THE REGULATION OF FREEDOM OF ASSEMBLY IN EUROPE, THE USA AND MOLDOVA: A PROPORTIONALITY BASED CRITIQUE OF MANDATORY NOTIFICATION AND AUTHORIZATION REQUIREMENTS

By

Victoria Apostol

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Department of Legal Studies

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Supervisor: Dr.Michael Hamilton

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EXECUTIVE SUMMARY

The regulation of the right to freedom of assembly impacts directly the application of this right, while the implementation of the right to freedom of assembly depends on its regulation. In this regard, the level of respecting the right to freedom of assembly can be measured through assessing how this right is regulated and implemented. This means that it is relevant to analyze different states protocols and actions that aim to frame legally and apply in practice the right to freedom of assembly.

Give this aspect, the purpose of this thesis is to examine to what extent mandatory notification or authorization requirements can be justified. In light of this, the research question is explored in accordance with the proportionality principle. Moreover, this study aims to discuss through operational questions whether the application of mandatory notification or authorization requirements affects differently certain groups of people; what might be the effective approaches to ensure a non-arbitrary application of laws on right to freedom of assembly and whether mandatory notification or authorization requirements influence different styles of policing assemblies.

This thesis seeks to address in a comparative perspective the European Court of Human Rights approaches and the Supreme Court of the United States of America approaches regarding the interpretations of regulations of such requirements. In addition, this study attempts to establish the role of negotiations between police and protesters in justifying mandatory or authorization requirements.

Furthermore, this thesis explores critically the regulation and implementation of law on freedom of assembly in Moldova. This aspect is examined through an empirical angle based on the qualitative research conducted in Moldova between middle of October and beginning of November in 2014.

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INTRODUCTION

The right to freedom of assembly is one of fundamental rights recognized internationally as an indicator of consolidated democracies, alongside the right to freedom of expression. This means that in a democratic society, individuals are free to organize themselves in assemblies with the purpose of expressing publicly their opinions. However, this freedom is not unconditioned and individuals can be limited in organizing assemblies if those conditions are not satisfied. This approach was established internationally as being legitimate from a legal and human rights perspective. Therefore, certain conditions were even incorporated in the definition of the right to freedom of assembly. In this regard, the right to freedom of assembly by definition refers to peaceful assemblies. This means that individuals have the right to assemble only peacefully and any attempt to assemble otherwise is not protected by this right.

This presents the state with the problematic task of ensuring that pertinent conditions are met before it validates the freedom of assembly in a given instance. As a result, the state arguably becomes in need of knowing in advance the context and substance of an actual assembly, with the responsibility to authorize or deny the right to assemble in this given instance. This necessity leads to potentially ambiguous protocols that grant the state a 'right' of advance knowledge about an assembly ahead of individuals' right to freedom of that assembly. In this regard, it is significant how such protocols are regulated and implemented at the domestic level. Therefore this thesis seeks to examine the following research question: **to what extent mandatory notification or authorization requirements can be justified?**

Might different groups or different individuals be affected differently by notification or authorization requirements? In the Republic of Moldova, for example, according to the law on freedom of assembly, public authorities have the power to request the court to interdict or change the time, place and manner of an assembly. The mayor of Chișinău - the capital city were most of the assemblies take

place - used this power in 2013 to ask the court to change the time and place of a planned LGBT pride. In this empirical case, embedded in the law is an ability of the state to apply the law on freedom of assembly arbitrarily. What are effective approaches to ensure a non-arbitrary application of mandatory notification or authorization requirements? In these operational questions, the principle of 'proportionality', by which laws and restrictions are to be applied correctly – providing a balance between the imposed restrictions and the nature of the banned act[1] - becomes an underlying theme throughout the thesis as it investigates various state actions of implementing the right to freedom of assembly.

According to Guidelines on Freedom of Peaceful Assembly (second edition) "an assembly should be deemed peaceful if its organizers have professed peaceful intentions, and this should be presumed unless there is compelling and demonstrable evidence that those organizing or participating in that particular event themselves intend to use, advocate or incite violence."[2] This shows that even the intentions of individuals should be peaceful in order to exercise the right to freedom of assembly and claim its protection. However, peaceful assembly nonetheless "may annoy or give offense to persons opposed to the ideas that they seek to promote, and even temporarily hinders, impedes or obstructs the activities of third parties."[3] In addition, individuals do not lose the protection of the right to freedom of assembly as a result of a sporadic violence initiated by others during an assembly, if those individuals remain peaceful in their intentions or actions.[4]

Furthermore, Guidelines on Freedom of Peaceful Assembly (second edition) indicate that the violent conduct "should be narrowly constructed but may exceptionally go beyond purely physical violence to include inhuman or degrading treatment or the intentional intimidation or harassment of a

[1]Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR, Warsaw/Strasbourg, 2010, pp.38-40
[2]Ibidem, para.25, pag.33
[3]Ibidem, para.26, pag.33
[4]Ziliberberg v. Moldova, Decision as to the Admissibility, Application no. 61821/00, 2004, pag.10

'captive audience'."[5] Given this frame of defining the right to freedom of assembly, it is clear that any individual that shows violent intention or conduct should be limited in exercising the right to freedom of assembly, while peaceful intention and conduct mean in fact the right to freedom of assembly, even though that conduct can annoy or impede the activities of third parties.

