



MONITORING
RIGHT TO

FREE ASSEMBLY

**Country Report
2016-2017**

Moldova



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Brief Description of the Initiative

There is an increased number and intensity of protests and violations around them in the Western Balkans and Eastern Partnership region. To ensure that freedom of assembly rights are better understood and advocacy efforts are strengthened, the European Center for Not-for-Profit Law (ECNL) works with local experts from nine countries (Albania, Armenia, Belarus, Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Kosovo, Serbia) on mapping the existing environment for assembly in their respective countries. This assessment is a brief overview of topical issues and recent developments related to freedom of assembly in **Moldova**.

Contents

Summary.....	4
Overview of the Right to Free Assembly in 2016-2017	8
Legislation and Implementation.....	8
Policing of Assemblies.....	12
Media and Assemblies	15
Responsibility of Organisers.....	17
Detention and Prosecution.....	18
Accountability.....	19
Overall Assessment.....	20
Recommendations	20

SUMMARY

The freedom of assembly is enshrined in the Constitution of the Republic of Moldova and enjoyed in line with the Law on Assembly, which regulates how assemblies are organized and conducted. The new legal framework was adopted in 2008. It meets most of the requirements provided for in the OSCE recommendations with regards to the right to assembly.

Should we compare the number of violations in relation to the number of assemblies, we would see that the freedom of assembly saw constant positive dynamics. Most of the assembly organizers that the authors of this note met with agreed with this conclusion¹, except for the representatives of the opposition parties, who have had more difficulties conducting their assemblies.

With regards to the right to assembly – the key actors acknowledge the responsibility involved and the importance of having free and peaceful assemblies. The police officers mentioned that proper trainings in the area of assembly management were conducted for them recently. They were also equipped appropriately, to be able to ensure public order in situations of conflict. As they mentioned, they have a risk analysis system that allows them establish along the way how much staff is required to maintain the public order. The parties that organize frequently assemblies have a well-thought-out mechanism to keep the public order among the participants in assemblies, as well as to cooperate with the police and the local public authorities.

A lot of assemblies took place during 2015-2017. Most of the assemblies were of electoral and political nature. It is particularly during this period that several elections were held in Moldova. Thus, the parliamentary election took place in 2014, local general elections – in 2015, with the presidential election being held in 2016.

The continuous electoral fight lead to exploiting to the utmost extent the right to assembly in order to put pressure on authorities, political parties, individuals, as well as on courts of law to adopt certain decisions. Strikes, marches and other mass assemblies became a common thing in the center of Chisinau Municipality. These assemblies divided the society and made the authorities to act in certain ways that brought to light issues and realities that stood out of sight for years.

The most relevant assemblies were the protests that burst out in the spring of 2015, the issue at stake being corruption and indignation at the theft of nearly one billion dollars out of Moldova's banking system.

Starting with 6 September 2015, the center of Chisinau, the capital city of Moldova, turned into an amphitheater where opinions and ideas regarding the political system and the issues

¹ To develop this analytical note, the representatives of all the governing and opposition parties that conducted assemblies during the last three years and civic groups that participated in the assemblies were met with and interviewed.

that affected the entire society were expressed. Since September 2015, protests have been taking place non-stop. There were even tents put up in front of the Presidential Office, the Parliament building and in front of the Government building too. The key objectives of the protesters were fighting against corruption, having the persons at fault for the banking system fraud dismissed and making sure Moldova keeps moving towards the EU. As their most important claims, the protesters demanded for the president to resign, for the Constitution to be amended so as to allow the people elect the president by direct voting and for having incorruptible persons in public dignity offices.

The non-stop protests ended in August 2016. A part of the protesters gave up on 1 August 2016, while the other part was forced to pull out of the place where the assembly used to be held as a decision prohibiting the assembly was issued in this regard. Mass protests continued to take place after the presidential election of 30 October 2016 too, their purpose being to change the electoral system. On the other hand, the loyal forces of the governing parties held demonstrations in support of changing the electoral system, while on the other hand – civil society organizations and opposition parties protested against it. Thus, the first half of 2017 was perturbed by politics-related events.

The concern that the limitation of the right to assembly would be unjustified, which was tolerated by the competent authorities and the members of the society, demands that the cases of abuse be investigated, holding to account those who are guilty of violating the right to assembly. Although 8 years have passed since the events of April 2009², the international bodies are still concerned of the fact that the allegations made were not investigated completely. The most recent example, in this regard, is the report of the UN Human Rights Committee on the final conclusions regarding assemblies, of 31 October 2016³.

Most of the protests that took place over the last 3 years (2015-2017) were peaceful. We think positively of the change in the way the police authorities work. In the recent years, with support from both the state budget and foreign donors, the police were trained in assembly management and were seriously endowed in terms of equipment and logistics.

Thus, in general terms, most of the mass assembly organizers thought positively of the behavioural change of the police as far as peaceful public assemblies are concerned. On the other hand, the opposition political parties believed police were biased and discriminative and that they were used as a tool to harass and put pressure on the opposition.

