



# MONITORING THE RIGHT TO FREE ASSEMBLY

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2017  
2018 BULGARIA

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# A TIME TO PROTEST: THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN BULGARIA

Research report on citizens' right to  
freedom of peaceful assembly

Bulgarian Center for Not-for-Profit Law,  
2017 - 2018

*"... a group of shrill women who wanted to capitalize on  
their children, manipulating society, bringing these – presumably  
sick – children out in the scorching sun and in the rain, without a  
hint of a motherly feeling of care for them...",  
spoken by Valeri Simeonov, Deputy Prime Minister for Economic  
and Demographic Policy in the Third Government of Boyko  
Borissov, on occasion of the protest of mothers of children with  
disabilities in 2018.*

The Bulgarian Center for Not-for-Profit Law (BCNL) is a foundation registered under the Bulgarian law in 2001 as a non-profit public-benefit legal entity. BCNL's mission is to provide support in the drafting and implementation of legislation and policies with the aim to advance the civil society, civil participation and good governance in Bulgaria. BCNL's main activity is focused at developing laws and state strategies directly related to the operation of civil organizations.

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# I. EXECUTIVE SUMMARY



The right to freedom of peaceful assembly in Bulgaria is regulated at a constitutional and legislative level in the Bulgarian legal framework – in the **Constitution of the Republic of Bulgaria** and in the **Assemblies, Rallies and Marches Act (ARMA)**. Most Bulgarian municipalities have further developed secondary legislation, most often in the form of **municipal public order ordinances**.

In view of the legislative norms and implementation practices, the right to freedom of peaceful assembly in Bulgaria has been regulated in accordance with the international standards set out in numerous international documents. If there have been any “deviations”, the reasons are due mostly to the different practices of implementation of the procedure at the local level, where there are no express regulations, and in most cases through administrative duties and the imposition of penalties for non-compliance with them we can observe a transition from a “notification” to an “authorization-based” regime for organizing the event. This shortcoming allows the introduction of subjective and discretionary practices in the provision of the necessary assistance by the legally obligated state authorities (the local

authority and the police).

As at the autumn of 2018<sup>1</sup> we can say that protests in Bulgaria have become commonplace. At least one protest is covered on a daily basis in news reports – with demands for better social policy, the resignation of a minister, rehabilitation of the urban environment, mountain protection, stopping the construction of specific buildings, etc. Counter-protests are also a concomitant event, which is practically even naturally expected.

Despite the lack of official statistics, we can say that in Bulgaria, it is evident in recent years that “protesting” is a common way of expressing a civil position. Administrative obstacles are relatively few and fragmented in practice, so we cannot conclude that this right is not exercised freely and democratically. Although, not all municipal public order ordinances provide a clear and specific algorithm of all the necessary actions that the citizens should take to organize a meeting, rally or march, municipal administrative staff and police provide the necessary assistance to citizens to exercise their right to right to freedom of peaceful assembly. At present, objective and concrete threats to the exercise of the right to

<sup>1</sup> The analysis of the legal framework is as at 2018.





peaceful assembly cannot be identified.

The present report reviews the legal, political and social environment in which the right to freedom of peaceful assembly in Bulgaria was exercised between 2017 and 2018. Our observations and findings from this period lead to the conclusion that in Bulgaria there are no serious threats, restrictions, neither obstacles to the exercise of this right by the Bulgarian citizens.

The content of this study includes:

1. **Political and social context** of the exercise of citizens' right to freedom of peaceful assembly;
2. **Legal framework** – the primary legislation and secondary legislation at the local level (municipal ordinances). The "prism", through which the legal framework is studied, raises issues about the extent to which the Bulgarian legal norms provide guarantees in accordance with the international standards; whether the ordinances at the local level "further develop" the legislative framework lawfully or not; to what extent the specific instruments for exercising the right correspond to the objectives of the legislation. The case law illustrating the standards of law with regard to law enforcement and the passing of a fair judgment in case of a dispute has also been commented upon separately;
3. **Procedure for holding peaceful assembly in Bulgaria** – law and regulation enforcement practice at the local level;
4. **Police control of peaceful assembly;**
5. **Sanctions related to the exercising of the right to freedom of peaceful assembly;**

6. **Case studies** – interesting and emblematic examples of protests, which have taken place over the past few years, with important highlights drawn from them, feedback from stakeholders and their reflections on all issues related to the exercising of the right to freedom of peaceful assembly, have been the leading instrument of the study;

7. **Comments, conclusions and recommendations** – each section includes comments, conclusions and recommendations on the legislative framework, its enforcement by the institutions and the effect on the people exercising the right to peaceful assembly.

Regarding the methodology, several research methods have been used in the course of the study:

- **Materials research** – studying legal acts, templates, procedures, sample forms, information pages and official websites;
- **Collection of key examples of peaceful assembly**, held over the last 2 years (2017 and 2018) and their presentation as emblematic cases;
- **Conducting interviews** – 20 interviews held with different stakeholder groups: Protest organizers, participants in protests, representatives of the law enforcement authorities, representatives of the municipal administration and citizens;
- **Collection of data from requests for access to information** under the Access to Public Information Act: 10 answers collected<sup>2</sup> from Bulgarian municipal

<sup>2</sup> The information with statistic data was provided by 10 Bulgarian municipalities under the Access to Public information Act (APIA) for the calendar year 2017.

administrations<sup>3</sup>.

- **Direct observations** – attending and taking part in 12 peaceful assemblies, held during the research period and presented as emblematic cases in the present report.
- **Conducting validation meetings** – after the all 12 peaceful assemblies attended we were conducting validation meetings with monitors and research team to present the cases, discuss reflected observations and to reconcile the accumulated impressions.

For the purpose of this report, the authors of the study have used different synonyms to present the main subject of the study – "protest", "public assembly", "rallies", "assembly", "march" – but all of them express and derive from the **right to freedom of peaceful assembly**, namely – a temporary assembly of a group of persons in a public place in order to express a common position.

We would like to underline that freedom of peaceful assembly is a **right**, in order to avoid a divergence in the starting position of analysis of the right to freedom of peaceful assembly. It is an individual human right, guaranteed in the Bulgarian Constitution, in a number of international acts affecting human rights and in the Bulgarian Assemblies, Rallies and Marches Act. As evident from the report itself, proclaiming the right is the first most important and necessary step to build its construct. The next, no less important, element is how

<sup>3</sup> A total of 10 responses have been received out of 12 requests for access to public information sent to municipalities in the country. The municipalities, which have responded to the requests under the APIA, are: Blagoevgrad, Sofia Municipality, Plovdiv, Varna, Vidin, Stara Zagora, Kavarna, Yambol, Montana, Rousse. The municipalities, which did not respond to the requests submitted under the APIA, are: General Toshevo and Bansko.

*protection* is ensured – the guarantee that if there is a deviation in the interpretation of its content, a sufficient number of instruments are provided to restore the situation that the legal norm has intended. Last but not least is the public acceptance and the critical view of this right – where should the delineation line be and how are the people exercising it perceived as a whole?





## II. BACKGROUND AND CONTEXT

The study in this report builds entirely on the contemporary understanding of the sense and meaning of the right to freedom of peaceful assembly in democratic Bulgaria and its legal regulation in the current legal and regulatory framework:

- The right to freedom of peaceful assembly has been regulated in Bulgaria at the legislative level as a basic constitutional right. The right to freedom of peaceful assembly is a complex right and includes various opportunities for public action. It is a vital and indispensable element of the existence of any democratic society.
- The abovementioned characteristics place the right to freedom of peaceful assembly among the so-called first-generation human rights, which are of utmost importance for the democratic governance of the country and have an empowering effect on society – by exercising it, citizens place important political demands (for a change in certain policies) on the agenda, and due to its nature, there is broad media coverage of and a sharp focus on significant public affairs:

*"Protests are currently the only way people recognize for civilian*

*pressure," representative of a state institution.*

- The complexity of the right to freedom of peaceful assembly presupposes the exercising of other civil rights too, through which messages and positions are expressed – for example, the right to freedom of association, the right to freedom of speech, etc.
- Anti-political attitudes often reinforce the intention of expressing one position alongside others *on the street*; exercising their right to freedom of peaceful assembly, people realize their last opportunity to *participate* in the public debate, whether they *participate* in political parties or not; however, they are often "involved" in purely political struggles, which they eventually find disappointing with the long-term outcome.

*"... so many years spent on the same square make you ask yourself the question: 'Why?'" a protest participant.*

- Despite the numerous protests in Bulgaria, some specificities of modernity should also be taken into account – it is easier to gather thousands of people online



while offline activity has been dropping manifold.

*“... you waste energy in social networks, but not on the street where you should. People post a Facebook video and expect a reaction, but do not file a report offline – following the institutional procedure for that – with the competent authorities,” a protest organizer*

An important element in the realization of the right to freedom of peaceful assembly in Bulgaria are the specific mechanisms used for applying the rules, the attitudes towards them and the feedback shared by the different stakeholders with regard to and during the events under the Bulgarian Assemblies, Rallies and Marches Act<sup>4</sup> (ARMA) and in the long run – the effect they have achieved. The points of view of four main groups are significant for the realisation of the right to peaceful assembly and its “success”: **1) organizers; 2) participants; 3) institutions; and 4) non-participating citizens.** The feedback from these stakeholders creates a sense of satisfaction in the exercise of this right (from the view point of organizers), adoption of the role and tasks of guaranteeing the exercise (the institutions and bodies which have been entrusted with such powers), and, why not, those who are not directly involved, but are observers (the other citizens and the public).

The major challenges organizers of events under the ARMA are facing are to manage to assemble and motivate people to participate.

<sup>4</sup> Bulgarian Assemblies, Rallies and Marches Act (ARMA) was promulgated in February, 1990. The text is available online in Bulgarian version here - [www.lex.bg/laws/ldoc/2132284419](http://www.lex.bg/laws/ldoc/2132284419)

According to the organizers of the protests considered in this report, the most difficult thing is to stimulate the ordinary citizen to declare his or her position as a member of society by taking part in the protest.

Regarding the culture of protest, the organizers of and participants at events under the ARMA consider that such has only recently started being built in Bulgaria. Some of the organizers (mainly nature preservation organizations) even strive to foster this culture by holding an information campaign (mainly on Facebook) prior to each and every protest to raise public awareness about how a protest takes place, what is acceptable and what is unacceptable behavior on the part of the participants, how to behave in case of aggressive behavior by the police. Of course, there have been cases of mass participation of citizens in protest actions: about 10,000 citizens have, according to information provided by environmental organizations, joined the protest wave for protection of the Pirin Nature Park and against the construction of a new gondola lift on its territory<sup>5</sup>, a number which is even higher than that of the citizens who took part in the mass protests from the end of 2012 and in 2013. Only a small number of people however participate in them, according to protest organizers in Bulgaria. *“With time and after reading texts in sociology and statistics, you learn that if you want to enter the evening news you have to organize the protest after business hours, between 18:30 and 19:30, for no more than an hour or two, because people would start dispersing, and on certain days,”* the organizers shared with us. They see as problematic not only the lack of time for citizens to protest, but

<sup>5</sup> See Case III.

also the fact that ordinary citizens are wasting too much energy *“defending causes”* on the Internet, due to which *“not much energy is left for the street”*.

The **stakeholder institutions** interviewed, to whom protesters’ requests have been directed, said that they thought the responsible authorities were in fact influenced by the protests, because most of the processes happened under pressure from citizens, but this lead to untimely and poorly implemented reforms. They argue that when the administration acts under pressure and stress and when demands are made, without a well-structured bilateral dialogue in place between the parties with calmly discussed proposals for alternative actions, there is no way to arrive at the adoption of strategically thought-out and workable solutions with long-term effect but only at temporary piecemeal solutions to problems and unsustainable results. In this sense, the feeling of the interviewed institutions is that the very culture of protest in our country is underdeveloped due to which the protests that are being staged do not achieve their desired impact, as they individually impose a momentary pressure on the administration and cannot lead to the adoption of a sustainable strategic policy and long-term problem solving.

