



LOOPHOLES IN PROTECTING THE RIGHT TO PEACEFUL ASSEMBLY IN HUNGARY

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The Hungarian Helsinki Committee, a human rights non-governmental organisation based in Budapest, Hungary, wishes to draw the attention of the Organisation for the Security and Cooperation in Europe (OSCE) to the perils of the freedom of peaceful assembly in Hungary.

The right to peaceful assembly lies at the cross-section of democracy and human rights. It is not only a fundamental right to be defended but also a tool to protect other rights. Freedom of assembly enables individuals to stand up for themselves, their community and values and represent them publicly. It is a means of raising awareness, expressing opinions, showing solidarity and achieving political and public policy change. Demonstrations form an essential part of direct democracy and are also capable of providing direct feedback to those in power in between elections. These functions of the freedom of peaceful assembly become paramount in a shrinking civic space,¹ where democratic values and the rule of law are disrespected,² the consequences of which affect the rights of the broader masses – just as in the case of Hungary.

OSCE's 1990 Copenhagen Document³ outlines the right to peaceful assembly and demonstration in line with the principles in Article 11 of the European Convention on Human Rights. Additionally, the Guidelines on Freedom of Peaceful Assembly⁴ (Guidelines) provide detailed assistance to Hungarian authorities not only in shaping the relevant legislation but also in its application to ensure compliance with international standards.

In 2023, several demonstrations showed that Hungarian legislation lacks guarantees against abusive application of the law that negatively affects the freedom of peaceful assembly.

1. Keeping assemblies out of sight and sound

According to the OSCE Guidelines, participants in public assemblies have as much a claim to use public venues for a reasonable period as anyone else. *"Indeed, public protest, and freedom of assembly in general, should be regarded as equally legitimate uses of public space as the more routine purposes for which public space is used (such as commercial activity or for pedestrian and vehicular traffic)."*⁵ In

¹ See: <https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/OSCE-WHDC-2023-HHC-civic-space-statement.pdf>.

² See: <https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/OSCE-WHDC-2023-HHC-rule-of-law-statement.pdf>.

³ <https://www.osce.org/files/f/documents/9/c/14304.pdf>

⁴ Guidelines on Freedom of Peaceful Assembly, Second Edition, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2010, <https://www.osce.org/files/f/documents/4/0/73405.pdf>

⁵ Guidelines, § 20.

accordance with the above international standard, Hungarian authorities should seek to guarantee the exercise of the right to freedom of assembly at ordinarily accessible public places that everyone has an equal right to use.⁶

Cases of 2023 prove that Hungarian authorities are reluctant to guarantee the exercise of the freedom of assembly at symbolic public venues that fall within the sight and sound of the governing majority. Protests are impeded at the Prime Minister's Office (also called Karmelita) by police cordons (see below under Section 1.1.), while the criminalisation of demonstrations at public places surrounding the home of politicians constitutes a *de facto* ban (see below under Section 1.2.). In addition to the above, the execution of the judgments of the European Court of Human Rights (ECtHR) in the *Patyi and Others v. Hungary* group of cases has been pending for more than a decade for lack of guarantees against unjustified bans and restrictions on demonstrations applied outside Act LV of 2018 on the Right to Assembly (the Assembly Act).⁷

1.1. Symbolic venues closed by police cordons

Hungary has a long track record of banning demonstrations at symbolic venues. Remarkable part of the non-implemented judgments of the ECtHR concerns the violation of the right to peaceful assembly by restricting access to symbolic public spaces and declaring it unavailable for holding demonstrations for security reasons.⁸ For over a decade, the legislation in force deliberately keeps up the possibility of the police to close down any public space via a security measure and declare it inaccessible for demonstrations without providing effective legal remedy against the arbitrary closure of the venue. This legal possibility of the police to close down a public venue for security reasons creates a permanently pending, arbitrarily applicable legal basis for banning or dissolving an assembly outside the scope of grounds foreseen by the law on assembly.

One of the symbolic public venues affected by this measure is Színház Street in Budapest, surrounding the building of the Prime Minister's Office (also called Karmelita). The Színház Street – and therefore the building of the Prime Minister's Office – has been permanently closed down by the police with cordons since December 2020. The first cordon was installed on 2 December 2020, after a scandal concerning one of the members of the ruling Fidesz party broke.⁹ New, higher cordons appeared around the Karmelita in November 2021¹⁰ and have remained there ever since. While the Deputy Prime Minister, Zsolt Semjén claimed in April 2023 that the cordon was installed due to construction works around the Karmelita, in reality, construction works have not been carried out in the whole area affected. In a complaint proceeding initiated by an activist, the police admitted that the cordons were installed as part of a security measure under the Police Act.¹¹

In April and May of 2023, the ongoing protests of students and teachers ended up in disproportionate actions by the police. The police used tear gas against the students twice: once on 24 April 2023, and once on 3 May 2023. On both occasions, after the end of their announced demonstrations, students continued the protest in front of the Prime Minister's Office, which was surrounded by cordons and

⁶ Guidelines, § 19.

