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CIVIL LAW ASPECTS OF THE EXERCISE OF THE FREEDOM OF ASSEMBLY IN THE REPUBLIC OF NORTH MACEDONIA

Abstract

The freedom of the citizens to assemble peacefully for pursuing their cause is recognized by the international human rights instruments as well as the national legislation. The scope of the right is defined and further specified in particular in the case-law of the European Convention on Human Rights. On a national level, the right is guaranteed by the Constitution and the mechanisms for its exercise and protection are in specific laid down in the Law on Public Assemblies. The international and national instruments guarantee the right to peaceful assemblies or gatherings. However, the gatherings may be violent or otherwise result in a breach of the rights of the others including damage to property and persons. On the key question - who will be liable for the damage occurred, the national legislation provides answers to questions that are to a certain extend contradictory. On one hand side, the specific law regulating the assemblies locates the liability for damage at the organizers of the assembly. On the other hand, the Law on Obligations as a general law regulating the liability for damage locates it primarily with the state. In the article, we argue that the approach of the Law on Obligations locating the liability for damage at the state and guaranteed the right (and the obligation) the state to claim compensation for the amount paid from the person who caused the damage is an approach that has a foundation in the international instruments.

Key words: *right to assembly, liability for damage, liability of assembly organizer, State liability, police*

I. INTRODUCTION

The freedom of the citizens to assemble peacefully for pursuing their cause has been at the heart of some of the most important social movements in the history.[1] is recognized by the international human rights instruments as well as the national legislation. The scope of the right is defined and further specified in particular in the case-law of the European Convention on Human Rights. On a national level, the right is guaranteed by the Constitution and the mechanisms for its exercise and protection are in specific laid down in the Law on Public Assemblies. The international and national instruments guarantee the right to peaceful assemblies or gatherings whatever they cause may be. However, as we witness, the gatherings are often violent resulting in a breach of the rights of the others including damage to property and persons. Even in an assembly that generally is not considered a violent one damage may occur. The key issue is who will be liable for the damage occurred. The national legislation provides answers to these questions that are contradictory. On one hand side, the specific law

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[1] John D. Inazu, *The Forgotten Freedom of Assembly*. (August 24, 2009). Tulane Law Review, Vol. 84, p. 565, 2010, Available at SSRN: https://ssrn.com/abstract=1460903

regulating the assemblies[2], locates the liability for damage at the organizers of the assembly. On the other hand, the Law on Obligations[3] as a general law regulating the liability for damage locates it with the state. In this article, we examine the freedom of assembly from the perspective of the scope of the right and the mechanisms for its exercise in the international instruments and the national legislation. Special attention is paid to the issue of the liability for damage occurred during assembly from the aspect of its legislative and practical implications. We argue that the approach of the Law on Obligations locating the liability for damage at the state and guaranteed the right (and the obligation) the state to claim compensation for the amount paid from the person who caused the damage is an approach that has a foundation in the international instruments.

II. LEGISLATIVE FRAMEWORK OF THE FREEDOM OF ASSEMBLY

The Constitution of the Republic of North Macedonia identifies the fundamental rights of individuals and citizens, recognized by international law and protected by the Constitution, are one of the fundamental values of the Constitution (Article 8). One of those rights is the freedom of assembly (hereinafter: FOA). Article 21 of the Constitution provides that: "Citizens have the right to assemble peacefully and to express public protest without prior announcement or a special license. The exercise of this right may be restricted only during a state of emergency or war".[4] In accordance with the Constitution, ratified international agreements are an integral part of the legal order (Article 118). In the case of North Macedonia, several human rights instruments regulating freedom of assembly are of particular importance.

1. Applicable International Instruments

The international treaties of the United Nations with different degree of specificity regulate the right. The Universal Declaration of Human Rights (Article 20 (1))[5] guarantees the right to "freedom of peaceful assembly and association". Formally, no limitations of the right are provided but it is to be noted that the right is guaranteed only for peaceful assemblies. The International Covenant on Civil and Political Rights (Article 21)[6] also recognizes the right of peaceful assembly, but also provides for principles of how this right may be restricted. Thus, the restrictions may be imposed on the exercise of this right only in conformity with the law and those restrictions should be such to be considered necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

The freedom of assembly is recognized also by the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights; hereinafter

