

MONITORING THE RIGHT TO FREE ASSEMBLY

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2017
2018 CROATIA

 **#right2freeassembly**



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Published in January 2019

This publication is co-funded with the support of the National Foundation for Civil Society Development. The content of this publication is the sole responsibility of the Human Rights House Zagreb and does not necessarily reflect the views of the National Foundation for Civil Society Development.

The monitoring report was conducted as part of the 'Monitoring the Right to Free Assembly' regional project, managed by the European Center for Not-for-Profit Law (ECNL).



The project is made possible by the International Center for Not-for-Profit Law (ICNL) through the Civic Space Initiative, and by the Government of Sweden. The author bears the sole responsibility for the content.

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(Pictures on the cover pages are provided by Jorge Láscar, <https://bit.ly/2D7MVQb>)

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I. EXECUTIVE SUMMARY

This research provides an estimation of the level of protection of the right to public assembly in Croatia during 2017 and 2018 and includes an analysis of the main elements of organization and administration of assemblies as well as the identification of respective challenges. The data obtained through analysis of the legislative framework was triangulated with the data collected through interviews with relevant stakeholders and monitoring of selected peaceful assemblies and public protests.

As opposed to previous years, 2017 and 2018 were not marked by a large number of assemblies with strong public response that would question the existing legislative and institutional framework for exercising the right to assembly. However, there is a visible trend of holding assemblies of various kinds, sizes and media coverage. In general, assemblies are banned only exceptionally and most of them were held without major incidents. When it comes to public perception, assemblies are still perceived as an expression of dissatisfaction and a potential cause of problems and disorder, instead of an exercise of fundamental right and freedom whose purpose is to encourage public debate and

contribute to the development of democratic and inclusive society.

The legislative framework governing public assemblies in the Republic of Croatia is on relatively satisfactory level. The greatest challenge to its implementation represents the application of equal criteria to all assemblies irrespective of their type, organizer and purpose. Over the past few years there has been a progress in the policing of assemblies, especially with respect to larger protests or assemblies related to politically or socially sensitive topics. Nevertheless, there is still room for improvement both in terms of improving communication of assembly organizers with competent authorities, as well as in terms of achieving uniform reaction and equality in treatment of all the organizers and participants of assembly.

The right to public assembly is subject to certain constraints and it is necessary to strike a balance between the use of this right on the one hand, and the proportionate application of lawful restrictions on the other. There are number of unpredictable situations that may occur during assemblies and therefore it is important to emphasize good cooperation and dialogue between organizers and law

enforcement services in order to foresee and prevent possible matters of concern. Even though no significant difficulties in exercising the right to public assembly or deterioration of the legislative and institutional framework have been detected, tackling existing obstacles could further enhance the protection of freedom of assembly and contribute to creation of an enabling environment for unhindered use of this fundamental constitutional right.



II. BACKGROUND AND CONTEXT

On the basis of the research carried out, it can be concluded that the citizens of Croatia are almost unimpeded in exercising their right to public assembly, with exception of minor barriers which occasionally make the organization process more complicated. The right to peaceful assembly is largely enabled and protected in line with international standards but there is still some space left for improvement. Differences in treatment exist to some extent but are not visible in the way that certain social groups are denied the right to peaceful assembly. The only situations in which differences in treatment of certain assemblies are detected are related to the size and the subject of public assemblies. For example, during informative meeting of organizers with representatives of police authorities assembly arrangements are sometimes discussed in detail whereas in other cases the meeting is just a formality, which is mostly the case in relation to smaller assemblies. When it comes to larger and politically sensitive assemblies, an increase in caution of the authorities is noticed due to the very nature of the assembly. In some cases such heightened caution manifests itself in the form of administrative barriers and excessive precautionary measures, such as lengthy processing of requests for use of public space,

attempted route redirection or prevention of joining in the parade. In addition, process of obtaining all necessary authorizations to hold an assembly in many cases includes initiating separate procedures with police as well as with local authorities. Namely, apart from notification to police, assembly organizers are required to obtain permission for use of public space from local authorities which makes the entire process longer and more complicated. However, cases of different groups receiving significantly different treatment with respect to the same circumstances in relation to assembly organization process have not been observed. Compared to the situation several years ago, no significant differences are visible in terms of exercising the freedom of assembly which is overall assessed as satisfactory and unproblematic. In fact, based on the experience of assembly organizers, it can be concluded that the situation with regard to legislative regulation, administrative implementation and policing of assemblies is good and has remained unaltered in comparison to previous years.

According to statistics of the Ministry of Interior of the Republic of Croatia, during the year 2017 a total of 19,689 assemblies were

held in Croatia. Out of this number, 169 were protests, 10,381 sports events, 6,074 cultural-entertainment gatherings, 914 political gatherings and 2,151 were other gatherings. The data on the assemblies held is grouped according to the competences of the police administration units for each county. The largest number of assemblies in 2017 was held in Istria (2,673), Primorje-Gorski Kotar (2,386), Zagreb (2,090) and Split-Dalmatia Counties (2,027).¹ Even though there is no statistical categorization of protest by topics, based on the assemblies observed during 2017 and 2018 protests that gathered the largest number of participants were related to issues such as educational system reform, reform of pension system, expressions of opposite views on reproductive rights as well as protests against the ratification of Istanbul Convention organized by groups which consider that this document would introduce a so called “gender ideology” to Croatian legal system. Issuance of bans on certain assemblies represents a rare occurrence in Croatia. In 2017 only one such case was recorded when a cultural-entertainment gathering was prohibited under the Public Assembly Act. Similarly, in 2016 only two events were banned.² All the research participants agree that in practice bans of assemblies are rarities in Croatia.

The number of assemblies in 2017 involving an incident was 74, out of which only one incident was associated with the protest, while the majority i.e. 45 incidents occurred during sports events and 23 during cultural-

¹ Ministry of Interior, Statistical overview of main security indicators and work results in 2017, Zagreb, January 2018, p.124, available at: <http://stari.mup.hr/UserDocImages/statistika/2018/Statisticki%20pregled%202017.pdf>

² Ibid.

entertainment gatherings. During the incidents, 3 police vehicles, 2 civilian vehicles and 5 facilities were damaged, but based on the data available it is not comprehensible whether the events in question were qualified as assemblies resulting in violence or disorder. In 2017, 45 cases of use of coercive means were recorded during the assemblies, most of which were used at sports gatherings. The means of coercion were used in total 3 times during the protests. In 2017, 1,193 persons were arrested in connection with public assemblies, which is a 15.6% increase compared to the previous year. Arrests usually occur during sports events (1,050), followed by cultural-entertainment gatherings (93) and lastly the protests (18), e.g. a group of counterprotesters was arrested after blocking the way of a parade. In connection with public assemblies 68 criminal reports and 1,818 misdemeanor applications were filed in 2017.³

As a conclusion, Croatian legal framework is relatively well developed in terms of protecting the right of assembly and its compliance with the standards prescribed by the European Convention on Human Rights is at a satisfactory level. Practical enforcement of the regulations relating to the freedom of assembly can be assessed as unproblematic, which can be inferred from the experience of stakeholders involved in organizing and conducting public assemblies as well as from a low number of cases in Constitutional Court practice relating to the protection of the right to

³ Ibid.

public assembly.⁴

⁴ According to the official search engine of the Constitutional Court of the Republic of Croatia, only two decisions referred to Article 42 of the Constitution which grants the right to public assembly and peaceful protest and both cases are from year 2014. See: www.usud.hr, accessed on 24 September 2018. In addition, through search of the practice of the European Court of Human Rights no case has been found against the Republic of Croatia regarding the exercise of the right to public assembly. One case relates to the right to strike (which is a special form of assembly), but the issues of this case have been assessed in the light of the right to association (both rights are guaranteed under Article 11 of the European Convention on Human Rights). See: <https://hudoc.echr.coe.int/eng#%7B%22documentcollection%22%3A%22JUDGMENTS%22%7D>], accessed on 3 October 2018.