Nonetheless, there are additional features of the right to freedom of assembly that should be taken into account in order to claim its protection. In light of this, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, defines an 'assembly' as "an intentional and temporary gathering in a private or public space for a specific purpose."[6] A definition as such indicates that the right to freedom of assembly is not nullified in a private space, and in fact there are no differences between private and public space in exercising this right. Moreover, the European Court of Human Rights (ECHR) emphasized and reiterated in several cases that "the right to freedom of assembly includes the right to choose the time, place and modalities of the assembly".[7] This shows that individuals can choose where (place), when and how to organize their meeting, alongside the general dichotomy of private and public space.

However, as it was mentioned earlier there are certain conditions that if they are not satisfied individuals may be limited legitimately in exercising the right to freedom of assembly. One of these terms it is the nature of assemblies, namely they should be peaceful, while the others are related to the limits of exercising this right and are called restrictions; rather than conditions. In this regard, the international and regional standards on regulating the right to freedom of assembly state the following: "No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of

[5]Guidelines, 2010, para 27, pag.34
[6]Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2012, para.24, pag.7
[7]Saska v. Hungary, Application no. 58050/08, 2012, para.21

the rights and freedoms of others."[8] A similar provision can be found in the European Convention on Human Right, art.11, as well as in the American Convention on Human Rights, art.15.

The rationale behind such provisions is related to the states' interests over the public space and its responsibilities towards the rights of others. For example, the right to freedom of assembly may easily conflict with the right to movement of others if a group of individuals choose to organize an assembly in the most circulated street. Such a situation would justify the intervention of the state in regulating the potential conflict of two rights. However, the state should try first of all to find a solution for such a situation and not to ban the planned assembly without any attempt to solve the issues that it may cause.[9] In this regard, it is very important how the right to freedom of assembly is regulated at the domestic level and what mechanism is in place in order to avoid conflicting situations.

There is no requirement at the international level that states should enact a specific law on freedom of assembly, though "such legislation can greatly assist in protecting against arbitrary interference with the right to freedom of assembly."[10] Moreover, "the purpose of such legislation should never be to inhibit the enjoyment of the right to freedom of assembly but, rather, to facilitate and ensure its protection."[11] In light of this, mandatory notification or authorization requirements are seen and accepted internationally by states as mechanisms that facilitate the application of the right to freedom of assembly. As a result, requiring individuals to notify public authorities or police about their intention to organize an assembly and even to seek authorization for the planned event constitutes a practice largely implemented by different states.

While mandatory notification or authorization requirements are not seen as an interference with the right to freedom of assembly, this does not guarantee an appropriate regulation and application of

[8]International Covenant on Civil and Political Rights, 1966, Art.21
[9]Report, Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, May 2011 – June 2012, Warsaw, 2012
[10]Guidelines, 2010, para.11, pag.27
[11]Ibidem, para.11, pag.28

these requirements. To the contrary, the consistent numbers of the cases addressed by the ECHR regarding the regulation of the right to freedom of assembly through the notification or authorization requirements indicate that such requirements are becoming less justified and less credible in playing their role of the facilitator.

Moreover, different studies on policing assemblies have shown that such requirements began to be ignored and used in an abusive manner by police or public authorities. In this regard, it is legitimate to assume that an inappropriate regulation and application of the mandatory notification or authorization requirements lead to violations of the right to freedom of assembly. This is a human rights problem and requires to be addressed in relation to justification of such requirements. Thus this thesis investigates when and how notification or authorization requirements become reasonable and legitimate.

The formulation of the research question indicates that it addresses a global problematic of ambiguity in state regulation of the right to the freedom of assembly. However, the thesis analysis is focused mainly on European practices of specifically either 'mandatory notification', or 'authorization' requirements. A similar system of 'permit' exists in the United States of America (USA). The regulations and implementation of this permit system serve the comparative approach of this thesis.

The analysis has been divided into three chapters. Chapter 1 begins by laying out the legal interpretations of mandatory notification, authorization and permit requirements. It then goes on to address in a comparative perspective the ECHR approach towards regulation of mandatory notification or authorization requirements. The last part explores the impact of ambiguous provisions on justification of such procedures. The aim of this chapter is to determine from a legal perspective to what extent mandatory notification or authorization requirements can be justified.

Chapter 2 critically discusses the implementation of mandatory notification or authorization

requirements. It explores whether or not and how such requirements influence different styles of policing assemblies. Moreover, this chapter examines the role of negotiations between organizers of an assembly and police in justifying mandatory notification or authorization requirements. The analysis is based on literature review of relevant sociological and anthropological studies regarding different styles of policing assemblies identified in the USA, as well as in the European countries.

The last chaper assesses the research question from an empirical angle. It evaluates the regulation and implementation of mandatory notification in the Republic of Moldova (Moldova). Interviews, participatory observation, video materials and civil society reports constitute the basis for the analysis of this chapter. Selecting Republic of Moldova as the third jurisdiction is relevant to the subject and to the reserach question of this thesis from the following two perspectives: 1. the law on freedom of assembly in Moldova is considered one of the most progressive laws of its kind at the regional (Europe) and international (OSCE) level and 2. the implementation of this law is jeopardized by political interests of actors responsible for its application.