Very few cases when the police officers reacted disproportionately during some assemblies, using special means excessively. Some organizers of and participants in mass assemblies

² On 7 April 2009, mass protests broke out in the center of Chisinau after the voting results in the Moldovan Parliament were made public. The protests escalated into mass riots with the Parliament building and the Presidential Office being vandalized. In the aftermath, hundreds of persons were apprehended, some of whom reported that they were subjected to physical force and torture without any justification. At least one person died during the protests.

³ The Human Rights Committee, concluding observations on the 3rd periodic report of the Republic of Moldova (CCPR/C/MDA/3) at its 3309th and 3311th meetings (see CCPR/C/SR.3309 and 3311) held on 18 and 19 October 2016.

were apprehended, their cases still being looked into in courts. The way in which the trials of these persons are being handled has given rise to great concerns regarding the independence of justice.

At the same time, there are actions and inactions whereby the right to protest peacefully could be limited. These actions seem to be tolerated and sometimes even coordinated by police officers or other public authorities.

Persons dressed as civilians, who were actually officers of special forces, of security bodies as well as sportsmen in some sports clubs affiliated to certain political forces were spotted at the assemblies organized by opposition parties. According to the organizers, these persons made attempts to start quarrels with the people who participated in the assemblies, which added to the pressure that the organizers were under.

During assemblies at which the number of participants was small, there were almost as many police officers. At other assemblies, the police officers meant to separate simultaneous assemblies had guns on them, although the law provides that using a gun is prohibited unless the life of the police officer is at risk.

During 2016-2017, there were at least 3 cases when the police and the local public administration authorities violated people's right to assembly by limiting, without good reason, the movement by public transportation from district centers to Chisinau Municipality and by stopping even railway transport. The organizers of those assemblies reported that the number of participants decreased significantly because of those concerted actions.

It was particularly the opposition parties that reported that territorial party leaders were persecuted for having organized people to participate in the assemblies. They filed a number of complaints with the international structures, whereby they reported that the police used recordings from the previous protests in order to put pressure on the local leaders so as for them to no longer get involved in organizing other assemblies on behalf of the opposition parties.

Several organizers of mass assemblies reported that the law does not regulate simultaneous assemblies fairly. The 'first come, first served' principle provided for in the law seems to lead to situations where one abuses one's rights. Thus, according to the website where preliminary declarations to hold assemblies are registered – some organizers have booked places in the center of Chisinau for more than 3 years for certain public assemblies. It is worth-mentioning that, more often than not, these organizers did not hold any assemblies, but the fact that they registered them makes it impossible for other honest-minded organizers to assemble in the same place.

There were some assemblies that have caused concerns in 2017, for example:

The Protest of 20.07.2017

On 20 July 2017, the Parliament of Moldova was to pass in final reading the Draft Law on the Mixed-Member Electoral System. The party in power decided to set up a stage in front of the

Parliament building, to broadcast live the meeting of the Parliament and to thus call on its supporters to participate in an assembly in support of the said procedure⁴.

At the same time, the opposition political factions and some members of civil society organizations declared previously that they would hold a protest in front of the Parliament when the draft law changing the electoral system was to undergo the second reading.

Therefore, the Chisinau City Hall and the police should have convened about how the simultaneous assemblies were to take place. So, the assembly convened by the governing party was held right at the entry into the Parliament building where a stage and sound cabinets were set up, while the other same-time assembly was taking place just a few tens of meters away.

The assemblies did not pass without incidents. Thus, on 19 July, late in the evening, a few supporters of an opposition party decided to hold a spontaneous protest. For this purpose, they brought together a few persons in front of the Parliament, who were then joined by a few tens of other people. Before long, two participants who were more active were apprehended under the pretext that they had tents that they wanted to put up there in front of the Parliament. They were accused of not complying with the requirements of the police and of calling the police officers names. On 20 July 2017, Buiucani Court found them guilty of administrative offences and put them under a 10-day contravention arrest. Although a second appeal was filed against that decision, the Court of Appeal did not provide an answer with regards to it during the time that they spent in custody. It turned out that they had already served their punishment without the court responding to the second appeal.

The simultaneous assemblies of 20.07.2017 were peaceful, in general, without any major incidents. Still, the organizers of the protest against changing the electoral system reported that among the participants there were many instigators working, in fact, for secret services and some sport clubs. The police created a cordon to separate the two crowds. During the assembly, some leaders of the opposition broke through the police cordon and tried to get up on the stage where the main protest was taking place, but they were driven away forcibly by persons dressed up as civilians. Still, police officers used physical force on another party leader recording the entire incident, although his behavior did not require special measures to be taken. At present, his complaint is under examination.

⁴ <https://www.usnews.com/news/world/articles/2017-07-20/moldova-passes-divisive-election-law-amid-street-protests>

OVERVIEW OF THE RIGHT TO FREE ASSEMBLY IN 2016-2017



Legislation and implementation

Have there been any changes (or proposals for change) to the law relating to freedom of assembly in the timeframe covered by this report?

Have there been any positive / negative developments in relation to how the law is administered (including policing of assemblies)?