[2] Law on Public Gatherings („Official Gazette of the Republic of Macedonia no. 55/95, 19/06, 66/07 and 152/15 and „Official Gazette of the Republic of North Macedonia no. 31/20); hereinafter LPA

[3] Law on Obligations („Official Gazette of the Republic of Macedonia no. 18/01, 04/02, 05/03, 84/08, 81/09, 161/09 and 123/13); hereinafter LOO/RM

[4] Constitution of the Republic of North Macedonia ("Official Gazette of the Republic of Macedonia" no. 1/92, 31/98, 91/01, 84/03, 107/05, 3/09, 49/11 and 6/19), translation from https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx

[5] Universal Declaration on Human Rights; https://www.un.org/sites/un2.un.org/files/udhr.pdf; North Macedonia is a signatory by succession from the former Socialist Federal Republic of Yugoslavia (SFRY), signatory as of June 26, 1945. By Resolution A/RES/47/225 of 8 April 1993, the General Assembly decided to accept the Republic of Macedonia as a member of the United Nations, whereby the country would be temporarily addressed for all purposes within the United Nations as a "former Yugoslav Republic of Macedonia ", awaiting a solution to the differences that have arisen regarding its name

[6] International Covenant on Civil and Political Rights; https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx; signatory by succession since 19 January 1994

ECHR)[7] and the limitations to the right are provided. The case-law of the European Court of Human Rights (ECtHR) further specifies the mechanisms for the protection and the exercise of the right and its limitations. Thus, Article 11(1) of ECHR provides that everyone has the right to freedom of peaceful assembly and this right may not be restricted unless restrictions "are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others" (Article 11(2)). Further, the ECHR provides those lawful restrictions may be imposed on the exercise of the right to assembly and the right to association by members of the armed forces, of the police or of the administration of the State.

Having in mind the importance of the ECHR in the assessment of the national legal framework regarding assemblies, in this section, we will, in particular, analyse the concept of "assembly" and its particular features in the light of the provision of the ECHT and the case-law of the European Court of Human Rights. The case-law of the ECtHR suggests that the concept of "assembly" is an autonomous one, covering gatherings which are not subject to domestic legal regulation, irrespective of whether they require notification or authorisation or whether they are exempt from such procedures, and irrespective of whether it fell under the notions of "public event" or "static demonstration" set out in domestic law [8] (Navalnyy v. Russia [GC], 2018, § 106; Obote v. Russia, 2019, § 35). The key feature of the assembly is the common purpose of its participants, regardless if it is a private meeting or a meeting in public places, whether static or in the form of a procession. The right to FOA may be exercised by individual participants and by the persons organising the gathering (Kudrevičius and Others v. Lithuania [GC], 2015, § 91; Djavit An v. Turkey, 2003, § 56). The purpose of the gathering is not relevant for the establishment if Article 11 would be applicable. Its primary purpose is to protect the right of political peaceful demonstration and participation in the democratic process; however, it is equally applicable to gatherings with social character (Djavit An v. Turkey, 2003, § 60), cultural gatherings (The Gypsy Council and Others v. the United Kingdom (dec.), 2002); and religious and spiritual meetings (Barankevich v. Russia, 2007, § 15). By the recent practice of the ECtHR the official meetings, notably parliamentary sessions, also fall within the scope of Article 11 (Forcadell i lluis v. Spain (dec.), 2019, § 24).

Article 11 of the ECHR, as the other international instruments, provides protection only to the right to "peaceful assembly". Thus, protection under this Article will not be afforded to the organisers and participants in assemblies that were violent (Kudrevičius and Others v. Lithuania [GC], 2015, § 92). The burden of proving violent intentions on the part of the assembly organisers lies with the authorities (Christian Democratic People's Party v. Moldova (no. 2), 2010, § 23). Taking measures necessary in a democratic society for the prevention of disorder or crime and for the protection of the rights and freedoms of others by the ECtHR is justified (Osmani and Others v. "the former Yugoslav Republic of Macedonia" (dec.), 2001; Protopapa v. Turkey, 2019, §§ 104-112). At the same time, the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of citizens. This obligation is an obligation for measures to be taken and not results to be achieved (Kudrevičius and Others v. Lithuania [GC], 2015, § 159; Giuliani and Gaggio v. Italy [GC], 2011, § 251). This may result in interference with the exercise of the right to FOA, but such interference, in any case, should be justifiable. Restrictions are justified if they are "prescribed by law", pursue one or more legitimate aims under Article 11, para. 2