The pages of the report which follow examine in greater detail the role of the staff in municipal administrations when protest notifications are made, their possibility to join protests and the cases in which they may refuse organizers the holding of the events for which they have submitted a notification.

As for the **citizens** who have not participated in the recent protests in Bulgaria, the interviews

show that the mature adults consider the protest as a field for expression of the citizens’ rights of the young. A great part of the elder non-participating citizens are engaged in helping their relatives and not an insignificant number of them are forced to continue working (despite having reached pensionable age), resulting in a lack of time and resources for elder citizens to take part in the events under the ARMA subject to this report. The non-participation of younger citizens in protests is mostly grounded in the belief that they are an ineffective means of achieving change – mainly because of the split in our society, the lack of personal ownership of the cause and the routine that the protest turns into (*“those in power become resistant to your protest”*). And there is another category of people who have been active participants in protests in the past but are currently not involved at this time, mostly because of the built up disappointment, disillusionment and lack of real results, on the one hand because the competent authorities do not provide effective solutions, and on the other hand, because the protesters themselves put pressure, only state their demands and do not accept dialogue (according to most interviewees).

The data collected from ten Bulgarian municipalities<sup>6</sup> under the Access to Public Information Act regarding the assemblies, rallies and marches held on the territory of the respective municipality for the calendar 2017 show the following:

- The total number of **notifications** for the holding of assemblies, rallies and marches

<sup>6</sup> The municipalities, which have responded to the requests under the APIA during the calendar 2017, are: Blagoevgrad, Sofia Municipality, Plovdiv, Varna, Vidin, Stara Zagora, Kavarna, Yambol, Montana, Rousse.

during the calendar year 2017 submitted to 10 municipalities has been 716;

- There has been **only 1 refusal** to hold an event under the ARMA out of a total of 716 notifications submitted;
- **The main topics** of the assemblies, rallies and marches held have been **very diverse** – dominated by ecological and environmental themes, socio-economic issues, political in nature, related to commemorations and celebrations;
- **There is no official information** on the number of events held under the ARMA where violence has taken place and the authorities have resorted to **police intervention**. The only information available is that the presence of Interior Ministry employees has been ensured for all events. This is due to the fact that the competent police authorities do not keep statistics on the number of cases in which the police officers have taken a stand during assemblies, rallies and marches.



### III. LEGAL FRAMEWORK

In the Republic of Bulgaria the right to freedom of peaceful assembly is regulated at a constitutional and legislative level in the legal framework – in the Constitution of the Republic of Bulgaria, promulgated in July, 1991, and in the Assemblies, Rallies and Marches Act (ARMA) promulgated in February, 1990, and the Acts for its amendments from January, 1998, and March, 2010. Most of the municipalities have further developed secondary legislation in the form of municipal public order ordinances.

#### NATIONAL LEGISLATION

The right to freedom of peaceful assembly is one of the fundamental political rights guaranteed at the constitutional level, as proclaimed in Article 43 of the Constitution of the Republic of Bulgaria.

*Art. 43. (1) Citizens have the right to assemble peacefully and without weapons at rallies and marches.*

*(2) The procedure for organizing and holding assemblies and marches shall be determined by law.*

*(3) Indoor meetings shall not require authorization.*

There is no legal definition in the constitutional text, as well as in the laws in force in Bulgaria, of what specifically the right to freedom of peaceful assembly includes – the content of the right is derived from the disposition of the legal norm itself. The secondary legislation (municipal ordinances) use the term *“public event”*. For example, in the Supplementary Provisions of Municipal Ordinance No. 1 on Ensuring Public Order, Protection of the Environment and the Property on the Territory of the Municipality of Kavarna the term **“public event”** has been defined as *“an activity organized and conducted by state or municipal authorities, legal entities and natural persons at places accessible to an unlimited number of persons”*.

As regards the terms *“assemblies”*, *“rallies”*, and *“marches”* – the forms through which the right to freedom of peaceful assembly is exercised – there is also a lack of legal definition. The meaning of these concepts is derived through interpretation. According to the legal theory<sup>7</sup> these forms of exercising the right to freedom of peaceful assembly are defined as follows:

- **Assembly** – outdoor or indoor event at which citizens discuss topical political

<sup>7</sup> “Constitutional Law”, Prof. Stefan Stoychev, p. 257



and other issues and form opinions about them. This type of event is for organizing social interaction;

- **Rally** – a mass outdoor gathering, at which citizens form and express their attitude on important public issues;
- **March** (or “a rally on the move”) – citizens walking along public places to express an attitude on a particular issue in public life.

As can be seen from the above, the main difference between the three forms is that assembly and rally are static events, while marches are dynamic.

Regarding the regulation of the individual forms of exercising the right to freedom of peaceful assembly, it is similar for the three types of event – the procedure for holding them is regulated by law, and imposing restrictions on this right by a statutory act is not permitted.

According to the text of the Constitution of the Republic of Bulgaria, organizers of assemblies and rallies may be citizens, this term practically including any *individual* (as a synonym for a natural person)<sup>8</sup>, and not just having the narrow meaning of the concept of *citizen* (resident of a state). Furthermore, organizers can be associations, political parties and public organizations (there is no definition in the law as to what is meant by a public organization, but it should certainly include non-governmental organizations and other types of legal entity).

The main law governing the procedure for holding the above-mentioned events is the

<sup>8</sup> This approach of the Constitution of the Republic of Bulgaria has been adopted in other texts too – Art. 44 of the Constitution – the right of association, Art. 45 of the Constitution – the right to lodging complaints.

Assemblies, Rallies and Marches Act (ARMA). It contains no legal definition of the individual forms of exercising the right to peaceful assembly. Under to Article 3 of the ARMA: “Citizens may express opinions, views and sentiments on issues of political, economic, social, cultural or other nature at assemblies, rallies and marches, through speech, posters, images, or in another appropriate manner,” which outlines the content of the very right to freedom of peaceful assembly.

### REGIME OF EXERCISING THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

The procedures and guarantees for organizing and holding the forms of exercise in Bulgaria of the right subject to this report are provided for under the ARMA. The right to freedom of peaceful assembly includes the right of citizens to freely choose the time, place and manner of holding the respective event in line with the *Sight and Sound* Principle – the right to be heard and seen wherever you want. The Bulgarian legislation envisages the application of a **notification regime** (Article 8 of the ARMA) for the organization of **outdoor** assemblies, rallies and marches. This situation is in line with international standards for providing guarantees for the exercise of the right to freedom of peaceful assembly.

*Article 8. (1) In order for an outdoor assembly or rally to be convened, the organizers shall within no less than 48 hours of the start notify in writing the mayor of the municipality on the territory of which it will be held, indicating the organizer, the purpose, the place and the time of the assembly or rally.*

*(2) In urgent cases the notification for the outdoor assembly or rally under the preceding*

*paragraph may be done with a one day's notice.*

The notification system includes the obligation of organizers to inform the mayor of the municipality on the territory of which it is to be held in writing at least 48 hours, or in urgent cases – within one day (for assemblies and rallies) – and 72 hours, or in urgent cases – within two days (for marches) – prior to the start of the event, indicating the organizer, the purpose, place and time of the assembly, rally or march.

The notification system **does not apply** to **indoor** events. Because of its nature, such events, which can be held indoors, are the only meetings. The Assemblies, Rallies and Marches Act explicitly states about them, that that indoor meetings do not fall within the scope of the special regulation.<sup>9</sup>

At the statutory level in Bulgaria **there is no requirement for any act to be issued** in response to a notification, but if one of the legally established grounds for banning an event is in place, municipality mayors have 24 hours within which to issue a (written and motivated) **Denial Order**. In the meantime they need to collect the necessary data to ground his order. The power of the mayor to deny the holding of an assembly, rally or a march in case of a reasonable presumption or a real danger of a criminal act is explicitly provided for in Article 12, Paragraph 2 of the ARMA, containing an exhaustive list of the grounds for prohibition:

*Art. 12. (2) The mayor of the municipality may deny the assembly, rally or march where there*

<sup>9</sup> Pursuant to § 1 of the Additional and Final Provisions of the Assemblies, Rallies and Marches Act “This Act shall not apply to weddings, family and other celebrations, cultural and sporting events, funeral rituals, religious rites and the like, as well as for any indoor meetings.”

*is undoubted evidence that they:*

- 1. Are aimed at forcibly modifying the constitutionally established order or compromising the territorial integrity of the country;*
- 2. Jeopardize the public order in the respective town or village;*
- 3. Jeopardize the public health in case of a preliminarily announced epidemic situation;*
- 4. Violate the rights and freedoms of other citizens.*

Where the time and place of the assembly, rally or the route of the march create conditions for violation of the public order or endangering traffic safety, the mayor of the municipality has to propose their change (Article 12, Paragraph 1 of the ARMA). It remains a moot point to what extent this norm corresponds to the constitutional text in so far as it may appear to interfere with the right of citizens to freely choose the time, place and method of holding the respective event. What is more, the application of a restrictive interpretation of the norm of Article 12, Paragraph 1 of the ARMA leads to the conclusion that if the organizers do not agree with the changes proposed by the mayor and there are no grounds for denying the event explicitly provided for by the law, the mayor should not be able to deny the holding of the assembly, rally, or march.

The possibility of coordination between the mayor and the organizers of a possible change in the time, place and/or route of the events is expressly provided for in the majority of the secondary pieces of legislation issued by municipalities in the case of submission of more than one notification for the organization of public events by different organizers for the



same time, place, route or intersecting routes.

ROLE OF THE MAYORS IN THE PROCEDURE

The mayor of the municipality shall contribute to the normal holding of the event and to the maintenance of public order. The mayor shall immediately notify the Ministry of Interior (Mol) both about the holding or non-holding the event. In practice, the mayor has exclusive powers not only to assist, but also to ensure the conditions for the normal course of the event and, if conditions for violation of the public order are in place, to issue an act to stop the event. By virtue of Article 13, Paragraph 1 of the ARMA, the mayor of the municipality shall terminate the assembly, rally, or march when they are not organized or if they are not held pursuant to and following the procedure established by law. However, that rule is to be interpreted restrictively only in the light of the explicit termination hypotheses listed, and not in the case of a purely procedural violation, for example – in case the notification has not been submitted.

An important element of the legal framework concerning the right to freedom of peaceful assembly is also an explicit norm in the law (Article 4 of the Law on the ARMA), which is an additional guarantee for the realization of the right to protest in Bulgaria. According to the text of the law, citizens may not be prosecuted and punished for organizing and participating in assemblies, rallies, and marches, and for their opinions, views and sentiments, unless they constitute a crime or other offense.

Thus, in the event of a violation of the statutory order established for holding one of the three forms of exercising of the right to freedom

of peaceful assembly (for example, in the organization of a peaceful assembly without prior notice) or in case a crime is committed (for example, in the case of hooliganism), the general mechanisms established for sanctioning these acts are triggered by the imposition of administrative criminal sanctions, indictment, etc. When giving an order to ban the holding of the assembly, rally, or march on one of the grounds under Article 12, Paragraph 2 of the ARMA, the mayor has *discretionary powers*, which means that the mayor has the right to independent judgment as to what specific decision to take. The ban shall be imposed by a motivated act within 24 hours of the notification. This short time for the mayor to react is a good legislative solution as it allows the organizers very shortly after submitting the notification to focus their efforts to take the necessary actions to ensure the logistics of the event, instead of waiting for a long time to see if there will be a denial of the event right before the event. The organizer of the assembly, rally, or march may appeal the denial to the respective administrative court within 3 days as of receiving the ban. The appeal shall not stop the execution of the order. The court shall rule on it within 24 hours. The court’s judgment shall be announced immediately and be final.

If, within 24 hours of receipt of the notification of the event, the mayor has not collected sufficient evidence that one of the grounds for the denial is in place, the event should be possible to hold. The power to issue a denial order may not be delegated to other officials, i.e. the mayor may not assign the exercise of this power to another official of the municipal administration.