Furthermore, the application of mandatory notification or authorization requirements is analyzed in relation to the state's positive obligations. The latter translates into a state responsibility of not just to abstain from intervening with the right to freedom of assembly, but also to undertake specific actions in order to protect the right to freedom of assembly.[12] The European Court of Human Rights argued in the case of Plattform „Ärzte für das Leben" v. Austria that "genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11 (art. 11) […] Article 11 (art. 11) sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be."[13] In addition, positive obligations of the state include the requirement to facilitate assemblies, maintain public order and uphold the rights of others.

[12] Guidelines, 2010, pp.36-37
[13] Plattform „Ärzte für das Leben" v. Austria, Application no.10126/82, 1988, para.32

Given these responsibilities of the state, it is significant to know what tools are used by the state in order to accomplish them. In light of this, it is accepted internationally that "it is appropriate that organizers should inform the authorities of their intention to hold an assembly as early as possible […] only in this way can the authorities reasonably be expected to fulfill their positive obligations [...]."[14] This indicates clearly that mandatory notification or authorization requirements serve the state as a tool to satisfy its positive obligations. It seems that authorities need information about the planned assembly in order to accomplish their responsibilities regarding the right to freedom of assembly. Therefore to ask individuals to notify or seek for authorization prior assembly represents a mechanism that allows the state to fulfill its positive obligations.

Such relationship between state's positive obligations and mandatory notification or authorization requirements shows that these requirements serve the state to satisfy its positive obligations. In this regard, it is important to ask whether to oblige individuals to inform authorities about the planned assemblies is the most appropriate way to accomplish the state's positive obligations. Moreover, if such requirements serve mostly the state and not the citizens, then are they justifiable and to what extent. This aspect represents another landmark of this thesis and it is approached throughout all three chapters.

The existent procedural differences between notification and authorization requirements do not represent a subject of this thesis. This means that the purpose of this thesis is not to identify whether notification requirements are better than authorization requirements or vice-versa, rather to acknowledge the existent procedural differences and to treat them as such. The aim is to question to what extent such requirements can be justified as in essence both notification and authorization requirements demand the same, namely demand individuals to provide information about their intention to organize an assembly. Therefore the focus is on the extent of justification for such demands,

[14]Guidelines, 2010, para128, pp.68-69

rather than on the procedures attached to them.

However, according to Guidelines on Freedom of Peaceful Assembly, "a permit requirement is more prone to abuse than a notification requirement."[15] In this regard, states are encouraged to "require the organizers to submit a notice of the intent to hold an assembly, but not a request for permission."[16] This is an important aspect and although it is not a subject of this thesis, it is discussed briefly in the third chapter, because it is a relevant element in the evolution of the law on freedom of assembly from the Republic of Moldova.

Furthermore, the terms assembly and protest are used as synonyms in this thesis. There are different types of assemblies, including marches, protests, and pickets, however, the differences between these types are not relevant for this thesis, because they do not influence the application of mandatory notification or authorization requirements. In addition, the comparison of mandatory notification or authorization requirements with the permit requirements is done at the level of similarities; rather than at the level of differences. For instance, one of the permit requirements is a fee imposed on individuals in order to get a permit for a certain place and a certain form of assembly,[17] while mandatory notification or authorization requirements do not include any fee. These differences are important in understanding the complexity of the permit, notification or authorization requirements, but they are less relevant in relation to the research question of this thesis.

Taken together, all these aspects contribute to existing knowledge on right to freedom of assembly by providing relevant findings regarding to what extent mandatory notification or authorization requirements can be justified.

[15] Guidelines, 2010, para 118, pag.65
[16] Ibidem, para.118, pag.65
[17] American Civil Liberties Union, *Know Your Rights: Demonstrations and Protests*, https://www.aclu.org/free-speech/know-your-rights-demonstrations-and-protests, Accessed on 30th of October, 2014

Methodology

Semi-structured interviews have been the qualitative research method used in relation to the empirical study undertaken on the law on freedom of assembly from Moldova. In this regard, three civil society representatives were interviewed in relation to the law and its application. They have been invited to take part in this academic research based on their engagement with the law on freedom of assembly prior and since its adoption in 2008.

Each of the interviewees has a separate and distinct expertise on how the law on freedom of assembly functions in practice. In this regard, Serghei Ostaf was involved in the formulation and adoption process of the law, Oleg Brega explores and testes the law almost every day through initiating different protests and Angelica Frolov has expertise on organizing LGBT prides in Moldova.[18]

This range of experiences helps to understand how it was possible that a communist government that was restricting abusively any assembly during almost seven years of ruling adopted in 2008 one of the most progressive laws on freedom of assembly; how this progressive law was implemented by that communist government; whether police tactics and strategies have changed since 2008 and how notification requirements are used by public authorities in order to advance their political interests, especially in relation to less accepted forms of assemblies, like LGBT prides.