[7] Convention for the Protection of Human Rights and Fundamental Freedoms; https://www.echr.coe.int/Documents/Convention_ENG.pdf; The ECHR was signed on 09.11.1995 and ratified on 10.04.1997

[8] Guide on Article 11 of the European Convention on Human Rights – Freedom of assembly and association, Council of Europe/European Court of Human Rights, 2021, p. 8

(the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others) and are "necessary in a democratic society".
The freedom of assembly is not an absolute right and those who overstep it may be held responsible for their reprehensible acts. However, the ECtHR is clear in its positions that peaceful participants in an assembly may not be held responsible for reprehensible acts committed by others. This is the case even when the demonstration results in damage or other disorder (Taranenko v. Russia, 2014, § 88). In addition, this is applicable to the organizers of the assembly who as per the ECtHR should not be held responsible for the conduct of the attendees (Mesut Yıldız and Others v. Turkey, 2017, § 34; Kemal Çetin v. Turkey, 2020, §§ 50-51). The national legislation, as we will show further does not follow this principle.

2. National Legislative Framework for the Freedom of Assembly

The specific legal act regulating the freedom of assembly in North Macedonia is the Law on Public Assemblies. The Law was first enacted in 1995 and was subsequently amended in 2006, 2007, 2015 and 2020, including by an intervention of the Constitutional Court which annulled one provision in 2006.
The LPA regulates the exercise of the FOA understood as the right of citizens to public assembly for the peaceful expression of opinion and public protest (Article 1), as well as the cases when the public assembly will be stopped. The LPA provides that the right can be exercised in a way that enables peaceful expression of opinion and public protest related to social, economic, cultural, religious political and other interests (Article 3)[9]. The LPA defines that assemblies in terms of the law are those that consist of more than 20 citizens, outdoors or indoors. This minimum of participants was for the gathering to be considered an assembly within the meaning of the law was introduced in the LPA by its amendments in 2006[10], however the rational of this provision is not clear. The international instruments do not foresee such requirement a gathering to be considered a public assembly only if certain number of persons participates in it. This position of the LPA has a number of implications from the perspective of exercise of the right, as to any gathering below the specified number, the law will not be applicable thus the participants will not be able to exercise the rights (and obligations) set by the law. One may question how the number will be established if a same person (individual or a legal entity) organizes simultaneously gatherings of less than 20 persons per location, but all with the same purpose. The organizer in this case will not have the same the same obligations, without discussing here if they are dimensioned adequately, compared to the one who organizes a gathering of even 21 persons. When discussing this provision and its implications, we should have into consideration that this may negatively impact the application of Article 155 of the Criminal Code that sanctions any unlawful interference in the public assemblies[11] as the

[9] LPA in the time it was enacted provided in Article 2 that the right of citizens to peaceful assembly may be exercised in a way that they will peacefully express public protest and will not restrict the right of citizens who do not participate in public assembly for free movement and other rights established by the Constitution of the Republic of Macedonia. In 2006 the Constitutional Court annulled the part of the article containing the limitation of the FOA (and will not restrict the right of citizens who do not participate in public assembly for free movement and other rights established by the Constitution of the Republic of Macedonia). The Constitutional Court, in its decision U-31/2006-0-1 found that the limitation of the right in defined too broadly and therefore inconsistent with Article 11(2) of the ECHR.

[10] Article 2 of Law on amendments of the Law on Public Gatherings („Official Gazette of the Republic of Macedonia no. 19/06)

[11] Criminal Code („Official Gazette of the Republic of Macedonia" no. 37/96, 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 41/14, 115/14, 132/14, 160/14, 199/14, 196/15, 226/15, 97/17 and 248/18), Preventing or hindering a public gathering, Article 155: (1) A person who by force, serious threat, deceit or in some other manner prevents or hinders the convening or the holding of a peaceful public gathering, shall be punished with a fine, or with

gathering will not be considered a public assembly within the meaning of the law. In regard to the place and manner in which the public assembly is organized the LPA has a rather open approach providing that a public gathering for the peaceful expression of an opinion or protest may be held at any place suitable for that purpose (Article 2-a). Exceptions exist when it comes to health facilities when the assembly prevents the access of ambulances and disturbs the peace of the patients; kindergartens and schools while the children stay in them and on highways and motorways when it is organized in a way that endangers road traffic.