FEES

**No fees have been envisaged** pursuant to the ARMA for holding assemblies, rallies, and marches. However, if there is product placement and advertising of commercial companies during the event, the law provides for the payment of fees in general. This means that if the organizers of an event under the ARMA admit the positioning of commercial products, brands, logos, and advertisements at the event, they shall pay the fees for advertising in public.

UNANNOUNCED EVENTS (SPONTANEOUS EVENTS)

There is no special regulation of **spontaneously organized events** in the Bulgarian legislation. These events are governed by the general regime. Failure on part of organizers (citizens) to comply with the procedure established for holding assemblies, rallies, and marches under the ARMA is subject to an administrative penalty – a fine – by law<sup>10</sup>, and some municipal ordinances even expressly envisage the imposition of an administrative penalty in the form of a pecuniary sanction for organizers which are legal entities. Despite the sanction regime established by law, there have been few cases of imposition of fines due to violation of the notification regime set out in the ARMA and in the specific local level public order ordinance<sup>11</sup>. On the other hand, there

10 Pursuant to Article 14, Paragraph 1 of the Assemblies, Rallies and Marches Act “Citizens and officials who breach the procedure established and guarantees provided for organizing and holding assemblies, rallies and marches shall be punishable by a fine of 50 to 300 lev, unless they are subject to a more severe punishment.”

11 Please, see the examples given in the International Standards and Case Law Section on page 23 et seq of the present report

have been some cases in which protests have been organized without the rules for notifying the local authority having been followed, but this has not led to administrative penal consequences (or at least whether sanctions have been imposed is not known). Practice has shown that if it is impossible to find out who the organizer of the particular spontaneous event is, there is no liable person under the administrative or criminal law to whom the statutory sanction shall be imposed. In view of the above, spontaneous assemblies, rallies, and marches should be possible to hold, subject to the general grounds for termination under Article 12, Paragraph 2 of the ARMA.

There is no explicit regulation of **counter-protests** in the law, which implies that the arrangements for them are the same. It is another matter that the lack of regulation of counter-protests often leads to conflicts. In recent years there have been many attempts in Bulgaria by citizens and groups of citizens (including representatives of political factions and football fans) to sabotage the holding of a protest or march by other groups of citizens<sup>12</sup>. This is done requesting an anti- or counter-protest at the same time and place, as well as by “booking” a large number of days for an event which is not actually held, only to avoid another event being held<sup>13</sup>.

Many municipal ordinances expressly regulate the hypothesis of **several notifications received from different organizers** about the holding of different events at the same time,

12 For example, when the Sofia Pride was organized in 2017.

13 According to local government officials, this is one of the weaknesses of the law, because the local authorities often do not know how to “reconcile” the different organizers, including when it is clear that there is a threat of escalation of tensions and potential risk of breach of peace.



place and with the same route. In such cases, where notifications have been submitted for the same day and for the same route or location by two organizers, the general principle is that the administration should give priority to the applicant who has submitted their notification first. The route of the event notified chronologically later is redirected so as to bypass the other or the venue is changed. Although this situation is regulated in a similar way in almost all municipal ordinances, which are further developed by the legal regulation, there are also some differences in this respect. For example, the ordinance of Sofia Municipality provides for a special practice according to which, if several notifications have been received before the expiration of 24 hours since the first notification, the relevant municipal administration authorities shall help the organizers concerned reach an agreement for conducting the planned events without conflict in different times or places, and in case agreement is not reached, the municipal administration authorities shall ensure that the public event, for which the first notification has been received, takes place. Another special practice has been developed in the ordinance of the Municipality of Varna, according to which, whenever more than one notification has been received for holding of public events by different organizers for the same time, place, or route or with intersecting routes, the matter is settled by mutual consent of the organizers, supported by the mayor of the municipality.

**Minimum requirements for organizers to comply with before and during the organization and holding of the events under the Assemblies, Rallies and Marches Act:**

- *To submit a notification containing the relevant information within the term prescribed by law;*
- *To take the necessary measures to respect the procedure for holding events and traffic safety on the route of the event (in the case of a march)<sup>14</sup>;*
- *Not to violate the public order;*
- *Not to violate the rights and freedoms of other citizens;*
- *To protect the public property.*

### RESTRICTIONS ON HOLDING EVENTS UNDER THE ARMA

The limitations under the ARMA are intended to ensure the smooth running of activities in compliance with the law. The limitations are explicitly mentioned in the normative texts of Article 5, Article 6 and Article 7, Paragraph 2 of the ARMA:

- **Time constraints** – Assemblies, rallies, and marches are prohibited during the night hours (from 10 pm to 6 am) for preserving public order and ensuring the peace of other citizens who do not participate. This constraint is the so-called “blanket ban”.
- **Citizen participation constraints** – The presence of people carrying weapons or other objects that could be used to endanger the life or health of others, or to cause material damage, as well as the presence of people who are intoxicated, are forbidden. These constraints are once again related to the preservation of public order, the life and security of other citizens

<sup>14</sup> Pursuant to Article 11, Paragraph 2 of the Assemblies, Rallies and Marches Act.

participating and non-participating in the events. Citizens who are masked in a way that makes them difficult to recognize are forbidden to take part – this prohibition concerns the accountability of these citizens for damages caused by them or for offenses/crimes committed during the course of events.

- **Territorial constraints** – A so-called “security zone” has been introduced with the 2010 amendments (not less than 5 and not more than 10 meters from the respective building) around the buildings of key national institutions (around the buildings of the National Assembly, the Presidency and the Council of Ministers, as well as in close proximity to military sites).

Citizen participation and territorial constraints comply with the international standards because they are provided to preserve of public order, the life and security of other citizens participating and non-participating in the events and to prevent of material damages on key national institutions. However, regarding the time constraints, we find that this limitation is contrary to international standards, as it is possible for a protest taking place between 10 pm and 6 am not violate public order.

### AMENDMENTS AND UNSUCCESSFUL ATTEMPTS TO CHANGE THE ASSEMBLIES, RALLIES AND MARCHES ACT

The Assemblies, Rallies and Marches Act (ARMA) was adopted in 1990 and promulgated in the State Gazette (SG), Issue No. 10 of 02.02.1990. The act was subsequently amended twice. The amendments were adopted by the National Assembly and entered in force, promulgated

in the State Gazette, respectively, in Issue No. 11 of 29.01.1998 and in in Issue No. 24 of 26.03.2010.

- The first amendment concerned the adoption of the Lev Denomination Act (SG, Issue No. 20 of 1999, Supplemented in Issue No. 65 of 1999, in force as of 5.07.1999) and reflects the obligation for all numbers in old levs, indicated in the laws enacted before 5 July 1999 to be replaced by such numbers in new levs which are 1000 times lower than the old levs.
- Initiatives for a second amendment to the ARMA were taken in 2009 when two separate bills were tabled in Parliament: **1) ARMA Amendment Bill, submitted by Ivailo Toshev, Emil Radev and Krassimir Tsipov (GERB Political Party); and 2) ARMA Amendment Bill, submitted by the member of parliament Yane Yanev (Order, Law, and Justice Political Party) and a group of members of Parliament.**

The proposed amendments came after a series of convictions by the European Court of Human Rights in Strasbourg against Bulgaria for violation of Article 11<sup>15</sup> of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, although not making specific recommendations to the Bulgarian state to bring its domestic legislation in line with international standards, provide the Bulgarian ruling elite the opportunity to think about how and with what legislative amendments the mechanism of exercising the citizen’s right to freedom of peaceful

<sup>15</sup> Some of these solutions and the reasons for them have been discussed in the International Standards and Case Law Section on page 23 et seq of the present report.



assembly can be improved. But instead of introducing more guarantees for respecting the citizen's right and freedom of peaceful assembly and marches, part of the changes (specifically those proposed by the member of Parliament Yane Yanev) quite to the contrary – restrict even more the exercise of this right.

After first-reading adoption of the two bills individually by the 41<sup>st</sup> National Assembly, the Committee on Homeland Security and Public Order approved and proposed a consolidated text of a Bill for Amendment to the Assemblies, Rallies and Marches Act (BA to ARMA) for a second reading. The main changes referred to: Updating the terminology, increasing the notice terms for organizing assemblies, rallies, and marches, defining the territorial scope of the security zones around the National Assembly, the Council of Ministers and the Presidency, and introducing fast legal proceedings in appeals of denials for holding assemblies, rallies, and marches.

The Consolidated version of the BA to ARMA was adopted by the 41<sup>st</sup> National Assembly on 21 January 2010. Subsequently, however, by Decree No. 15 of 2 February 2010, the President of the Republic of Bulgaria Georgi Parvanov (Bulgarian Socialist Party)<sup>16</sup> vetoed the bill and it was referred back for reconsideration and discussion by the National Assembly as a result of a public response provoked against two of the changes and widespread concerns about restriction of the fundamental rights of citizens. In particular, a revision of the text on the **spatial expansion of the ban on public events – assemblies, rallies, and**

**marches** – was required. The ban extends over the designated area around the National Assembly and the areas close to military sites as well as over the areas around the premises of the Presidency and the Council of Ministers. Citizens and trade unions have expressed the view that *their right to peaceful assemblies and marches is hindered* in this way, since their possibility of directly addressing their requests to the institutions responsible for taking the respective action is ruled out.

Another demand was to revise the text concerning the **increase in the notice term for convening an outdoor assembly or rally from 48 to 72 hours**. This increase was perceived by the public as *a kind of restriction of the rights and freedoms of citizens* and a reason for postponing the public response to major issues of public concern.

The reasoning of the presidential decree includes that *“the law shall ensure a balance between the possibility of free and peaceful expression of civil society and the normal functioning of the supreme institutions. The highest level in the hierarchy of democratic values is guaranteeing civil rights and freedoms, and any necessary restriction may and shall only be regulated by law. These limitations may not be of such a nature as to invalidate or make it impossible to exercise the civil rights guaranteed by the constitution.”*

Following its review in plenary on 17 March 2010, the 41<sup>st</sup> National Assembly adopted the final Bill for Amendment to the Assemblies, Rallies and Marches Act<sup>17</sup>. Despite the dropping of the text regarding the increase of the notice period, all other texts are retained, including

the ban on holding assemblies, rallies, and marches in the security areas around the buildings of the National Assembly, the Council of Ministers and the Presidency (both texts proposed by MP Yane Yanev, Order, Law, and Justice Political Party).

Another 5 amendments to the ARMA were initiated in the years to follow but they were not adopted by the Parliament:

- In 2004 the Council of Ministers with Prime Minister Simeon Saxe-Coburg-Gotha (National Movement for Simeon II) tabled a Bill for Amendment and Supplementation in the following areas: Updating terminology; complementing the list of types of institutions (military sites and medical institutions) around and in which events under ARMA are prohibited; prohibiting the use of motor vehicles when holding events under the ARMA;
- Seven years later, in 2011, MP Hristo Bissarov (Movement for Rights and Freedoms) failed to pass an amendment related to prohibiting events under the ARMA around religious and ritual temples and institutions;
- In 2012, MP Ognyan Yanakiev (Ataka Political Party) and a group of members of parliament proposed that assemblies, rallies, and marches be held only in Bulgarian language;
- Two years later (in 2014) MP Volen Siderov (Ataka Political Party) and a group of MPs introduced homophobic context into the proposed provisions through of ban on the public display of homosexual orientation or affiliation and the imposition of excessive fines for violation of the ban;

- A year later, in 2015, MP Valeri Simeonov (National Front for the Salvation of Bulgaria Political Party) and a group of MPs proposed that the assemblies and rallies be held in the Bulgarian language.

As it was mentioned above, after the last amendments in the ARMA, adopted in March, 2010, currently, there are no other amendments and improvements being considered by the government, neither by individual MPs.

## INTERNATIONAL STANDARDS AND CASE LAW

An important part of the analysis of the quality of the legal framework is related to checking to what extent the international standards have been properly interpreted in the national law and, most importantly, to what extent law enforcement can achieve justice in case of breached exercise of the right.

## EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The provision of Art. 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) clearly regulates the content of the right to peaceful assembly together with the right of association:

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a*

<sup>16</sup> <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=29433>

<sup>17</sup> <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=31235>



*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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

The text of the provision of Article 11, Paragraph 2 of the Convention clearly states the only restrictions that may be imposed. The right to freedom of peaceful assembly is realized by taking actions in public places (squares, streets, etc.) and can cause discomfort to other citizens (traffic congestion, business disruption, etc.), without being considered violation of their interests. Events may contain appeals for action, including provocation, but not call for violence.

Since 2001, at international justice level, Bulgaria has been convicted 8 times by the European Court of Human Rights (ECHR) in Strasbourg for violating Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to pay compensation to the complainant by public funds<sup>18</sup>. The main reasons are related to the unlawful interference with the complainant's right to association and peaceful assembly through bans imposed by local municipalities for holding assemblies and rallies and the lack of effective internal remedies against violations in the exercise of these rights.

<sup>18</sup> Stankov and United Macedonian Organization (UMO) Ilinden v. Bulgaria, 2001; UMO Ilinden and Ivanov v. Bulgaria, 2005; Ivanov and others v. Bulgaria, 2005; UMO Ilinden and others v. Bulgaria, 2006; Green Balkans v. Bulgaria, 2007; Singartiyski and others v. Bulgaria, 2011; United Macedonian Organization Ilinden and Ivanov v. Bulgaria (No. 2), 2011, 2012

The four cases, initiated by the complainant United Macedonian Organization (UMO) Ilinden – an association based in Southwestern Bulgaria, which made several attempts to organize commemorative meetings at various locations in the geographical region of Pirin Macedonia, are emblematic. In the period 1994 - 2003, with a few exceptions, these rallies were systematically prohibited by the authorities (Stankov and UMO Ilinden v. Bulgaria case and UMO Ilinden and Ivanov v. Bulgaria case). In 1990 - 1991 and again in 1998 - 1999 the organization was denied registration by the Bulgarian court (ECHR decision on admissibility of the complaints by UMO Ilinden and others v. Bulgaria).

In the series of convictions against Bulgaria, the ECHR in Strasbourg found that there was a violation of Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, due to the fact that the Bulgarian court had interfered without justification with the freedom of association of the complainant (UMO Ilinden) to protect the rights and freedoms of the Macedonian minority (Stankov and UMO Ilinden case) and due to the practice of the Bulgarian authorities to impose sweeping bans on UMO Ilinden's meetings, which the Court does not consider necessary in a democratic society (Stankov and United Macedonian Organization Ilinden case, Paragraph 109, and United Macedonian Organization Ilinden and Ivanov case, Paragraph 114). Among the grounds for the sweeping bans imposed by local authorities, are: the lack of registration of the organization, the alleged threat to public order, the holding of meetings of other organizations and authorities at the same time

and place, and contradictory statements by Ilinden on issues perceived as sensitive.

In addition, the Court also draws attention to a negative trend, based on the fact that *"the national authorities rely on grounds that the Court has at the process time already considered to be problematic in its previous judgments" and this is indicative of an "alarming disregard for the judgments of the Court of Justice and the complainants' right to freedom of assembly."* The Court also notes with concern that in September 2007 and in May and September 2009, the police authorities hardened their approach by detaining participants in Ilinden's meetings without relying on any grounds for detention and without any violent behavior giving rise to such measures.

As a result of the abovementioned judgments of the ECHR, the second of the two successful amendments to the current Assemblies, Rallies and Marches Act was introduced in 2009 in order to improve the conditions for exercising the right to freedom of peaceful assembly and freedom of association of citizens. In particular, improvements include the optimization of the procedural terms – on the one hand, the term for notifying the mayor before the scheduled day and time for the respective event under the ARMA was reduced, as well as respectively the period within which the mayor of the municipality may issue an order to deny the event (up to 24 hours), and on the other hand fast legal proceedings (within 24 hours) were introduced in case of appeals against bans for holding an event under the ARMA, issued by the municipal administrations.

## BULGARIAN CASE LAW

The Bulgarian case law is relatively poor in

judgments concerning the implementation of the Assemblies, Rallies and Marches Act (ARMA). The analysis of judgments shows that the court strictly interprets the legal requirements for the right to peaceful assembly.

The judgments delivered under the ARMA are divided into 3 main categories:

- The main part of the judgments on appealed order of the mayor of the municipality for termination or banning of the holding an event under the ARMA (assembly, rally or march);
- A smaller part of the judgments concern complaints against the imposition of an administrative sanction – "fine"; and
- The smallest number of the judgments are on the substance of the texts of the normative acts: about the unlawfulness of provisions in municipal public order ordinances at the local level.

The operative part of the judgments of the first group are predominantly to repeal the mayor's order to ban or terminate the event. Among the main motives of the tribunal is the existence of an explicit arrangement of the hypotheses in which the mayor may order a ban or termination of the holding of an assembly, rally and march. The Bulgarian court has in its judgments repeatedly stated the argument that exceeding the legally established framework within which the mayor may decide whether to ban an event under the ARMA infringes not only the specific provisions of the law but also the explicit provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (in particular Article 11 of the Convention) and the Constitution of the Republic of Bulgaria

(in particular Article 43, paragraph 1). In the motives of their judgments on the ARMA Bulgarian tribunals often refer to the case law of the ECHR, under which the Bulgarian state is convicted to pay compensation to the Bulgarian applicant for breach of precisely Article 11 of the Convention.

Another substantive reason in the judicial grounds is the duty of the mayor of the respective municipality to motivate their banning orders on undoubtedly established facts related to actions of event participants which endanger public order beyond any doubt<sup>19</sup>. An interesting example in the reasoning of the judgments is that it is impermissible on part of the administrative body to give its own opinion on whether an organized event will achieve its goals – rather, the mayor should stick only to pointing out the existence of the hypotheses under the ARMA which give him grounds to order the denial<sup>20</sup>. A specific example in which the court declared the mayor's order for banning the holding of an event under ARMA void is the fact that the order was issued by an incompetent authority inasmuch as ARMA provides no possibility for delegation of powers to impose a ban on an event under ARMA to municipal administration officials<sup>21</sup>. Another motive in the court's reasoning is that the order to terminate the event under the ARMA shall be based on facts and circumstances which have arisen at the time of its issue and not such

19 Judgment No. 61 of 14.05.2016 of Administrative Court – Kardzhali under Administrative Case No. 79/2016

20 Judgment No. 377 of 14.05.2017 of Administrative Court – Pleven under Administrative Case No. 778/2017

21 Judgment No. 5253 of 26.07.2013 of Administrative Court – Sofia under Administrative Case No. 7467/2013

which would occur thereafter<sup>22</sup>. In this sense, the issue of a ban on an event under the ARMA on the grounds of facts and circumstances that might arise during the holding of the event may not serve as justification for denying the event. According to the court, the law provides sufficient guarantees for the smooth holding of the events under the ARMA, which is reflected as an addition to the above-mentioned reasons.

With regard to the first group of judgments, whereby the court does not repeal the mayor's order but dismisses the appeal against it, we can see an interesting example in the judgments in which the court affirms that, under the discretionary powers conferred on the mayor, the latter has taken the right decision to deny the holding of an event under the ARMA<sup>23</sup>. In these judgments, the court puts forward the motives that the mayor has rightly considered that the blocking of an important road artery (due to the event) would jeopardize the public order and that the concentration of several public events different in nature at the same place and time on the territory of the respective town or village in question would also endanger public order and constitutes grounds for the ban. Another reason for the judgments rejecting the appeals against the mayor's orders lies in the control functions assigned to the mayor of the municipality under the ARMA and his obligations to protect the public order, stemming from the Local

22 Judgment as of 28.03.2013 of Administrative Court – Montana under Administrative Case No. 235/2013

23 Judgment as of 11.08.2011 of Administrative Court – Sliven under Administrative Case No. 221/2011; Judgment No. 810 of 19.05.2012 of Administrative Court – Bourgas under Administrative Case No. 1150/2012; Judgment dated 29.08.2011 of Administrative Court – Dobrich under Administrative Case No. 647/2011

Self-Governance and Local Administration Act<sup>24</sup>.

The Court assumes in its reasoning for these judgments that the mayor's actions to issue an order for the termination of the event under ARMA have been carried out in accordance with the purpose of the law – for the event to be held and for the public order to be preserved, together with the rights and freedoms of all citizens of the territory on which the public event has been organized.

The major part of the judgments concerning the imposition of a fine mention in the operative part that the penal decree for the imposition of an administrative sanction shall be annulled for lack of sufficient evidence that the person on whom the fine has been imposed has committed the offence<sup>25</sup>. The judgments for which the court has found sufficiently reasoned legal and factual grounds for the imposition of a fine are fewer in number<sup>26</sup>. As for the last type of cases, factually, in one of the cases the protest organizer has exceeded the time and place announced in advance, and in the other case a public event has been organized, without prior notification of the mayor of the municipality, in which a sound system (megaphone) has been used. In both cases the minimum fine has been imposed according to the respective municipal

24 Judgment as of 20.06.2013 of Administrative Court – Rousse under Administrative Case No. 172/2013

25 Judgment No. 3366 of 9.05.2016 by Sofia District Court under Administrative Criminal Case No. 20820/2015; Judgment No. 4732 of 13.06.2013 by District Court – Blagoevgrad under General Criminal Case No. 758/2013; Judgment No. 6216 of 30.07.2013 by District Court – Blagoevgrad under General Criminal Case No. 757/2013;

26 Judgment No. 6443 of 9.08.2013 by District Court – Blagoevgrad under General Criminal Case No. 759/2013; Judgment No. 377 of 20.10.2009 by District Court – Vratsa under Administrative Criminal Case No. 1068/2009.

ordinance (BGN 50 (EUR 25) and BGN 30 (EUR 15) respectively). It is a relatively alarming fact that the first of the two aforementioned cases says that the protest has been “organized by it with the prior permission of the Mayor of B. Municipality”, and the court has not commented in its motives that the regime is of notification, not of authorization.

Here we are going to pay attention to two other cases in which the court has repealed penal decrees for the imposition of a fine, on the one hand, but on the other hand, the court once again has not commented on the use of the term “*authorisation by the mayor*” in respect of the proceedings. The main reason for us to separate these two cases is that these are complaints from different individuals who have turned to their respective court in connection with the same political event<sup>27</sup>. In both cases, residents of a village in the Vidin Region have noticed a crowd gathering in the center of the village, including the candidate for mayor of a certain political party and the chair of that party, with propaganda materials having been distributed. Again, in both cases, the residents concerned have contacted the mayor's administration for information on whether authorization was granted for this event to be carried out, with the municipality secretary having given a negative answer. A penal decree for the imposition of a fine has been issued to the offenders, annulled in both cases by the court (one of the cases has moved to a cassation instance<sup>28</sup>, which has confirmed the decision of the first instance court). From

27 Judgment of 7.02.2012 by District Court – Belogradchik under Administrative Criminal Case No. 331/2011; Judgment of 28.03.2012 by District Court – Belogradchik under Administrative Criminal Case No. 332/2011.

28 Judgment as of 24.04.2012 of Administrative Court – Vidin under Cassation Administrative Case No. 82/2012



the legal side, the court has in both cases justified the operative part of its judgment with the substantive procedural violations when the Statements of Administrative Offense had been drawn up. However, there has been no comment on the fact that the appellant has violated the Assemblies, Rallies and Marches Act, by failing to submit a notification about the event in advance.