⁷ See more in the Rule 9(2) communication of the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee of 20 August, 2020 at [https://hudoc.exec.coe.int/?i=DH-DD\(2020\)707E](https://hudoc.exec.coe.int/?i=DH-DD(2020)707E).

⁸ The *Patyi (No. 2) v. Hungary* case (Application no. 35127/08, Judgment of 17 January 2012), the *Szerdahelyi v. Hungary* case (Application no. 30385/07, Judgment of 17 January 2012), the *Tóth v. Hungary* case (Application no. 20497/13, Judgment of 26 May 2020) and the *Póka v. Hungary* case (Application no. 31573/14, Judgment of 06 October 2020).

⁹ See: <https://www.bbc.com/news/world-europe-55145989>.

¹⁰ See: <https://444.hu/2021/11/29/korbekordonoztak-a-karmelita-kolostort>.

¹¹ See: <https://444.hu/2023/07/07/elszolta-magat-a-rendorseg-a-karmelita-elotti-terulet-nem-epitesi-hanem-objektumvedelmi-okok-miatt-van-lezarva>.

guarded by the police. On 3 May 2023, protesters intended to pull down the much-criticised, symbolic cordons around the Karmelita. When mostly young people and students dismantled the cordon that had been blocking the Prime Minister’s Office, the police used tear gas against the demonstrators, then removed several of them from the crowd and arrested some. Several people were prosecuted for violence against an official or for public nuisance, while others were prosecuted for breaching the Assembly Act.¹²

The closure of the Karmelita entailed disproportionate police measures, yet the legal basis of the police cordons remains unclear. Hungarian legislation does not provide effective legal remedy against the arbitrary application of security measures ordered by the police, therefore protesters can be kept out of sight and sound of the Prime Minister and the Hungarian government even at the price of disproportionate police measures.

1.2. Criminalising peaceful assemblies to be held within sight and sound of high-ranking politicians

Several non-implemented judgments of the ECtHR concern the unjustified prior ban or dissolution of demonstrations to be held in the vicinity of the private residence of the Prime Minister and other governmental officers.¹³ In all these cases, the ECtHR found that the Hungarian authorities unlawfully expanded the grounds for banning a demonstration (or dissolving it, respectively); therefore, the interference was devoid of legal basis and thus constituted a violation of Article 11 of the Convention. As repetitive ECtHR judgments show, for over a decade, Hungarian state authorities have been consistently seeking to impede the holding of demonstrations at public venues near the private residences of high-ranking politicians, especially the Prime Minister, protecting them from the “sight and sound” of protests.

While the proper execution of repetitive ECtHR judgments required resolving the problem by providing more guarantees for this specific type of demonstration, a new set of laws introduced in 2018 has confirmed this problematic practice and further restricted the right to assembly to be exercised in similar settings by criminalising the freedom of peaceful assembly in the vicinity of the private residence of politicians.¹⁴ The new criminal offence named “*harassment committed against a public official at a place and time incompatible with his official duties*” is punishable with up to three years of imprisonment. While before the amendment, citizens had at least tried to use the possibility to express their opinion in front of the residence of politicians in various forms, after the entry into force of this new criminal offence, the phenomenon of exercising the right to assembly in the residential area of politicians completely disappeared. As declared publicly by the Government,¹⁵ the

¹² See: <https://helsinki.hu/csak-partatlan-vizsgalatok-tisztazhatjak-mi-tortent-a-karmelitanal/>.

¹³ Including the *Patyi and Others v. Hungary* case (Application no. 5529/05, Judgment of 07 October 2008), the *Póka v. Hungary* case (Application no. 31573/14, Judgment of 06 October 2020), and the *Vincze v. Hungary* case (Application no. 44390/16, Judgment of 21 October 2021).