III. LEGAL FRAMEWORK

LEGISLATION

The chapter of the Constitution of the Republic of Croatia dealing with personal and political rights and freedoms guarantees the right to public assembly and peaceful protest in accordance with the law.⁵ This right is further elaborated by the act which is considered organic and whose enactment requires a qualified majority in the Croatian Parliament. The first Public Assembly Act adopted in April 1992⁶ has been replaced by the new Public Assembly Act (hereinafter: PAA) of November 1999, which has been amended several times so far.⁷ PAA regulates various forms of assemblies, obligations of public authorities in relation to assemblies, rights and duties of organizers of assemblies, notification procedures and procedures for prohibition of assemblies, stipulates restriction of the right to assembly as well as sanctions in case of violation of its provisions.

The Criminal Code provides for violation of

the right to assembly and protest as a criminal offense in the chapter that deals with human rights and fundamental freedoms⁸. In addition, certain specific types of assembly are regulated by the Act on Prevention of Disorder at Sports Competitions⁹ which regulates gatherings at sporting events, the Act on the Legal Status of Religious Communities¹⁰ which regulates religious ceremonies as a special form of public gathering, the Labour Act¹¹ which regulates the strike and the Act on Referendum and Other Forms of Personal Participation¹² because the collection of signatures for a referendum is also considered a special form of assembly. The Act on Police Affairs and Authorities¹³ regulates the rules of conduct of police officers in matters of protection of public order and peace, as well as performing other duties which may be necessary to police

8 Criminal Code (OG 125/11, 144/12, 56/15, 61/15, 101/17), Article 128

9 Act on Prevention of Disorder at Sports Competitions (OG 117/03, 71/06, 43/09, 34/11)

10 Act on Legal Status of Religious Communities (OG 83/02, 73/13)

11 Labour Act (OG 93/14, 127/17)

12 Act on Referendum and Other Forms of Personal Participation in State Administration and Local and Regional Self-Government (OG 33/96, 92/01, 44/06, 58/06, 69/07, 38/09, 100/16, 73/17)

13 Act on Police Affairs and Authorities (OG 76/09, 92/14)

5 Constitution of the Republic of Croatia (OG 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14), Article 42

6 Public Assembly Act (OG 22/92)

7 Public Assembly Act (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12)

the assemblies.

Regarding the legal framework, no major changes have been made since 2016 except for the adoption of the Act on Amendments to the Act on Referendum and Other Forms of Personal Participation¹⁴ that require a Personal identification number (OIB) instead of the Unique master citizen number (JMBG) when collecting a voter's signature for the referendum. Amendments were made following the Constitutional Court's Decision¹⁵ on the grounds of lack of a justified reason for further use of the Unique master citizen number (JMBG) when expressing their will for a referendum to be held since it was contradictory to the constitutionally guaranteed right of voters to the protection and confidentiality of personal data.

DEFINITION

The Public Assembly Act (PAA)¹⁶ distinguishes peaceful assemblies and public protests, public manifestations of commercial character and other forms of assembly. Different legal conditions apply in relation to each one of them.

Peaceful assembly and public protest is by definition an organized gathering of more than 20 people held for public expression and promotion of political, social and national beliefs and goals.¹⁷ The Act does not contain provisions relating to assemblies involving

14 Act on Amendment to the Act on Referendum (OG 73/17)

15 Constitutional Court of the Republic of Croatia, Decision No. U-I-1962/2008 of 27 September 2016 (OG 100/16), available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2016_11_100_2155.html

16 PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12)

17 PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 4

less than 20 participants. However, although it mentions individual protests in the sense that it is not necessary to notify them, it is unclear whether individual protest refers to the protest involving only one person and what the rules are for assemblies attended by less than 20 participants.

Public events are assemblies organized for making profit within the registered activities that require special security measures given the expected number of participants or the character of the event.¹⁸ Since this form of assembly refers to public manifestations of commercial character, it will not be taken into account in the further course of this research. Moreover, other forms of assembly include assemblies aimed at the realization of economic, religious, cultural, humanitarian, sports, entertainment and other interests.¹⁹

The leading criterion for such division into categories of peaceful assemblies and public protests, public manifestations of commercial character and other forms of assembly is differentiation according to the purpose of public assembly. The main differences among these three categories are noted in relation to the notification process, the ban and the interruption of the gatherings.. For example, whereas it is mandatory to notify peaceful assemblies and public protests as well as public events, when it comes to other forms of assembly the obligation to submit a notification represents only an exception in cases which require special security measures.

Also, the legal term "peaceful assembly and public protest" differs from the constitutional term "public assembly and peaceful protest".

18 Ibid.

19 Ibid.

The use of different terminology related to the same kind of assembly is evident in various pieces of legislation and official documents, and despite the fact that this discrepancy does not lead to significant complications in practice, such disparity in terminology remains unclear and unnecessary.

RESTRICTIONS

The Public Assembly Act can impose limitations on the right to public assembly that are necessary in a democratic society for protection of the freedom and rights of others, legal order, public morality and health.²⁰ The Act basically follows the constitutional norms and prescribes the obligation to establish certain legitimate limitation objectives and the application of the principle of proportionality. The obligation to comply with these principles as well as meeting the condition to be prescribed by law is also a general standard in line with the European Convention for the Protection of Human Rights and Fundamental Freedoms²¹ and further emphasized by the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly²².

Thus, according to the legal provisions peaceful assembly and public protest shall not be held near the hospital (in a way that impedes access to emergency vehicles and disturbs the peace of patients), close to kindergartens and primary

20 PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 3(1)

21 Gardašević, Đ.: The right to public assembly in Croatian and Comparative Law, Digest of the Faculty of Law Split, Vol. 48, 3/2011, p. 511, available at: https://hrcak.srce.hr/index.php?show=clanak&id_clanak_jezik=107772

22 OSCE/ODIHR, The Guidelines on Freedom of Peaceful Assembly, 2010, point 2.3 and 2.4, available at: <https://www.osce.org/odihr/73405?download=true>

schools (while there are children present), in national parks and protected nature parks (with the exception of assemblies aimed at promotion and protection of nature and human environment), on motorways and highways (if the road traffic safety is compromised), and in other places if, considering the time, number of participants or the nature of the assembly, it could seriously disrupt the movement and work of a large number of citizens.²³

The restrictions on holding assemblies at St Mark's Square in Zagreb are specifically regulated by law due to the proximity of the main state institutions. The protest can not be held within 10 meters from the buildings of the Croatian Parliament and the Government of the Republic of Croatia, as well as within 20 meters from the building of the Constitutional Court. Assemblies held at St. Mark's Square are also limited in terms of the number of participants (1500 persons), the time when it can be held (8h to 22h) and the route which may be used to reach the location (with exceptions provided for persons with disabilities or mobility difficulties).²⁴

The proportionality of the need for all the restrictions related to assemblies on St. Mark's Square is questionable. For example, the provision on the time of holding the assembly prevents holding a continuous protest whereas the provision on limiting the number of participants prevents holding of assemblies that attract a wide public interest organized to send a certain political message in front of state institutions i.e. precisely at the place where the

23 PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 11

24 Ibid.

measures which provoked public reaction in form of an assembly were adopted in the first place. Such regulation entails consequences such as reducing the number of participants or hesitation in terms of advertising and inviting the public to participate in an assembly, which is contrary to the original idea of the right to public assembly accessible to all with minimal restrictions imposed. Although it is assumed that the legislator specified restrictions precisely to prevent the inconsistency of arbitrary estimations in each individual case, the adoption of individual decision on the restriction of the right to public assembly on this location in accordance with the specific security needs would be more in line with the principle of proportionality.