The Constitution of the Republic of Moldova provides that assemblies are free and may be organized and conducted only peacefully and without the use of any kind of weapon. According to the Law on Assemblies, the Parliament safeguards the right of any person to organize, conduct and participate in peaceful assemblies in public places outside buildings. The Law No 26 of 22.02.2008 on Assemblies regulates only the procedure of organizing and holding the assemblies held outside the buildings. It does not regulate religious assemblies, processions, demonstrations, sport competitions, cultural and artistic events, commemorative events, meetings on the occasion of official visits, trading activities, which should be regulated by a separate document. Nevertheless, until special regulatory acts are passed, such assemblies will take place in compliance with the Law No 26. As for the trading activities, the local public administration authorities can collect payments for providing the services required by the organizers.

To conduct an assembly, the organizer must inform the local public administration authority of the administrative territorial unit concerned about the assembly at least five days before it. Spontaneous assemblies and assemblies with a small number of participants (less than 50) are not subject to this rule. The fact that no notification was made with regards to an assembly cannot serve as a reason for prohibiting it from taking place, but it can lead to charges for contravention for the organizers.

The organizer is to provide in the preliminary declaration the name of the organizer, the contact data, the purpose of the assembly, the place, date and hour that the assembly is to be convened at, the routes (if any), how is the assembly going to be conducted, the approximate number of participants and the services requested from the local public administration authority. Thus, depending on what services are required, there can be other bodies or institutions involved. Usually the waste collection services, emergency health care services and the services of police authorities to keep public order (in case of rallies) are requested. The law provides that the local public authorities are to take the necessary measures to provide the services that the organizer requested. They are usually provided by the LPA or by the subordinate bodies. Fees can be charged only for the actions and services that are not provided by these institutions.

Chisinau City Hall (Chisinau being the capital city where most assemblies in number and the most numerous ones take place) has an on-line platform for years where records are kept of the registered assemblies. So, every assembly organizer can see whether a particular venue is pre-booked on a particular date. This platform allows for a more efficient systematization and planning of assemblies⁵.

According to the law, the organizer does not have the obligation to meet separately with the representatives of local public authorities or with the police before the assembly. He/she has the obligation to appoint an assembly coordinator. At the same time, the organizer can create his/her own public order team for as long as the assembly takes, the members of which would need to wear distinguishing insignia to be easily identifiable.

According to the good practices in place, more often than not, the police meets with the organizers, before the assemblies, to establish the exact route, planned actions, as well as the services that the police or other public services can provide.

The interviews with most of the leaders of political parties who conducted public assemblies during 2015-2017 revealed that only a few representatives of opposition parties were not called on by the police before the assemblies. The opposition parties reported that they were stalked around by the police and by secret services. No organizer mentioned having had discussions with the police after public assemblies.

As for simultaneous assemblies, the City Hall holds preliminary meetings, at which the representatives of all organizers who intend to convene an assembly at the same venue and at the same time are invited, and they try to establish how the assemblies will be conducted concomitantly. If, considering the venue and the number of participants expected, the persons at the meeting conclude that holding two simultaneous assemblies is possible, then they will give recommendations to the organizers regarding the distribution of space at the venue and to the police authorities regarding public order. If, however, they conclude that holding all simultaneous assemblies at the same venue and taking into account the number of expected participants is impossible, then the City Hall is to propose the organizers to change the time, venue or the format of their assemblies. This suggestion is made orally at the meeting for the organizers at it and then sent in writing, within 24 hours after the meeting, to those who did not participate in the meeting. If none of the organizers accepts to change the time, venue or format of the assembly, then priority is to be given to the organizer that pre-booked the venue first.

Formally, the organizers are under no obligation to contact with one another not even during the meeting with the police. Still, the organizers do have to comply with the requirements of the police, as well as to take away persons who commit contraventions during the assembly.

An assembly can only be prohibited if there is a court decision in this regard. The law provides that the court can be informed about prohibiting an assembly if it is known that the

⁵ <http://intruniri.chisinau.md/?tinfo=-180>.

purpose of the assembly is inciting people to aggression, national, racial, ethnic or religious hatred. Also, an assembly can be prohibited if it incites to discrimination or public violence, as well as if it undermines the national security or territorial integrity of the country, if crimes are committed or the public order and public morality are violated alongside the rights and freedoms of other persons or if people's lives and health are at stake.

The legal basis that law enforcement bodies follow during public assemblies consists of the Law No 320 of 27.12.2012 on the Activity and Status of Police Officers, the Law No 806 of 12.12.1991 on Carabineer Troops (internal troops) of the Ministry of Interior, the Law No 26 of 22.02.2008 on Assemblies, the Law No 218 of 19.10.2012 on the Use of Physical Force and Guns – legislative acts that provide for general powers and duties and for the categories of special measures that can be used.

Some attempts to amend the legal framework on assemblies were made first back in 2013, when the Ministry of Interior (Mol) submitted a Draft Law Amending the Law on Assemblies and a Draft Law on Ensuring and Restoring Public Order During Public Events, whereby certain barriers were to be introduced as far as public assemblies are concerned. It seems, however, that the Mol gave these two drafts up after the public debates during 2013-2014. At present, there are no public discussions regarding any drafts meant to bring changes to the legal framework on assemblies.