The LPA have a number of provisions regulating the manner in which the public assembly is to be organized that have a direct impact on the system of liability for damage. The LPA regulates, per se, the planned/organized assemblies, providing that they may be announced i.e., the Ministry of Interior to be notified that an assembly will be organized. This does not mean that spontaneous gatherings are not permissible. Article 21 of the Constitution provides that the FOA may be exercised without prior announcement or a special license, and the LPA uses the term "may notify" thus providing for an option the public assembly to be organized without formally having an organizer. As we will see further this may have a significant impact on the issues of the liability for damage. For the assemblies that formally have an organizer, the LPA sets a number of very strict rules and imposes obligations that one may question should be obligations of an organizer. Thus, the organizer is provided with an opportunity to inform the Ministry of Interior about the holding of the public assembly and the measures taken for its holding and do this in the interests of the security (Article 3, para. 1). The LPA requires the notification to be submitted no later than 48 hours before the beginning of the public assembly. It should include information on the purpose of the assembly, place and time of its holding, the organizer of the public assembly and the measures taken by the organizer in relation to the unhindered organization and carrying out of the public assembly, as well as data on the organization of the data for the organization of the guard service (service for maintain the order on the assembly). The organizer, as per LPA (Article 4, para. 1) is obliged to ensure public order during the assembly, in order to protect the rights of the citizens, the normal flow of traffic, the supply of the population with medicines, food, fuel and similar urgent needs, as well for compliance with the obligations of international agreements, as well as to establish guard service. The Law provides that the organizer may request the Ministry of Interior to provide for the security of the public assembly by the police, but in that case the costs for that security shall be borne by the organizer (Article 4, para. 2). These two provisions of the LPA raise serious questions on the role of the state in the exercise of the FOA and the excessive responsibilities, in our opinion, delegated to the organizer. The ECtHR is clear that FOA is to be understood as well as a positive obligation for the states, meaning that the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and safety of citizens. The main function of the police, as per the Law on Police (Article 3)[12], is the protection and respect of the fundamental freedoms and rights of the citizens as guaranteed by the Constitution, the laws and the ratified international agreements, protection of the legal order, prevention and detection of criminal offenses, taking measures to prosecute perpetrators acts, as well as maintaining public order and peace in society. The police work (Article 5) *inter alia* includes the protection of life, personal safety and property of the citizens, prevention of committing criminal acts and misdemeanours, detection and apprehension of their perpetrators and taking other measures determined by law to prosecute the perpetrators of those acts, regulation and control of road traffic and providing

imprisonment of up to one year. (2) If the crime from paragraph 1 of the present Article is committed due to hatred or by an official person by misusing his official position or authorization, he shall be punished with imprisonment of three months to three years.

[12] Law on Police („Official Gazette of the Republic of Macedonia no. 114/06, 6/09, 145/12, 41/14, 33/15, 31/16, 106/16, 120/16, 21/18 and 64/18)

assistance and protection to the citizens in case of necessary need. Thus, comparing the provisions of the Law on Public Assemblies and the Law on Police one can draw a conclusion that a number of tasks that regularly fall within the authorizations or the obligations of the police are by law transferred to the organizer and their guard service.
The organizer, further on, will be liable for any damage that occurred during the public assembly as explicitly provided by the LPA (Article 7). The position and the effects of such provision will be discussed further.

