

AMNESTY INTERNATIONAL PUBLIC STATEMENT

16 March 2022 EUR 68/5344/2022

SLOVENIA: WITHDRAW CLAIMS FOR PROTESTERS TO COVER COSTS ASSOCIATED WITH POLICING ASSEMBLIES

In a letter sent today by Amnesty International to the Prime Minister of Slovenia, the organization called on the Slovenian authorities to guarantee people's right to peaceful assembly, and specifically to withdraw claims for protesters to cover exorbitant costs associated with policing demonstrations. Such claims are punitive in nature and aimed at deterring people wishing to come together to express their opinions in public. Requiring participants to pay for the costs of policing is a direct violation of the right to freedom of peaceful assembly and could have a serious chilling effect on others willing to join protests in the future.

Today, Amnesty International also launched an international appeal – known as an Urgent Action available at <http://www.amnesty.org/en/documents/eur68/5346/2022/en/> – urging the Slovenian authorities to withdraw the claims and ensure the respect of the right to freedom of peaceful assembly. The petition targeting the Slovenian Prime Minister is available at <https://www.amnesty.si/nujna-akcija-jenull>.

In light of the claims for reimbursement of costs for policing protests and wider concerns around the exercise of the right to peaceful assembly, Amnesty International urges the Slovenian authorities to adopt a human rights-based approach to policing protests in full consideration of their duty to facilitate, enable and protect the right to freedom of peaceful assembly in line with their international and regional human rights commitments. Accordingly, law enforcement agencies should seek to carry out the policing of assemblies in a manner that ensures the best possible and effective enjoyment of this right, and not limit their planning to the anticipation of problems.

FINANCIAL CLAIMS FROM PROTESTERS FOR POLICING COSTS

On 3 March, Jaša Jenull, an activist and theatre director, was issued a 'call for reimbursement before filing a lawsuit' from Slovenia's State Attorney ordering him to pay 34,340.56 Euros. The costs relate to a protest held in Ljubljana on 19 June 2020, when Jenull and several dozen more sat on the ground on the Republic Square to read the Constitution aloud in protest against restrictions on the rights to freedom of expression and peaceful assembly imposed in the context of the Covid-19 pandemic. According to information widely reported, police forcibly removed protesters who did not leave the square voluntarily. The public reading of the Constitution was then followed by a protest.

Jenull was given a deadline by the State Attorney to pay the requested amount by 1 April 2022, otherwise a civil lawsuit would be filed against him the day after. This latest claim for reimbursement adds up to a previous civil lawsuit and another 'call for reimbursement' that Jenull was already facing for costs for policing other protests, which now altogether amount to over 40,000 Euros.

This latest financial claim for reimbursement of the costs of policing is not an isolated case. According to official data provided by Slovenian authorities during a meeting of the Parliamentary Committee on Internal Affairs and the Committee on Justice on 4 October 2021, the authorities have claimed 972,166 Euros of policing costs to be charged against protesters.¹ To date, according to information provided by the State Attorney's Office to Amnesty International, 28 claims for policing costs are being processed for the amount of 269.778,48 Euros.

¹ https://www.dz-rs.si/wps/portal/Home/seje/evidenca!/ut/p/z1/04_Si9CPYkssy0xPLMnMz0vMAfIjo8zivSy9Hb283Q0N3E3dLQwCQ7z9g7w8nAwsPE31w9EUGAWZGgS6G-Dn5BhsYGwQHG-IHEaPfAAAwNCBOPx4FUfiNL8gNDQ11VFQEAf8pdGQ/dz/d5/L2dBISEvZ0FBIS9hQSEh/?mandat=VIII&type=pmagdt&uid=72614A163248AB9BC12587680037D923

Financial claims for reimbursement of the costs for policing protests represent an inadmissible and disproportionate interference with the right to peaceful assembly.² According to international and regional standards, states have an obligation to actively facilitate the right to peaceful assembly, which requires providing adequate services that should not be expected to be covered by the organizers or the participants. Requirements for participants or organisers either to arrange or to contribute towards the costs of policing or security, medical assistance or cleaning are a direct barrier to the realization of this right and could also create a significant deterrent effect for those wishing to exercise their rights.

The Human Rights Committee, the body tasked with overseeing states' implementation of the ICCPR, has found that requirements by states to organizers to pay for such costs was a violation of article 21 of the Covenant.³ The OSCE's Guidelines on freedom of peaceful assembly also state that "organizers should not be required to pay for the facilitation of peaceful assemblies".⁴ In this sense, the OSCE has concluded that obliging organizers to pay for such costs would create a significant deterrent for those wishing to enjoy their right to freedom of peaceful assembly and it is likely to be prohibitively expensive.

PROTECTION OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY EXTENDS TO SPONTANEOUS ASSEMBLIES

The authorities have justified their claims for policing costs on the basis that the protests were held without notifying the authorities which, according to the police, required additional resources to ensure public safety due to the lack of planning.

Under international human rights law, spontaneous assemblies are equally protected under the right to freedom of peaceful assembly. Even when domestic legislation establishes a requirement for organizers to notify authorities in advance of an assembly, police should facilitate assemblies when people decide to take their views spontaneously to the streets as long as they are peaceful. Since it is well established that failure to notify the authorities of the intention to assemble must not render an otherwise peaceful assembly unlawful, numerous international and regional human rights mechanisms have called on states to ensure that spontaneous assemblies are explicitly exempted from the requirement to give advance notification.⁵

Therefore, invoking a lack of notification to impose financial sanctions to claim back the costs of policing is an illegitimate interference with the right to peaceful assembly. Moreover, it is of further concern that it appears that an individual with more public visibility, like Jaša Jenull, who has repeatedly rejected claims that he was the organizer of the protests, has been particularly targeted by the authorities in an attempt to amplify the intimidatory message to other protesters.