Judgments on the unlawfulness of texts of the municipal public order ordinances, regulating the procedure for holding events under the ARMA at the local level can also be found in the Bulgarian case law. In one of the cases, the court repealed a provision of the Public Order Ordinance adopted by the Municipal Council of Haskovo Municipality, which prohibits *“the holding of competitions, rallies, demonstrations, religious and other mass and public events without the prior authorization of the mayor of the municipality.”* The main motives of the tribunal have been the conflict with a higher-ranking legislative act (the ARMA), with a substitution of the statutory notification regime by an authorization regime, and the non-compliance with the requirements of the Normative Acts Act regarding the accurate and clear formulation of the provisions of normative acts, and with the prescriptions of the Supreme Administrative Court that rulemaking shall use a clear language (with regard to the lack of specification of the concept of *“other mass and public events”*)<sup>29</sup>. Another interesting example in the case law of this kind is related to the town of Rousse, where until 2012, there had been a separate Ordinance No. 19 on the conditions, the procedure and the guarantees for holding

29 Judgment as of 3.04.20187 of Administrative Court – Haskovo under Administrative Case No. 1302/2017

assemblies in the open, rallies, marches, processions and other mass public events on the territory of the Municipality of Rousse. The case once again concerns the repeal of an unlawful provision in the secondary piece of legislation introducing an authorization regime as opposed to the notification regime provided for under the ARMA<sup>30</sup>

30 Judgment as of 17.02.2012 of Administrative Court – Rousse under Administrative Case No. 465/2011





# IV. ADMINISTRATION OF FREEDOM OF ASSEMBLY



## STAKEHOLDERS

The institutions and structures which are of relevance to the exercise of the right to peaceful assembly are mainly on the local level and include:

- **The mayors of the municipalities** – they are assigned specific functions for the implementation of the ARMA, including the obligation to “co-operate” for the normal running of the events;
- They share the responsibility together with the organizers for taking the necessary measures to comply with the procedures for holding marches and for traffic safety.
- Mayors of municipalities have the power to terminate the holding of assemblies, rallies and marches when they are not organized or conducted under the conditions and following the procedure established under the ARMA (Art. 13 of the ARMA). It is permissible for specific employees of the municipal administration designated by the mayor to impose fines and pecuniary sanctions.
- The chief duties of mayors are:
- To assist for the safe holding of the event – ensuring public order and traffic safety;

- To assist in securing the route requested by the organizers and, if this is not possible, to propose and coordinate an alternative route with them in advance.
- **The police authorities** – they ensure that the public order is generally observed, ensure the normal course of the event on this basis;
- **The courts** – they have powers to resolve administrative disputes regarding the lawfulness of refused or restricted peaceful assemblies<sup>31</sup>. Fines are imposed with penal decrees for violations of the procedure under the ARMA subject to appeal pursuant to the Administrative Violations and Penalties Act.

<sup>31</sup> The mayor's ban of an assembly, rally, or march may be appealed pursuant to the special procedure provided for under Article 12, Paragraph 3 of the ARMA – before the respective administrative court within three days, considered in a one-instance proceeding – the decision of the administrative court is final.





- **The Local Ombudsmen<sup>32</sup>**, and the **National Ombudsman of the Republic of Bulgaria<sup>33</sup>** – they do not have explicitly assigned functions and powers related to the exercise of this right, but given their role they could be a tool for citizens to seek protection or assistance.
- **The organizers** – citizens and organizations (political and non-political) – they have the duty to ensure the necessary measures for preservation of the order and have a shared responsibility with the mayors for the protection of traffic safety.

In particular, a citizen who intends to organize a peaceful assembly, rally, or march will have to go through the following **preliminary steps**:

1. Familiarization with the **regulatory documents** both at the primary and secondary levels;
2. **Getting a sample notification form** to be submitted to the mayor (only a very small part of the municipalities in Bulgaria maintain an electronic version of the notification form, some even do not have such a form, even in hard copy medium), respectively filling it in and registering it with an incoming number in the record keeping department of the municipality;

32 According to \*Article 21a, Paragraph 2 of the Local Self-Government and Local Administration Act "The ombudsman shall assist for the rights and legitimate interests of the citizens to be respected before the local self-government and the local administration bodies"

33 According to \*\* Article 2. (Amended by State Gazette, Issue 20 of 2018) of the Ombudsman Act "(1) The Ombudsman shall be a public defender promoting and protecting human rights and fundamental freedoms. (2) The Ombudsman shall intervene by the means envisaged in this law when citizens' rights and freedoms have been violated by action or omissions of state and municipal authorities and their administrations as well as by the persons assigned with the provision of public services and from private entities."

3. **Communicating additionally with the municipal administration** – only when it is necessary to make changes to the time, place and/or route of the event for reasons not dependent on the organizer;
4. **Visit to the local police station** for coordination of the route and other organizational details of the event – no normative basis but established as a practice – organized by the respective municipal administration for the purpose of preserving the public order<sup>34</sup>.

In the past few years, some negative trends could be observed which municipal administrations have started applying in their practice, by placing additional requirements for the citizens organizing protests without having legislative grounds for that. For example, after submitting the notification, organizers are required **to receive from the municipal administration<sup>35</sup> "a letter of agreement."** Such a requirement is in practice manifested as "authorization" to hold protests, since failure to present it may lead to refusal by the mayor and, respectively, obstruct the possibility for citizens to exercise their right to freedom of peaceful assembly. Such practice is an exception from the general rule according to which no administrative acts are issued in response to a submitted notification.

Another negative trend being established in

34 For example, following a notification to the mayor of Sofia Municipality, the municipal administration initiates a working meeting with the organizer of the event and the Sofia Metropolitan Directorate of Interior with the Ministry of Interior, for which a protocol is drafted, to discuss the time, the venue, the route of the event, the profile of the participants in the event, their approximate number, the availability of internal security provided by the organizer, etc.

35 For example, such practice can be observed in Sofia Municipality, Ruse Municipality, Pazardzhik Municipality and others.

recent years (for example, in Sofia Municipality) is the requirement from the police to organizers **to provide the presence of a private security company** (for example, Varna Municipality has such a requirement) during the protest when they intend to hold a larger scale event with the supposed participation of a large number of people.

These two negative trends lead, on the one hand, to corruption of the notification regime established by law for holding an event under ARMA through the introduction of an *authorization* element (with the "letter of agreement") and on the other, to devaluation of the role and participation of the police in the events as the only lawfully empowered authority to impose order during mass public events.

## LOCAL REGULATION

At the local level, the right to peaceful assembly is regulated in the relevant municipal ordinances – in the majority of cases these are the municipal ordinances which regulate the preservation of public order and in rarer cases – ordinances regulating the use of municipal property<sup>36</sup>, but there is no case where a municipality has adopted a separate ordinance on the subject.

The review of the secondary legislation framework regulating the right to peaceful assembly leads to the conclusion that in the large municipalities included within the scope of the study, such as the capital city of Sofia, Plovdiv, Varna, Ruse (Stara Zagora is an exception) there are more detailed and fuller

36 The object of study is the regulatory framework in 12 Bulgarian municipalities which vary in size and where peaceful assemblies have been frequently organized in recent years.

regulations of the subject matter at the local level. In their ordinances, there are special sections or chapters dedicated to holding assemblies, rallies or marches, as well as other mass public events.

*For example, in Ordinance No. 4 on maintaining and preserving public order, the terms and procedure for holding mass public events, protecting public and private property and cleanliness on the territory of Ruse municipality, the regulation is contained in special Section V. "Terms and procedure for holding mass public events on the territory of Ruse Municipality"; special Section IX. of The Ordinance of Varna Municipality on Public Order regulates "Procedure and conditions for holding assemblies, rallies and other mass public events."*

In the ordinances of smaller municipalities in terms of number of residents, in most cases there is no explicit regulation or there is reference to the provisions of the law (ARMA). Naturally, there are exceptions – such as General Toshevo Municipality (with a total population of 15,097<sup>37</sup>), whose *Ordinance No. 1 on maintaining and preserving public order, the cleanliness and public property on the territory of General Toshevo Municipality* has special provisions on the terms and procedure for holding peaceful assemblies in Section V. "Preserving public order when holding assemblies, rallies, marches and other mass public events."

37 According to data of the National Statistics Institute - population census of 01.02.2011.

In the predominant number of cases, municipal ordinances which regulate this subject matter in more detail keep to the basic legislative provisions. However, there are also specific secondary legislation acts and reference provisions whereby the legal framework is exceeded – in the form of a supplement, specification or “additional regulation” of the subject matter, or straightforward “deviation” from some legal provisions.

### DEVIATIONS FROM THE GENERAL NOTIFICATION PERIODS

For example, on holding marches or processions, the provisions of *The Ordinance of Varna Municipality on Public Order* partially overlaps with, and partially deviates from, the general legislative provisions defining a minimum period for notifying the mayor – “at least 48 hours prior to commencement” of the assembly or rally (Article 8, para 1 of ARMA) and “at least 72 hours before holding” the march (Article 11, para 1 of ARMA). On the one hand, the Ordinance refers to the notification procedure for rallies or assemblies but at the same time, it requires that the notification period be **at least 5 days before the date of holding** the march, with the additional requirement of stating the starting and finishing point, the route, the number and type of vehicles, if any are used, as well as the supposed number of participants. Another example is *The Ordinance on protecting municipal property and public order of Blagoevgrad Municipality*, where the text of Article 12, Paragraph 2 of Section “Preserving public order and cleanliness in holding assemblies, rallies, marches and other mass public events” supplements the legislative

regulations by stating that the notification for mass public events shall be submitted both to the mayor and the units of the District Police Department. In *Ordinance No. 1 on maintaining and preserving public order, cleanliness and public property on the territory of General Toshevo Municipality* different notification periods are provided: “**not earlier than 14 days and not later than 48 hours before the planned holding of the event.**”

### A NOTIFICATION WHICH BECOMES AN “AUTHORIZATION”

In the sample notification published on the website of Sofia Municipality (SM), **and supplementing the regulatory framework, it is specified that SM issues a letter of agreement in response to the application**, which should be received in person by the applicant or an authorized person. In Article 5 of *Ordinance No. 1 on preserving public order and maintaining the presentable state of Yambol Municipality*, there is a general regulation of the procedure and requirements for holding **mass public events, sports and other competitions (sporting events are excluded from the scope of the ARMA) outdoors** (“on streets and squares”). These are held after the advance authorization of the municipal administration and coordination with the units of Regional Directorate of the Ministry of Interior (RDMI)-Yambol, but the procedure for the authorization is not further specified, nor is the legislative notification regime explicitly referred to. In the special ordinance of Plovdiv Municipality, there are separate provisions on **automobile, sports competitions, races and other events on the streets and squares** held after authorization issued by

a competent deputy mayor authorized by the mayor of Plovdiv Municipality, and the organizers of the event are obliged to notify in writing the mayor of Plovdiv Municipality **at least 5 (five) working days** before these are held, and Plovdiv Municipality has the obligation to inform RDMI-Plovdiv about the event separately. According to the ordinance of Varna Municipality, the procedure and conditions for **granting authorization** for holding **mass sporting events, concerts, festivals and other similar events (excluded from the scope of the ARMA)** are defined with order of the mayor of Varna Municipality. With regard to outdoor assemblies and rallies, only notification is required, but Paragraph 2 of Article 59 of the Ordinance states that “the organizer shall provide its own or hired security for the purposes of preserving public order, medical services and transport, if necessary.” This is in contradiction with the requirements of the ARMA.

### DETAILED NOTIFICATION SAMPLE FORMS

The results of performed queries about the availability and content of notification sample forms for holding assemblies, rallies and marches under the ARMA show that electronic access to such templates is provided on the web pages of only three municipalities – Plovdiv, Varna and Sofia Municipality. The notification template on the website of Plovdiv Municipality requires the inclusion of only general information, without a description of the content elements required by law, only such regarding personal data and contact details of the applicant, a description of the specific request in free form and a list

of attached documents. It can be noticed that only the template of Sofia Municipality requires the notification to be addressed not only to the mayor, but carbon copied to the Security Directorate. The notification sample forms of Sofia Municipality and Varna are almost identical and contain the legal grounds (Article 8 and Article 11 of the ARMA) and, respectively, require the inclusion of: data about **the organizer**, its contact details and representing person; **type of the event** with a sample list of various subject matters of assemblies: political, social, economic; **method of holding**, which means the form of the peaceful assembly; **means** used; **date, venue and starting and ending times; occupied area** in square meters with an attached layout of the positioning (for Sofia Municipality, this needs to be approved by the Architecture and Urban Planning Directorate) when movable facilities are placed, as specified in one of the sample application forms; and for holding marches or processions – point of gathering, **route**, duration and stopping points; **estimated number of participants**; additional data if necessary on **vehicle parking; the measures** to be taken by the organizers in accordance with the law; listing a **person in charge of the event** with contact details. Thus, the sample forms significantly supplement the primary and secondary legislation in terms of content requirements. A notification to Sofia Municipality should explicitly state the type of the event and the main demand (purpose) of the same (which is a mandatory element under the ARMA). The notification to Varna Municipality also includes two mandatory documents to be attached – Declaration under Article 55 of the Ordinance, following the template, to be



attached to the application and is related to the liability of organizers of public events (their obligation for such declarations is explicitly regulated in the Ordinance), as well as certificate of registration, when the organizer is a legal person. Both notifications contain a footnote with instructions on the method of submission (where, when, to whom); the prohibited hours for holding the event by law, as well as an obligation for written notification in the event of changes in the circumstances. Only the sample form of Sofia Municipality, supplementing the regulatory framework, specifies that SM issues a letter of agreement in response to the application, which should be received in person by the applicant or an authorized person.