The use of physical force and special measures is strictly regulated in the special law on special measures and in the classification on physical force. According to the rules, those subject to this law shall use physical force, including special combat techniques, to defend themselves, to fend away attacks onto citizens, onto law enforcement bodies and other persons involved in ensuring public order and safety and in combating crimes, as well as to stop violations of the law, apprehend offenders, take down those who go against the legal requirements should the non-violent methods be helpful in fulfilling their obligations.

Physical force can be used in any situation where the law allows for special measures or guns to be used. Using physical force shall be avoided, as much as possible, against minors, if their age is obvious or known, against women, older persons and persons that show visible signs of disability. Physical force shall not be used against women that show visible signs of being pregnant, except for cases where they attack the subjects of the law or other persons, including a group of persons, fight back in a way that threatens the lives and safety of people and if such behavior cannot be stopped by non-violent measures.

According to the police representatives, they use the risk analysis method, which allows to increase, if required, the staff in charge of public order, as well as to determine what this staff is to be equipped with.

Should the law be seriously violated during what was supposed to be a peaceful assembly, the representative of the local public administration authority shall ask the organizer to stop the assembly immediately. Should the participants not abide by the repeated summons to leave the venue of the assembly, the police shall take all legal measures to force people to go

away when asked to do so by the representative of the local public administration authority. If the assembly is put an end to forcibly, the police shall develop a protocol indicating the reasons and grounds to stop the assembly.

The legislation provides for individual liability, but the organizers cannot be held liable for the inactions or the actions of other persons.

There were very few cases when the police officers took into custody the organizers of certain assemblies before the protests themselves even started. Usually, people are apprehended for not having complied with the requests of the police or for having insulted the police officers. No-one was apprehended, though, for not having observed the preliminary booking. A few persons who participated in mass assemblies were apprehended and taken into custody during the reference period. They were charged with mass rioting, but no final court decisions were issued.

In general, the trust in justice has decreased significantly of late. The way in which the administrative/criminal cases of persons taken into custody before or during assemblies are being tried has given rise to new protests in front of the courts of law. The number of assemblies held in front of courts of law increased lately to a significant extent.

Given that the assemblies were mostly peaceful and no special measures were used, emergency health care was needed only a very few times.

The organizers of or participants in assemblies have the right to challenge the action or inaction of authorities or representative of authorities, including of the police in disciplinary, criminal or administrative cases. Nevertheless, although several complaints were filled on matters of discipline, criminal and administrative behavior, none of them was settled in favor of the complainant.

Protesters and organizers of assemblies are protected also by the Criminal Code⁶ which incriminates the violation of the right to assembly by illegally preventing any type of assemblies and meetings.

⁶Article 184, Criminal Code. A violation of the right to freedom of assembly by illegally preventing meetings, demonstrations, manifestations, processions, or any other type of assembly as well as citizens' participation therein or by forcing citizens to participate in such assemblies: a) committed by an official; b) committed by two or more persons; c) involving violence not dangerous to life or health.



Policing of Assemblies

Do the police usually engage in forms of dialogue/communication with organisers before, or during an assembly?

Do the police generally facilitate and enable spontaneous / non-notified assemblies; simultaneous assemblies; counter protests; peaceful assemblies that block roads / traffic; sit-ins or occupations of buildings?

Do the police ever use force at assemblies? What is the range of weapons and the types of other equipment used? Is there generally medical assistance available to people who might need it?

Are undercover police ever used at assemblies?

What types of surveillance & imagery collection do the police use at assemblies? Do the police permit participants in assemblies to video / film / photograph police actions?

Generally, the police enforce the national law on assemblies. However, there were cases when police officers prevented the conduct of assemblies, applied physical force and special means disproportionately during the peaceful assemblies. According to the practices developed by the police and some mayor's offices, especially by Chisinau Mayor's Office, the police try to engage in a dialogue with the organizers of the assembly before and even during the assembly.

Most of the organizers/political parties mentioned that they engage in such discussions, while the opposition parties mentioned that often, pretending they want to discuss in advance how the assembly will be conducted, the police are trying in fact to collect information in order to prevent these assemblies. Hence, some of the organizers who do not trust the police and refuse to participate in such prior discussions.

Mayor's Office representative attends most of the assemblies and tries to facilitate them by coordinating with the organizers of the protest and the police. Taking into account that most of the assemblies take place in Chisinau municipality, an interview with Mayor's Office representative in charge of facilitating the assemblies was conducted. He noted that most of the times he does not encounter difficulties in discussing and coordinating with the organizers the way the assemblies will take place. He mentioned that he facilitated the conduct of assemblies by providing the facilities needed in this respect (connection to electricity, sanitation, emergency health care, etc.).

After the assemblies, the police do not organize debriefings with the organizers. However, in case of assemblies where conflicts took place, police officers try to express their views on the events through press releases or conferences.