Example: The ban of peaceful protest against the arrival of the Serbian president Aleksandar Vučić to Zagreb?

Association of Widows of the Croatian War Veterans of City of Zagreb and Zagreb County planned to organize a peaceful protest on St. Mark's Square against the arrival of Serbian president Aleksandar Vučić to Zagreb. However, on the basis of the Act on Police Affairs and Authorities and based on security assessments related to the implementation of special security measures, namely the safety of protected persons and objects, the police temporarily restricted access to St. Mark's Square

therefore leading to protest being organized at Ban Josip Jelačić Square instead. Although the police stressed in its statement that this was not a case of banning public assembly under Article 14 of the Public Assembly Act, the described situation was reported by the media as an imposed ban on protest. Restricting access to St. Mark's Square in fact prevented the protest to be held at the place where its messages could have been conveyed in the strongest and most visible manner.²⁵

²⁵ "Policija je zabranila prosvjed protiv Vučića na Trgu sv. Marka, pa su branitelji ostali na Trgu bana Jelačića" (*Police bans protest against Vučić on St. Mark's square so war veterans had to remain on Ban Jelačić square*), Hrvatska danas, 12 February 2018, available at: <http://hrvatska-danas.com/2018/02/12/policija-je-zabranila-prosvjed-protiv-vucica-na-trgu-sv-marka-pa-su-branitelji-ostali-na-trgu-bana-jelacica/>

CASE STUDY - ASSEMBLIES ON ST. MARK'S SQUARE

In the frame of assessment of development of an enabling assembly environment, it is interesting to look into timeline of changes concerning legal framework that has over a certain time period prevented peaceful assembly and public protest on St. Mark's Square - a place where the main state institutions are located and which traditionally represents an assembly point for expressing political reactions and views of Croatian citizens.

The Public Assembly Act adopted in 1999 provided for a list of restrictions with respect to the location of peaceful assembly which involved the vicinity of hospitals, kindergartens and primary schools, national parks, particularly protected cultural monuments, highways, main roads and other places in case that time, number of participants and nature of the gathering could seriously disturb movement and work of larger number of citizens.²⁶ Amendments to this Act from 2005 introduced a provision prohibiting assemblies at locations within 100 meters of the premises where the Croatian Parliament, the President of the Republic of Croatia, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia are located or

26 PAA (OG 128/99), Article 11

hold their sessions.²⁷ This provision practically prevented holding assemblies at a place where the expression of political opinion of the citizens would be the loudest and most visible.

Introduction of such provision was justified by the reasons of state security and protection of rights and freedoms of others, with the explanation that similar security measures have been introduced all over the world following events from September 11, 2001. The measure was described as necessary for safety reasons given the specific configuration of buildings as well as special category of protected persons which apart from the highest Croatian state officials also includes foreign delegations considering that state visits mostly take place at the locations in question.²⁸

The Constitutional Court of the Republic of Croatia abolished the mentioned provisions in 2011 following the procedure for review of the conformity of the Act with the Constitution initiated by the Independent Trade Unions of Croatia and the informal citizens' initiative "Matija Gubec - resistance to the space of political discretion".²⁹

When analyzing the disputed provisions and deciding on their constitutionality, apart from

27 The provision was first introduced by the Act on Amendments to PAA (OG 90/05) which was abolished by the Constitutional Court decision in November 2005 for reasons of formal unconstitutionality because it was not passed by a prescribed majority in the Croatian Parliament necessary for the adoption of organic laws. The new Act on Amendments to PAA (OG 150/05) was adopted in December of the same year and it contained the same provision introducing the respective limitation.

28 Constitutional Court of the Republic of Croatia, Decision No. UI-295/2006 and UI-4516/2007 of 6 July 2011 (OG 82/11), point 15, available at: [https://sljeme.usud.hr/usud/praksaw.nsf/94b579567876f9fcc1256965002d1bf4/c12570d30061ce54c12578c500340c83/\\$FILE/U-I-295-06.pdf](https://sljeme.usud.hr/usud/praksaw.nsf/94b579567876f9fcc1256965002d1bf4/c12570d30061ce54c12578c500340c83/$FILE/U-I-295-06.pdf)

29 Ibid., point 1

the Constitution and related case law the Constitutional Court took into consideration relevant provisions of the Convention on Human Rights, the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and case law of the European Court of Human Rights. In addition, through the Venice Forum the Constitutional Court requested relevant information for this procedure from the Venice Commission of the Council of Europe and took into consideration relevant documents of the Venice Commission, the Office for Democratic Institutions and Human Rights and the Organization for European Security and Cooperation.³⁰

The Constitutional Court found that even though such a restriction was legitimate and met the principle of proportionality given the high degree of inadequacy of space, it was nevertheless not necessary in a democratic society as there was no "social need" to maintain it in the sense of Article 11 paragraph 2 of the Convention on Human Rights. In addition, since there was no provision of the same kind that would prohibit organization of public events or other forms of gatherings that concern economic, religious, cultural, humanitarian, sports, entertainment and other interests on the same location, the Constitutional Court found that there was no objective and reasonable justification to prohibit only public assemblies that express political, social and national beliefs and goals.³¹ According to the Court's standpoint, the diversity of motives of public assemblies does not constitute a constitutionally

30 Ibid., chapter V

31 Ibid., point 55

acceptable criterion for their distinction in a democratic society. Such regulation has led to unequal treatment not in accordance with the Constitution which unreasonably puts political, social and national beliefs and objectives on the level of discriminatory grounds.³²

Pursuant to the decision of the Constitutional Court, Croatian Parliament adopted amendments to the Public Assembly Act in 2012³³ which allowed assemblies to be held on St. Mark's Square and which represent a significant development in relation to previous regulation and a step forward regarding the respect of the principle of sight and sound of the protest. New provisions also contain certain restrictions, but they are more in line with the principle of proportionality. According to them, the protest on St. Mark's Square may be held at a distance of at least 10 meters from the buildings where the Croatian Parliament and Government of the Republic of Croatia are located and at least 20 meters from the building of the Constitutional Court. Additional restrictions refer to the number of participants which is limited to 1500 persons and to the time of the protest which is allowed to be held from 8h to 22h. The Act also prescribes a route that participants are allowed to take to reach St. Mark's Square, with the exception provided for persons with disabilities and mobility difficulties.³⁴

Allowing for a public assembly to be held near the most important state institutions represents a significant step forward regarding enabling citizens to exercise their constitutional right to public assembly

32 Ibid., point 50

33 Act on Amendments to PAA (OG 78/12)

34 Act on Amendments to PAA (OG 78/12), Article 1

which should be restricted only when necessary and in a way that is proportionate to circumstances of each individual case. The possibility to hold an assembly that is organized as a response to political measures brought by state authorities in the physical vicinity of these institutions is in line with the principle of sight and sound and contributes to effective exercise of the right to assembly as a fundamental human right of all citizens in a democratic society. Although allowed, assemblies on St. Mark's Square are still subject to substantial legal limitations concerning the number of participants, arrival route and allowed time frame due to specifics of this particular location. Such limitations should be in accordance with a strict test of necessity and proportionality³⁵, whereas in this case the law explicitly provides for general restrictions instead of determining necessary limitations in accordance with the specific needs of each individual assembly.³⁶

35 United Nations, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, point 66, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf

36 According to the OSCE/ODIHR Guidelines, the regulation of assemblies in residential areas or of assemblies at night time should be handled on a case-by-case basis rather than being specified as prohibited categories of assemblies. (OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, Explanatory Notes, 2010, point 43, available at: <https://www.osce.org/odihr/73405?download=true>)