### COORDINATING THE ROUTE OR VENUE

In most cases, the secondary legislation framework does not explicitly regulate the requirement for coordinating the route or venue of the peaceful assembly. However, almost every ordinance provides for coordination between the mayor and the organizers in the hypothesis of more than one notification received for holding public events by different organizers at the same time, venue, route, or crossing routes. Most ordinances explicitly regulate the hypothesis of received notifications from several organizers for holding different events at the same time, place and route of movement. The framework is similar, but under the ordinance of Sofia Municipality, for example, if several notifications have been received less than 24 hours since the first notification was received, the relevant municipal administration units **assist in reaching agreement** between the

interested organizers on **conflict-free holding of the planned events at a different time or venue, and, in the event that agreement is not reached, the municipal administration units provides for the holding of the public event about which the first notification was received**. This practice carries the potential risks of possible abuse of rights in cases of intentional submission of notification for “booking” events with the aim of sabotaging specific events planned in advance by other organizers.

### WIDER REGULATION

The ordinance of Rousse Municipality regulates the procedure for organizing and holding, and provides an inexhaustive list of **other mass public events**, among which *“sporting events held outside the respective sports facilities, concerts, trade shows; festivals; exhibitions and advertising and promotion outdoor events, donation campaigns; open petitions; public events of religious institutions held outside the houses of prayer; organization of circus shows, carnivals; processions, including religious and mourning ones; festive illuminations or firework shows.”* With regard to the possibility to appeal the prohibition for holding the events which do not fall under the scope of the Assemblies, Rallies and Marches Act, the issue is referred to the deadlines and procedures as per the Administrative Procedure Code (APC). Under the provisions of APC, the appeal proceedings are two-instance ones and appeal is possible not only by the organizer of the mass public event, but also by other stakeholders affected by the prohibition. This is different from the special appeal regime for the mayor’s order prohibiting the holding of an event under

ARMA, which explicitly provides for one-instance appeal proceedings by the organizer of the respective event.

Although it is clear that the law provides exhaustive regulation for the elements of the right in a way that makes it clear that it is not possible to introduce at a secondary legislation level restrictions or complications deriving from its exercise, the analysis of municipal ordinances shows that in some cases elements of deviation in the direction of additional regulation “sneak in”. Such provisions are unlawful and should be repealed when attacked. What should be “regulated” at the local level is only the sources where further information and details about how to exercise the right can be found, who is obliged to provide this information and how. On the other hand, according to interviewed municipal representatives, the law is extremely laconic and this is the reason why it is “further developed” at the local level, since more clarity is necessary as to how the state bodies with specific powers (related to preserving public order and considering the interests of the other citizens) should act in specific situations and what measures they should take in advance. At the interviews we held, we received the recommendation to have more clearly defined powers on a legislative level in order to “guarantee” that the event will be held in compliance with the law.

- The interviewed protest organizers shared that they had not encountered serious difficulties related to the legal regulation and the procedure for holding the events. According to them, the application of the procedure for notifying the local authorities, providing

the organization and additional security required by law and coordinating the activities with the police are rather a minor problem compared to motivating people to participate in the protest. “Ordinary citizens” who have not organized an event under the ARMA and have had no occasion to get acquainted with the procedure for organizing a protest have a different idea. They feel that this procedure is complicated, even unclearly set out – there are steps which happen in practice, but the formal regulation is not clearly and unambiguously structured.

- Difficulties are encountered in the cases when movable objects need to be used during the protests – in these hypotheses, the procedure becomes more complicated for the organizers since explicit approval by the chief architect administration of the town is required, as well as by the Green Systems Directorate with the municipal administration.
- Although they find the procedure implementable and possible, protest organizers in Bulgaria still define the procedure for notifying the local authorities about holding an event under ARMA as rather cumbersome and stressful. On the other hand, protest organizing NGOs state that their good knowledge of the procedure and skills in applying it are due to their experience with the procedure, and some of these NGOs even have legal departments or at least legal consultants whose expertise they can turn to. In this sense, protest organizers believe that while it is relatively easy for them to exercise the

right to peaceful assembly, for ordinary citizens exercising this right would take much more time and effort.



# V. POLICING OF ASSEMBLIES

## SECURITY GUARANTEES AND POLICE PARTICIPATION

One of the key authorities with duties related to events taking place without public order being disrupted are the police authorities. The main regulatory acts governing the operations of police authorities are the Ministry of Interior Act (MIA) and the Instructions of the Ministry of Interior on the patrol and post duties. The ones applicable to the Municipal Police units are Ordinance No. 81213-422 of 16.04.2015 on the organization and operations of the Municipal Police units and the arrangements in the contract between the respective municipality and the respective Regional Directorate of the Ministry of Interior (as per the Ordinance). There are no other (or at least none are known to the public) internal written acts or specifically prescribed rules that should be observed by police officers when guarding citizens' peaceful assemblies<sup>38</sup>.

In the majority of events held under the ARMA, a meeting is held between the event organizers

<sup>38</sup> According to some of the police officers interviewed, at every briefing on an upcoming event under the ARMA, specific oral instructions are provided on the conduct of the representatives of the law enforcement authorities during its course.

and police representatives<sup>39</sup>. According to the information obtained at the interviews held with protest organizers, when submitting a notification at the municipality, the organizers are informed by the administration that they should coordinate the upcoming event with the law enforcement authorities or else their contact details will be given to the police to contact them in order for the coordination of the event to take place. During the meeting with the police, the organizers need to present the subject of the protest, the people who will take part, their tentative profile, the estimated number of protesters, the route and direction of movement of the protest, etc. The organizers are given clarifications regarding their rights and, most of all, their obligations – both as organizers and as protesters. These guidelines should be passed on as instructions to the organizing team and clarified to the protesters by the organizers. A protocol is concluded between the two parties – organizers and the respective police seniors. However, it turns out that this protocol is often violated – the organizers do not provide sufficient preliminary

<sup>39</sup> Interviewed police officers shared that minutes are drawn up of the working meeting with the organizers at which the following are arranged: conditions for holding the event, internal security to be provided by the organizers, etc."



clarifications and instructions and do not duly warn the protesters about their obligations. These preliminary talks help experts to make the specific positioning arrangements and police officers to observe them so that people not involved can feel safe and confident that no extreme incidents will take place.

In addition, in the course of the protest, when necessary, communication is carried out between police officers and organizers and protesters. The police officers reply to queries and explain why they need to carry out a certain action. Naturally, police officers must remain objective and impartial and not take a stand on the message of the protests.

Police authorities assign from available staff the police officers to guard the protest. Due to the limited number of security police officers, police inspectors from district police departments are summoned. Due to the nature of the operation, everything should be carried out expediently and efficiently, and police officers receive specific orders and instructions in view of the nature and specifics of the event. For example, before each specific protest, experts with long years of experience within the MI structure prepare a detailed positioning plan. These plans point out several key elements: what the route of the protest will be, which the security zones will be, respectively, and how many police officers should be placed where, what their tasks will be, i.e. specific allocation by numbers and positioning of the available staff. The plan also shows, depending on the movement of the protest, when and how traffic should be suspended, how it should be directed and who is in charge of that.

The main duty of police officers is to **monitor the keeping of public order and its non-disruption before**, during and after protests. People's behavior is observed and, more specifically, whether there are inciters, and if there are suspicions of such (most often these are often recognized by police officers based on their conduct) who could cause mass riots, first **the identity of the person is established** and he or she is taken out of anonymity. If necessary, the person is taken out of the crowd by the police officers and if no problem is established, a protocol is drawn up. If later during the protest that person commits an offence, he or she can quickly be found based on their established identity and the video surveillance records.

If circumstances require it, the detailed positioning plan is modified on the move. When the protest organizers contact the police, or the latter notice a problem, changes are announced on the police radio and if the problem escalates, after it is reported, orders are awaited on how the security guards should proceed without allowing citizen rights to be violated.

In this sense, the greatest difficulties for the police in managing the situation are when tension escalates – both between the protesters themselves and between them and the police, when protesters act aggressively against the law enforcement officials due to the misconception that the police officers are there to also protect them from inciters who

might be amongst them<sup>40</sup>.

According to the operational police units, their role and procedures have been justified and regulated in the primary and secondary legislation in a sufficient and clear manner, *"as long as there is someone to read them."*<sup>41</sup> In this respect, they believe that measures should be taken to promote the laws and the obligations of citizens exercising their right to peaceful assemblies in terms of the individual types of public gatherings.

The interviews we carried out led to conclusions in different directions depending on the perspective: according to operational police officers directly guarding the events organized under ARMA, it would be good if stricter measures were introduced to guarantee the preservation of public order during protests, for example. On the other hand, senior police officials assess the protest culture of the protesting citizen in Bulgaria as low, due to lack of knowledge of the laws and viewing the police as a threat. According to them, the use of force by the law enforcement authorities during public events should not be viewed as a case of exceeding police powers when it is in response to a provocation or conflict.

With regard to the statements in the previous paragraph, we would like to point out the question of cases when an official from the MI system has been sanctioned for exceeding

40 This is also the direction of the operational officials' opinion: if during the protests in 2013 police powers were exceeded, this was often also due to the fact that police officers had had to stand for days on end around the Parliament's fences and on duty. They were not allowed to use their due paid annual leave. They were not given an opportunity to see a psychologist in order to vent all the stress accumulated upon them as that link "between a rock and a hard place."

41 The opinion of an interviewed police officer.

their police powers. The only officially and publicly known such case in recent years is the one of police officer Veselin Denchev and the infamous in Bulgaria "night of the white bus" during the protests against the cabinet of Plamen Oresharski (the evening of 23.07.2013 when the Parliament was under siege by protesting citizens, which necessitated that the members of parliament be led out of the National Assembly building by bus, which led to additional escalation of tension between protesters and police officers). The trial concluded with an acquittal (due to lack of sufficient evidence that the citizen who filed the complaint was hit on the head with a baton by the accused police officer himself), which entered into force after the prosecutor's office did not appeal. The informal conversations we had with representatives of the law enforcement authorities showed that it is almost impossible to implement criminal liability in cases of a police officer exceeding his or her official powers. The reason, according to those interviewed, is that if proceedings are instigated against a police officer for exceeding police powers, the judge presiding over the trial will judge the word of the police officer against that of the citizen. In order to establish beyond doubt that the police officer had exceeded his or her powers, his or her colleagues would have to testify against him or her, and the former would not testify against a colleague who is a defendant, not only because of professional ethics, but also because of the very real possibility that such actions would lead to them being "expelled" from the respective police unit or them being "abandoned" during field operations.