Following the interviews with the organizers who conducted the highest number of assemblies during the last three years, we conclude that the police apply differential

treatment to the organizers of assemblies. The opposition parties, who tried to conduct spontaneous or simultaneous meetings, frequently reported the prevention of such meetings. In these cases, the organizers reported suspicious of being that they were followed around by the police and that their phone calls were intercepted. Some small-scale picket events were immediately stopped by police officers on the pretext that another assembly was due to take place, or that the actions of the organizers were mass disorders.

A particular challenge is the organizers' and protesters' liability. Thus, there is a trend to qualify the actions of the protesters conducting less peaceful assemblies as mass disorders according to Article 285 of the Criminal Code⁷, although there are less drastic incriminating legal provisions according to the Contravention Code. Hence, Article 67 of the Contravention Code states that persons can be held liable under the contravention law for: organizing an assembly without the preliminary statement being submitted by its organizer in the manner prescribed by law; failure of an assembly's organizer to fulfill the obligations provided for in the law; participation in assemblies of persons holding arms; hindering in any form access to buildings in the immediate proximity of the venue of the assembly.

There is a relevant example in this respect that arouse a lot of controversy both nationally and internationally, since the allegations of committing mass disorders were to be qualified as contravention. Thus, on 6 September 2015, when a opposition leader of 'Casa Noastra – Moldova' (G. Petrenco) party and given the pre-booking registered with Chisinau City Hall, led a number of participants in a protest march to the General Prosecutor's Office. They demanded for the Prosecutor General to resign. Mr Petrenco was outside the building, on the stairs, shouting slogans against the Prosecutor General. Special forces came at the site. Shortly after that, a special response squad showed up at the venue and formed a police chain stretching around the Prosecutor's Office, separating the protesters from it. A lot of people were at that time on the stairs of the Prosecutor's Office. Before long, when the protesters hailed the suggestion to put up tents, the special forces standing on the upper stairs at the entrance into the PO pushed the persons in front of them downwards, making thus the crowd jostle, which lead to clashes between protesters and police officers. This jostling served as grounds for the special forces to act against the protesters. As a result, eight persons were picked out of the crowd, among which Mr Petrenco. They were apprehended and escorted to the Riscani Police Inspectorate, then taken into custody and charged with mass rioting. All the members of the organizers' group were taken into custody, their arrest being extended often until January-February 2016, when they were released and put under judicial control. According to the last final decision of the court, the group was prohibited to participate in any public assemblies that could escalate into mass riots⁸. On 28 June 2017, the representatives of the group were found guilty of mass rioting and sentenced

⁷Article 285, Criminal Code. Mass disorders – organizing or leading mass disorders involving violence against persons, pogroms, arson, damage to goods, the use of firearms or other objects used as weapons, and violent or armed resistance to representatives of authorities.

⁸ <https://en.crimemoldova.com/news/politics/petrenco-case-the-leader-and-group-members-have-been-suspended/>, <http://humanrights-online.org/en/the-right-to-a-fair-trial-violated-in-the-case-of-petrenco-group/>, <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6037&lang=2&cat=3>.

to 4 years in prison with conditional suspension for the same period of time and were imposed a fine too. This decision was appealed.

The assembly from 19.07.2017 is another relevant case of stopping spontaneous assemblies on the pretext that another assembly was due to take place. Thus, on 19 July, late in the evening, a few supporters of an opposition party decided to hold a spontaneous protest. For this purpose, they brought together a few persons in front of the Parliament, who were then joined by a few tens of other people. Before long, two participants who were more active were apprehended under the pretext that they had tents that they wanted to put up there in front of the Parliament. They were accused of not complying with the requirements of the police and of calling the police officers names. On 20 July 2017, Buiucani Court found them guilty of administrative offences and put them under a 10-day contravention arrest. Although a second appeal was filed against that decision, the Court of Appeal did not provide an answer with regards to it during the time that they spent in custody. It turned out that they had already served their punishment without the court responding to the second appeal.

From another point of view, a large number of organizers said they had not encountered difficulties in conducting the assemblies, and the police had facilitated their conduct. No assemblies, such as blocking public roads or occupying buildings, took place during the last two years. Neither the police, nor the mayor's office have the right to change or modify assembly's itinerary, place and time, only the court of law having the power to do so.

During 2015-2016, non-stop assemblies were held in tents installed in the center of Chisinau. The police ensured the conduct of these assemblies without any restrictions.

A separate and controversial topic of discussion was the use of special means during large-scale assemblies. The most representative case is the protest from 27 August 2016, when a number of meetings and assemblies were held all across Moldova. Most of them were of entertaining and cultural nature, given that Moldova turned 25 years of independence. The Great National Assembly Square (the largest public space in the center of Chisinau Municipality) was to host several entertaining and cultural events. The most important assembly on the Great National Assembly Square was the one organized by the central public authorities. There was supposed to be a military parade at the event. The pompous events were organized amid protests against the fraudulent schemes played with the state budget, as huge amounts of money were spent for the parade. Because of this, a group of a few hundred persons organized a counter-protest chanting 'I am not afraid'. This group of people was kept away from the pompous assembly by a mesh fence supported by a police cordon. The many video recordings of the event showed that at a certain moment in time, a few protesters started to push against the police cordon. Later, without any warning whatsoever, the police officers started to scatter the crowd using teargas. The breaking up of the crowd with teargas caused panic. Some protesters, who looked peaceful, were affected by the teargas.