The interviews have been conducted between middle of October and beginning of November, 2014. Two interviewees agreed to meet me in their offices, while the third interviewee agreed to me in my office. All three interviewees agreed to have their names mentioned in the thesis and to be quoted

[18] After several attempts to reach the municipality authorities from Chișinău – the capital city where most of the assemblies take place - in order to find out their position regarding the law on freedom of assembly the result was the same, namely no response. I visited the mayor office in order to register myself for a meeting with the mayor because this is the requirement. The registration process is conducted by one of the mayor councils who decide whether your "problem" is worthy to be presented to the mayor. In this regard, the council decided that my "problem"- to conduct an academic interview as part of the research for my thesis - was not worthy to be presented to the mayor of Chișinău. As a result of this, my registration was refused. In addition to that, I have sent an e-mail on the mayor address asking whether he will be willing to be interviewed regarding the law on freedom of assembly. I did not get back any response and when I called for several times to ask whether the mayor received the e-mail or whether the answer is positive or negative, no one from the secretary picked up the phone.

by using their names. The duration of each interview was around 40 minutes. The interviews have been conducted in Romanian, but have been translated in English during the transcription process. I have transcribed by myself the interviews. The transcriptions of interviews are full transcriptions (Annex 2).

The topic guide contained general questions and particular questions (Annex 1). General questions have been designed to be addressed to all three interviews, while particular questions have been designed to be addressed separately to each interviewee in accordance with their specific expertise on the law of freedom of assembly. The designed questions were simple and constructed in a logical order by respecting the following three stages: 1.warming up phase; 2.elaboration phase and 3.cooling down phase. The data analysis took place according to the next coding scheme-table[19]:

Categories	**Subcategories**	**Codes**
Perceptions of the new law on freedom of assembly	- The adoption of the new law - Comparison with laws from other countries, as well as with the old law - Perceptions of mandatory notification requirements	Communist government Progressive, restrictive, limits, authorization Rights, liberties, democratic
The application of the law	- Public authorities power and its justification - The role of police and its attitude in applying the new law on freedom of assembly	Discriminatory, justified, procedures, court, arbitrary Illiteracy, change, facilitator, abuses
Negotiations	- Meetings with police - Lessons learn from communication with police - trust	Listening, discussions Start, work, stereotypes Increasing

[19] N. Brikci and J.Green, A Guide to Using Qualitative Research Methodology, Medecins Sans Frontieres, 2007, http://fieldresearch.msf.org/msf/bitstream/10144/84230/1/Qualitative%20research%20methodology.pdf

CHAPTER I

Regulation of mandatory notification or authorization requirements

1.1 The legal interpretation

The permit and mandatory notification or authorization requirements are recognized by both judicial institutions, the Supreme Court of United States of America (the Supreme Court) and the ECHR as a legitimate demand imposed by the states in relation to exercising the right to freedom of assembly. The Supreme Court considers the permit requirements constitutional under the First Amendment, while the ECHR does not see the mandatory notification or authorization requirements as an interference with the right to freedom of assembly.

In this regard, the Supreme Court argued in the case of Cox v. New Hampshire, 312 U.S. 569 (1941) that "civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend."[20]

A similar consideration of balancing the right to freedom of assembly with other rights is also stipulated in the European Convention on Human Rights. However, contrary to the American system, such consideration was not decided through a case, but it was included in the body of the right to freedom of assembly. This translates into the existence of a second paragraph to the Art.11 of the Convention which stipulates that "No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national

[20] Cox v. New Hampshire, 312 U.S. 569, 1941, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=312&invol=569

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."[21]

In light of this, it seems that the existence of such considerations related to the right to freedom of assembly in both systems indicates towards the necessity of regulating a potential conflict between this right and interests of the state in securing the public order, safety and freedoms of others. This leads in assuming that the permit, or the mandatory notification, or authorization requirements could solve this conflict by the fact that organizers would inform the police and/or public authorities about their plans. Therefore the latter would be in the position of managing traffic or ensuring protection, if need it.

An argument as such was expressed by the Supreme Court in the case of Cox v. New Hampshire, 312 U.S. 569 (1941) which was the first case decided on permit requirements, this means that it became a precedent for the future similar matters. The Court thus stated that "the obvious advantage of requiring application for a permit was noted as giving the public authorities notice in advance so as to afford opportunity for proper policing. And the court further observed that, in fixing time and place, the license served 'to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder'."[22]

The ECHR offered a similar explanation regarding the role of mandatory notification or authorization requirements by arguing in the case of Berladir and Others v. Russia that "the notification, and even authorization, procedures for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of

[21]European Convention on Human Rights, 1950, Art.11, para.2
[22]Cox v. New Hampshire, 312 U.S. 569, 1941, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=312&invol=569

any assembly, meeting or other gathering, be it political, cultural or of another […] (a)n authorization procedure has the purpose of enable the authorities to ensure the peaceful nature of a meeting."[23]

It seems that such arguments imply that an organized society ensures an appropriate performance of the right to freedom of assembly. Therefore it is important to have put in place means that will contribute in organizing the society and balancing the interests that might disorganize it. In this regard, it appears that both judicial systems found the permit and the mandatory notification or authorization requirements as a mean to guarantee the implementation of the right to freedom of assembly in an organized society.

The comparative perspective shows that the mandatory notification or authorization requirements are not an uncommon demand authorized by the states. To the contrary, they are legitimized through the use of similar arguments developed by the Supreme Court for the legitimization of the permit requirements.

However the recognition of mandatory notification or authorization requirements as a non-interference with the right to freedom of assembly does not illustrate to what extent they can be justified. In this regard, the research question is explored further through the analysis of the ECHR approach regarding the regulation of such requirements in comparison with the Supreme Court approach.