IV. ADMINISTRATION OF FREEDOM OF ASSEMBLY

The Public Assembly Act provides for the obligation to notify peaceful assemblies and public protests five days prior to their beginning or, exceptionally, in the case of a particularly justified reason, at least 48 hours before the assembly commences. The notification is submitted to the police administration unit which has jurisdiction over the area where assembly or public protest is intended to take place.³⁷ Notification form is available online on the website of the police administration unit³⁸, but according to the instructions listed on the form itself, the organizer of the assembly is required to personally deliver the notification to the police station. The notification should indicate the purpose, place, date and time of the assembly, information about the organizer or his representative, personal data of the assembly leader, number of stewards and number of participants.³⁹ The manner of submitting notification is not specified by law, and in practice there is no possibility of submitting notification of the assembly

online or via post, fax or electronic mail.⁴⁰ Based on information received from police authorities and assembly organizers, personal delivery of the notification to the police station is requested for each assembly that requires notification. There are no provisions on direct consequences of failing to provide notification, but according to Public Assembly Act the official of the Ministry of Interior can prevent or stop the assembly in case that it is unnotified.⁴¹

On the other hand, there is no legal obligation to notify "other forms of assembly" organized for the purpose of realizing economic, religious, cultural, humanitarian, sports, entertainment and other interests, with the exception of assemblies which, given the number of participants or the nature of the assembly, require special security measures outside the regular activities of the local police administration. In this case, the notification shall be submitted to the competent police administration no later than 48 hours prior to the assembly.⁴² The reason for such more

³⁷ PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 7

³⁸ Notification form available on police authority website: <http://zagrebacka.policija.hr/MainPu.aspx?id=151470>

³⁹ PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 8

⁴⁰ Interview with assembly organizers

⁴¹ PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 22

⁴² PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 33

flexible provision may lie in the cause of the assembly and legislator's presumption that assemblies whose primary purpose is not to express political, social or national beliefs would only exceptionally pose potential threat to public order and peace. However, this presumption is not true as from the perspective of police authorities sports events represent the most challenging type of assemblies with respect to policing and maintaining public order.

Public Assembly Act contains a special provision determining the place in the city of Zagreb foreseen for holding of public assemblies and peaceful protests without prior notification⁴³, as well as a provision according to which a representative body of each city with population of more than 100,000 inhabitants can designate one place where peaceful assemblies and public protests may be held without prior notification⁴⁴. The City of Osijek decided to use this opportunity in September 2016 when the decision on determining the place for holding peaceful assemblies and public protests without notifying the competent police authority was brought, determining both the place and the time frame for holding the assemblies. Even though there is no obligation to provide notification to the police, the organizer of the peaceful gathering and public protest is obliged to submit the notification to the administrative body of the City of Osijek in charge for utilities no later than 5 days before the start of the event.

43 PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 13 stipulates that in the capital of Croatia, Zagreb everyone may hold a peaceful assembly and public protest without prior notification on French Republic Square.

44 PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 12

Exceptionally, under particularly justified circumstances it can be submitted 48 hours prior to the commencement of the assembly.⁴⁵

According to the views and experience of most organizers, police generally allows spontaneous assemblies held without prior notification. The police do not have the habit or the reason to interrupt assemblies attended by less than 20 people which the organizer is not legally obliged to notify. In some cases, the organizer informs the police authorities that the assembly of less than 20 people shall take place. In the event that the police come to such an assembly, they enquire with the organizers about the reason and purpose of the assembly and sometimes proceed with identification of the organizer or individual participants. The identification of all participants of the unnotified (small) assemblies is carried out only at St. Mark's Square, presumably for security reasons due to the proximity of the major state institutions.⁴⁶

From the perspective of the police authorities, it is problematic when the assembly is convened through social media because in this case usually it is not possible to determine the person responsible for its organization. The police keep track of invitations to those assemblies in order to attend and monitor them. Even though such assemblies are not notified and in most cases the police is not able to identify a person responsible for their organization, they still allow for the events to take place.⁴⁷

45 Decision on determination of the place to hold peaceful assemblies and public protests without notification, Official Gazette of the City of Osijek No 11, 27 September 2016

46 Interview with assembly organizers

47 Interview with representative of police authorities

The communication of the organizer with the police authorities begins from the moment the notification is lodged with the competent police administration unit and lasts until the assembly is held, including throughout the whole duration of the assembly. Such action is in line with the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, recommending the establishment and maintenance of continuous communication between the organizers of assembly and police authorities, especially in the context of large and controversial assemblies.⁴⁸ After submission of the assembly notification, the policing service or public order department of the police unit where assembly will take place holds an informative meeting with the organizer during which they negotiate the details about the protest organization. Although such a meeting is not prescribed by the Public Assembly Act, it is a good practice for all police authorities. In addition, the police informs the organizer about his legal rights and obligations. **Organizers generally assess overall communication with the police before and during the assemblies as satisfactory. Moreover, it is noted that the police simplify the notification procedure and related formalities to certain organizers based on years of good cooperation and large number of protests previously held without incidents. However, such approach is related to the fact that the organizers concerned are the ones whose protest messages or motives are not to such an extent politically and socially delicate, meaning there are significantly fewer**

48 OSCE/ODIHR, The Guidelines on Freedom of Peaceful Assembly, 2010, point 5.1, available at: <https://www.osce.org/odihr/73405?download=true>

opportunities for problematic situations to emerge. No subsequent meetings between the organizers of the assembly and the police are held once the assembly has taken place since no need for follow-up meetings has been detected so far.⁴⁹

A supplement to the notification before the assembly is held is permitted if it is submitted timely i.e. early enough in order to allow for adequate preparation of police units. The changes are mainly related to predicting the number of participants, reporting of additional equipment, minor route changes etc. In the meantime, the police occasionally contacts the organizer via telephone to inform him of other assemblies or events taking place at the same time or about new circumstances that could cause difficulties. For instance, the police alerts the organizers of potential risky situations that could lead to unwanted provocations and conflicts.^{50 51}

Example: A protest against mandatory military service

The Workers' Front announced on social media a protest in front of the building of the Ministry of Defense of the Republic of Croatia in Zagreb against the introduction of

49 Interview with assembly organizer

50 Ibid.

51 One of the organizers of the assemblies that were considered to be of higher risk cited an unpleasant experience with the police on two occasions when the police attempted to impose on him to formally notify the authorities about the organization of closed-type events that by definition were not public assemblies, probably due to prevention of possible problematic situations and reactions these events could provoke. Even though this was intended as a precautionary measure, it was nevertheless excessive and legally unfounded. (Interview with assembly organizer)

a mandatory military service. They encountered several difficulties when they attempted to lodge a notification about the protest. After being referred to several police stations they were finally informed that it was impossible to submit the notification about the protest given that earlier that day someone has allegedly notified the authorities of holding a protest on the same location. In addition, they did not provide information about who were the organizers of the other protest. Subsequently, they learned through social media that it was an unknown veterans' association that allegedly organized an assembly to support the introduction of military service, which was announced on social media only after the police rejected to authorize the notification of the first assembly. From the Workers' Front they emphasized that it was extremely unusual that someone would decide to organize a protest at the same location just half an hour earlier. Given that in this period the issue of introducing military service was the current topic of public discussions, the organizer saw these circumstances as an attempt to prevent the protest from happening. However, despite these aggravating circumstances both assemblies were held at the respective location - one for the introduction of military service

and another, twice the size, against it.^{52 53} The organizer of one of the protests encountered obstacles that were imposed without providing necessary clarifications of the situation in question. When it comes to imposing restrictions or bans to assemblies, thorough explanation and justification shall be given to the organizer in each particular case.