Having analyzed more thoroughly the video recordings, it was noticed that there were 5 persons among the participants in the counter-protest who started to shout offensive words at the police officers. Moreover, they pushed against the mesh fence that was put there to

separate the two groups of protesters. We can notice that not the organizers of the assembly, nor the representatives of the City Hall urged the protesters not to be aggressive, unlike what is provided in Articles 21 and 22 of the Law on Assembly. What is more, the police did not try to take the aggressive persons away from among the peaceful protesters either. They just scattered the crowd using teargas. In the end, many persons sustained injuries, including peaceful protesters, and needed health care services.

Some of the peaceful protesters filed complaints with the Prosecutor's Office, which refused to investigate the case upholding that the police acted lawfully and rightfully. This refusal was taken to courts, which have not issued any decision on the matter yet.

Another great protest which raises the question about the need to apply physical force took place on 20 January 2016. This protest broke out while another protest – a non-stop one – was already taking place in front of the Parliament of the RM since September 2015 and lasted until August 2016. The purpose of the assembly was to voice disagreement with the appointment of the Prime Minister and with the way in which he was appointed. Although many police officers were present on site, they were not able to hold the lines. Before long, a group of protesters broke through them and entered into the Parliament building, where they destroyed some items they found in the hall⁹. The clashes resulted in many victims, who needed doctors to help them. On 20.01.2016, in the evening, 15 persons – 9 police officers and 6 civilians – were taken to the Emergency Care Hospital with traumas they got at the protest in front of the Parliament. Two party leaders were among the injured¹⁰.

A criminal case was opened following the protest. The case is still being tried at present. It raises questions over the inaction of police who did not stop the aggression because of which the line of police was broken through and the hall of the Parliament building was deteriorated. The police did not use any special measures during this protest, nor did they apprehend anyone, as it happened in the Petrenco case described above. Criminal proceedings were initiated only after the protest.



Media and Assemblies

Is the mass media able to report freely at assemblies?

Are citizen journalists or non-accredited journalists able to report freely at assemblies?

Are human rights defenders and or monitors able to observe freely at assemblies?

⁹ Interview regarding the appointment and election of Pavel Filip as Prime Minister <http://www.europalibera.org/a/27499947.html>, viewed on 2.12.2016.

¹⁰ Interview with the Minister of Interior <http://www.europalibera.org/a/27499939.html>, viewed on 2.12.2016.

The current legal framework provides for safeguards for journalists in conducting their work. The Criminal Code incriminates the impediment of journalists' work¹¹, criminal prosecution bodies initiated several criminal cases as a result of altercations between journalists and organizers of assemblies. However, there were very few such cases. In general, the participation of journalists in public assemblies and the shooting of assemblies is not a special challenge. There were very few cases when some television crews were not allowed to shoot the protests or they were even assaulted (Publika TV)¹². However, due to the fact that the televisions are affiliated to the ruling party, and the organizers represent the opposition parties, the incidents occurred between the same televisions and organizers of the assemblies¹³. Another damaging trend was the use of the mass media to discredit certain political leaders and/or organizers of ample assemblies. A case that happened recently proved that the police did not respond promptly and appropriately to stop the dissemination of flyers denigrating the organizer of the assembly, and neither did they take any measure afterwards to find and punish those who did it. Thus, just when these ample assemblies were about to begin, a great number of flyers containing slanderous information about the party leader were disseminated at the venue. The TV channels subordinated to the ruling party started a large campaign discrediting the organizer of the protest.

The organizers have both the legal and practical possibility to inform the public about the assembly they intend to conduct. Facebook, Twitter and other social networks are the most common ways to do so. On the eve of planned large-scale assemblies, the organizers hold press conferences urging the public to attend the assembly. The police or government agencies did not impede informing the public about the protests that are to be conducted.

All protests can be viewed on-line, broadcast on the social networks of the organizers or specialized channels broadcasting on-line events, such as www.privesc.eu; www.realitateam.md; www.unimedia.md as well as other channels. No cases have been reported of blocking these information channels in the recent years¹⁴. At the same time, there were no cases when journalists were held accountable for reflecting the protests.

During all protests police use surveillance and imagery collection, but data protection legislation doesn't regulate how long the police can retain such imagery and what it can be used for. During the interviews with some political leaders who organized protests during 2015–2017, they told that some participants invoked that they were intimidated by tax and government agencies as a repercussion for attending the assemblies.

¹¹ Article 180¹. Deliberate obstruction of media activities or intimidation for criticism. Deliberate obstruction of activities of a media outlet or journalist, as well as intimidation of a media outlet or journalist for criticism.

¹² See the video during protest at https://www.publika.md/echipa-publika-tv-agresata-la-mitingul-partidelor-de-opozitie-de-la-parlament-video-necenzurat_2971364.html

¹³ The Chairperson of the Democratic Party, a ruling party, has control over the General Trust Media Group, which owns Publika TV;

¹⁴ During the protests from 7 April 2009, there were cases when some social networks were blocked for certain periods of time, or even when the Internet was stopped.