1.2 The ECHR approach

Mandatory notification or authorization requirements are regulated differently among the European countries. The differences are mostly of an administrative nature. For example, in some countries there is a condition to fulfill the mandatory notification no less than 30 days prior to a planned assembly, while in other countries a requirement as such is missing. However, there are substantive differences too. In this regard, a good example is the Russian Federation's supreme law on

[23]Berladir and Others v. Russia, Application no.34202/06, 2012, para.40

freedom of assembly which guarantees the right to freedom of assembly only to Russian citizens.

To acknowledge this aspect is important as the existence of such differences among the European countries constitutes the basis of one of the ECHR principles. This principle is "the European consensus" which is formulated frequently in a negative way (because of the existent differences), namely "the lack of the European consensus". Generally, ECHR attaches to this principle another of its principles that allows the Court to analyze each case in accordance with member states' cultural, historical and philosophical background. In this regard, the second principle is 'the margin of appreciation'.[24] Consistently, the Court's interpretation and application of these two principles lead to the recognition of public authorities and/or national courts to be in a better position to impose a law at the national level and to sanction for the failure to respect that law.[25]

To give a large margin of appreciation to the states, because there is no common consensus among the European countries regarding certain aspects in relation to human rights laws represents a questionable approach adopted by ECHR. In this regard, it appears to create room for states to use a discretionary power in applying laws differently for different groups. For instance, in the case of mandatory notification or authorization requirements such discretionary power can manifest itself in the attempts of public authorities and/or police to change the place and/or time of an assembly by forcing the organizers to accept either the new time and/or place, or not to conduct the assembly in general.

Nonetheless, ECHR has a supervision power over domestic margin of appreciation. According to the Court "such supervision concerns both the aim of the measure challenged and its 'necessity'; it covers not only the basic legislation but also the decision applying it, even one given by an independent court."[26] In this regard, the Court reaffirmed its general principles of scrutiny regarding the right to freedom of assembly and the state's actions by stating in the case of Barankevich v. Russia the

[24]Handyside v. The United Kingdom, Application no.5493/72, 1976, para.47
[25]Ibidem, para.48
[26]Ibidem, para.49

following:

> In carrying out its scrutiny of the impugned interference, the Court has to ascertain whether the respondent State exercised its discretion reasonably, carefully and in good faith. It must also look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts.[27]

However the Court delivered a highly contradictory reasoning in the case of Berladir and Others v. Russia regarding the state's power in regulating mandatory notification or authorization requirements. On one hand, the Court re-enforced the legitimate implications of the right to freedom of assembly, namely the capacity to choose the place, time and manner for organizing an assembly. On the other hand, it did not question the Russian authorities' actions of leaving the organizers without any alternatives by changing the chosen place and time and by forcing them either to accept the new offers, or by abstaining from exercising their right to freedom of assembly.[28]

The Court argued that "since states have the right to require authorization, they must be able to apply sanctions to those who participate in demonstrations that do not comply with the requirement."[29] An argument as such is highly questionable, especially in the situation when the place and/or time of an assembly are changed without any reasonable explanation and the right to freedom of assembly becomes conditioned.

In the dissenting opinion presented in the case of Berladir and Others v. Russia, the judges Vajic and Kovler pointed out that "no proper reasons were given at the domestic level for reducing the event's duration."[30] This aspect indicates how vulnerable the right to freedom of assembly might become when the mandatory notification or authorization requirements are used in an unjustifiable manner by public authorities. Moreover, the lack of Court's attention to this aspect raises questions

[27]Barankevich v. Russia, Application no. 10519/03, 2007, para.26
[28]Berladir and Others v. Russia, Application no.34202/06, 2012, paras.39-45
[29]Ibidem, para.41
[30]Ibidem, dissenting opinion

about the proportionality test, namely how proportionality can be achieved when public authorities and/or police without any proper reasons dismiss the fulfilled notification or authorization requirements.

The applicants in the case of Berladir and Others v. Russia argued that "the applicable legislation did not meet the quality of law required under the Convention because this legislation did not indicate the scope of a public authority's discretionary power to change or restrict the location or time of a proposed gathering. The legislation did not determine the legal consequences of non-compliance with the authority's alternative proposal regarding the venue and/or timing of the event. It was not clear whether failure to comply with the proposal entailed administrative liability."[31]

This is a valid argument, especially in the context of the Court's reasoning in the case of Lindon, Otchakovski-Laurens and July v. France where it stated that "a norm cannot be regarded as a "law" within the meaning of Article 10 § 2[32] unless it is formulated with sufficient precision to enable the citizen to regulate his conduct; he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."[33]

However, the Court did not invoke this reasoning in the case of Berladir and Others v. Russia. Instead, it argued that "the Russian notification-and-endorsement procedure is just one example among others of the variety of systems existing in Europe, and it is not the Court's task to standardize them."[34] It is notable the difference between the applicants' argument and Court's reasoning. The applicants asked for transparency and foreseeability in law, while the Court argued about common standards among the variety of systems existing in Europe.

The inadequacy of clarity in law regarding the public authorities' and/or police's power to change or restrict the time and/or place of a planned assembly is a considerable problem as it transforms the mandatory notification or authorization requirements into unjustifiable demands. The mandatory

[31]Berladir and Others v. Russia, Application no.34202/06, 2012, para.31
[32]The same principles apply for Art.11 para.2
[33]Lindon, Otchakovski-Laurens and July v. France, Applications nos. 21279/02 and 36448/02, 2007, para.41
[34]Berladir, 2012, para.54

notification or authorization requirements are supposed to assist individuals in exercising their right to freedom of assembly and not to give discretionary power to the states.