BLANKET BANS ON PROTESTS AND FINES OF PROTESTERS DURING COVID-19

Amnesty International is concerned over numerous measures taken in the last few years by Slovenian authorities to curb people's participation in protests, including numerous fines, closure of public spaces for protests and the imposition of a blanket ban on all demonstrations for several months in the context of Covid-19.

During May and December 2020, the police conducted random identity checks, detained and fined peaceful protesters simply for carrying anti-government placards and subjected them to legal proceedings. In November 2020, the authorities considerably increased fines for organizing public gatherings in defiance of a blanket ban.⁶

² The right to freedom of peaceful assembly is protected under various international and regional human rights treaties to which Slovenia is a state party, including the International Covenant on Civil and Political Rights (ICCPR) and the European Convention of Human Rights.

³ See, for example: *Sekerko v Belarus*, UN Human Rights Committee, UN Doc. CCPR/C/109/D/1851/2003 (2013) para. 9.6; *Zaleskaya v Belarus*, UN Human Rights Committee, UN Doc. CCPR/C/101/D/1604/2007 (2011) paras 7.2 taken with 10.6

⁴ OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010, para. 155

⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, (2012), paras. 29, 91. Commentary to the Declaration on Human Rights Defenders, UN Special Rapporteur on the Situation of Human Rights Defenders, (2011), p. 32. *Bukta and Others v. Hungary*, (25691/04) European Court of Human Rights (2007); OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010, para. 4.2.

⁶ http://www.ds-rs.si/sites/default/files/dokumenti/ziuopdve_epa_1472-viii.pdf; https://www.uradni-list.si/_pdf/2020/Ur/u2020175.pdf

According to information publicly available, Slovenian authorities imposed **blanket bans on protests** between October 2020 until April 2021, except for a 12-day hiatus when protests of maximum 10 individuals were allowed. The bans were imposed as part of a wider set of policies intended to address the public health emergency created by Covid-19 and stop the spread of the virus.

While the right to freedom of peaceful assembly is not absolute, it can only be subjected to restrictions which are clearly prescribed by law and are necessary and proportionate to one of the limited legitimate aims permitted under international law (national security, public safety, public health or morals, and the protection of the rights of others).⁷ In this sense, the Human Rights Committee has determined that blanket restrictions on peaceful assemblies are presumptively disproportionate as they impede a differentiated or individualized assessment of the conduct of the participants and the assembly.⁸

This means that, even in times of a public health emergency, restrictions on the right to freedom of peaceful assembly must be aimed at a relevant legitimate purpose such as preventing the spread of or otherwise addressing a disease like Covid-19.⁹ In assessing whether restrictions on assemblies are necessary, authorities must consider less-restrictive measures available to achieve the same objective and prioritize less-restrictive measures, including limiting the number of participants, ensuring the distance between each participant, wearing of masks, informing the public and controlling access routes in order to avoid mass afflux of bystanders. Even within the range of these possible measures, authorities are duty-bound to choose the least restrictive ones that would still allow the assembly to effectively convey its message. Prohibiting a specific assembly must only be a measure of last resort, when other less restrictive means would not be sufficient to achieve the legitimate aim.

In assessing proportionality, the authorities must give sufficient weight to the fundamental importance of the right to freedom of peaceful assembly. General restrictions must also be time-limited and regularly reviewed as to their necessity and proportionality, assessing if the restriction continues to be effective in achieving the objective of protecting public health. Transparency in the decision-making process is also essential.¹⁰

The organization has previously drawn the attention of the authorities that blanket bans constitute a disproportionate restriction on the rights to freedom of expression and peaceful assembly, even when implemented in the context of a public health emergency like that of Covid-19.¹¹ Using the blanket bans on protests to impose further penalties for those who exercised their rights only compounds the concerns over the exercise of the right to freedom of peaceful assembly in Slovenia.

In addition to the claims to reimburse the costs of policing protests, Amnesty International understands that many individuals have been **fined** in the last two years for their participation in public assemblies, including heavy fines on those who defied the blanket ban on protests. In July 2021, the Constitutional Court ruled that the government's decisions to prohibit public gatherings and limit the number of protesters were unconstitutional because they represented a disproportionate infringement of human rights.

Amnesty International urges the Slovenian authorities to promptly withdraw the claims for protesters to reimburse the costs of policing and refrain from taking any further legal action against those who refuse to pay. Slovenia must take urgent measures to ensure the adequate facilitation of the right to freedom of peaceful assembly, including by ensuring that spontaneous assemblies are not hindered and adopting a policing approach in full consideration of their duty to facilitate peaceful protests.

⁷ General Comment 37, para. 36

⁸ Human Rights Committee, General Comment 37 para. 42

⁹ Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1984/4 (1984), para. 25.

¹⁰ See Venice Commission and OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, Study n° 581/2010: "Any decision to restrict or prohibit an assembly should be based on legislation that reflects applicable standards and clearly describes the decision-making procedures. State authorities should also keep records to ensure transparency in their decision-making processes". Available at: <https://bit.ly/2SFGIFh>

¹¹ <https://www.amnesty.si/pravica-do-protesta>; <https://pravna-mreza.si/javni-poziv-za-prenehanje-represije-in-sankcioniranja-mirnih-protestov/>; <https://pravna-mreza.si/vlozena-pobuda-za-presoj-ustavnosti-odloka-ki-prepoveduje-shode/>