2008, where the aim was to criticise perceived dysfunctions in the judicial system.

56 See e.g., ECtHR, *Sáska v. Hungary*, no. 58050/08, 27 November 2012, para. 23.

57 See e.g., ECtHR, *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, 7 February 2017, para. 440; and *Ekrem Can and Others v. Turkey*, no. 10613/10, 8 March 2022, para. 90.

58 See e.g., ECtHR, *Moreno Gómez v. Spain*, no. 4143/02, 16 November 2004, paras. 60-62; and *Chumak v. Ukraine*, no. 44529/09, 6 March 2018.

59 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 143.

60 See e.g., ECtHR, *Jerusalem v. Austria*, no. 26958/9526958/95, 27 February 2001, para. 40; *Ruokanen and Others v. Finland*, no. 45130/06, 6 April 2010, para. 52; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, 22 October 2007, para. 59. See also *Amicus Curiae Brief for the Constitutional Court of Georgia on the Question of the Defamation of the Deceased*, Venice Commission, CDL-AD(2014)040, para. 23.

considerations could apply with respect to the right to freedom of peaceful assembly, all the more if the assemblies organized in the vicinity of public institutions involve the peaceful manifestation of political speech or debate on questions of public interest, which enjoys enhanced protection under the ECHR and for which the state has a narrow margin of appreciation.[61] Consequently, the protection of the right to respect for private or family life of a public mandate-holder cannot justify a blanket prohibition to peacefully assemble in the vicinity of their residence.

31. This should not prevent, in specific given circumstances, where there is convincing and compelling evidence from the concrete assembly at stake, that certain restrictions on assembling in the above-mentioned locations could be imposed. In this case, the relevant public authority must explain in detail the extent to which the given assembly would, if unrestricted, interfere with the rights and freedoms of specific high-level public mandate-holder(s) and/or their family members, and how any restrictions on the assembly would serve to mitigate these interferences, and why less restrictive measures would not lead to the envisaged success.[62]

32. In light of the foregoing, instead of blanket bans, the restrictions should be imposed on a case-by-case basis in light of the particular characteristics of each assembly. It is understandable that heightened security may be required to ensure public order during assemblies at these specific locations close to public institutions or residence of high-level public mandate-holders; however, this is generally a policing rather than a regulatory issue, and the relevant law enforcement bodies should be empowered to make decisions on appropriate security measures to be put in place for each assembly, on a case-by-case basis.[63] This also certainly falls short of justifying the proposed restriction. **It is therefore recommended that the blanket ban on assemblies within 50 meters of certain government, parliament, courts and other public institutions' buildings or residence of high-level public mandate-holders be deleted, and the management of security risks be left to the relevant law enforcement bodies on a case-by-case basis, based on the specific circumstances, subject to judicial scrutiny and in line with international human rights standards.**

33. Existing Section 4 (3) of the 1990 Act provides that "*The municipality may designate a place in the municipality where an assembly may be held for the purpose specified in Section 1 (2) without notice. In doing so, it may determine the time during which such gatherings may not take place."* The proposed amendment would further specify "*The municipality shall designate a place referred to in the first sentence preferably in a public place which is a square, park, market place or other similar place*."

34. While recognizing that assemblies may be held without notice, which is welcome in principle, the fact that a municipality shall designate a specific place for such unnotified and/or spontaneous assemblies, would *de facto* restrict the ability of organizers to freely chose the desired location of their assemblies. Furthermore, this may also limit the possibility to organize and participate in moving assemblies (including parades, processions) that can be held spontaneously, as well as limit the ability of assembly participants to jointly reach the designated location.

35. As underlined in the Guidelines on Freedom of Peaceful Assembly, *"[t]he need to protect spontaneous assemblies as an expected (rather than exceptional) feature of a*

61 See e.g., ECtHR, *Ekrem Can and Others v. Turkey*, no. 10613/10, 8 March 2022, para. 91; and *Mustafa Hajili and Others v. Azerbaijan*, nos. 69483/13 and 2 others, 6 October 2022, para. 66.
62 See *Guidelines on Freedom of Peaceful Assembly*, para. 143.
63 See *Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peacefully, with Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic*, ODIHR-Venice Commission, 22 October 2008, para. 26.

healthy democracy has been recognized in numerous domestic laws and court decisions,[64] *and should be facilitated and protected in the same way as assemblies that are planned in advance."*[65] The proposed provision also runs the risk of having the said public authority categorically exclude places suitable and open to the public as sites for peaceful assemblies and that assembly participants should be free to choose,[66] also with a view to reach their target audience in the most effective way. One cannot exclude that the municipality may also designate places at the outskirts of the municipality, which may render completely inaudible the message that the organizers may wish to convey to the target audience and potentially the public at large.[67] Moreover, the use of suitable sites must always be assessed in the light of the circumstances of each case,[68] and should not be decided *a priori* for all assemblies held without notice. As underlined in the ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, *"[t]he fact that a message could also be expressed in another place, is by itself insufficient reason to require an assembly to be held elsewhere, even if that location is within sight and sound of the target audience"*.[69] When in specific circumstances, it is necessary to change the place of an assembly, an acceptable, suitable alternative place should be made available, and this alternative must be such that the message which the assembly seeks to convey may still be effectively communicated to those at whom it is directed, i.e., within 'sight and sound' of the target audience.[70]

36. In light of the above, **the obligation, or even the possibility, for a municipality to designate a place where all unnotified assemblies shall take place should be reconsidered entirely, as this would otherwise unduly restrict the ability of organizers to freely chose the desired location of their assemblies.**

RECOMMENDATION A.

To reconsider entirely the blanket ban on assemblies within 50 meters of certain government, parliament, courts and other public institutions' buildings or residence of high-level public mandate-holders, and leave the management of security risks to the relevant law enforcement bodies on a case-by-case basis, based on the specific circumstances, subject to judicial scrutiny and in line with international human rights standards.

64 For example, the second sentence of Article 44(2) Armenian Constitution: "*In cases stipulated by law, outdoor assemblies shall be conducted on the basis of prior notification given within a reasonable period. No notification shall be required for spontaneous assemblies*." See also, UN Human Rights Committee, Communication No. 2217/2012, *Popova v The Russian Federation*, Views adopted on 6 April 2018, para 7.5 (references omitted): "*… while a system of prior notices may be important for the smooth conduct of public demonstrations, their enforcement cannot become an end in itself. Any interference with the right to peaceful assembly must still be justified by the State party in the light of the second sentence of article 21. This is particularly true for spontaneous demonstrations, which cannot by their very nature be subject to a lengthy system of submitting a prior notice*." UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012, para. 29. Polish Constitutional Tribunal, Judgment of 10 July 2008 No. P 15/08 (105/6/A/2008).

65 See *Guidelines on Freedom of Peaceful Assembly*, para. 79.

66 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 147, which provides: "*The fact that a message could also be expressed in another place, is by itself insufficient reason to require an assembly to be held elsewhere, even if that location is within sight and sound of the target audience. This means that legislators may not exclude entire categories of locations for the holding of assemblies (such as certain types of buildings including presidential palaces or parliaments, hospitals, schools and educational institutions) […]*". See also UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 56: "*The designation of the perimeters of places such as courts, parliaments, sites of historical significance or other official buildings as areas where assemblies may not take place should generally be avoided, inter alia, because these are public spaces*." See also Report of the UN Special Rapporteur (2012), A/HRC/20/27, 21 May 2012, paras. 39-41.

67 See e.g., ECtHR, *Mustafa Hajili and Others v. Azerbaijan*, nos. 69483/13 and 2 others, 6 October 2022, para. 65.

68 See *Guidelines on Freedom of Peaceful Assembly*, para. 147.

69 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 147.

70 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 147. See also e.g., *Bay Area Peace Navy v. United States*, 914 F.2d 1224 (9th Cir. 1990), where a restriction preventing protestors from entering a government designated buffer zone was declared null and void because it denied protestors access to their audience.

