



Submission by the International League for Human Rights (ILMR)

Call for comments: revised draft general comment No 37 on article 21 (right of peaceful assembly) of the international covenant on civil and political rights

The ILMR welcomes the call for comments on the revised draft General Comment No. 37 on article 21 (Right of peaceful assembly) of the International Covenant on Civil and Political Rights.

In German law the freedom of assembly, according to its wording, protects the right to assemble and to remain assembled (§ 1 Abs. 1 Versammlungsgesetz).

§ 1(1) Versammlungsgesetz repeats in another form the principle of freedom of assembly laid down in Article 8 (1) of the constitutional law but goes further than this provision in that the right of assembly is not restricted to Germans but is granted to everyone.

Furthermore, § 1 (1) Versammlungsgesetz further defines in more detail the scope of freedom of assembly, which Article 8 (1) of the constitutional law only negatively delimits to the effect that assemblies must be peaceful and not bear arms. Accordingly, freedom of assembly includes the right to organise assemblies and to participate in them (see Füssel DVBl. 1954, 553).

It guarantees not only assembly as such, but also the collective activities that are possible within the framework of an assembly, i.e. the freedom to demonstrate (Dietel/Gintzel para. 219).¹

The right of assembly is not restricted by § 1 para. 2 Versammlungsgesetz. Rather, the provision is only of declaratory significance (Füssel note 6). It clarifies which restrictions of the right of

¹ *Erbs/Kohlhaas/Wache*, 227. EL November 2019, Versammlungsgesetz § 1 Rn. 1, 2

assembly (event and participation) result from the constitutional law. An assembly that is organised despite these reasons for prohibition can be prohibited under § 5 No. 1 VersammlungsgG and dissolved under § 13 (1) No. 1 VersammlungsgG.²

The ILMR would like to comment on the following points:

In paragraph 26 it says: “States are obliged, for example, not to prohibit, restrict, block or disrupt assemblies without compelling justification, and not to sanction participants without legitimate cause”.

The ILMR would like to point out the fact that there are several ways to sanction participants. It should be also prohibited to sanction participants indirectly for instant by demanding charges for identity verification or dismissal as happened in Germany under the “Besondere Gebührenverordnung des BMI”.³ Charges like that are eligible to ward people from their fundamental right of peaceful assembly (article 21) as they are scared to become sanctioned for just being there and demonstrating. These charges are also critical in conjunction with the rights of freedom of opinion and right to a lawful judge as there is no judicial control ahead.

Paragraph 76 says “where criminal or administrative sanctions are used against participants in a peaceful assembly, such sanctions must be proportionate and cannot apply where their conduct is protected by the right.”

The decisive word here is proportionate. The ILMR believes that a precise proportionality standard should be laid down in the report, particularly regarding fees and sanctions.

Paragraph 77 says that “the procedural guarantees of the Covenant apply in all such cases, and also to issues such as deprivation of liberty and the imposition of sanctions, such as fines, in connection with participation in peaceful assemblies”.

² Erbs/Kohlhaas/Wache, 227. EL November 2019, VersammlG § 1 Rn. 37-41

³ BMIBGebV, BGBl. I S. 1359, 2019

In the view of the ILMR the term “sanctions” is too narrow as there are, like in the example of the “Besondere Gebührenverordnung des BMI” above, also situations where participants must pay charges which are sanction likely but not called like them. In this constellations participants of peaceful assemblies should also have the procedural guarantees of the Covenant particularly with regard to the right to a lawful judge.

In paragraph 74 it says “Requirements for participants to cover the costs of policing or security or medical assistance or cleaning associated with peaceful assemblies are generally not compatible with article 21. These costs should as a rule be covered by public funds and should not be transferred to the participants.”

This must apply even more to police measures that are not in the interest of the participants, such as identity checks, as these costs are also already financed by taxes etc.

Berlin, 21 February 2020