*"Protesters often view police officers not as guards of the public order, but as their enemies who do not recognize or share their cause and message, and so do not fight for them. In most cases, the police pay the highest price (being a scapegoat) due to the absurd situation – on the one hand, they are called upon to observe the rules and laws made by the National Assembly to guard public order, which is why the police are entrusted with specific obligations and powers to use force when necessary, but on the other hand, when there are provocations or violations and the police officers have to carry out their legal duties, sometimes even having to resort to force in order to restore peace and order, they are branded by the protesters, citizens and media as "the villains" who violated citizen rights and used repression. And the nature of police work is such that it needs to benefit everybody.<sup>42</sup>"*

<sup>42</sup> According to regulatory acts, the duties of police units during a protest are also related to protecting the rights and freedoms of the citizens and preserving their life, health and property. In practice, however, according to interviewed MI employees, the police have to guard not the citizens, but the protest itself, or the building before which the protesters have gathered, or state representatives, and thus, instead of protectors of the citizens, the police officers often turn into bodyguards and a tool in the hands of those in power.

For the police, the security measures and actions undertaken by them are entirely proportionate – they stick to the letter and spirit of the law and in this sense, observe the powers granted to them by the MIA, ARMA and the other special laws<sup>43</sup>. In this respect, they do not think that the security actions and procedures undertaken by them are excessive (beyond what is necessary) or insufficient, but that they are proportionate and that the police respond and act in accordance with what must be done in the specific case and circumstances. If force needs to be used to take someone out of the gathering or to deal with a conflict that has arisen, they adapt the measures to be undertaken in accordance with the specifics of the cases.<sup>44</sup>

According to the interviewed police officers, the law enforcement authorities recognize and respect the right of citizens to fully and freely express their opinion and position and to objectify them in accordance with the ways provided for by law. Their feeling is that their security operations are not overprotective and, with view of the high number of protests taking place in Sofia, they believe that the way order is preserved corresponds to the manner of the protest – extreme incidents are not allowed and are removed quickly.

#### ***The organizers' assessment of the procedure for visiting the law enforcement authorities***

<sup>43</sup> "MIA – this is our supreme law, it is our legislation... Everything depends on the protest – everything written down in MIA is enforced when necessary...", from an interview with a MI employee.

<sup>44</sup> According to interviewed MI employees, the problem of training and qualifications of staff within the system is significant. In the past 10 years these have been reduced progressively, reaching the stage where in the past 3 years the mandatory qualification courses for staff within the MI system have not been carried out at all, which additionally exacerbates the problem of lack of qualified staff.

*for coordinating the event is that it takes too much time and is obscure, since the procedure postulated by law is a notification one, and this meeting leads to the conclusion that holding the protest needs to be allowed. However, the prevailing opinion is that law enforcement authorities do not exceed their powers. "Nobody has prevented us from going anywhere. It is the people who escalate the tension, not the MI units." Only LGBT organizations state that they have difficulties when working with the police in two directions: reluctance on behalf of MI units to guard their events in particular, and the possibility that it is at their events in particular where escalation of tension and riots are probable (provoked by neonazi and nationalistic factions).*

The need of video recording as a preventive measure is confirmed – both for the security of the protesters and for the police officers in the event of extreme incidents. The feeling of senior police authorities is that media coverage of protests is always *NON-objective*. They focus on cases of conflict and present mainly extreme incidents. Very often they even distort the actual role of police officers and present them as violators of citizen rights who use an unjustified degree of force – and those are actually the cases when the police had had to interfere using force in order to prevent further violence and restore order and security, according to the police officers.

In view of the collected information, MI officers who take part in guarding events under ARMA receive preliminary instructions on each case separately, and a specific assessment of the required gear. The interviewed law enforcement representatives confirmed



that during protests there are cases when undercover police officers take part and are on the watch for suspects among the crowd and potential presence of inciters who create tension on purpose. There is no regulatory framework which explicitly sets out the algorithm of actions to be undertaken by the law enforcement authorities during an event under ARMA. They are assigned their main duties under the Ministry of Interior Act as protectors of the public order against riots. This is why there is no clear information in what cases and circumstances the police may suspend citizen protests, whether there are preliminary trainings how the police should carry out their duties during protests, whether they always wear their distinctive markings as law enforcement authorities, and whether the former bear their names.

## MEDIA AND PROTESTS

In Bulgaria the media – national and regional television and press media, radio, online media – can freely attend and fully cover ongoing protests. Anybody working professionally as a journalist with a specific media, or who is an amateur journalist, can film with a video or photo camera, cover or hold interviews both with protest organizers and participants, and with authorized law enforcement officials, without any regulated restrictions or prohibitions in this direction – neither at the legislative level, nor at that of secondary legislation. In recent years, a trend can be observed for the latest information and video clips from protests to be freely covered by amateur journalists on the social media, without any possibility for censorship.

The feedback received from interviews with journalists from national online media shows that when covering protests and reporting from the field, the media encounter no serious problems with the law enforcement authorities and representatives of other competent institutions. On the contrary, the media shared that they always get the full cooperation of the security authorities, so they can freely cover the ongoing events without being disturbed. The interviewed journalists shared that restriction of access for journalists to the location of protests is extremely rare (and if there had been one, it was to protect the life and health of the journalist in question), not to mention being arrested or incarcerated. According to them, tension and conflict situations are most often created by protest participants who impede the journalists' field work with hooligan behaviour against the journalists or the equipment they are using.

The most powerful and significant role nowadays is that of social networks widely used by protest organizers to attract followers and participants on the one hand, and on the other, to cover up-to-date information, photo and video materials. There is a percentage of protest organizers who do not rely on online activity since they know that significantly less people will come in person.

Most protest organizers do not view the media as a partner in holding events under the ARMA. Although they note their role as a significant participant in the process (a channel of information which reaches every citizen in Bulgaria and not just stakeholders and participating parties), protest organizers believe that the media are only interested in sensational news and covering it live.

Organizers are firm that in most cases the media cover the protests in a tendentious manner, do not follow the whole development of the event (the reason for holding it, how it was organized and held and what happened as a result). Thus, according to organizers, the media help create the feeling that protests are isolated incidents in the capital (as the city with the highest number of protest activities) of people with free time to waste on the street, and this is an obstacle to creating an adequate image of protests in the ordinary citizen and to awakening his or her civic consciousness. On the other hand, it has to be noted that representatives of women's organizations (which organized the protests supporting the Istanbul convention) view the media as a sympathizing party in their initiatives. According to them, the media in Bulgaria are feminized, which significantly facilitates both contact with them and work on causes such as the one for ratification of the Istanbul Convention. This view is not shared by LGBT organizations whose invitations to cover their events are usually turned down by the media.





## VI. CRIMINALIZATION OF PROTESTS

In terms of certain conduct in violation of the right to freedom of peaceful assembly, the law provides for administrative penalty liability for the offenders. For example, the Assemblies, Rallies and Marches Act postulates imposing **an administrative penalty of a fine** in the amount of 50 to 300 leva on citizens and officials who violate the procedure and guarantees for organizing and holding assemblies, rallies or marches, unless they are subject to a more serious penalty (Article 14 of the ARMA). In other words, in the event that the organizer of an assembly, rally or march does not submit the notification for holding an event under the ARMA as required by law, this would represent an offence of an administrative nature. In addition, on a local level, municipal ordinances envisage imposing administrative sanctions related to either mass public events not regulated by law, or applicable to assemblies, rallies and marches but specifying the amount of the fines or property sanctions (some of them correspond to the limits set by the law, but others fall outside those)<sup>45</sup>. Penal rulings are issued by the mayor of the municipality and can be appealed under the Administrative Offences and Sanctions Act.

<sup>45</sup> For example, in an Ordinance for protection of municipal property and the public of Blagoevgrad Municipality, the sanctions envisaged are from 100 to 500 leva.

In addition to an administrative offence, the law also provides for **criminalization of certain actions**, related to implementing the right to peaceful assembly. Paragraph 2 of the Additional Provisions of the ARMA refers to the new section VIII of Chapter III of the Special Part of the Criminal Code (CC). This is the section containing Article 174a, which states:

*Article 174a. (New - SG, v. 10 of 1990) (1) A person who, through violence, fraud, threats or in another illegal way, breaks up or impedes the holding of an assembly, rally or march under the Assemblies, Rallies and Marches Act, shall be subject to incarceration of up to two years.*

*(2) An organizer who holds prohibited or continues to hold a suspended assembly, rally or march in violation of Articles 12, para 3, and 13, para 1 of the Assemblies, Rallies and Marches Act, shall be subject to incarceration of up to one year.*

In Article 174a, Paragraph 1 of CC, two acts are criminalized, related to an attempt to thwart the implementation of the right to freedom of peaceful assembly – “breaking up” and creating “obstacles” to holding an assembly, rally or march. In other words, Paragraph 1 represents a guarantee for implementing the



right in the event of an attempt to thwart it by outside interference. Paragraph 2 criminalizes acts under two possible hypotheses in which the organizers of an event under the ARMA are in violation of this Act, namely, holding a prohibited or continuing a suspended event. "Prohibited" is an event under ARMA, which the mayor of the municipality has suspended on the grounds of his authority under Article 13, Paragraph 1 because *"the assembly, rally or manifestation have not been organized or are not being held under the terms and conditions"* of ARMA. In this sense, as can be seen from the text of Article 174a, Paragraph 2 of CC, not submitting a notification can be interpreted as grounds for indicting the organizers of an event under ARMA.

The CC provides for incarceration of up to 2 years in the event of implementing the factual content of Paragraph 1 of Article 174a, and up to 1 year – for being in violation of Paragraph 2 of the same Article.

From the point of view of enforcement of the above penal and administrative penal sanctions in the event of violation of the law, it is evident from the court practice described in this analysis that the most frequent sanctions imposed are fines. There are also cases of application of the penalty norm of CC<sup>46</sup> by the court.

46 Judgment No. 147 of 15.06.2011 of RC – Rouse under case file No. 846/2011, confirmed with Judgment of 3.11.2011 of DC – Rouse under case file No. 475/2011; Judgment of 1.09.2010 of RC – Popovo under case file No. 128/2010.

## CASE STUDIES – EXAMPLES OF EMBLEMATIC PROTESTS ORGANIZED IN BULGARIA IN 2018

In 2018 Bulgaria was overtaken by a powerful wave of civil protests, which became emblematic examples of the culture of protesting and expressing a community position from the squares against the injustices in the state governance and adopted policies. For the purposes of this analysis, we have focused and monitored the development of 6 of the largest-scale protests and counterprotests held in 2018 which covered the territory of almost the whole country. Some of them were a continuation of civic reactions and intolerance to specific social, economic and environmental issues in the country which developed over time and erupted in 2017 or even earlier.

The analysis of the observed protests and counterprotests which seriously moved Bulgarian society in 2018 gives us grounds to make the following important conclusions:

- Following the large-scale protests in 2013 against the Cabinet of Plamen Oresharski, citizens today are exercising their right to peaceful assembly more and more confidently to voice their civil position on socially significant topics. To a large extent, the social network Facebook has facilitated exercising this right through the possibilities it provides – protest organizers can quickly and easily create events on Facebook, thus disseminating the information about upcoming protests and their message and invite Facebook users to take part in the protest demonstrations

"with a click". This allows large masses of people to be informed immediately after submitting the notification for holding a protest in the respective municipality and to self-organize straightaway. At the same time, a significant percentage of people is observed who freely express their views and comments on the social media and confirm that they will take part in the organized protests, but do not actually attend them on site (Protests in defense of National Park Pirin - #SAVE PIRIN, Protests of the mothers with the black T-shirts under the slogan "The System is Killing Us").

- The trend is being established for regularity and persistence (for many of the participants this is a prerequisite for success) in holding the protests (every day, every week, every month) until a reaction is obtained and/or the citizens' demands are met by the competent institutions and persons – the National Assembly, the Council of Ministers, individual ministers, etc. Until any kind of reaction is obtained, more often than not, protests are not suspended (Protests in defense of National Park Pirin - #SAVE PIRIN, Protests of the mothers with the black T-shirts under the slogan "The System is Killing Us," Counterprotests of the nationally representative organizations of people with disabilities against the Personal Assistance Act and for a fair social and healthcare reform).
- When a series of protests is organized, with time the initial demands are modified and enriched with new, additional demands after each protest. When protest

actions are held systematically, protesters often vary the forms of holding the assemblies and the ways of expressing their message – through processions, peaceful demonstrations, silent vigil, relay running, tent camps (Protests in defense of National Park Pirin - #SAVE PIRIN, Protests of the mothers with the black T-shirts under the slogan “The System is Killing Us,” Counterprotests of the nationally representative organizations of people with disabilities again the Law on Personal Assistance and for a fair social and healthcare reform).