To reconsider entirely the obligation, or even the possibility, for a municipality to designate a place where all unnotified assemblies shall take place.

4. Proposed New Grounds for Prohibiting Assemblies

37. The Draft Act would introduce, under Section 10 (2) of the 1990 Act, three new grounds for municipalities to prohibit assemblies. At the outset, as emphasized in the Guidelines, "*as a rule, peaceful assemblies should be facilitated without restriction*".[71] The Guidelines further underline that "*Prohibiting an assembly should be a measure of last resort and should only be considered when a less restrictive response would not achieve the purpose pursued by the authorities in safeguarding other relevant rights and freedoms, and public order. Any ban or prohibition of an assembly should be decided upon only on a case by case basis, with the legitimacy, necessity and proportionality test to be carried out for each individual assembly. In order to justify a prohibition, the state must provide evidence that it has first attempted to facilitate an assembly, or to impose less onerous restrictions. […] Mere suspicions, fears or presumptions are not sufficient to warrant the imposition of prior restrictions on assemblies.*"[72]

4.1. Prohibition of Assemblies in the Vicinity of the Home of a Person whose Employment, Profession or Office is Directly Connected with the Purpose of the Assembly (Section 10 (2) (d))

38. Proposed new Section 10 (2) (d) of the 1990 Act would introduce the possibility for a municipality to prohibit an assembly "*if it is to be held in the vicinity of the home of a person whose employment, profession or office is directly connected with the purpose of the assembly and the convener has not consented to a change of venue of the assembly*". The draft provision does not refer to any element suggesting that the municipality will assess whether the prohibition is necessary and proportionate but seems to imply that the decision may be automatically taken based on the mere connection between the purpose of the assembly and the targeted person's employment, profession or office when the organizer has not agreed to a change of location.

39. The comments made with respect to the restriction to choose the location of an assembly in Section 3 above similarly apply to the introduction of this new ground for prohibiting an assembly. At the same time, there are a number of differences with respect to this proposed new prohibition ground.

40. First, it is noted that the scope of this proposed prohibition (Section 10(2)(d)) is even broader than the above-mentioned restriction on assembling in certain locations (as discussed above under Section 3 of the Opinion). Some of the terms are vague and may potentially be subject to different interpretation by the relevant authorities.[73]

41. The personal scope of the restriction targets not only high-level public mandate-holders but also any person whose employment or profession is directly connected with the purpose of an assembly. This could potentially encompass a much broader group of individuals, including e.g., business owners, employers, but also other professionals, for

71 *Ibid.* *Guidelines on Freedom of Peaceful Assembly*, para. 128.
72 *Ibid.* *Guidelines on Freedom of Peaceful Assembly*, paras. 132 and 134.
73 See ECtHR, *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, 7 February 2017, para. 441, where, with respect to legislation prohibiting the holding of public events "in the immediate vicinity of court buildings", a wording not further defined, the ECtHR concluded that the term was broad and gave local executive authorities' wide discretion in determining what is considered to be "in the immediate vicinity".

instance law enforcement officers or any type of public servants. In these cases, the privileged protection of political speech, debate on questions of public interest and the peaceful manifestation of opinions on such matters would not necessarily apply. At the same time, as emphasized above, the right to freedom of peaceful assembly also encompasses the freedom to choose the modalities and manner of an assembly, including the location.[74] The presumption of peacefulness of assemblies, including assemblies which might cause inconvenience to the public or to certain individuals, includes an obligation of tolerance and restraint towards peaceful assemblies.[75] A blanket prohibition that would preclude any consideration of the specific circumstances of such an assembly, is intrinsically disproportionate.[76] Generally, if it is claimed that one's right to privacy is affected by an assembly, the authority should seek to determine the validity of that claim in the given circumstances, and the degree to which one should tolerate a temporary burden; there is a high threshold that must first be overcome before a violation of Article 8 of the ECHR can be established.[77]

42. This is to be distinguished from demonstrations which may have an intimidating effect, for instance on members of an ethnic minority, especially when they are in their homes, where the state has a positive obligation to protect the right of the members of the target groups to live without intimidation.[78] But as underlined by the ECtHR, it may be only in the course of demonstrations that such a goal and effect may become evident.[79]

43. In light of the foregoing, **the power of the municipality to prohibit all assemblies in the vicinity of the home of a person when this person's employment, profession or office is directly connected with the purpose of the assembly, is vaguely worded, may result in disproportionate restrictions, and therefore should be reconsidered**. An assembly in such areas may be restricted in specific circumstances, on a case-by-case basis, if due to the repeated organization of the demonstrations next to the home of certain individuals and associated with the expression of ideas that are intimidating or threatening[80] or if falling within the scope of another ground for prohibition (see Sub-Section 4.3 below).

4.2. Prohibition in Case of "Reasonable Apprehension of a Clash between the Participants in Several Notified Assemblies" (Section 10 (2) (e))

44. Proposed new Section 10 (2) (e) of the 1990 Act would introduce the possibility for the municipality to prohibit an assembly if "*there is reasonable apprehension that there will be a clash between the participants in a number of notified assemblies, as a result of which the orderly and peaceful conduct of those assemblies cannot be ensured even with the deployment of available forces and means, no agreement has been reached between the*

74 See *Guidelines on Freedom of Peaceful Assembly*, para. 58. See also ECtHR, *Sáska v. Hungary*, no. 58050/08, 27 November 2012, para. 21.
75 *Guidelines on Freedom of Peaceful Assembly*, para. 21; and Joint Report of UN Special Rapporteurs (2016), A/HRC/31/66, para. 30.
76 In relation to blanket restrictions imposed on the time, location or manner of an assembly, see e.g., *Guidelines on Freedom of Peaceful Assembly*, paras. 133, 147 and 151. See also UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 38, which states that *"[b]lanket restrictions on peaceful assemblies are presumptively disproportionate*".
77 See e.g., ECtHR, *Moreno Gómez v. Spain*, no. 4143/02, 16 November 2004, paras. 60-62.
78 See e.g., ECtHR, *Vona v. Hungary*, no. 35943/10, 9 July 2013, para. 66; ECtHR, *R.B. v. Hungary*, no. 64602/12, 12 April 2016, para 99, where the Court "*accepts that in certain situations the domestic authorities might be required to proceed with the dispersal of a violent and blatantly intolerant demonstration for the protection of an individual's private life under Article 8. Nonetheless, in the present case, the applicant's complaint was merely directed against the authorities' failure to apply criminal-law sanctions against the demonstrators to prevent an infringement of her private life*"; ECtHR, *Király and Dömötör v. Hungary*, no. 10851/13, 17 January 2017, para. 64; and in relation to Article 3 ECHR: ECtHR, *P.F. and E.F. v. the United Kingdom* (dec.), no. 28326/09, 23 November 2010, para. 38.
79 *Ibid. Vona v. Hungary*, para. 69.
80 See e.g., ECtHR, *Vona v. Hungary*, no. 35943/10, 9 July 2013, paras. 66-69.

conveners on the modification of the time or place of the assemblies, and public order cannot be ensured by any less disruptive measures".

45. As noted above, mere suspicions, fears or presumptions are not sufficient to warrant the imposition of prior restrictions on assemblies.[81] The ECtHR has held that *"[t]he mere probability of tension and heated exchange between opposing groups during a demonstration is not enough to justify the prohibition of an assembly"*.[82] The burden should lie on the public authorities to demonstrate the reality of such a risk.[83] The mere reference to a "reasonable apprehension" seems to fall short of the relevant and sufficient, convincing and compelling, reasons that should be adduced by public authorities to justify restrictions.[84] As a measure of last resort, prohibition should only be pronounced in case of a real and serious risk of imminent violence that cannot be mitigated or prevented by means other than prohibition.