¹⁴ The new set of laws include the following modifications: (i) with effect from June 2018, the Fundamental Law was modified remarkably, restricting the right to freedom of assembly, declaring that “*exercising the right to freedom of expression and assembly shall not violate the private and family life and home of others*” [see Article VI of the Fundamental Law]; (ii) with effect from August 2018, the Criminal Code was modified, introducing a new type of criminal offence that provides a legal basis for criminalising the act of protesting at the private residences of politicians [see Article 222(3) of the Criminal Code codifying the criminal offence of harassment against public official]; (iii) on 1 October 2018, the Assembly Act entered into force, providing a legal basis to impose a ban on assemblies being held at public venues surrounding the home of politicians [see Article 13(4) of the Assembly Act according to which an assembly can be banned if it is suitable to infringe “*the rights of others to privacy, to family life and home*”; under Article 13(2) of the Assembly Act, an assembly can be banned if it would qualify as a criminal offence, e.g. harassment committed against public officials]. See more in detail in Section 2.1. (iv) of the Rule 9(2) communication of the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee of 20 August, 2020 at [https://hudoc.exec.coe.int/?i=DH-DD\(2020\)707E](https://hudoc.exec.coe.int/?i=DH-DD(2020)707E).

¹⁵ As claimed by Head of the Prime Minister’s Office, Gergely Gulyás in an interview on 24 May 2018, the new set of rules was introduced with the aim “*to prevent demonstrations in front of the private residence of politicians*”. See:

goal of the modifications was the *de facto* ban on demonstrations to be held at public venues surrounding the private residences of prominent politicians: “*the era of protests in front of private residences should end*”.¹⁶ The communicated goal was achieved and since 2018, demonstrations at the private residence of prominent politicians have totally disappeared from the toolbox of Hungarian citizens. The message that these protests seek to convey is not capable of being effectively communicated to those to whom it is directed and will fall outside “sight and sound” of the target audience.

2. Permissive approach to violence against Roma

Years after the ECtHR established in the *Király and Dömötör v. Hungary* judgment¹⁷ that Hungarian authorities failed to protect Roma against racist abuse during an anti-Roma demonstration, in September 2023, an anti-Roma demonstration was held in Budapest by right-wing organisations.¹⁸ The speeches made at the demonstration were clearly racist, advocating the exclusion of Roma on the basis of origin. The real content of the speeches was clear, the aim was inciting hatred, even despite the wrapping that disguised them. The demonstration was not banned by the police, despite the fact that civil society organisations, including Roma organisations, have priorly warned of the unlawful nature of the demonstration.¹⁹ The police took note of the demonstration and were reluctant to take into account the severely violent anti-Roma nature of the assembly, the attendance of groups known for their militant behaviour and anti-Roma stance.

While the demonstration held was not violent, the speakers clearly indicated that they do not consider Roma Hungarians to be equal, to be part of the nation, and that they want to control them and restrict their rights simply because of their nationality. The speeches held contained collective stigmatisation, which is not permissible in a democratic country, creates conflict between social groups and threatens social peace. The police must take firm action against racist demonstrations that incite hatred and protect the rights of people belonging to vulnerable social groups, otherwise the cumulative effect of shortcomings may lead to openly racist demonstrations, with actual acts of violence, as established in the *Király and Dömötör v. Hungary* judgment.

RECOMMENDATIONS

We call on the OSCE and OSCE Participating States to:

1. Urge the Hungarian authorities to implement the OSCE Guidelines on the Freedom of Peaceful Assembly and the non-executed judgments of the ECtHR establishing repetitive violations of the freedom of peaceful assembly in the *Patyi and Others v. Hungary* group of cases.
2. Call on Hungarian authorities to expressly guarantee the freedom of assembly within the sight and sound of high-ranking politicians and decision-makers. Most notably, the Government should de-criminalise protests held in public places surrounding the homes of politicians.

<https://www.atv.hu/belfold/20180524/korlatoznak-a-gyulekezesi-jogot-ezt-jelenti-a-gulyas-altal-bejelentett-otthon-vedelme>.

¹⁶ See: <https://index.hu/belfold/2018/05/24/gulyas-be-lehet-fejezni-a-maganlakasok-elotti-tuntetest/> and <https://merce.hu/2018/05/25/hamarosan-korlatozhatjak-a-politikusok-hazai-elotti-tunteteseket/>.

¹⁷ <https://hudoc.echr.coe.int/eng?i=001-170391>

¹⁸ See: <https://helsinki.hu/a-gyuloletbeszedet-nem-vedi-a-velemenynyilvanitas-szabadsaga/>.

¹⁹ See: <https://gyuloletellen.hu/aktualitasok/raszista-tuntetes-torvenyserto>.

3. Urge the Hungarian authorities to provide guarantees against abusive application of security measures by the police in order to make symbolic public venues accessible for holding demonstrations and protect assemblies against bans lacking proper legal basis.
4. Encourage the Government of Hungary to protect vulnerable minorities, especially Roma from openly violent demonstrations that may incite hatred against members of a particular social group and may lead to actual physical violence.