The issues related to public assemblies are monitored by the Office of the Ombudsman in the frame of exercise of other fundamental rights, even though its annual report does not include a separate section related to the exercise of the right to public assembly. For instance, during the reporting period for 2017 the Office of the Ombudsman focused on an analysis of current events related to exposure to religious content in public institutions and public services. Namely, according to the data of the Office of the Ombudsman for 2017, citizens have been questioning the appropriateness and permissibility of activities of praying initiatives that took place in close vicinity to hospitals during visiting hours. The best-known such initiative organizes campaigns and public assemblies during which it advocates primarily for the protection of the right to life, including an initiative to stop the

⁵² Workers' Front, Press release: Police banned protest against mandatory military service, February 2017, available at: <https://radnickafronta.hr/334-izjava-za-medije-policija-zabranila-radnickoj-fronti-prosvjed-protiv-obaveznog-vojnog-roka>

⁵³ "Dva prosvjeda zbog vojnog roka: Nećemo ginuti za Todorica!", (Two protests against military service: We will not die for Todorica!), N1 Hrvatska, 11 February 2017, available at: <http://hr.n1info.com/a178935/Vijesti/Dva-prosvjeda-zbog-vojnog-roka-Necemo-ginuti-za-Todorica.html>

interruption of pregnancy on demand. The Ombudsman reviewed this specific situation as it was at the same time a form of public expression of freedom of religion as well as the right to assembly, and raised the question of the appropriateness of such initiatives taking place in close vicinity to hospitals, bearing in mind that patients and their families also enjoy the freedom of religion as well as that patients are entitled to unhindered health care which also includes protection of privacy. Considering that on the grounds of the Public Assembly Act a public assembly should not be held in close proximity to hospitals in a way that prevents access to emergency vehicles and disturbs the peace of the patients, the Ombudsman warned that when allowing assemblies organized in close vicinity of the hospital, particular consideration should be given to all the circumstances surrounding the request to organize such an initiative. The legislator recognized hospitals as places where the right to public assembly could be justifiably restricted so if the aim of a particular assembly may be achieved outside the health institution, possibility of holding such an assembly at another suitable location should be carefully considered. In this regard, the Ombudsman sent a recommendation to the Ministry of Health to advise hospitals to take into consideration the abovementioned circumstances when it comes to giving consent to public assemblies in their areas.⁵⁴

⁵⁴ Office of the Ombudsman, Ombudsman Report for 2017, p.167, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>

THE ROLE OF LOCAL AUTHORITIES

Even though notification of assemblies is submitted to police administration unit, local civil authorities have an important role in facilitating public assemblies when it comes to rules relating to use of public space where an assembly shall take place. Local government bodies pass on local acts that regulate the use of public space on their area and public assemblies are reported to the local self-government unit in charge of space planning, communal services and traffic. Approval of local authorities is necessary for the use of public areas and roads for the purpose of public assembly, and in that sense civil authorities play an important role in facilitating essential components for enabling assemblies to take place, such as traffic hindrance, use of speakers or setting up the stage and other infrastructure.

In the frame of this research the procedure of obtaining necessary permissions to organize an assembly has been looked into more closely on the example of the City of Zagreb. Within its area, the City Office for Space Planning, City Construction, Utilities and Traffic gives permissions for use of public space for assemblies if they involve use of infrastructure and devices on public space as well as stop and disturbance of local traffic. Within this Office both Sector for Utilities and Public Space and Sector for Traffic deal with this issue and cooperate whenever the manifestations require permissions of both kinds.⁵⁵

Assembly organizers come personally to local authorities in order to obtain a necessary licence and there is no online form or registration

⁵⁵ Interview with representatives of local authorities

available. In each individual case the organizer personally discusses the arrangements for an assembly in dialogue with local authorities and in accordance with the specific requests and circumstances of a certain assembly. The information on procedure for notifying local authorities is not publicly available and easily accessible online, but all necessary information is provided to organizers personally in accordance with the specifics of the individual case. On the premises of the local authorities the organizers may easily obtain information and instructions on the application process regarding obtaining necessary authorizations for use of public space to set up infrastructure or for temporary hindrance of local traffic.⁵⁶ After submission of the notice to hold an assembly the competent sector requests opinion of the respective city unit depending on the purpose of the event, which is followed by the committee decision that allows the use of the public space for a particular event and specifies the amount of fee in accordance with local legislation in cases when the fee is charged.⁵⁷

Decision of local authority gives the permission to use public areas for the purpose of holding an assembly and specifies all the devices that may be used during that assembly, rules regarding maintaining public surface clean as well as regulations on the noise protection in the event that it is necessary. According to the practice of local authorities, there are very few cases when the request for use of public areas for setting up infrastructure for an assembly is rejected. The reason for rejection is usually very short application deadline during which

⁵⁶ Ibid.

⁵⁷ In practice, the fee is charged only with respect to commercial or hospitality events.

the request could not be processed or holding of several events at the same place simultaneously.⁵⁸

In relation to public assemblies, local authorities cooperate with sectors within their own structures but they do not cooperate with other state administration bodies or public services as no need has been shown for such cooperation according to their experience so far. From the perspective of local authorities, there are no major challenges with respect to administration of public assemblies and their cooperation with organizers is mostly based on established practice. Local authorities keep internal records of permits issued for assemblies on their area, but there is no official statistics of data on assemblies that would be publicly available.⁵⁹

If local authorities impose a limitation or do not issue a permit on matters within their jurisdiction, the organizers have the possibility to appeal to the Ministry of Construction and Physical Planning within 15 days of the adoption of such decision. According to the experience of local authorities, in most cases the Ministry confirms their assessment whereas cases when the appeal is sustained are rare. Given the nature of the events often organized within the short time period, there are also cases when the appeal process is not completed before the assembly in question takes place.⁶⁰

According to the experience of organizers of assemblies, the process of obtaining permissions from local authorities is bureaucratic and slow. From the standpoint

⁵⁸ Interview with representatives of local authorities

⁵⁹ Ibid.

⁶⁰ Ibid.

of several organizers this procedure often tends to be somewhat impractical and biased. In some cases the request was not processed on time and protests were held without necessary permissions which were obtained retroactively. Organizers describe rules regarding utilities as very strict when it comes to technical details that the organizer shall take into account, such as access of vehicles that deliver equipment to pedestrian areas or rules regarding noise regulation and waste disposal. For example, the organizer is obliged to cover the fee for measuring noise level and in cases of larger assemblies that include a manifestation of any kind the organizer contacts local waste management service that coordinates the cleaning of the area, but the organizer is obliged to cover the cleaning fee accordingly. Consequently, throughout the organization process there may be a whole series of technical difficulties that cause problems to organizers, especially when it comes to large gatherings that are organized in a relatively short time period.⁶¹ The process for obtaining permits should be as simple and quick as possible in order not to impose excessive bureaucratic obstacles to unhindered realization of the right to public assembly, as it was pointed out by the Venice Commission in the Guidelines for Freedom of Peaceful Assembly.⁶² Making information publicly available regarding necessary steps of notification process and introducing online application form would to a great extent clarify and simplify the procedure.