46. Further, as underlined in the Guidelines on Freedom of Peaceful Assembly, "*[i]ndividuals have a right to assemble as counter-demonstrators to express their disagreement with the views expressed at a public assembly*".[85] In such cases, the coincidence in time and venue of the two assemblies is likely to be an essential part of the message to be conveyed by the second assembly.[86] Counter-demonstrations shall be facilitated so that they occur within 'sight and sound' of their target audience, unless this physically interferes with the other assembly and gives rise to a real and serious risk of imminent violence that cannot be mitigated or prevented by other means.[87] An assembly may only be prohibited as a last resort measure when the risk of violent counter-demonstrations cannot otherwise be prevented or mitigated[88] and the principle of proportionality must always be respected.[89]

47. The proposed new provision refers to the possibility of a clash between simultaneous assemblies as a result of which the "*orderly and peaceful conduct of those assemblies cannot be ensured even with the deployment of available forces and means*". As noted in the Guidelines, the mere argument that a state has inadequate resources to protect peaceful assembly to justify a prohibition may represent a failure of the state to meet its positive obligations.[90]

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81 See *Guidelines on Freedom of Peaceful Assembly*, para. 134.
82 See ECtHR, *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, 21 October 2010, para. 77.
83 See ECtHR, *Christian Democratic People's Party v. Moldova* (No. 2) (2010), no. 28793/02, 14 February 2006, para. 23. See also *Guidelines on Freedom of Peaceful Assembly*, para. 134.
84 See *Guidelines on Freedom of Peaceful Assembly*, paras. 131.
85 See *Guidelines on Freedom of Peaceful Assembly*, paras. 22 and 77. See ECtHR, *Öllinger v. Austria*, no. 76900/01, 29 June 2006, paras. 43-51. This case provides guidance as to the factors potentially relevant to assessing the proportionality of any restrictions on counter-demonstrations, including whether the coincidence of time and venue is an essential part of the message of the counter-demonstration, whether the counter-protest concerned the expression of opinion on an issue of public interest, the size of the counter-demonstration, whether the counter-demonstrators have peaceful intentions, and the proposed manner of the protest (use of banners, chanting etc.). *Olivieri v. Ward*, 801 F.2d 602,606-608(2d Cir. 1986) and O'Neill & Vasvari 23 *Hastings Const. L.Q.* at 100. Also see *Bay Area Peace Navy v. United States*, 914 F.2d 1224 (9th Cir. 1990) (overturning the decision on a buffer zone that prevented the message of protestors from being observed).
86 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 77.
87 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 22; see also European Commission of Human Rights, *Christians against Racism and Fascism v. United Kingdom* (dec.), no. 8440/78, 16 July 1980, where the Commission held that a general ban on demonstrations can only be justified if there is a real danger of their resulting in disorder which cannot be prevented by other less stringent measures.
88 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 81.
89 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 81. See also ECtHR, *Öllinger v. Austria*, no. 76900/01, 29 June 2006. See also UN Human Rights Committee, *Rabbae, A.B.S. and N.A v. the Netherlands*, Views adopted 14 July 2016, CCPR/C/117/D/2124/2011, para. 10.4, in which the Committee emphasized that Article 20(2) should be crafted narrowly in order to ensure that other equally fundamental ICCPR rights, including freedom of expression are not infringed. See also Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No 35: Combating racist hate speech' (26 September 2013) UN Doc CERD/C/GC/35, para. 20. The CERD has recognized that "*measures to monitor and combat racist speech should not be used as a pretext to curtail expression of protest at injustice, social discontent or opposition*".
90 See *Guidelines on Freedom of Peaceful Assembly*, paras. 132.

48. The wording of the proposed new provision also suggests that the decision to prohibit an assembly should be taken after considering possible less intrusive measures, suggesting some form of proportionality assessment, which is positive in principle. At the same time, a number of considerations may be taken into account on a case-by-case basis to assess the proportionality of any restrictions on counter-demonstrations, including whether the coincidence of time and venue is an essential part of the message of the counter-demonstration, whether the counter-protest concerned the expression of opinion on an issue of public interest, the size of the counter-demonstration, whether the counter-demonstrators have peaceful intentions, and the proposed manner of the protest.[91] Pursuant to Article 5(1) of the ICCPR and Article 17 of the ECHR, however, no state, group or person may engage in any activity or perform any act aimed at the destruction of the rights and freedoms set out in these instruments, meaning that counter-demonstrations organized with the sole, main or additional purpose of physically disrupting or preventing another assembly are not permissible.[92] But, this intention may be very difficult to detect ahead of an assembly. It should therefore be based on a case-by-case assessment and the authorities may decide to restrict an assembly when, based on previous experiences, there appears to be a serious risk that it may disrupt or prevent another assembly.[93]

49. As emphasized in the ODIHR-Venice Commission Joint Guidelines on Freedom of Peaceful Assembly, *"[w]here prior notification is submitted for two or more assemblies at the same place and time, simultaneous events should be facilitated where possible. Simply prohibiting an assembly in the same place and at the same time as an already notified or planned public assembly, in cases where both can reasonably be accommodated, is likely to amount to a disproportionate and possibly discriminatory response*."[94] Moreover, where demonstrators do not engage in acts of violence, public authorities must show a certain degree of tolerance towards peaceful gatherings if the right is not to be deprived of all substance.[95] The newly proposed amendments to the Draft Act suggested by the Committee for Defence and Security on 20 June, if adopted, would make clearer that the previously announced assembly shall prevail. As emphasized in the Guidelines, simply applying a 'first come, first served' rule and prohibiting an assembly in the same place and at the same time as an already notified one in cases whereas both can reasonably be accommodated is likely to amount to a disproportionate and possibly discriminatory response in such a case.[96]

50. Finally, there may be circumstances where some public order or public safety concerns may arise when the presence or conduct of assembly participants creates a significant and imminent danger of physical injury for other participants, public authorities or passers-by, or of damage to property. Even in such instances, extra precautionary measures should generally be preferred over more extensive restrictions or even prohibition on the assembly itself, which should remain a measure of last resort.[97] While organizers and stewards may provide assistance, states retain primary responsibility for the protection of public safety and security, and have a positive obligation to provide adequately resourced policing arrangements to enable intervention when necessary.[98]

91 See ECtHR, *Öllinger v. Austria*, no. 76900/01, 29 June 2006, paras. 43-51.
92 See *Guidelines on Freedom of Peaceful Assembly*, para. 144.
93 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 144.
94 *Ibid. Guidelines on Freedom of Peaceful Assembly*, paras. 22 and 78.
95 ECtHR, *Kuznetsov v. Russia*, no. 10877/04, 23 October 2008; UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 47; and *Guidelines on Freedom of Peaceful Assembly*, paras. 21 and 62.
96 See *Guidelines on Freedom of Peaceful Assembly*, para. 78.
97 See *Guidelines on Freedom of Peaceful Assembly*, para. 132.
98 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 138.

51. In light of the foregoing, **the drafter should reconsider the proposed prohibition ground based on a mere "reasonable apprehension" that simultaneous assemblies may lead to clashes, introducing instead the standard of a real and serious risk of imminent violence that cannot be mitigated or prevented by means other than prohibition**.

4.3. Prohibition in Case of "Reasonable Apprehension of Interference with the Fundamental Right to Privacy of Several Persons or With the Peaceful Enjoyment of the Home" (Section 10 (2) (f))

52. Proposed new Section 10 (2) (f) of the 1990 Act would provide the possibility for the municipality to prohibit an assembly if "*there is a reasonable apprehension from the place of the assembly or other facts reported that the holding of the assembly will interfere with the fundamental right to privacy of several persons or with the peaceful enjoyment of the home of several persons and that no less intrusive measures can be taken to protect those rights*". The proposed wording suggests that the decision to prohibit an assembly should be taken after considering possible less intrusive measures, suggesting some form of proportionality assessment. At the same time, the comments made above with reference to "reasonable apprehension" are similarly applicable.