In this regard, the Supreme Court decisions regarding the relationship between discretionary power of authorities and permit requirements might serve as a good practice for the European states, as well as for the European Court on Human Rights in approaching the regulation of mandatory notification or authorization requirements.

The Supreme Court thus advanced in the case of Niemotko v. Maryland, 340 U.S. 268 (1951) that "it […] becomes apparent that the lack of standards in the license-issuing 'practice' renders that 'practice' a prior restraint in contravention of the Fourteenth Amendment, and that the completely arbitrary and discriminatory refusal to grant the permits was a denial of equal protection. Inasmuch as the basis of the convictions was the lack of the permits, and that lack was, in turn, due to the unconstitutional defects discussed, the convictions must fall."[35]

Furthermore, the Supreme Court argued in the case of Poulos v. New Hampshire, 345 U.S. 395 (1953) that in certain cases where the ordinances on licensing systems were held null not because they adjust the use of public places, but because "they left complete discretion to refuse the use in the hands of officials."[36] Moreover, the Supreme Court has indicated in the case of Thomas and Windy City Hemp Development Board v. Chicago Park District, 534 U.S. 316 (2002) that "where the licensing officials enjoys unduly broad discretion in determining whether to grant or deny a permit, there is a risk that he will favor or disfavor speech based on its content. We have thus required that a time, place and manner regulation contain adequate standards to guide the official's decision and render it subject to effective judicial review."[37]

[35]Niemotko v. Maryland, 340 U.S. 268, 1951, http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?navby=case&court=us&vol=340&invol=268
[36]Poulos v. New Hampshire, 345 U.S. 395, 1953, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=345&invol=395
[37]Thomas and Windy City Hemp Development Board v. Chicago Park District, 534 U.S. 316, 2002, pag.7 http://www.law.cornell.edu/supct/pdf/00-1249P.ZO

In light of this, the Supreme Court argued that those 13 specific grounds included in the Park District's ordinance based on which the applications for granting a permit could be denied "provided narrowly drawn, reasonable and definite standards to guide the licensor's determination."[38]

It is notable the difference in approaches between the Supreme Court and the ECHR. The Supreme Court insists on having clear and reasonable standards included in the law that will allow individuals to foresee the circumstances of denying the applications for granting a permit. While the ECHR does not address this aspect which continues to represent a source of additional power to the public authorities and/or police. The absence of sufficient grounds expressed in the law based on which an authorization can be dined or the place and/or time can be changed gives power to public authorities to decide arbitrarily what assembly gets to be authorized.

Moreover a discretionary power as such denatures the right to freedom of assembly by the fact that it becomes a negotiable right. In this regard, the mandatory notification or authorization requirements are used to an unjustifiable extent by the public authorities and/or police. For example, in the case of Saska v Hungary, "the Police Department proposed to the applicant that the planned demonstration be held in a secluded part of Kossuth Square, rather than its entirety."[39] The applicant did not accept this proposal. As a result of applicant's refusal the Police Department banned the assembly on the second day.

It seems that the power of public authorities and/or police to change the time and/or place of an assembly translates into an invitation to negotiate the circumstances of exercising the right to freedom of assembly. This aspect is very problematic, but it becomes even more questionable when there are no indicated specific grounds based on which public authorities and/or police can restrict the time, place and manner of an assembly.

In the case of Saska v. Hungary, the Court argued that "the right to freedom of assembly includes

[38]Thomas and Windy City Hemp Development Board v. Chicago Park District, 534 U.S. 316, 2002, pag.8 http://www.law.cornell.edu/supct/pdf/00-1249P.ZO

[39]Saska v Hungary, Application no. 58050/08, 2012, para.8

the right to choose the time, place and modalities of the assembly, within the limits established in paragraph 2 of Article 11."[40] Additionally, it mentioned that public authorities did not present "relevant and sufficient" reasons for the suggested constraint. This appears to be an appropriate Court's approach towards the right to freedom of assembly, but it is almost irrelevant from the mandatory notification or authorization requirements' perspective.

The Court referred only to the general possibility of restricting the right to freedom of assembly in accordance with the reasons listed in the second paragraph of the Art.11 which can be invoked without having put in place a mandatory notification or authorization system. It did not make any references to how mandatory notification or authorization requirements should be regulated, since they are not seen as an interference with the right to freedom of assembly. It was not indicated to what extent the mandatory notification or authorization requirements can be justified. This aspect contributes in assuming that the mandatory notification or authorization requirements are merely a form of controlling the right to freedom of assembly.

Since the violation of this right is related to the public authorities' decisions to change the place, time and manner of an assembly, it is legitimate to assume that perhaps a non-mandatory notification or non-authorization system will serve better the right to freedom of assembly. This hypothesis is developed further in the third chapter. Nonetheless, the indirect effects that mandatory notification or authorization requirements produce on right to freedom of assembly - make it negotiable - remain a problematic aspect that needs to be addressed properly.