III. LIABILITY FOR DAMAGE OCCURRED DURING PUBLIC ASSEMBLY

The Law on Obligations provides for a general rule that each person is obliged to abstain for an act that may cause damage to another person. Once the damage occurred the person that is liable by fault is obliged to compensated, while the LOO also provides for strict liability – liability regardless of fault in cases of damage arising from dangerous objects and dangerous activities (Article 141, para. 1 and 2). The obligations arising from damage (civil wrongs, torts) are "such relations wherefrom for the party of the tortfeasor arises obligation to compensate the damage, while for the injured party the right the damage to be compensated".[13] For the obligation to arise, certain conditions should be met. Thus, the obligation will arise if there is damage that results from a wrongful act in a manner that there is a casual link between them. Besides the general conditions one of the specific conditions – the existence of fault or of risk - as grounds for fault based or strict liability. In the Macedonian Tort Law theory, the damage is defined as "Any unfavourable result of the wrongful act of a person (tortfeasor) on the property and non-property rights (values) and legally protected interests of a person (injured party) which occurs without his consent (will) and which the tortfeasor is obliged to remove (compensate)". The Law on Obligations (Article 142) stipulates that damage is a reduction of someone's property (ordinary damage) and prevention of its increase (lost profit) as well as violation of personal rights (immaterial damage). Specific for the national legislation is that it provides for the so-called 'objective' concept of immaterial damage, defining it as a breach of personal rights rather than subsuming it to its subjective consequences – physical and/or emotional pain and suffering. Any act outside of the limits of the prescribed duties would constitute a wrongful act and give rise to a claim for damages, provided the other conditions are met. The duties are prescribed in the general law in the general law on obligations – as the principle of forbiddance to cause damage, or specified in different laws regulating the specific field. The breach of those duties would be considered a wrongful act, understood as an act that led to the occurrence of damage, while the damage may be caused by an act or omission or by an object or activity that represents a source of increased risk.[14] The casual link in Macedonian Tort Law represents the link between the wrongful act and the damage – the damage should be a direct consequence of the wrongful act, and the act itself should be adequate for causing the stated damage. When it comes to obligations grounded on strict liability, the existence of a causal link is assumed.[15]
When it comes to the issue of liability for damage occurred in public gatherings, the Law on Obligations regulates the issue as a special case of liability for damage - Liability Because of Terrorist Acts, Public Demonstrations or Events. The Law (Article 166) provides for strict liability of the state for damage that is a result of death, bodily injury or harm and destruction of property of a natural or legal person. This liability of the state is conditioned that it is not

[13] Гале Галев, Јадранка Дабовиќ – Анастасовска, *Облигационо право,* Правен факултет „Јустинијан Први“ – Скопје, Скопје, 2009, стр. 583
[14] Гале Галев, Штетно дејствие, Годишник на Правниот факултет „Јустинијан Први во Скопје во чест на Димитар Поп Георгиев, том 40, Правен факултет „Јустинијан Први“ – Скопје, 2006, стр. 42
[15] See Article 159, LOO/RM

regulated otherwise in a specific law. The right to such damages is not recognized for the organizers, participants and helpers in such events. The State is entitled to claim reimbursement of amounts paid on the above grounds from the person provoking the damage. The liability for damage that is a result of these events, exists in the national legislation, via the Law on Obligations of SFRY, since 1978, further amended in 1985.[16] Later, when the national Law on Obligations was enacted[17] the provision was reformulated. The rules of the previous version of the said article (Article 180/LOO SFRY) specified the reasons for the imposition of the strict liability of the state – the bound of state's agencies, in conformity to existing regulations, to prevent injury or loss. The meaning of such provision is that the state cannot be exempt from liability on the grounds that its agencies exercised the standard duty of care. The absence of error on their side is not and cannot be considered ground the state to be relieved from the liability for damage. The same principle applies to the actions undertook (or not) to prevent the damage. Regardless if the state (its agencies) could have or could have not prevent the damage in circumstances where they it will be held liable. Those theoretical positions in regard to the meaning and the application of Article 180 of the SFRY Law on Obligations[18] are still valid and applicable.

Although the existing formulation of the LOO/RM of the article does not specify the reasons for the strict liability providing only a general formulation that the liability is regardless of fault implies the obligation of the state to prevent the occurrence of damage. The failure to do so, regardless if *de facto* was in such a position, would result in its liability.[19] It is to be noted that the liability of the state, in this case, is not subsidiary – the state will be held liable even if the person who has actually caused the damage is known, but also as noted by authors when the compensation cannot be obtained from the actual tortfeasor.[20]

On the issue of the injured party, the LOO provides protection both to natural and legal persons. The natural persons will be entitled to compensation of damage caused "by death, bodily injury or harm and destruction of property" while the legal persons will enjoy the protection of their property only. As per Article 142 of LOO/RM a person may suffer material damage understood as reduction of someone's property (simple damage/loss), the prevention of its increase (lost profit) and immaterial damage understood as a violation of their personal rights. The violation of the personal rights understood as the rights to life, health, honour, reputation, privacy etc (Article 9-a, LOO/RM) however, may also cause material damage, especially when it comes to costs for funeral and health treatment as well as damage arising from loss of a close person or relative.