53. The newly proposed amendments to the Draft Act suggested by the Committee for Defence and Security on 20 June, if adopted, aim to specify that this prohibition would only apply when the assembly is "*to be held in an area predominantly intended for residential use and that is not a square, park, market place or other similar place*" and if the assembly would "*interfere with the fundamental right to privacy of a large number of persons or interfere with the peaceful enjoyment of the home of a large number of persons beyond the level normally associated with a peaceful assembly*". While noting the attempt to more precisely define and strictly circumscribe the Section 10(2)(f) of the Draft Act, it may remain difficult for a public authority to assess prior to an assembly the level of interference with the right to privacy and peaceful enjoyment of home.

54. It must also be reiterated that some degree of disruption with respect to the right to privacy and peaceful enjoyment of one's home must be tolerated if the essence of the right to peacefully assemble is not to be deprived of any meaning.[99] As already noted in Sub-Section 4.1 above, if it is claimed that the right to privacy is affected by a specific assembly, the authority should seek to determine the validity of that claim in the given circumstances, and the degree to which one should tolerate a temporary burden; there is a high threshold that must first be overcome before a violation of Article 8 of the ECHR can be established,[100] for instance when the actual conduct of certain demonstrations have an intimidating effect on certain individuals[101] (see para. 42 above).

55. With respect to the "peaceful enjoyment of the home" explicitly mentioned in the Draft Act, Article 1 of Protocol 1 to the ECHR protects the peaceful enjoyment of one's possessions. When balancing the right to assemble and the right to peaceful enjoyment of the home, it should be reiterated that peaceful assemblies should be regarded as an

99 See UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 31, which provides: "*Private entities and broader society may be expected to accept some level of disruption as a result of the exercise of the right.*" See also ECtHR, *Chumak v. Ukraine*, no. 44529/09, 6 March 2018, para. 53; and *Bukta and Others v. Hungary*, no. 25691/04, 17 July 2007.

100 See e.g., ECtHR, *Moreno Gómez v. Spain*, no. 4143/02, 16 November 2004, paras. 60-62.

101 See e.g., ECtHR, *Vona v. Hungary*, no. 35943/10, 9 July 2013, paras. 66 and 69.

equally legitimate use of public space as other, more routine activities[102] and a certain level of disruption to ordinary life, including to peaceful enjoyment of one's home, or even annoyance, should be tolerated.[103] However, notwithstanding the freedom to choose the location or route of an assembly, the right of peaceful assembly does not bestow an automatic right of entry to private property.[104] When balancing the right of a property owner against the competing right to freedom of peaceful assembly, the latter should prevail where there is no adequate alternative public space that would allow an assembly to take place in 'sight and sound' of its intended audience and if the owner's right to enjoyment of his or her private property will not be significantly disrupted.[105] In this context, state authorities should ensure that facilitating the assembly does not impose out-of-pocket costs on the private property owner.[106]

56. In light of the foregoing, **the need to introduce a new ground for prohibiting an assembly on the basis of a "reasonable apprehension" of interference with the right to privacy and peaceful enjoyment of the home should be re-assessed or at the very least, more strictly circumscribed to ensure that prohibition may only be decided in case the proposed assembly would impose unnecessary and disproportionate burdens on others or create significant and imminent danger to public safety.**

4.4. Prohibition by a Municipality and Proposal for Alternative, Suitable Locations (Section 10(3))

57. Existing Section 10 (3) of the 1990 Act provides for the possibility for the municipality to "*prohibit an assembly if it is to be held in a place where the necessary restriction of transport and supply would be in serious conflict with the interest of the population, if the assembly can be held elsewhere without undue hardship, without defeating the stated purpose of the assembly*". The proposed amendments would supplement this provision by referring, beyond the restriction of transport and supply, to restrictions on the right to privacy and restrictions on the peaceful enjoyment of a dwelling.

58. Restrictions on the location and manner of an assembly may be regulated where necessary to safeguard legitimate interests of the state, the public or the rights of other individuals, provided that the regulation is unrelated to the content of the assembly's

102 See UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 7; ECtHR, *Patyi and Others v. Hungary*, no. 5529/05, 7 October 2008: ECtHR rejected the Hungarian government's arguments regarding potential disruption to traffic and public transport; *Körtvélyessy v. Hungary*, no. 7871/10, 5 April 2016, para. 29: the ECtHR concluded: "*the authorities, when issuing the prohibition on the demonstration and relying on traffic considerations alone, failed to strike a fair balance between the rights of those wishing to exercise their freedom of assembly and those others whose freedom of movement may have been frustrated temporarily, if at all.*" See also *Guidelines on Freedom of Peaceful Assembly*, para. 62.

103 *Guidelines on Freedom of Peaceful Assembly*, para. 143. See also UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 31, where the Committee underlined that *"[p]rivate entities and broader society may be expected to accept some level of disruption as a result of the exercise of the right [to freedom of peaceful assembly]*". See also e.g., ECtHR, *Chumak v. Ukraine*, no. 44529/09, 6 March 2018, where no pressing social need was considered to exist for the dispersal of a picket on a road based on unsubstantiated conclusions that the protesters concerned had "obstructed the passage of pedestrians" and "endangered road users", with no estimate being made of the number of protesters or the size of the area they had allegedly blocked; more recently, custodial sentences were considered disproportionate in ECtHR, *Makarashvili and Others v. Georgia*, no. 23158/20, 1 September 2022, where no assessment was made by the courts of whether that blocking of a road had been intentional or a result of circumstances on the ground, such as the number of demonstrators and the related question of the "lawfulness" of the police demands, whereas one was not disproportionate in the case of demonstrators who had blocked the road during police attempts to reopen access to the Parliament building

104 See *Guidelines on Freedom of Peaceful Assembly*, para. 64. See also UN Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 57: "*While gatherings in private spaces fall within the scope of the right of peaceful assembly, the interests of others with rights in the property must be given due weight. The extent to which restrictions may be imposed on such a gathering depends on considerations such as whether the space is routinely publicly accessible, the nature and extent of the potential interference caused by the gathering with the interests of others with rights in the property, whether those holding rights in the property approve of such use, whether the ownership of the space is contested through the gathering and whether participants have other reasonable means to achieve the purpose of the assembly, in accordance with the sight and sound principle*."

105 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 83.

106 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 83, and references cited therein.

message,[107] and only if it complies with the above-mentioned requirements of legality, legitimacy, necessity, proportionality and non-discrimination (see para. 26 above).[108]

59. First, international law is clear that given the importance of freedom of peaceful assembly in a democratic society, assemblies should be regarded as an equally legitimate use of public space as other, more routine uses of such space, such as pedestrian movement, road traffic or economic activity.[109] Peaceful assemblies may impact the rights and freedoms of others, including those who live, work, trade and carry on business in the same locality. They can in some cases be inherently or deliberately disruptive and require a significant degree of toleration.[110] A certain level of disruption to ordinary life caused by assemblies, including temporary disruption of traffic, transport, annoyance and even harm to commercial activities, should be accommodated and tolerated.[111] As mentioned above, balancing the right to assemble and the rights of others must always aim at ensuring that assemblies may proceed, unless they impose unnecessary and disproportionate burdens on others or create significant and imminent danger to public safety by hindering access to emergency health care services.[112] The mere fact that the content or manner in which an assembly is conducted may annoy, offend, shock or disturb others, or that such an assembly may cause some temporary disruptions of daily life, does not by itself amount to a violation of public order.[113]

60. Where demonstrators do not engage in acts of violence, public authorities must show a certain degree of tolerance towards peaceful gatherings if the right is not to be deprived of all substance.[114] Proposing an alternative location may be understandable when balanced against the need, for instance, to ensure access to emergency health care services. Generally, assemblies should be organized and policed in such a manner that they do not block access to hospitals and services providing critical healthcare, especially emergency access.[115] However, the question of whether public health is endangered by such gatherings must be assessed by reference to facts of the individual cases, not in abstract.[116] More generally, preventive restrictions of individual rights are thus only