⁶¹ Interview with assembly organizers

⁶² OSCE/ODIHR, The Guidelines on Freedom of Peaceful Assembly, 2010, point 4.1, available at: <https://www.osce.org/odihr/73405?download=true>

Example: The City of Rijeka rejects to give permission to set up stands for collecting referendum signatures

The City of Rijeka rejected to give permission for setting up stands on its public areas to the citizens' initiative "The truth about Istanbul Convention" which requested permission for a total of 26 locations for collecting signatures to call a referendum on cancelling the Istanbul Convention. The City of Rijeka took the position that no such activities could be carried out on its public areas because the City objects to withdrawal of the ratification of the Istanbul Convention, an international document which protects women and children from all forms of violence. Representatives of the citizen initiative filed criminal charges against the mayor of the City of Rijeka based on provisions of Criminal Code that refer to violations of electoral rights. ⁶³

⁶⁴ Access to public areas for the

⁶³ "Obersnel odgovorio protivnicima "Istanbulske": Grad Rijeka ne dopušta zastrašivanje stanovništva lažima" (Obersnel responded to the opponents of the Istanbul Convention: City of Rijeka will not allow intimidating its citizens by lies), Novi list, 17 May 2018, available at: http://www.novolist.hr/Vijesti/Rijeka/Obersnel-odgovorio-protivnicima-Istanbulske-Grad-Rijeka-ne-dopusta-zastrasivanje-stanovnistva-lazima?meta_refresh=true

⁶⁴ City of Rijeka, Mayor Obersnel's response to today's statement by citizens' initiative "Truth about Istanbul Convention", 23 May 2018, available at: <https://www.rijeka.hr/odgovor-gradonacelnika-obersnela-na-prozivke-sadrzane-u-priopcenju-koje-je-danas-poslala-gi-istina-o-istanbulskoj/>

purpose of exercising the right to assembly should be accessible to all citizens' initiatives under the same conditions regardless of which goals and ideas they stand for. Irrespective of the arguments on which the City of Rijeka objected to give its permission, the event in question has denied the right to public assembly to citizens who intended to collect signatures on its public areas.



V. POLICING OF ASSEMBLIES

INSTITUTIONAL FRAMEWORK

Police authorities play an important role throughout the whole process of public assembly. Involvement of the police in public assemblies starts already at the stage of the application due to the legal obligation to submit a notification of a peaceful assembly and public protest to the police administration unit in whose area the assembly is planned to be held.⁶⁵

The Minister of Interior is authorized to issue a prohibition of public assembly if it is not timely and duly notified, if it is notified to take place in areas where it is not allowed, if the purpose of the assembly is to invoke and encourage the war or the use of violence, national, racial or religious hatred or any other form of intolerance, or if there is a reasonable probability that holding of an assembly would lead to direct and real danger of violence and other forms of serious disturbance of public order and peace.⁶⁶ The organizer can file a complaint against the decision on the assembly ban within 3 days of its receipt to

⁶⁵ PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 7

⁶⁶ PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 14

the Administrative Court of the Republic of Croatia which decides on the complaint in urgent procedure.⁶⁷ In practice, imposing a ban on assemblies is very rare which is reflected in the fact that two assemblies were banned in 2016 and only one in 2017.⁶⁸

In the Police Directorate of Ministry of Interior there is a Public Order Service with the Special Department for Securing of Public Assemblies which is in charge of monitoring the issues of public assemblies, proposing and undertaking measures for equipping and professional training of the police in relation to policing of assemblies and maintaining of public order, as well as of proposing measures and overseeing the work in police administration units with regards to this issue. The Department also monitors relevant legal regulations, performs quality assessment of public assemblies' policing and security plans, imposes measures to eliminate detected omissions and develops guidelines, recommendations and instructions

⁶⁷ PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 15

⁶⁸ Ministry of Interior, Statistical overview of main security indicators and work results in 2017, Zagreb, January 2018, p.123, available at: http://stari.mup.hr/UserDocsImages/statistika/2018/Statisticki%20pregled_2017.pdf

for work of police administration units.⁶⁹

Police administration units are established for each county and are in charge of policing of assemblies on the respective area. Within the Zagreb Police Unit there is a separate Policing Service, whereas the rest of police units have public order departments in charge of policing assemblies on their local area. Within each police administration there is an intervention unit which, inter alia, watches after security on public assemblies.⁷⁰ Gatherings in relation to sports competitions and sport supporters group meetings are recognized as high-risk assemblies given that policing of such assemblies is the most challenging. Larger incidents and need for more significant police intervention is rare during protests and parades.

Specific training of police officers in relation to policing of assemblies is not carried out on a regular basis as there has been no need for such training so far according to experience of representatives of police authorities. However, an international course for commanders of intervention units on the subject of policing of high-risk public assemblies held in October 2017 in Valbandon, Istria, organized by the Command of the Intervention Police of the Ministry of Interior may be highlighted as an example of good practice. This was the first international course organized by the intervention police on this topic and its participants included both Croatian police officers and representatives of the German Federal Ministry of Interior who had the opportunity to exchange experience and good

69 Regulation on the Internal Organization of the Ministry of Interior (OG 70/12, 140/13, 50/14, 32/15, 11/17, 129/17 and 5/18), Article 21-22

70 Ibid.

practice in policing of high risk assemblies on examples of actual events of public assemblies in Berlin and Zagreb. Along with the analysis of policing methods, concepts of training in relation to terrorist attacks were discussed in accordance with the general aim of the course which was to provide further training of intervention units, raise the preparedness level for high risk assemblies, as well as to improve the police cooperation of different countries given the fact that today's challenges that police meets often go beyond the national borders and require cooperation on international level.⁷¹

COMMUNICATION WITH ORGANIZERS

Before the assembly starts, police officers in charge of communication and coordination with the organizer briefly inform the organizer on the manners of policing of the assembly. Undercover police, officers in regular uniforms as well as intervention units are present on the assemblies. Contact person on behalf of the police authorities that maintains communication with the organizer is always in plain clothes and the presence of more undercover police officers is observed during larger assemblies and marches when they are present among the participants. Their role is primarily supervisory and consists of alerting and coordinating with other police officers. Right after the assembly has finished, the representatives of the police authorities address the organizers and conclude the assembly. The organizers mostly commend good communication with the police in charge of policing assemblies as well as their

71 Ministry of Interior: International course for commanders of intervention units, Top news section, available at: <http://medjimurska.policija.hr/268528/28.aspx>

willingness to cooperate.⁷²

The problem identified during certain protests is the situation when shouts and threats come from people who are not participants of the assembly and which remain ignored by the police, while they react immediately to the same behavior when it comes from the protesters requesting from the organizer to resolve the situation. From such cases it can be concluded that additional training of police officers would be useful in order to apply the same criteria while managing all assemblies and to respond properly to unwanted behavior irrespective of its source and target.

When it comes to the use of force during assemblies, the police is authorized to use the means of coercion prescribed by the Act on Police Affairs and Authorities that include physical strength, spray, sticks, cuffs, equipment to stop motor vehicles, trained dogs and horses, special vehicles, chemical substances, firearms, water cannons, explosives and special weapons. Coercive measures are used after a prior warning, unless it is likely that a prior warning would endanger the achievement of the goal, and to the extent necessary to achieve the purpose of the action.⁷³ Use of force is a rare occurrence in practice and it is mostly applied during conflicts of supporters at sports competitions. Equipment such as water cannons or trained dogs is used extremely rarely and it is mostly only kept ready during high risk gatherings for case of emergency.⁷⁴

72 Interview with assembly organizers

73 Act on Police Affairs and Authorities (OG 76/09, 92/14), Articles 81-83

74 Interview with representatives of police authorities

There was no case of use of force detected among the observed assemblies and information received through interviews with organizers for 2017 and 2018, primarily because none of the situations escalated to the extent that the use of force or weapons was necessary. In relation to the assemblies observed, there were also no detected cases of arrest or detention of participants of a protest. According to statistical data for 2017, there were a total of 45 cases of use of coercive measures during public assemblies and only 3 situations were related to protests.⁷⁵ Presence of medical assistance near the protest was not observed by any organizer, while the organizers of larger gatherings informed medical services about the assembly taking place but do not recall spotting their presence at the protest itself.⁷⁶

Police officers can be individually identified during assemblies by badge number and identity cards which both police officers in uniforms as well as officers in plain clothes are obliged to present upon request. There is a possibility to hold police officers liable for their conduct during public assembly through the internal disciplinary procedure, but the information on number and nature of such cases is not publicly available.⁷⁷ According to the Act on Police, serious violations of the official duties of police officers are processed before the disciplinary courts of first and second instance established within the Ministry

75 Ministry of Interior, Statistical overview of main security indicators and work results in 2017, Zagreb, January 2018, p.123, available at: http://stari.mup.hr/UserDocImages/statistika/2018/Statisticki%20pregled_2017.pdf

76 Interview with assembly organizers

77 Interview with representatives of police authorities

of Interior.⁷⁸ The course of the procedure is regulated by the provisions of the Act on Police and the Ordinance on the Disciplinary Liability of Police Officers⁷⁹.