In this regard, the decision of the United States Court of Appeals, First Circuit in the case of Sullivan v. City of Augusta No. 06-1177 (2007) of declaring unconstitutional the requirement to meet the Police Chief within 10 days "to discuss and attempt to agree on the details of the route and other logistics"[41] represents a good example of not transforming the right to freedom of assembly into a

[40]Saska, 2012, para.21
[41]Sullivan v. City of Augusta No.06-1177, 2007, http://caselaw.findlaw.com/us-1st-circuit/1230177.html

negotiable transaction. The United States Court of Appeals agreed with the plaintiffs' argument regarding the discomfort that might be caused by a meeting face-to-face with the Police Chief for those who protest and assembly against "the alleged civil rights abuses by police."[42] Therefore the District Court emphasized that "the in-person meeting requirement chills substantially more speech than is necessary to achieve the end [of promoting public health and safety]."[43]

This decision shows that a legal provision that forces individuals to negotiate their right to freedom of assembly in relation to the time, place and/or manner of a planned assembly is not acceptable. It goes beyond the role of the permit requirements that are supposed to facilitate to organize an assembly and not to constitute a barrier in exercising this right.

However there is another element analyzed and decided by the Circuit Court in relation to this case that represents another good example for the European countries on how to balance the power vested into public authorities and/or police versus the mandatory notification or authorization requirements. In this regard, the Circuit Court argued that the prior notice of 30 days requirement is unconstitutional as "it is not narrowly tailored and vests too broad discretion in City officials."[44] Hence, it explained that "while practical considerations, such as the scheduling of additional needed officers, will justify a short period of advance notice, a blanket rule requiring the permit application to be made in all cases no fewer than thirty days prior to an intended parade, march, or other use of public ways is not narrowly tailored and so violates the First Amendment."[45]

This approach suggests clearly that unjustified permit requirements violate the right to freedom of assembly. It reminds that the permit requirements should be well defined, narrowly tailored to the needs of facilitating the organization of an assembly and justified in allowing the public authorities to comply with its positive obligations and its interests in protecting the public order, security and/or

[42]Sullivan v. City of Augusta No.06-1177, 2007, http://caselaw.findlaw.com/us-1st-circuit/1230177.html
[43]Ibidem, http://caselaw.findlaw.com/us-1st-circuit/1230177.html
[44]Ibidem, http://caselaw.findlaw.com/us-1st-circuit/1230177.html
[45]Ibidem, http://caselaw.findlaw.com/us-1st-circuit/1230177.html

rights of others. The permit requirements should not offer discretionary power to the public authorities and/or police and should not transform the right to freedom of assembly in a negotiation.

Additionally, the Circuit Court concluded that the provision that stipulated that "the City Manager may allow a shorter time frame for good cause shown"[46] it is inadequate, because all individuals seeking an assembly permit within some designated shorter period are forced to convince the City Manager of the presence of "good cause". In Court's opinion a requirement as such pushes individuals to an additional effort that they need to undertake in order to claim their right to freedom of assembly.[47]

All these arguments indicate once again that notification or authorization requirements should be regulated in a proper manner in order to avoid abuses that lead to violation of the right to freedom of assembly. This translates into a need of improving the regulation of such requirements. In light of this, the decisions of the Supreme Court, as well as of the Circuit Court represent a good source of inspiration for appropriate regulation of mandatory or authorization requirements. Also, the approaches of these two courts serve as an appropriate example for the ECHR in terms of demanding from national authorities more clarity and foreseeability in designing laws that regulate the right to freedom of assembly.

1.3 The impact of ambiguous provisions

The most recent decision of ECHR regarding the right to freedom of assembly with a focus on mandatory notification requirements in the case of Primov and Others v. Russia[48] denotes a different Court's approach in demanding clarity in law and establishing the role of such requirements. Thus, the Court argued that "an unlawful situation does not justify an infringement of freedom of assembly.

[46]Sullivan, 2007, http://caselaw.findlaw.com/us-1st-circuit/1230177.html
[47]Ibidem, http://caselaw.findlaw.com/us-1st-circuit/1230177.html
[48]The final decision was ruled by ECHR on 13th of October 2014, http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144673#{"itemid":["001-144673"]}

While rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public events since they allow the authorities to minimize the disruption to traffic and take other safety measures, the Court emphasizes that their enforcement cannot become an end in itself. In particular, where irregular demonstrators do not engage in acts of violence the Court has required that the public authorities show a certain degree of tolerance towards peaceful gatherings."[49]

This argumentation shows that mandatory notification or authorization requirements serve the role of assisting the public authorities in ensuring its interests correlated to the right to freedom of assembly and they are not the ultimate goal to be achieved. Moreover, it suggests that peaceful assemblies should be accepted and permitted to take place since they started, even though the organizers did not comply with the lawful requirement to notify or seek authorization from public authorities or acted against the public authorities' denial to authorize the assembly.

Nonetheless, the Court upheld its opinion on sanctions by reiterating that "since states have the right to require authorization, they must be able to apply sanctions to those who participate in demonstrations that do not comply with the requirement."[50] Although it argued that "the absence of prior authorization and the ensuing "unlawfulness" of the action dos not give *carte blanche* to the authorities; they are still restricted by the proportionality requirement of Article 11."[51] It seems that in Court's opinion public authorities should manifest a certain degree of tolerance towards peaceful assemblies that are not in accordance with lawful requirements; however they are entitled to apply sanctions for failing to comply with those requirements, but only by respecting the proportionality principle.