Responsibility of Organisers

Are the organisers of an assembly held liable for behaviour of others?

If there is no identifiable organiser, how do the police respond?

The law stipulates several obligations for the assembly organisers such as: to hold an assembly in a form, at a place and in terms stated in the preliminary declaration and not to admit significant deviations from these. Assembly organisers also have the right to appoint an assembly coordinator whom they have to present to the authorities. Whereas the organiser may create his or her own team to maintain order during the assembly. It is worth noting that the legislation guarantees for the organiser's authority by vesting him or her with the right to adjourn the assembly and ask the participants to leave the venue. This right correlates with the participants' obligation to leave the venue.

The law expressly stipulates that the organisers may be held liable only for their own actions, except for the cases when they trigger participants' behaviour. Furthermore, according to Article 23 of Law on Assemblies, the burden of proof is imposed on the prosecutor, who would have to prove that the organiser called and instigated the participants to perform certain illegal actions during the assembly.

The same Article stipulates that an assembly organiser could be held liable for holding an assembly without submitting a preliminary declaration as prescribed by the law or for holding an assembly contrary to the declaration provisions. Thus, the assembly organisers can be subject to contravention liability for not submitting a preliminary declaration under the terms and conditions stipulated by the law. The prescribed sanction is the fine of up to MDL 1,200 (equivalent to about EUR 55), which is about 50% of the minimum salary per economy.

A less exact norm can be found in Article 67(3) of the Contravention Code, and namely: if the assembly organiser fails to fulfill the obligations under the law, he or she shall be subject to a fine of up to MDL 900 (equivalent to EUR 45). Since the organiser must hold the assembly at a place and in terms stipulated in the preliminary declaration, then the sanction can be imposed namely for the failure to comply with the conditions provided for in the preliminary declaration.

The participants are obliged to ensure the peaceful nature of the assembly and must not hinder the access into the building in any form. Otherwise, they will be punished under the Contravention Code as well.

No cases of liability for certain acts of assembly participants' misconduct laid on the organisers of such assemblies were made public during 2015–2017.

It is important to underline that in cases of spontaneous assemblies the assembly organiser is often missing, since the assembly takes place on a competitive basis among several persons

who in most cases do not have a clear plan. In such situation, the responsibility could be assumed only in case of certain contravention acts committed by the participants.



Detention and Prosecution

Are people ever arrested or detained in advance of an assembly? If so, are they given easy access to legal advice or medical assistance?

Has there been an increase in the scale of punishments imposed on people arrested at assemblies in recent years?

Are the courts generally seen as neutral and impartial?

Studies and reports of several specialized organizations proved that in the Republic of Moldova the most frequently used preventive measures is still the pretrial detention, and the use of the pretrial detention is practically systematic¹⁵. According to statistics systematized by Ministry of Justice for the 12 months of 2016, the rate of admission of prosecutors' motions is quite high. Thus, according to statistics, confirmed by the MoJ representative, the situation is as follows: • 3,329 (84%) of 3,954 motions to issue an arrest warrant were admitted by the court • 3,754 (86%) of 4,326 motions to extend the detention period were admitted by the court.

One of the most concerning case is the case of Alexei Alexeev, who was arrested after the September 17 protest mounted by the Great National Assembly Council¹⁶. He is minivan driver who transported the audio-system for amplifying sound at the protest in front of Moldovan Public Television on 17 September 2017. Alexei Alexeev was accused of entering the police cordon with a minibus and of hurting police officers, even though he moved very slow and was directed by a police officer. By the decision from 20.09.2017 he was arrested and placed in Penitentiary nr. 13, in inhuman and degrading condition. After a massive protest from civil society this decision was changed to house arrest on 26.09.2017, yet it does not diminish the injustice made to this person by the authorities, which apply brutal antidemocratic abuse¹⁷. The case is still pending before the court.

As for the apprehensions of persons who participated in mass assemblies, the issues of their medical insurance or impossibility to be assisted by chosen lawyers were not made public. The urgent issue here, however, is the one of the quality of justice act and trust in judicial authorities, which is rather critical.

¹⁵ See the report The right to freedom and security of the person in the Republic of Moldova, february 2017, <https://promolex.md/wp-content/uploads/2017/04/Raport-LIBERATE-si-SIGURANTA-engleza-WEB.pdf>

¹⁶ <http://www.ipn.md/en/societate/86504>

¹⁷ <http://freedom.md/eng/index.php?do=cat&category=declarations>

The results of Freedom House Report regarding the Republic of Moldova for 2015, 2016 and 2017 show worrying data on the democracy score and the judicial system. This Report showed that the democracy score is low. The issues from the judicial and corruption system were among the causes that led to the worsening of the situation in this area. The independence of judicial power declined from a rating of 4.75 (2015-2016) to 5.00 (first part of 2017). Negative coefficients in justice were due to intimidation of judges, lack of reforms to ensure integrity in the appointment of judges¹⁸.



Accountability

Is it possible to hold any state authorities (ministry, municipality) or the police to account for their behaviour and actions relating to assemblies?