107 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 148.
108 *Ibid. Guidelines on Freedom of Peaceful Assembly*, paras. 23-24 and 28-29.
109 See UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21),* para. 7; ECtHR, *Patyi and Others v. Hungary*, no. 5529/05, 7 October 2008: ECtHR rejected the Hungarian government's arguments regarding potential disruption to traffic and public transport; *Körtvélyessy v. Hungary*, no. 7871/10, 5 April 2016, para. 29: the ECtHR concluded: "*the authorities, when issuing the prohibition on the demonstration and relying on traffic considerations alone, failed to strike a fair balance between the rights of those wishing to exercise their freedom of assembly and those others whose freedom of movement may have been frustrated temporarily, if at all.*" See also *Guidelines on Freedom of Peaceful Assembly*, para. 62.
110 UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21),* para. 44.
111 *Guidelines on Freedom of Peaceful Assembly*, para. 143. See also UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21),* para. 31, where the Committee underlined that *"[p]rivate entities and broader society may be expected to accept some level of disruption as a result of the exercise of the right [to freedom of peaceful assembly]*"; see also paras. 7, 15, 47 and 85. See also e.g., ECtHR, *Chumak v. Ukraine*, no. 44529/09, 6 March 2018, where no pressing social need was considered to exist for the dispersal of a picket on a road based on unsubstantiated conclusions that the protesters concerned had "obstructed the passage of pedestrians" and "endangered road users", with no estimate being made of the number of protesters or the size of the area they had allegedly blocked; more recently, custodial sentences were considered disproportionate in ECtHR, *Makarashvili and Others v. Georgia*, no. 23158/20, 1 September 2022, where no assessment was made by the courts of whether that blocking of a road had been intentional or a result of circumstances on the ground, such as the number of demonstrators and the related question of the "lawfulness" of the police demands, whereas one was not disproportionate in the case of demonstrators who had blocked the road during police attempts to reopen access to the Parliament building.
112 See UN Human Rights Committee, *General comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21),* para. 36: "*The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it."* See also *Urgent Opinion on Proposed Amendments to the Law of Georgia on Assemblies and Demonstrations and to the Administrative Offences Code of Georgia*, OSCE/ODIHR, 2023, para. 39, and *Urgent Opinion on the Law on Assemblies of the Republic of Moldova*, OSCE/ODIHR, 2023, para. 34. See also ECtHR, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, 15 October 2015, para. 155, which underlines that the mere disruption of traffic in itself does not justify an interference with the right to freedom of assembly.
113 *Guidelines on Freedom of Peaceful Assembly*, para. 139.
114 ECtHR, *Kuznetsov v. Russia*, no. 10877/04, 23 October 2008; UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21),* para. 47; and *Guidelines on Freedom of Peaceful Assembly*, paras. 21, 62 and 143.
115 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 142.
116 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 142. See also e.g., ECtHR, *Yilmaz Yildiz and others v. Turkey*, no. 4524/06, 14 October 2014, para. 43.

possible in exceptional cases where there is a clear and imminent danger that a crime will be committed.[117] States should always seek to ensure that any preventive intervention that negatively impacts an individual's right to freedom of peaceful assembly is based on objective evidence that without such intervention, the individual will commit a "concrete and specific"[118] offence of significance (constituting, for example, actual violence or serious criminal damage).[119]

61. Second, for domestic law to meet the qualitative requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with human rights; the mandate, duties and powers of the authority responsible for making decisions in relation to assemblies should be clearly stated in law.[120] As underlined in the case law of the ECtHR, in matters affecting fundamental rights, it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in both the ECHR and the ICCPR, for legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise.[121]

62. Finally, it must also be reiterated that if in specific circumstances, it is necessary to change the place of an assembly, an acceptable, suitable alternative place should be made available; this alternative must be such that the message which the assembly seeks to convey may still be effectively communicated to those at whom it is directed, i.e., within 'sight and sound' of the target audience.[122] Section 10 (3) specifies that the change of location decided by the municipality should not create "*undue hardship*" and should not "*defeat the stated purpose of the assembly*". Although this wording may suggest some form of proportionality assessment on the side of the municipality, this should generally be for the organizers rather than for a public authority to assess whether these conditions are fulfilled as they are best placed to do so. Assembly organizers should not be compelled or coerced to accept the proposed alternative, as requiring otherwise would undermine the very essence of the right to freedom of peaceful assembly.

63. In light of the above, the **proposed amendment to Section 10 (3) of the 1990 Act adding new grounds for a municipality to propose an alternative location for an assembly should be re-considered and it should be made clear that assembly organizers should not be compelled or coerced to accept the proposed alternative.**

RECOMMENDATION B.

To reconsider the prohibition of all assemblies in the vicinity of the home of a person when this person's employment, profession or office is directly connected with the purpose of the assembly (proposed new Section 10 (2) (d));

To reconsider the prohibition ground based on a mere "reasonable apprehension" of clashes between simultaneous assemblies introducing instead the standard of a real and serious risk of imminent violence that cannot

117 See *Guidelines on Freedom of Peaceful Assembly*, para. 140.
118 See ECtHR, *Shimovolos v. Russia*, no. 30194/09, 21 June 2011, para. 55.
119 See *Guidelines on Freedom of Peaceful Assembly*, para. 140.
120 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 97.
121 See ECtHR, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018; UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 39.
122 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 147. See also e.g., *Bay Area Peace Navy v. United States*, 914 F.2d 1224 (9th Cir. 1990), where a restriction preventing protestors from entering a government designated buffer zone was declared null and void because it denied protestors access to their audience.

be mitigated or prevented by means other than prohibition (proposed new Section 10 (2) (e));

To re-assess the need to introduce a new ground for prohibiting an assembly on the basis of a "reasonable apprehension" of interference with the right to privacy and peaceful enjoyment of the home or at the very least, more strictly circumscribe this ground to ensure that prohibition may only be decided in case the proposed assembly would impose unnecessary and disproportionate burdens on others or create significant and imminent danger to public safety (proposed new Section 10 (2) (f));

To reconsider the proposed amendment to Section 10 (3) adding new grounds for a municipality to propose an alternative location for an assembly and make it clear that assembly organizers should not be compelled or coerced to accept the proposed alternative.

5. Offences against the Right to Assemble and Increased Sanctions

64. The proposed amendments to Section 14 of the 1990 Act would supplement the list of existing offences currently subject to a fine of EUR 169, by adding new offences that would be subject to a fine ranging from EUR 169 to EUR 1690, hence increasing by ten times the amount of the sanction.

65. Any sanction or punishment should be based on a law that complies with the principle of legality and foreseeability of legislation, and that is sufficiently clear.[123] A major issue with the proposed amendments is that the proposed new offences somewhat overlap or duplicate existing offences[124] and it may be difficult for an individual to clearly distinguish between conduct that may be subject to a fine of up to EUR 169 and others subject to the higher fine potentially amounting to EUR 1690. For instance, it is not clear which behaviour would constitute "improper conduct" subject to EUR 169 fine (existing sub-paragraph (f)) and what would amount to "grossly disorderly conduct" potentially subject to EUR 1690 (proposed new sub-paragraph (l)). This may trigger legal uncertainty and confusion as to the applicable norms.

66. It is noted that Article VII of the Draft Act also proposes to supplement Section 348 (1) of the Criminal Act with a new sub-paragraph (m) that would subject the failure "*without serious reason, to comply with an obligation to pay a fine or similar penalty of a pecuniary nature imposed by a decision of a public authority in at least a small amount*" to a penalty of up to two years of imprisonment. This means that the new offences that could be introduced in the 1990 Act and that are subject to a fine could ultimately lead to the possibility of imposing a custodial sanction. As underlined in the ECtHR caselaw, peaceful and non-violent forms of expression should not be made subject to the threat of imposition of a *custodial sentence.*[125] To comply with international human rights

123 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 221.

