

CHALLENGES & RECOMMENDATION

# CROATIA

on Freedom of Assembly

## LEGAL TERMINOLOGY



Ambiguity of legal terminology that can be interpreted differently.

Issues regarding assembly limitations are not clearly defined and leave space for interpretation, such as “vicinity”, “seriously disturb”, “larger number of citizens” and their “movement and work”.

*Issue*



*International standard*

All laws should be drafted unambiguously, and should incorporate legality, necessity and proportionality tests.<sup>1</sup>



*How it should be implemented?*

The law should include clear principles of legality, proportionality and necessity, and explicitly state that any possible inconsistencies between laws or ambiguous provisions shall be interpreted in favor of the right to exercise freedom of assembly.



# LIABILITY OF THE ORGANIZER OF THE ASSEMBLY



**Liability to secure public order** and peace at the assembly and to ensure enough security stewards.

Provisions that authorize stewards for such a high level of responsibility open a space for different and arbitrary interpretations, which could be used to place additional burden on the organizers of an assembly, limiting the freedom of assembly.



Obligations on the organizers to protect the citizens' rights and public order do not correspond with international standards.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association states: *"Assembly organizers and participants should not be considered responsible (or held liable) for the unlawful conduct of others... [and, together with] assembly stewards, should not be made responsible for the maintenance of public order".*<sup>2</sup>



The liability of the organizers and participants should be reassessed and revised in the law, in accordance with the international standards.



# SPONTANEOUS ASSEMBLIES



**Spontaneous** assemblies are not recognized or regulated by law.



International documents recognise spontaneous assemblies, and the Venice Commission states: *"Indeed, in an open society, many types of assembly do not warrant any form of official regulation."*<sup>3</sup>

The notification (not a request) is only necessary for safety and security measures to enable facilitation of the right to peaceful assembly. When notification is needed, the Venice Commission recommends that scope for exceptions should be stated in the law.<sup>4</sup> In this sense, the assembly should not be stopped or prohibited under the explanation that the request was not submitted or approved.



Spontaneous assemblies should be recognized and allowed in all applicable laws and facilitated in practice by the relevant authorities.



# POLITICAL INFLUENCE



Political influence over institutional framework.

Institutions dealing with freedom of assembly require further development of their capacities for prompt and effective reaction. State has positive obligation to facilitate the right to peaceful assembly.

When the state is adopting decisions limiting freedom of assemblies it should be done to pursue legitimate aims. Institutions should have the capacity to implement the legality, proportionality and necessity test in a well-reasoned and transparent manner as the international standards provide that *“transparent decision-making is central to the process of planning and facilitating assemblies and in ensuring that any action taken by law enforcement is proportionate and necessary.”*<sup>5</sup>

States should further develop institutional capacities in order to restrict political influence and *“grant a broad mandate to an independent oversight body that possesses all competence and powers for effective protection of rights in the context of assemblies.”*<sup>6</sup>



<sup>1</sup> United Nations (2016). *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*. Available at

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/018/13/PDF/G1601813.pdf?OpenElement>

<sup>2</sup> United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. (2012). *Best practices related to the rights to freedom of peaceful assembly and of association*, para. 31. A/HRC/20/27.

See more in the OSCE/ODHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly Second Edition 2010*; recommendation 5.7

<sup>3</sup> OSCE/OIDHR Venice Commission Recommendations 2010, recommendation 4.1, pg 17/18

<sup>4</sup> Ibid. 4.2, page 18

<sup>5</sup> United Nations (2016). *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*.

<sup>6</sup> Ibid.

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