Thus, in the specific case of public assemblies, when they cease to be peaceful, material damage may be caused to the property of the natural and legal persons, in terms of decrease of the value of the property (when it is destroyed or damaged), as well as when the wrongful act prevents an increase in the value of the property (when, for example, due to a destruction of property the injured party is not able to use it and make profit from it). In these cases, as a primary rule.

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[16] Law on Obligations ("Official Gazette of SFRY" no. 29/1978, 39/1985, 45/1989 and 57/1989), hereinafter LOO/SFRY

[17] Law on Obligations („Official Gazette of the Republic of Macedonia no. 18/01)

[18] Đorđe Nikolić, *„Član 180"*, in: Slobodan Perović (ured.), Komentar Zakona o obligacionim odnosima, , Savremena administracija, Beograd 1995, str. 417; Stojan Cigoj, *„Član. 180"*, in: Borislav T. Blagojević i Vrleta Krulj, (ured.), Komentar Zakona o obligacionim odnosima, ,Savremena administracija, Beograd 1983, s. 678–679; Jakov Radišić, *Obligaciono pravo*, Nomos, Beograd 2004, p. 265; Bogdan Loza, Obligaciono pravo, Službeni glasnik, Beograd 2000, 244.

[19] Marija Karanikić Mirić, *Odgovornost Države Za Štetu Usled Terorističkih Akata, Javnih Demonstracija Ili Manifestacija* (State Liability for Damage Resulting From Terrorist Acts and Public Demonstrations) (2012). Đorđe Ignjatović (ur.), Kaznena reakcija u Srbiji, II deo, Beograd, 2012, p. 196, Available at SSRN: https://ssrn.com/abstract=3651414

[20] Boris Vizner, *"Član 180"*, Komentar Zakona o obveznim (obligacionim) odnosima, Zagreb, 1978, p. 814-817

the tortfeasor is liable to re-establish the situation existing prior to the occurrence of damage (natural restitution). When such re-establishment of the previous situation fails to eliminate the damage entirely, or the restitution is impossible, or the court finds it necessary for the responsible person to pay monetary compensation, the damage will be compensated by payment of an adequate amount of money as compensation for loss. In addition, the court may award compensation in money, at the request of the person suffering damage, unless the circumstances of the specific case justify restitution. When it comes to the scope of the compensation of the simple damage, the amount to be paid is determined according to prices at the time of the rendering of the court's decision, unless something else is ordered by law. In assessing the amount of the profit lost, the injured party would be entitled to the profit which was reasonably expected according to the regular course of events or particular circumstances, and whose realization has been prevented by an act or omission of the tortfeasor shall be taken into account.[21]

The LOO, in principle, recognizes the right to immaterial damage both to natural and legal persons (Article 9-a) but in the specific case of damage in public assemblies only natural persons are entitled to this and the damage is limited to the one occurred to the life and the health of the person. The immaterial damage in Macedonian law is defined as a breach of personal rights (Article 142, LOO/RM). This concept was introduced in the Macedonian tort law with the amendments of the Law on Obligations in 2008. The new, objective, concept of immaterial damage departs from the position that immaterial damage is a subjective notion. By the subjective concept, in order for an occurrence of immaterial damage to be considered, the injured party should to feel the consequences in form of pain and suffering. According to the accepted objective concept, the degree to which the injured party can feel the pain and suffering is not important for the establishment of the right to be compensated for the damage, and it is only relevant for the amount of compensation. Although, it should be noted that the tendencies of the objective concept are that entitlement to compensation should also be given to persons who cannot feel the pain at all (for example they are in a coma) or if, because of their mental state, they are not able to see the significance of the condition in which they are.[22] Immaterial damage may occur in particular, and most frequently, by violation of physical and mental health and results in the right to compensation. This injury, in terms of liability for immaterial damage, is actually reflected in the occurrence of physical and mental pain. The damage will be compensated provided that the court finds that the severity of the injury and circumstances of the case justify this, regardless of the existence of material damage (Article 189, para 1, LOO/RM). What is specific is that the intensity and duration of these pains will be qualifying circumstances in determining the amount of fair monetary compensation (Article 189, para. 2, LOO/RM).