124 For instance, it is not that clear how the existing offences of "(c) unreasonably obstructs or impedes access to the assembly by participants in the assembly, (d) unlawfully prevent another from exercising the right to assemble, (e) trespasses unlawfully into the assembly, (f) by improper conduct, prevents the participants from fulfilling the purpose of the assembly, (g) prevent the parties from peacefully dispersing" subject to a EUR 169 fine, would be distinguished from the proposed new offences of "(j) unlawfully and intentionally obstructs another in the exercise of the right to assemble, (k) unlawfully and intentionally prevents participants from entering the assembly or from peacefully dispersing, (l) by grossly disorderly conduct, prevents the participants from fulfilling the purpose of the assembly".

125 See ECtHR, *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, 17 May 2011, para. 43; ECtHR, *Murat Vural v. Turkey*, no. 9540/07, 21 October 2013, para. 66; ECtHR, *Mariya Alekhina and Others v. Russia*, no. 38004/12, 17 July 2018, para. 227. In ECtHR, *Taranenko v. Russia*, no. 19554/05, 15 May 2014, para. 87, it was also emphasized that: "*The Court must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence*."

guarantees, criminal legislation must adhere to the principle of legality, ensuring clarity and foreseeability, as guaranteed by Article 15 ICCPR and Article 7 ECHR.[126] This requirement entails that an offence must be clearly enough defined in law that "*the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him [or her] criminally liable*".[127] It is essential that all the constitutive elements of a criminal offence – the individual conduct concerned and the intent – be clearly stipulated in law. It is unclear what "*without serious reason*" or "*at least a small amount*" means, thereby leaving potential for arbitrary application of this new provision. The newly proposed amendments suggested by the Committee for Defence and Security on 20 June would lead to the deletion of Article VII of the Draft Act, noting the potential range of persons who would be penalised under the new provision and that there are other more effective means to improve the enforceability of fines, which is welcome.

67. Additionally, where administrative or criminal sanctions are imposed, such sanctions must be necessary, proportionate, non-discriminatory in nature and must not be based on ambiguous or overbroadly defined offences.[128] Further, the nature and severity of any penalties imposed must be proportionate and not be excessive.[129] Unnecessary or disproportionately harsh sanctions for behaviour during assemblies could, if known in advance, inhibit the holding of such events and have a chilling effect that may prevent participants from attending.[130] The Guidelines on Freedom of Peaceful Assembly make clear that penalties for minor offences that do not threaten to cause or result in significant harm to public order or to the rights and freedoms of others should accordingly be low and the same as minor offences unrelated to assemblies.[131]

68. The new contemplated sanctions for offences against the right to assemble could reach EUR 1690, which correspond approximately to the average nominal monthly wage in the Slovak Republic.[132] This represents a sharp increase compared to the existing EUR 169 fine, which is generally within the range of what is imposed for some road traffic violations or other minor offences.

69. Such an excessive and disproportionately large fine, especially in conjunction with the possibility of imposing a penalty of up to two years of imprisonment in case of failure to pay a fine "without valid reasons" raises particular concerns. The ECtHR has made clear that it will examine with particular scrutiny all cases where sanctions imposed by national authorities for non-violent conduct involve a prison sentence.[133] Such types of penalties raise due-process concerns, and may have a chilling effect more broadly on the exercise of the right to freedom of peaceful assembly.[134]

70. **It is recommended to reconsider the proposed inclusion of new offences that overlap with existing offences, and the substantial increase of the fines that can be imposed.**

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126 The *nullum crimen sine lege* principle is enshrined in Article 15 (1) of the ICCPR and Article 7 (1) of the ECHR, as well as in the *Universal Declaration of Human Rights*, United Nations, General Assembly, Resolution 217 A(III) (UDHR), Article 11 (1). See also the *Rome Statute of the International Criminal Court*, adopted on 17 July 1998, entered into force 1 July 2002, Articles 22 (*nullum crimen sine lege*) and 23 (*nulla poena sine lege*). See also, *EU Directive 2017/541 on Combating Terrorism*, para. 35, referring to "*the principles of legality and proportionality of criminal offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law.*"

127 See ECtHR, *Kokkinakis v. Greece*, no. 14307/88, 25 May 1993, para. 52; and ECtHR, *Jorgic v. Germany*, no. 74613/01, 12 July 2007, para. 100.

128 See *Guidelines on Freedom of Peaceful Assembly*, para. 222; UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 67.

129 See e.g., European Court of Human Rights, *Ekrem Can and Others v. Turkey*, no. 10613/10, 8 March 2022.

130 See *Guidelines on Freedom of Peaceful Assembly*, para. 222.

131 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 222.

132 See <Average monthly wage in economy of the SR in the 4th quarter and in 2023 (statistics.sk)>.

133 See ECtHR, *Peradze and Others v. Georgia*, no. 5631/16, 15 December 2022.

134 Joint Report of UN Special Rapporteurs (2016), A/HRC/31/66, para.48.

The introduction of possible custodial sanction for failure to pay a fine should also be reconsidered.

RECOMMENDATION C.

To reconsider the proposed inclusion of new offences against the right to assemble that overlap with the existing offences, and the substantial increase of the fines that can be imposed, while reconsidering the introduction of possible custodial sanction for failure to pay a fine.

6. Recommendations Related to the Process of Preparing and Adopting the Draft Act

71. The Draft Act was introduced in the session of the Government on 12 June 2024 and was adopted and submitted to the National Council of the Slovak Republic on the same day.[135] It was immediately assigned for discussion to the relevant committees for adoption pursuant to an accelerated procedure.[136] On 18 June 2024, the Committee of the National Council of the Slovak Republic for Defence and Security and the Constitutional Committee met to discuss the Draft Act.[137] On 20 June 2024, the Draft Act was adopted in first reading by the National Council (77 votes in favour, 60 votes against and 13 abstentions).[138]

72. As underlined in *ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024)*, accelerated legislative procedure "*should be used rarely and only in exceptional cases of genuine urgency to pass a specific law, as the process entails a lack of legislative planning and less or no time for in-depth consultations on draft laws, nor for adequate parliamentary scrutiny*."[139] The Guidelines further underline that *"[t]he legal framework should define precisely and narrowly the circumstances in which fast-track procedures may be applied and should require proper justification*" and *"[a]ccelerated lawmaking procedures should only be possible if they are based on a formal request submitted in accordance with the relevant legislation*".[140] They should not be applied to introduce important and/or wide-ranging reforms, such as legislation significantly impacting the exercise of human rights and fundamental freedoms,[141] as the one under review.

73. Section 89(1) of the Act of the National Council of the Slovak Republic No. 350/1996 on the Rules of Procedure of the National Council[142] provides that *"[i]n exceptional circumstances, when there may be a threat to fundamental human rights and freedoms or security, or if there is a threat of significant economic damage to the state, the National Council may, at the proposal of the Government, decide on an expedited legislative procedure on a draft law*".

74. On 12 June 2024, the Government submitted a proposal for the use of the expedited legislative procedure for the adoption of the Draft Act. The proposal refers to "*the extraordinary circumstances, i.e., the security situation in the Slovak Republic after the attempt assassination of the Prime Minister of the Slovak Republic Robert Fico on 15*

135 See <Laws : Search in Bills : Details of the Process - National Council of the Slovak Republic (nrsr.sk)>.
136 See *Decision No. 378* of the Interim President of the National Council of the Slovak Republic of 12 June 2024, sending the Draft Act for discussion by the Constitutional and Legal Committee, Committee for Finance and Budget, and Committee for Defence and Security, in accordance with the accelerated procedure.
137 See <Home - National Council of the Slovak Republic (nrsr.sk)>.
138 See also <Details of the Bill - National Council of the Slovak Republic (nrsr.sk)>.
139 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (16 January 2024), Principle 11.
140 *Ibid.* Principle 11.
141 *Ibid.* Principle 11.
142 Available at: <350/1996 Coll. - Act of the National Council of the Slovak Republic... - SLOV-LEX>.