Police officers mostly use handheld cameras for purposes of documenting and recording of public assemblies. Within the intervention police units, there are officers specifically trained for recording and documenting of gatherings which is important for the police as a proof in possible misdemeanor and criminal proceedings. In most of the cases observed, police officers were recording assemblies for surveillance purposes and according to the experience of organizers there are no clear rules on the selection criteria for protests that will be filmed. When protests were seen as potentially risky or in cases when assemblies gathered large numbers of participants, representatives of police authorities would film protests with cameras whereas smaller gatherings were often photographed with cell phones. Generally speaking, participants would be allowed to record police officers and their actions because there is no basis to ban such actions. The organizers did not notice that the participants would specifically record or photograph actions of police officers during an assembly, but in situations when they would find themselves in the picture they

78 Act on Police (OG 34/11, 130/12, 89/14, 151/14, 33/15, 121/16), Articles 97-100

79 Ordinance on the Disciplinary Liability of Police Officers (OG 141/11)

did not react or object.⁸⁰

IMPOSING RESTRICTIONS

An official may prevent or stop peaceful assembly and public protest under certain conditions prescribed by law, for example when the notification was not submitted or the assembly was banned, when assemblies are being held at a place not specified in the notification, if someone among the participants is armed or incites to war, use of violence or any form of intolerance, when the stewards are not able to maintain order and peace, when the circumstances arise that endanger health of participants and that represent danger of violence and other forms of serious disturbance of public order and peace.⁸¹ The decision on the termination of the assembly shall be communicated to the assembly leader who is required to initiate peaceful dismissal of the assembly. If that is not the case, the authorized official issues necessary orders and takes measures to dissolve the assembly.⁸²

Such situations are very rare in practice and no interruptions of that kind have been observed among the analyzed cases. Certain minor restrictions may be imposed during an assembly but in the majority of cases both sides manage to reach an agreement.

80 This conclusion refers to the general impression of the organizers in relation to recording and photographing public assemblies, which includes situations when police officers are present as a part of general picture. An exception was one case when a police officer requested from a participant to delete a photograph on his cell phone which he had taken at the time when police officer was taking down personal information for the purpose of identifying one of the protesters. (Interview with assembly organizer)

81 PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 22

82 PAA (OG 128/99, 90/05, 139/05, 150/05, 82/11, 78/12), Article 23

For example, assembly organizers often note police attempts to speed up marches and parades. It is organizer's right and obligation to clearly determine the walking speed and to communicate such details with the police officer in charge. Naturally, both sides have their own interests - the organizer wants to achieve visibility, send clear message and enable participation of all the interested citizens, while the primary concern of the police is to cause minimum interference with traffic and regular course of activities. **Consequently, the restrictions that arise during an assembly are mostly of technical nature and appear as a result of reactions to present situations and efforts to successfully bring the assembly to an end with as little hindrance as possible to the regular functionality of public areas. Given that these situations mainly comprise of minor difficulties such as attempted route redirection or tempo increase, participants manage to communicate them with the authorities and overcome most of such obstacles quickly and easily.**⁸³

Moreover, organizers of assemblies that gather large number of participants, respond to politically delicate topics, advocate for equality of certain minority groups or that are simply perceived as risky based on previous problematic experience are under impression that the police is not open enough to communicate about all the details of regulating an assembly despite organizers' efforts to arrange certain details in advance (e.g. application of strict rules for allowing participants to additionally join in the march or parade, appeal to police officers not to

83 Interview with assembly organizers

be positioned in a way that their presence and visibility would create an unnecessarily intimidating impression of the assembly). **Several organizers have expressed the opinion that different assemblies encounter different treatment regarding same issues which is not in line with the idea of the right to freedom of public assembly available under equal conditions for all.**⁸⁴

Organizers of public assemblies are of the opinion that police services are fairly respective towards enabling and policing of counter-demonstrations and they commend their skills and approach in keeping the protests apart and having the situation under control. There is a general observation by the organizers that the police is more tolerant when it comes to organizers who they are already familiar with and have established cooperation with based on good past experience.⁸⁵

MEDIA

With respect to media coverage of public assemblies, the organizers confirm that the mass media was able to report freely at all protests and are not familiar with the existence of any restrictions in this regard. Non-accredited journalists and human rights defenders also have the opportunity to report from assemblies although organizers can not undoubtedly confirm their presence at all assemblies. All organizers of protests extensively use social media before, during and after the assembly. Social networks are used to announce and organize protests, send out invitations, publish routes and rules of conduct,

84 Ibid.

85 Ibid.

report live during an assembly as well as to review on the assembly after its completion, repeat key messages, publish photographs and promotional videos and express thanks to the participants. Majority of the promotion and communication towards participants is managed through Facebook and Twitter and a separate Facebook page is often created for that purpose, whereas other social networks such as Instagram and Youtube are used to a lesser extent. In relation to use of social media for assemblies, no restrictions imposed by the government and other authorities were detected.⁸⁶

⁸⁶ Ibid.



VI. CRIMINALIZATION OF PROTESTS

Within the total number of incidents that occurred during public assemblies in 2017 during which official vehicles, civilian vehicles and other objects were damaged, only one incident was associated with the protest while the rest occurred during sport gatherings and cultural entertainment events.⁸⁷ Depending on the type and severity of the offense, participants of public assemblies may be charged with criminal offenses or misdemeanors. With respect to actions that occur during protests, the vast majority of offenders are subject to misdemeanor liability.

According to the official statistics of the Ministry of Interior for 2017, out of total of 1,193 persons arrested in relation to public assemblies the majority of arrests were related to sports gatherings while 18 arrests took place during protests.⁸⁸ Preventive arrests can occur if the authorities are familiar in advance with risky behavior of certain individuals in relation to assemblies, but generally arrests with respect to protests are not that frequent

⁸⁷ Ministry of Interior, Statistical overview of main security indicators and work results in 2017, Zagreb, January 2018, p.123, available at: http://stari.mup.hr/UserDocsImages/statistika/2018/Statisticki%20pregled_2017.pdf

⁸⁸ Ibid.

and there is no information of the occurrence of preventive arrests during the reporting period..

With regards to events on public assemblies, 68 criminal and 1818 misdemeanor cases were filed and out of this number 30 misdemeanor cases referred to events during protests in 2017.⁸⁹ Misdemeanors charges against assembly participants are filed by authorized police officers, and they are usually charged with violence, disturbing public order and peace and refusal to comply with police orders.⁹⁰ Public Assembly Act prescribes certain misdemeanors as well as fines of different range (from HRK 1,000 to HRK 50,000). In the course of 2017, a total of 22 motions to indict were filed to the misdemeanor court while in the rest of cases misdemeanor warrants were issued^{91, 92}

Criminal Code prescribes violation of the right to assembly and public protest as criminal

⁸⁹ Ibid.