Specific situation regulated by the Law on Obligation is the material damage due to loss of a close person. In the event of the death of a close person (relative), the family members are entitled to reimbursement of the usual costs of their funeral (Article 182, para. 1, LOO/RM), costs of the treatment of injuries sustained, as well as the earnings lost due to the inability to work. (Article 182, para. 2, LOO/RM). Law on Obligations takes into account the fact that with the loss of a person who provides support in a family, the means for the uninterrupted existence of that family are reduced. Therefore, LOO/RM, in Article 183, para. 1 entitles the person who was supported or regularly assisted by the deceased, as well as the one who according to the law had the right to seek support from the deceased, to be compensated for the damage suffered by the loss of support. The circle of persons who have the right to support is defined by the

[21] Articles 174 -181, LOO/RM

[22] Ivica Crnić, *Neimovinska šteta*, Organizator, Zagreb, 2006, p. 102

Family Law[23] and includes the minor children, including the children who are in process of education up to 26 years old as well as adult (child) who is incapable of work due to illness, physical or mental disability, and does not have sufficient means of subsistence and cannot receive them from his property, while that incapacity lasts (Article 179, para. 3, LF). According to the Law on Obligations, the damage caused by the loss of financial support is compensated in a form of a monetary annuity. The amount of the annuity is assessed in view of all circumstances of the case, and it cannot be higher than the one that the injured party would have received from the deceased if they had survived (Article 183, para. 3, LOO).
To conclude, as per Law on Obligations the state as a tortfeasor would be liable for the damage sustained by natural and legal persons that is a result of acts (of violence) in cases of public assemblies.

1. The specific rules and their implications

The legislator in LPA disregarded both the principles of the national tort law and the positions of the ECtHR, stipulating that the organizer of the event would be the one liable for the damage. This is a rather controversial provision. The national tort law foresees that only the person who have caused the damage with a fault (intent or negligence) or the person who has controlled the risk of the dangerous activity is held liable. ECtHR holds the position that the organizers of the public assembly should not be held responsible for the conduct of the attendees and that in general (peaceful) participants in an assembly may not be held responsible for reprehensible acts committed by others. However, the rule of LPA for the liability of the organizer, as a *lex specialis* rule will have primacy. This raises several issues on the practical implementation of the provision that at the end put in question the position of the legislator.

a. Organizer's liability

The LPA is very specific when it stipulates that the organizer of the public event is responsible for the overall organization including maintaining the peace and order (Article 4, LPA). The organizer, in case of any damage, occurred during the public assembly will be held liable to compensate it (Article 7). Two questions arise: first) what if there is no organizer and second) why would the organizer be liable for acts of third parties. The first question is very relevant from the perspective of the Constitutional provision that the right of FOA is exercised without prior announcement or a special license. This, in the LPA is reflected with the provision that the organizer "may" (meaning they also may not) notify the Ministry of Interior (MoI) of the public assembly. The other issue to be considered is the case of spontaneous gatherings, without a specific organizer. The provision of the LPA thus may result in three regimes: 1) when there is an organizer who has notified the MoI, 2) when there is an organizer who has not notified the MoI, and 3) when there is not an organizer. Only in the first case scenario, the organizer will be liable for the damage as per LPA, while in the other two the LOO/RM will apply. As for the second question why would the organizer be held liable one may argue that it is the one benefiting from the public assembly thus controls it and the risk. This argument however does not stand a chance in a democratic society where the public assemblies have a wider democratic and societal cause. The public gatherings, including or even maybe particularly, aim to provide a forum for different opinions and positions than the one's of the authorities to be heard and to enable active citizenship. In such circumstances, the obligation to maintain the public order and the protection of the rights of other is and it could only be with the state authorities. Any failure to do results in liability of the state, then on its side has the right to claim a refund from the persons liable for the damage, if and when they become known.