May 2024" to justify the use of such procedure. ODIHR is not in a position to assess the reality of the security threats mentioned in the Government's proposal and Explanatory Report accompanying the Draft Act. At the same time, the adequacy of the measures contemplated in the Draft Act to address the reported security situation could be questioned. Moreover, the use of the accelerated procedure to adopt or amend legislation that may significantly and unduly impact the exercise of human rights and fundamental freedoms should be avoided.[143] It is concerning that a legislation of the nature of the Draft Act, touching upon the exercise of core human rights, is being rushed in a manner that does not do justice to the weight of this legislative initiative. In any case, laws passed by accelerated procedures should be subjected to special oversight and should ideally contain a review clause.[144] **The Draft Act should be supplemented in this respect**.

75. An Explanatory Report[145] accompanying the Draft Act mentions the rationale for developing the Draft Act. With respect to Article I of the Draft Act on the right to assemble, the identified problem is described as: "*the conditions for exercising the right to assemble [are not] sufficiently formulated to ensure that the assemblies themselves take place in a constitutionally compliant manner*". Other parts of the Explanatory Report are otherwise rather descriptive, apart from a general references to the need to ensure "*the conditions for the undisturbed and smooth running of the activities of these state bodies*", "*limit the possibilities of interference or pressure on the independence of the judiciary*" and the "*protection of the fundamental right to privacy and undisturbed enjoyment of the home*".

76. It is noted that the reports of UN human rights monitoring bodies and of UN Special Procedures do not seem to highlight any specific issues with respect to the exercise of the right to freedom of peaceful assembly in the Slovak Republic and the regulation thereof. The legislation governing the right to freedom of peaceful assembly was adopted in 1990 and only amended four times since then, the last amendments dating back to 2016. As underlined in the Guidelines on Freedom of Peaceful Assembly, the right to freedom of peaceful assembly should be enjoyed, as far as possible, without (or with minimal) regulation,[146] unless there is a need for special protection. The need for further regulation without documented issues or concerns with the actual exercise of the right to peacefully assemble does not appear justified.

77. More generally, OSCE participating States have committed to ensure that legislation will be *"adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability"* (1990 Copenhagen Document, para. 5.8).[147] Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives"* (1991 Moscow Document, para. 18.1).[148] The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) emphasize that "*[a]ll interested parties and stakeholders should have the opportunity to access the lawmaking process, be informed about it and be able meaningfully to participate and contribute*".[149] The Guidelines on Freedom of Peaceful Assembly underline the

143 *Guidelines on Democratic Lawmaking for Better Laws* (16 January 2024), ODIHR, Principle 11.
144 *Ibid.* Principle 11.
145 Available at: <nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=548663>.
146 *Guidelines on Freedom of Peaceful Assembly*, para. 21. See also *Urgent Opinion on the Law on Assemblies of the Republic of Moldova* (2023), ODIHR, para. 18.
147 Available at <http://www.osce.org/fr/odihr/elections/14304http://www.osce.org/fr/odihr/elections/14304>.
148 Available at <http://www.osce.org/fr/odihr/elections/14310http://www.osce.org/fr/odihr/elections/14310>.
149 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (16 January 2024), Principle 7. See also Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5, which emphasizes that the public should have a meaningful opportunity to provide input.

importance of ensuring a consultative approach to the drafting of legislation and related regulations pertaining to the right to freedom of peaceful assembly, to ensure that the needs and perspectives of all persons or groups are taken into consideration, including those responsible for or affected by its implementation, as well as other interested individuals and groups (including local human rights organizations).[150] Such consultations should be an integral part of the legislative drafting process, and need to be open, transparent, meaningful and inclusive. In particular, sufficient and appropriate outreach activities should ensure the involvement of interested parties from various groups (particularly those facing particular challenges in the exercise of their rights to freedom of peaceful assembly) representing different and opposing views (including those that may be critical of the proposals made). The authorities responsible for organizing consultations should respond to proposals made by stakeholders, in particular where these proposals are not incorporated into the relevant draft law or policy (in this case, the authorities should explain why).[151]

78. From the information made available to ODIHR, it is understood that no public consultations have been organized and the use of the accelerated procedure may further prevent any meaningful and inclusive discussions at the parliamentary stage, or the organization of public hearings. The ODIHR Guidelines on Democratic Lawmaking for Better Laws underline that even when accelerated lawmaking procedures are applied, "*it is important that public consultations are only curtailed or dispensed with where this is absolutely necessary, and the cases need to be justified properly*".[152] In any case, consultations should be a significant component of the *ex post* evaluations of laws fast-tracked in these circumstances.[153]

79. In light of the above, **the public authorities are encouraged to ensure that any amendments to the 1990 Act are preceded by a proper, in-depth regulatory impact assessment and subjected to inclusive, extensive and effective consultations, including with civil society, and ensuring the involvement of interested parties from various groups representing different and opposing views, offering equal opportunities for women and men, for persons with disabilities, and persons from under-represented or marginalized groups to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including when the initial draft is being prepared by the government as well as before Parliament. The accelerated legislative procedure should not be used to amend the 1990 Act, and should it be nevertheless used, special oversight should be in place, including a review clause. More generally, as an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Draft Act and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of amended legislation, once adopted**.[154]

[END OF TEXT]

150 *Guidelines on Freedom of Peaceful Assembly*, para. 99.
151 *Guidelines on Freedom of Peaceful Assembly*, para. 99.
152 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (16 January 2024), para. 186.
153 *Ibid.* para. 186.
154 See e.g., ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (16 January 2024), para. 23. See also OECD, *International Practices on Ex Post Evaluation* (2010).

Annex 1 – Article I of the Draft Act on "Some Measures to Improve the Security Situation in the Slovak Republic" *(version as of 12 June 2024)*

DRAFT

NATIONAL COUNCIL OF THE SLOVAK REPUBLIC
IX. convocation

364

GOVERNMENTAL DRAFT

Act

z ... 2024

on certain measures to improve the security situation in the Slovak Republic

The National Council of the Slovak Republic has passed this law:

Art. I

Act No. 84/1990 Coll. on the Right to Assemble, as amended by Act No. 175/1990 Coll., Act No. 515/2003 Coll., Act No. 468/2007 Coll., Act No. 445/2008 Coll. and Act No. 125/2016 Coll. is amended as follows:

1. In Section 1, a new paragraph 3 is inserted after paragraph 2, which reads as follows:

"(3)Interference with the exercise of the right to assemble peacefully shall be prohibited.".

Paragraphs 3 to 5 shall be renumbered as paragraphs 4 to 6.

2. In Section 1, paragraph 6 reads:

"(6) Assemblies are prohibited within 50 metres of
(a) the building in which the President of the Slovak Republic has his permanent residence,
(b) a building in which the National Council of the Slovak Republic or the Government of the Slovak Republic regularly meets,
(c) the building in which the Constitutional Court of the Slovak Republic or the general court has its permanent seat, unless a special regulation provides otherwise,1b)
(d) an object, other than an object referred to in subparagraphs (a) to (c), where a constitutional body referred to in subparagraphs (a) to (c) is deliberating or otherwise exercising its functions,
(e) an object provided by the Ministry of the Interior of the Slovak Republic for the needs of the President of the Slovak Republic, the President of the National Council of the Slovak Republic and

the Prime Minister of the Slovak Republic pursuant to a special regulation;1c) the provision of Section 10(2)(d) shall not be affected thereby.".