- Since no official and publicly available statistics is being kept, the media do not work with objective data about the number of people who take part in individual protests or their profile – social status, age, gender. This is why journalist materials and reports almost always lack even tentative numbers which could provide an idea of the scale of the protests covered. The most frequent approach is to generalize the number of protesters as “tens,” “hundreds,” “thousands”, without an objective confirmation of this information being possible. In some cases, some unethical media speculate with the scale and quote unrealistic numbers, either exaggerating or belittling them. (Counterprotests against the ratification of the Istanbul Convention, Protests in defense of National Park Pirin - #SAVE PIRIN, Protests of the mothers with the black T-shirts under the slogan “The System is Killing Us,” Counterprotests of the nationally representative organizations of people with disabilities against the Personal Assistance Act and for a fair social and healthcare reform).

- When political actors or famous figures stand behind specific protests or become the face of protest campaigns, protests quickly become both the subject of political discussions and debates between opposing political parties and leaders, and the reason for division of society. Thus, when a specific political leader or famous figure expresses publicly their support for the message of a specific protest, the media interest is focused and directed almost entirely on this protest. In this way socially significant and important topics are easily driven out of context (Counterprotests against the ratification of the Istanbul Convention, Counterprotests in support of a second cabin lift in Bansko and in support of the management plan of NP Pirin, Protests of the mothers with the black T-shirts under the slogan “The System is Killing Us”).
- The protest of the mothers of children with disabilities which became famous throughout the country managed very quickly to generate a powerful civil energy and turn into one of the largest scale protests in Bulgaria for 2018, attracting followers and associates who had not had a position on the topic of the social system and policies for people with disabilities before that. This protest also gave rise to controversial opinions among the community to what extent and how public acts of citizens in the form of peaceful assemblies, the aggressiveness of the messages, communication of events, their effect and others can be politically manipulated. In addition to these important questions, the statement quoted

at the beginning of this report,<sup>47</sup> made by Deputy Prime Minister Valeri Simeonov, illustrates a specific type of public speech, which has developed as a tendency – using from the political tribune belittling and discrediting connotations towards the protesting citizens in order to stigmatize their protesting acts. Consequently, citizens’ intolerance to such conduct by a deputy prime minister was transformed into a mass protest with which the citizens demanded the immediate resignation of Valeri Simeonov. 28 days later, he handed it in.

- In conclusion, despite the lack of official statistics, we can say that in Bulgaria, it is evident in recent years that “protesting” is a common way of expressing a civil position. Administrative obstacles are relatively few and fragmented in practice, so we cannot conclude that this right is not exercised freely and democratically. Rather, there is disappointment from “the effect.” In comparison to 2013, when there were stronger political attacks against the protesters (terms were introduced in political speech, such as “protester guys,” “yellow-pavement guys,” “Sorosoids”), at present (2018) it can be said that such stigmatizing and propaganda waves have not pushed people away from exercising this right, but rather, have made them focused on gathering and demonstrating on a larger scale and including more

<sup>47</sup> “... a group of shrill women who wanted to capitalize on their children, manipulating society, bringing these – presumably sick – children out in the scorching sun and in the rain, without a hint of a motherly feeling of care for them...,” Valeri Simeonov, Deputy Prime Minister for the Economic and Demographic Policy in the Third government of Boyko Borisov, on occasion of the protest of mothers of children with disabilities in 2018

innovative methods of expressing their stand (within a specific event).



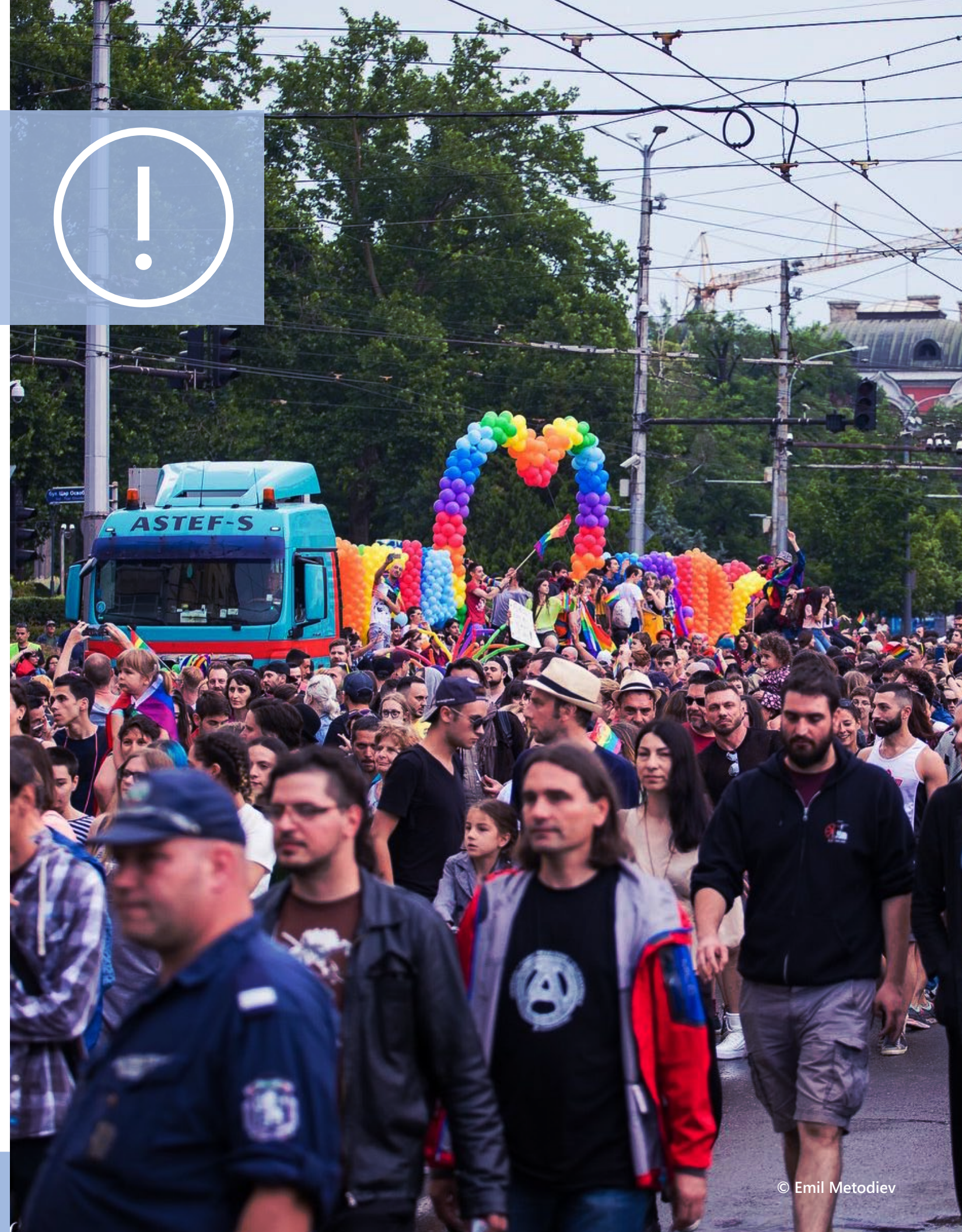
## VII. RECOMMENDATIONS

The study of the active regulatory framework and practical application of regulations governing the right to freedom of peaceful assembly of Bulgarian citizens has led to conclusions for legislative discrepancies and contradictory practice by state and local authorities. Based on the analysis carried out, we can make the following recommendations for improving and perfecting the regulatory framework, policies and practices regarding the exercise of the right to freedom of peaceful assembly in Bulgaria:

With regard to the application of the legislation and regulatory framework at the local level (in the respective ordinance on public order), we can observe four negative aspects on which we provide specific recommendations for improvement below:

- First, the lack of a standard sample form of the notification for holding a specific event to the mayor of the respective municipality creates an opportunity for introducing dishonest administrative practice and interpretation to circumvent the notification regime established by law. An example is the notification sample published on the web page of Sofia Municipality, which contains the footnote

that *“Sofia Municipality issues a letter of agreement in response to the notification, which should be received in person by the applicant or an authorized person.”* In this respect, **all municipal administrations**, as competent authorities that should take the lead in acting, should review their specific notification sample forms and bring them in compliance with the requirements of the law, as well as make them as simple and clear as possible so as not to create an opportunity for interpretation, circumvention or violation of the law.





- Second, in order to facilitate as much as possible the exercise of the right to peaceful assembly by all citizens, it is recommended to provide the possibility for access to and submission of the notifications to mayors electronically. A significant improvement in the practice of **municipal administrations** would be if sample forms were accessible and at a visible position on the web page of **every Bulgarian municipality**. On the other hand, a significant facilitation in view of the administration of notifications, observing legal deadlines and the submission of notifications itself would be the introduction of a unified electronic system where citizens could easily and quickly, through any device, notify the competent authorities about the upcoming event.
- Third, there is no explicit regulation of the coordination procedure with **the municipal department of law enforcement authorities**. On the one hand, the established practice of mandatory preliminary coordination of the event under the ARMA with the police destabilizes the notification regime set out in the legislation. The impression is created (often maintained by the municipal administration) that after all the police or the municipality “allows” the holding of the assembly, rally or march. On the other hand, we note the necessity for law enforcement authorities to coordinate with the organizers the route, venue and maintenance of public order. In this respect, we propose to the competent municipal authorities that an explicit regulation of the coordination procedure is introduced in the relevant local regulatory acts

(ordinances on internal procedures), so that it is clear to citizens what they should do step by step.

- Fourth, at the interviews we held with protest organizers, we established that the *first come, first served* rule is being misused when there are applications for holding two events at the same time and place or on the same route. The person we interviewed gave examples with organization of events by LGBT organizations (for example, the Sofia Pride). When submitting a notification in the municipality, it turns out that other organizers (including organizations promoting obviously homophobic messages) have “booked” the venue or route for several consecutive days or even consecutive weekends. Another example is the submission of a notification by these same homophobic organizations for holding a protest at a venue or along a route immediately parallel to that of the LGBT organizations, which in itself represents serious grounds for potential disturbance of public order. In this respect, we believe that abuse of the right to peaceful assembly should be avoided when the exercise of this right aims solely and entirely to infringe another’s right to hold an assembly, rally or march. This recommendation is targeted to all stakeholders – national, local authorities and private parties, which are interested in and related with the application of the legislation and regulatory framework at state and local level and which are stated in paragraph IV above.

Towards the **municipal authorities** - Bringing the local secondary legislation and practices

into compliance with legal requirements established generally for all types of mass public acts at the local level – some regulations seem to be providing only for the events which do not fall under the scope of the ARMA, but this is not always explicitly worded, sometimes the hypotheses listed include cases of “*processions, open petitions*,” meaning the regulatory framework at the local level is not precise and clear in terms of what its scope is. In addition, local regulation needs to be unified as much as possible because very often organizers of one and the same protest hold it in different municipalities and the different rules pose difficulties to their activity and are also demotivating.



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*The right to free assembly is an indispensable element of democracy and a healthy civil society. Recent years have seen a new era of mass protests, but also a significant increase in practical restrictions on the right in Western Balkan and Eastern Partnership countries. The European Center for Not-for-Profit Law (ECNL) supports its network of local partners (in Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Kosovo, Serbia and Ukraine) to monitor local laws, observe protests, report challenges and engage in the legal reform process to protect and promote this fundamental right.*

*This year's monitoring reports build on previous efforts and explore issues that are of relevance for all the participating countries. Accordingly, beyond the legal framework, the reports also look at the role of civil administration, policing, criminalization of protesters, as well as the overarching issue of accountability manifesting in all of these aspects.*



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