[23] Law on Family ("Official Gazette of the Republic of Macedonia" no. 153/2014, 104/2015 and 150/2015); hereinafter: LF

In this regard, it is to be noted that the Supreme Court hold a position that the State would be liable for damage even in the case where the actual tortfeasor (the person who committed the damage) is known in the time of deciding on the claim. Thus, the Supreme Court finds "[…] the State is passively legitimized and is directly liable for the damage caused without its fault to be established, as the damage [on the bus] occurred during public demonstrations, and this was confirmed also by a judgment in criminal proceedings, regardless of the fact that the offenders i.e., the persons who have committed the damage are known".[24] This reaffirms the theoretical position of the legal nature of the liability of the state.

b. Organizer's Guarding vs. State Policing

The LPA obliges the organizer, provided it is known, to undertake activities for the maintenance of peace and order during the assembly including by setting up guarding service. The organizer may request the police to provide an assistance in this, however as per the Law on Police such assistance is provided with adequate compensation of the costs of the police. The specific amount of the payment is determined by a Decision of the Minister of Interior on the basis of the working hours, the number of staff (including police officers) involved and the number of kilometres (Article 7-a, para. 2, Law on Police). This relation between the organiser and the police, from the aspect of the Law on Obligations, is a contractual one i.e., the police in this case has a role of a service provider in terms of the Service Contract as regulated by LOO.[25] Again there are (at least) two questions: first) what if the police, now as a service provider, fails to render its services and as a result, damage occurs, and second) how the overlap between the organizers and the police's duties will be regulated. In regard to the first issue at hand the LOO is clear that the Service Provider should carry out the works as agreed and as per the rules of the profession (Article 629, para. 1, LOO/RM), otherwise is liable to the purchaser of the services for the damage occurred (Articles 638-639 in conjunction with Article 251, LOO/RM). If the police, now as a service provider, does not carry out its duties of assistance as agreed or as per the rules of the professions i.e., if the contract between the parties is not performed as agreed, any damage sustained by the purchaser of the works (the organizer) will be compensated by the service provider (the police) under the rules of contractual liability for damage. Or in other words, the police would be liable for the predictable losses the organizer sustained in cases when the organizer is held liable for the damage that occurred to third parties in course of the public gathering. At the end this leads us to an absurd situation – the police to be held liable on the ground of contractual liability for acts (or omissions) that should have carry out in the first place as authorized by the law. The absurdity goes even further if we consider the obligation of the organiser to cease the gathering when there is the endangerment of the "life, health, security and safety of the people and property" (Article 4, para. 4, LPA) and the obligation of the police to do the same in the same circumstances (Article 7, para. 1, item 1, LPA). The "what if" questions in the situation when the organizer does not fulfil its obligation and the police does not exercise their right are numerous and lead only to the conclusion that the manner in which the issue of the duties of the organizer and their liability is regulated was not thought very well and should undergo a serious reform from the perspective of the civil law.

[24] Judgment of the Supreme Court of the Republic of North Macedonia, Case Rev. no. 39/2019. Available at the Judicial Portal of the Republic of North Macedonia; http://sud.mk [accessed 15/04/2021]

[25] LOO-RM, Article 619: By a Service Contract the person who performs the works (contractor, supplier) assume the obligation to perform a particular work, such as to manufacture or repair an object, or execute some physical or intellectual work, and the like, while the purchaser of the services shall assume the obligation to pay him monetary consideration in return.

IV. CONCLUSIONS

The right to Freedom of Assembly is protected under the national legislation. Contrary to the liberal provisions of the Constitution for the exercise of the right the specific Law on Public Assemblies imposes duties that may hinder the exercise of the right and cause a 'chilling effect' by imposing excessive obligations for the organizers. One of these excessive obligations is the liability for all damage that occurred during a public assembly. The provision of the LPA is contrary to the general principles of the Law on Obligations that provide for strict liability of the State in the cases of damage occurred on public demonstrations. In addition, as argued in the paper this is contrary to the positions of the European Court of Human Rights

How the situation could be rectified? The most effective solution is to amend the Law on Public Gatherings so as to provide application of the general rules on damage. If still, the legislator decides to provide for specific rules regulating in more detail the liability for damage on public assemblies the LPA should have a clear position on the following:

1) The organizer is not and cannot be held liable for acts of participants at the public assembly, thus cannot be held liable for the damage occurred;
2) The roles and the tasks of the police and the organizer cannot overlap. The organizer should not be excessively burdened with tasks related to the general public safety as this is an obligation of the State and its law enforcement agencies;
3) The State should be liable for any damage on the grounds of strict liability. This liability should be non-subsidiary with respective right to claim reimbursement course from the actual tortfeasor.

This, in our opinion, would lead to higher (legal) certainty that the damage is compensated, that the organizers are not discouraged from exercise of the right and the police and the state agencies, in general, carry out their duties to the full extent.

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