The footnotes to references 1b and 1c read as follows:
"1b) For example, Section 242 of Act No. 314/2018 Coll. on the Constitutional Court of the Slovak Republic and on Amendments and Additions to Certain Acts.
1c) Section 25a (1) of the Act of the National Council of the Slovak Republic No. 120/1993 Coll. on Salary Proportions of Certain Constitutional Officers of the Slovak Republic, as amended by Act No. .../2024 Coll.".

3.In Section 4(3), the following sentence shall be added at the end: 'The municipality shall designate a place referred to in the first sentence preferably in a public place which is a square, park, market place or other similar place.'

4.The footnotes to references 1, 1a, 4 and 5 read as follows:

"1) Act No. 85/1990 Coll. on the right of petition, as amended.
1a) Act of the Slovak National Council No. 96/1991 Coll. on public cultural events, as amended.
Act No. 1/2014 Coll. on the organisation of public sporting events and on the amendment and supplementation of certain acts, as amended.
4) Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Procedure Code) as amended.
5) Act No 135/1961 Coll. on Roads (Road Act), as amended.'.

5. Section 8 is supplemented by the following paragraph 3:

"(3)If the Police Force has information indicating that there are grounds for prohibiting an assembly, it shall inform the municipality in writing of such grounds.".

6. In Section 10, the following points (d) to (f) shall be added to paragraph 2:

'(d) it is to be held in the vicinity of the home of a person whose employment, profession or office is directly connected with the purpose of the meeting and the convener has not consented to a change of venue of the assembly,
(e)there is reasonable apprehension that there will be a clash between the participants in a number of notified assemblies, as a result of which the orderly and peaceful conduct of those assemblies cannot be ensured even with the deployment of available forces and means, no agreement has been reached between the conveners on the modification of the time or place of the assemblies, and public order cannot be ensured by any less disruptive measures,
(f)there is a reasonable apprehension from the place of the assembly or other facts reported that the holding of the assembly will interfere with the fundamental right to privacy of several persons or with the peaceful enjoyment of the home of several persons and that no less intrusive measures can be taken to protect those rights.".

7.In Section 10, paragraph 3 reads:

"(3)A municipality may prohibit an assembly if it is to be held in a place where the necessary restrictions associated with the holding of the assembly, in particular restrictions on the right to

privacy, restrictions on the peaceful enjoyment of a dwelling, restrictions on transport or restrictions on supply, would be seriously contrary to the interests of the public if the assembly can be held elsewhere without undue hardship without defeating the stated purpose of the assembly.".

8.In the first sentence of Section 11(2) and Section 20, the word "district" shall be replaced by the word "district".

9. Section 14, including the heading, reads:

"§ 14
Offence against the right to assemble

(1) An offence against the right to assemble shall be committed by a person who

(a) convenes or holds a meeting without complying with the notification obligation, holds a meeting that has been prohibited or breaches any other obligation of the convener under this Act,

(b) disobeys the orderly measures of the convener or designated organisers of the assembly or obstructs those persons in the performance of their duty,

(c) unreasonably obstructs or impedes access to the assembly by participants in the assembly,

(d) unlawfully prevent another from exercising the right to assemble,

(e) trespasses unlawfully into the assembly,

(f) by improper conduct, prevents the participants from fulfilling the purpose of the assembly,

(g) prevent the parties from peacefully separating,

(h) repeatedly or wilfully disobeys or repeatedly or wilfully obstructs the convener or designated organisers of the meeting in the performance of their duty,

(i) as a participant in the assembly, carries a firearm or explosive or a cold weapon capable of causing bodily harm, except where they are part of the uniform, historical or national costume or the equipment and armament of the armed forces, armed forces or armed security forces,

(j) unlawfully and intentionally obstructs another in the exercise of the right to assemble,

(k) unlawfully and intentionally prevents participants from entering the assembly or from peacefully dispersing,

(l) by grossly disorderly conduct, prevents the participants from fulfilling the purpose of the assembly,

(m) by his or her conduct disrupts the course of the assembly and it ceases to be orderly and peaceful, or he or she incites such conduct,

(n) as a participant of the assembly, his/her face is covered in a way that makes it impossible to identify him/her, if he/she is subjected to a service intervention by members of the Police Corps and the member of the Police Corps has called upon him/her to uncover his/her face.

(2) For an offence under paragraph 1
(a) (a) to (g) shall be subject to a fine not exceeding EUR 165,
(b) (h) to (n) shall be liable to a fine of between EUR 165 and EUR 1 650.

(3) The general regulation on offences shall apply to offences and their hearing.

The footnote to reference 3 reads:

"3) Act of the Slovak National Council No. 372/1990 Coll. on offences, as amended.".

10. In Section 14a, a new paragraph 2 is inserted after paragraph 1, which reads as follows:

"(2) The Ministry of the Interior of the Slovak Republic shall impose a fine of up to EUR 16,500 on a municipality that has been informed of the reasons for banning the assembly, has not banned the assembly and

(a)for reasons notified to it under section 8(3), the proceedings of the meeting were not peaceful or the meeting was dissolved; or

(b) a number of persons have been fined for committing an offence against the right to assemble related to the grounds notified under section 8(3).".

Paragraphs 2 to 4 shall be renumbered as paragraphs 3 to 5.

11. In Section 14a(3), the word "municipality" is replaced by "shall".

12. In Section 14a(5), the words "pursuant to paragraph 1" are inserted after the word "fines"

[…]

Art. VII

Act No. 300/2005 Coll., the Criminal Act as amended by Act No. 650/2005 Coll., Act No. 692/2006 Coll., Act No. 218/2007 Coll., Act No. 491/2008 Coll., Act No. 497/2008 Coll., Act No. 498/2008 Coll., Act No. 59/2009 Coll, Act No 257/2009 Coll., Act No 317/2009 Coll., Act No 492/2009 Coll., Act No 576/2009 Coll., Act No 224/2010 Coll., Act No 547/2010 Coll., Act No 33/2011 Coll., Act No 262/2011 Coll, Act No. 313/2011 Z. z., Act No. 246/2012 Z. z., Act No. 334/2012 Z. z., the ruling of the Constitutional Court of the Slovak Republic No. 428/2012 Z. z., the resolution of the Constitutional Court of the Slovak Republic No. 189/2013 Z. z, Act No. 204/2013 Coll., Act No. 1/2014 Coll., Slovak Constitutional Court Ruling No. 260/2014 Coll., Act No. 73/2015 Coll., Act No. 78/2015 Coll., Act No. 87/2015 Coll., Act No. 174/2015 Coll, Act No. 397/2015 Coll., Act No. 398/2015 Coll., Act No. 440/2015 Coll., Act No. 444/2015 Coll., Act No. 91/2016 Coll., Act No. 125/2016 Coll., Act No. 316/2016 Coll., Act No. 264/2017 Coll, Act No. 274/2017 Coll., Act No. 161/2018 Coll., Act No. 321/2018 Coll., Act No. 35/2019 Coll., Constitutional Court of the Slovak Republic ruling No. 38/2019 Coll., Act No. 214/2019 Coll., Act No. 420/2019 Coll, Act No. 474/2019 Coll., Act No. 288/2020 Coll., Act No. 312/2020 Coll., Act No. 236/2021 Coll., Act No. 357/2021 Coll., Act No. 105/2022 Coll., Act No. 111/2022 Coll., Act No. 117/2023 Coll, Act No 402/2023 Z. z., Act No 40/2024 Z. z., Resolution No 41/2024 Z. z. of the Constitutional Court of the Slovak Republic and Act No 47/2024 Z. z. are amended as follows:

1.In section 348(1)(k), the word "or" shall be deleted and the word "or" shall be added at the end of point (l).

2.In § 348, paragraph 1 is supplemented by the following point (m):

'(m) fails, without serious reason, to comply with an obligation to pay a fine or similar penalty of a pecuniary nature imposed by a decision of a public authority in at least a small amount.'.

[…]

Art. IX

This Act shall enter into force on the date of its promulgation.