According to Article 20 of the Law on Assembly, the local public authority shall provide all the conditions for the conduct of peaceful assemblies. Acknowledging the importance of these freedoms, the Legislator made it compulsory for the Mayor's Office to appoint a person responsible for the legal conduct of assemblies and to tell the organizers and the police what is the name of this person. Nevertheless, Chapter V of the Law No 26 on Assembly, entitled 'Liability for Violating This Law', does not provide for the liability of the public authority, but only for that of the organizers and participants in public assemblies.

In these conditions, the public authority may only be held accountable via the mechanisms of appeal against its actions or inactions, the appeals being filed with the court by persons whose rights were violated. Considering that breaking the right to assembly is often regarded as an offence, the organisers file complaints with the prosecution bodies most of the times. Still, the committed deviations entail, most frequently, minor consequences that cannot be qualified as offences, such as not making available all the facilities for conducting an assembly or not cooperating for the conduct of assemblies.

There are no specialised public or independent institutions in Moldova meant to monitor assemblies and to get involved in the settlement of any dispute regarding this freedom. There are also no civic associations focusing on this issue. CReDO used to be the key organisation monitoring the assemblies until the end of 2014¹⁹. Some indicators are monitored internally by police bodies and by the local public authorities in rather general terms. They make the statistics available once a year.

¹⁸ See ibidem Promo LEX report;

¹⁹ <http://credo.md/pageview?id=292?&lang=en>

As regards the institution of the Ombudsperson, its prerogatives are very broad. The Ombudsperson has the duties to: a) accept delivery of and examine the petitions alleging the violation of human rights and freedoms and send, by the set deadlines, answers to the petitions, in writing; b) submit to the authorities and/or responsible persons proposals and recommendations regarding the re-establishment of the rights of the persons whose human rights and freedoms were violated; c) contribute to settling out of court the conflicts between public authorities and individuals; d) contribute to improving the legislation in the area of human rights and freedoms.

Still, the Ombudsperson did not develop yet any thematic report regarding the freedom of assembly. This issue was analysed only in general terms²⁰. Also, no press releases were published with regards to the cases where the right to assembly was violated, as it happened. Obviously, there are no mechanisms to monitor independently how assemblies are conducted and to assess whether the right to assembly was violated or not.



Overall Assessment

Is the right broadly respected, facilitated and protected by the state?

Based on the aforesaid, the right to free assembly is more respected by the authorities. The first reason is the high-quality legal framework that ensures the guarantee of the right to assembly. The provisions of the law on assembly comply with the majority of relevant standards in this field. Moreover, the vast jurisprudence of the European Court of Human Rights in violation of the right to assembly by the Republic of Moldova allows larger accountability.

The authorities mainly implement the best standards in assemblies' management. In some cases, however, certain organisers were limited in organising assemblies under preliminary declarations. It is worth mentioning that these situations occurred in relation to certain opposition political formations.

The procedure of investigating the allegations of unjustified use of physical force and hindering the organisation of compromised assemblies is another issue. Despite the small number of such assemblies, the final solution regarding the claims submitted by assembly organisers or participants is unclear.

²⁰ See page 39 of the Study – Perception of Human Rights in Republic of Moldova, [http://ombudsman.md/sites/default/files/document/attachments/eng-raport do final pentru tipar.pdf](http://ombudsman.md/sites/default/files/document/attachments/eng-raport%20do%20final%20pentru%20tipar.pdf)

RECOMMENDATIONS

In terms of recommendations, some of them might have been made before, but they are still reasonable at present.

The **Police** Administration:

- Police authorities should put in place well-thought-out practices on their interaction with assembly organizers so as to ensure a cohesion during public events.
- The police shall improve their training and abilities to avoid excessive police intervention and passive observation of abuses committed by rally participants;
- A comprehensive regulatory framework for retaining and using the video and photo images collected by the police during protests is to be developed;
- The use of special means by the police is an extreme action and can only be used if other peaceful actions did not work;
- The participation of police officers, as civilians infiltrated into the protesters, should be excluded or coordinated with the organizers of the assembly in order to exclude speculation about disorders caused by police officers;

The **Public Administration**

- Municipalities shall develop their own monitoring systems and fully engage in consultations with rally organizers on peaceful ways of holding meetings;
- The local public administration should have sufficient and prepared staff to monitor the assemblies;

The **General Prosecutor Office** and **Courts**

- The General Prosecutor's Office should examine thoroughly the situations where physical force and special measures were used and disclose the results of the investigations and call the persons at fault – if any – to account.
- The judicial practice is to be unified with regard to the contraventions and offenses allegedly committed during the assemblies, so as to exclude the differential enforcement of the legal norms to different persons;

The **participants** and **organizers**

- Before assemblies, the organizers should inform, in advance, the potential participants in the assembly about the purpose, objectives and reasons of the assembly.

- For large assemblies or those that a great number of participants is expected to come to, the organizers should have enough people with the help of whom they would manage the assembly and keep public order.
- The coverage of assemblies by all media institutions should take place in a fair manner and without violating the Journalists' Code of Ethics;

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