⁹⁰ Interview with representatives of police authorities

⁹¹ Misdemeanor warrant is issued by the police station in cases when a fine of fixed amount is prescribed for certain misdemeanors.

⁹² Ministry of Interior, Statistical overview of main security indicators and work results in 2017, Zagreb, January 2018, p.121, available at: http://stari.mup.hr/UserDocsImages/statistika/2018/Statisticki%20pregled_2017.pdf

offense within the chapter dealing with human rights and fundamental freedoms. Obstruction or prohibition of legally organized public assembly or use of force, serious threat or other means in order to disrupt, prevent or significantly disturb legally organized public assembly or peaceful protest is punishable by up to one-year imprisonment.⁹³ According to the State Attorney's Office Report, there is a trend of low annual rate of criminal cases concerning offenses against human rights and fundamental freedoms, none of which during past years referred to violation of right to assembly.⁹⁴

Example: Arrest of Vir municipality mayor

The bridge connecting the mainland with the island of Vir was blocked by construction trucks as a sign of protest of the Vir municipal administration against the company from Zadar that invested in building a new petrol station in Vir. Municipal administration wanted to prevent its construction and claimed that the investor did not have a legal construction permit. The mayor of Vir municipality attended the protest as well and was arrested on that occasion given that he has instructed the municipality utilities trucks to block the traffic on the

⁹³ Criminal Code (OG 125/11, 144/12, 56/15, 61/15, 101/17), Article 128

⁹⁴ State Attorney of the Republic of Croatia, Report for 2016 and 2017, available at: <http://www.dorh.hr/Default.aspx?sec=645>

brigde. While being brought to the official vehicle by three police officers, the mayor stated that he is peacefully handing himself to the authorities as a person responsible for organization of demonstration but he stressed their constitutional right to protest which has been notified to the respective authorities.⁹⁵ This event has been in the media focus precisely due to the fact that it led to arrest of a person on political function which contributed to the increased visibility of the protest.

Example: Blocked traffic due to fuel price increase

In two occasions in June 2018 citizens have temporarily blocked the roads in several Croatian cities by stopping their vehicles as a sign of protest to fuel price increase. The initiative "STOP fuel price increase" did not organize any assembly points or groups of citizens, but it has merely invited citizens to take part in the #turnoffyourengine action on their own initiative. The initiative pointed out the importance of securing an empty traffic lane

⁹⁵ "Kulminacija sukoba investitora i vlasti: Kamionima blokirali Virski most, uhićen načelnik Kapović" (*Culmination of conflict of investor and authorities: Trucks blocked the bridge to Vir, mayor Kapović arrested*), Tportal, 20 June 2018, available at: <https://www.tportal.hr/vijesti/clanak/kulminacija-sukoba-investitora-i-vlasti-kamionima-blokirali-virski-most-nisu-pustali-ni-hitnu-pomoc-20180620>

for unhindered movement of emergency vehicles, fire engines and police.

Zagreb police unit stated that the police has been recording drivers and issuing tickets as well as that identified persons would be subsequently reported for misdemeanors. According to unofficial sources some drivers have been charged with parking violation, but the experience of citizens differs depending on the city given that on some locations police officers have been confirming to the citizens that they would not be fined.⁹⁶ The reason for this difference in treatment could be the fact that such events do not happen often and are not common in Croatia, so additional attention shall be given to tackle this challenge and achieve uniform approach in the future.

⁹⁶ "Vozači zaustavili vozila, Policija: Tko je blokirao promet bit će kažnjen" (*Drivers stop the vehicles, Police: Persons who blocked the traffic will be fined*), Večernji list, 20 June 2018, available at: <https://www.vecernji.hr/vijesti/prosvjed-stop-rastu-cijena-goriva-krece-u-15-30-mup-upozorava-prosvjednike-1253332>

VII. RECOMMENDATIONS

- The assembly notification procedure should be specified by law and the possibility of submitting notification by post or electronic mail and other means of communication should be introduced. It would be advisable to consider introducing an online notification system in order to simplify procedures related to exercise the right to free assembly.
- It would be advisable to consider the possibility of harmonizing the terminology referring to public assemblies used in various legislative acts (Constitution, Public Assembly Act, Criminal Code etc.) in order to avoid unnecessary discrepancies and ambiguities.
- It would be useful to consider the possibility of establishing an independent body that would decide on bans, restrictions and any doubts arising from the exercise of the right to assembly in accordance with effective and objective criteria.
- There is a need to improve the cooperation of all stakeholders involved in the process of notification, administration and policing of public assemblies since there is currently no existing continuous cooperation between state and local authorities on this issue.
- Due to the lack of easily and publicly accessible information on the role of local authorities with regards to exercising the right to free assembly, it would be useful to clarify their role in the process and make information accessible concerning obtaining necessary permissions to use public areas for that purpose.
- Given that separate procedures are required in order for assembly to take place – notification to the police as well as obtaining authorization for use of public space from local authorities, it would be useful to consider introducing a uniform procedure that would enable assembly organizers to obtain all necessary authorizations through one single application and thereby contribute to faster and simplified organization process.
- With regard to communication with representatives of competent institutions, it would be advisable that same persons remain in charge for communication with assembly organizers throughout the whole process in order to maintain continuity and facilitate organization and implementation of an assembly.



- Systematic implementation of specific training for police officers on policing of assemblies could contribute to further improvement of their ability of right and timely response to various situations that may arise during public assemblies.
- Public authorities could consult the Office of the Ombudsman regarding systematic monitoring of assemblies as well as support and assistance concerning the development of guidelines and institutional procedures for administration and policing of public assemblies.
- Guidelines should be developed for assembly organizers which would provide a clear and easy overview of practical information on the entire assembly process. It would be useful to include representatives of competent institutions as well as civil society organizations and assembly organizers in developing such guidelines in order to cover relevant issues from different perspectives.
- Civil society organizations experienced in organizing large and/or frequent assemblies could create an informative platform or jointly develop guidelines that would contain information, advice and suggestions regarding all stages of notification, administration and organization process. It would also be useful to regularly conduct monitoring of assemblies in order to warn about detected violations of rights of organizers and participants as well as to improve their dialogue with relevant institutions.

METHODOLOGY

Research started with desk research phase that included analysis of documents prescribing normative level of protection of the right to public assembly and review of changes of the legislative framework introduced since the last reporting period. It further included consulting international documents dealing with the issue of public assemblies and search for relevant national and international case law. Throughout the reporting period, media coverage of public assemblies has continuously been followed to identify the types and characteristics of assemblies being held and to detect issues that shall be looked into or further addressed. Several examples of individual assemblies that have raised special attention are presented in the report with a brief overview of the issue in question.

Furthermore, relevant stakeholders in the process of exercising the right to assembly were identified for conducting semi-structured interviews and to gather information about the organization, implementation and policing of assemblies and challenges related thereto. Interviews were conducted with stakeholders participating in various stages of assembly process, including assembly organizers and participants, representatives of police authorities, representatives of local authorities, Office of the Ombudsman and journalists. Interviews were conducted according to a questionnaire prepared on the basis of guidelines developed in the frame of the project adjusted to national context and circumstances. Following the collecting of abovementioned information, assemblies for

field observations were identified and selected assemblies were monitored in order to gather relevant information for focused analysis of their key components.

After all activities have been carried out, conclusions were drawn up on each of the components of public assemblies followed by the validation of key findings with relevant stakeholders. Based on key findings and data obtained, recommendations were drafted that take into account identified shortcomings and provide suggestions for filling the gaps in the system of organization and regulation of public assemblies in Croatia.

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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, 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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