This approach has a dual effect on the right to freedom of assembly. On one hand, the requirement of tolerance represents an appropriate demand in relation to the right to freedom of assembly by the fact that it ensures the practical application of this right. While, the ability to apply

[49]Primov and Others v. Russia, Application no. 17391/06, 2014, para.118
[50]Ibidem, para.118
[51]Ibidem, para.119

sanctions becomes highly problematic when legal provisions are ambiguous and do not allow individuals to understand properly what actions and when their actions may be unlawful. For instance, the Court argued in the case of Ziliberberg v. Moldova that "the impossibility to impose such sanctions would render illusory the power of the State to require authorization"[52] by rejecting the applicant's allegation regarding the insufficiency of precision in law as "to make the legal consequences of his actions foreseeable".[53] In this regard, the Court decided that the provision aiming to punish the 'active participation' in an unauthorized assembly is not vague and there is no need to define 'active participation' as "it is the duty of national courts to decide in every particular case what is 'active participation' and what is not."[54]

This example shows how an ambiguous provision vests discretionary power into public authorities and/or national courts. It indicates how individuals may be arbitrarily punished for participating in an unauthorized assembly. A decision as such is detrimental for the right to freedom of assembly.

Nonetheless, in the most recent decision in the case of Primov and Others v. Russia that was delivered fourteen years later than the decision in the case of Ziliberberg v. Moldova, the Court took a different approach. It observed that "a norm cannot be regarded as a 'law' if it is not formulated with sufficient precision"[55] by arguing that "in the present case it was relatively easy for the legislator to clarify what was meant by "lodging" of a notice."[56] Moreover, the Court stated that "the organizers must have been excused for misinterpreting the law since the law itself was ambiguous."[57]

This reasoning illustrates a clear request of clarity in law. It brings value in relation to mandatory notification or authorization process as it demands clarifications regarding the attached requirements.

[52]Ziliberberg v. Moldova, Decision as to the Admissibility, Application no. 61821/00, 2004, pag.12
[53]Ibidem, pag.10
[54]Ibidem, pag.11
[55]Primov, 2014, para.125
[56]Ibidem, para.125
[57]Ibidem, para.125

This means that public authorities should formulate with sufficient precision the lawful actions that should be undertaken by individuals in order to notify the intended assembly, as well as the consequences of their unlawful activities.

The analysis of the case of Primov and Others v. Russia in comparison with the case of Ziliberberg v. Moldova, as well as the analysis of all cases discussed in this chapter emphasizes the importance of having a good law that regulates the right to freedom of assembly. A good law means clear provisions which provide individuals with definitions and precise information in order to act lawful and to foresee the legal consequences of their actions. Also, it does not vest discretionary power into public authorities by transforming the right to freedom of assembly into a negotiable transaction.

All these characteristics of a good law apply directly to mandatory notification or authorization requirements. This means that the success of a law which regulates the right to freedom of assembly is measured through its provisions that describe and determine the mandatory notification or authorization requirements. In this regard, there is a legitimate need to have introduced in law justified mandatory notification or authorization requirements that play only the role of facilitating the organization of an assembly by balancing the state's and individuals' interests.

Based on the discussed cases, it is observable that unclear legal provisions constitute a direct source of arbitrary power for public authorities and/or police that appear in practice as an obstacle in exercising the right to freedom of assembly. However, an obstacle as such can be diminished or equal to zero by introducing reasonable requirements that would justify the legal acceptable purpose of mandatory notification or authorization process. This means that those requirements should correspond to their accepted role from a human rights perspective adopted by judicial institutions, namely to contribute in safeguarding the public order, the rights of others, to ensure protection and to limit potential violent public manifestations.

The comparison of mandatory notification or authorization requirements with the permit

requirements indicates similar approaches and interpretations given by both judicial institutions, the Supreme Court and the ECHR to the role of notifying or seeking for authorization or permission to organize an assembly. It shows that both legal systems, the American and the European system recognize such requirements as a mean of guaranteeing an organized society necessary in exercising freely the right to freedom of assembly. Nonetheless, the comparative perspective also brought into our attention the existent differences in judging the regulations of mandatory notification, authorization or permit requirements, as well as public authorities' actions in applying those regulations.

In this regard, it is noticeable the different approach of the Supreme Court in demanding clear rules in applying the permit requirements in order not to vest unjustifiable power into public authorities and/or police. This aspect represents rather a gap in the ECHR approach, even though the Court also asks for sufficient precision in law. Moreover, under the principles 'lack of the European consensus' and 'margin of appreciation', ECHR lacks sometimes determination in limiting public authorities from transforming the right to freedom of assembly in a negotiable transaction.

It is observable how the combination between the absence of clear regulations regarding mandatory notification or authorization requirements with an unlimited power of public authorities to change the time, place and/or manner of an assembly confers discretionary power into public authorities. The latter is used as a mean to force individuals to accept the new terms or to ban the assembly. In this regard, it appears that ambiguous provisions impact detrimental the right to freedom of assembly.

However all these information suggest already an answer to the research question addressed through this academic analysis, namely that from a legal and human rights perspectives mandatory notification or authorization requirements can be justified to the extent of balancing the right to freedom of assembly with other rights; to the extent of ensuring public order and facilitating the conduct of an assembly in an organized society.

This justification becomes illegitimate if public authorities enjoy arbitrary power and if an ambiguous law and unreasonable requirements have deterrent effects, force individuals to negotiate their right to freedom of assembly and/or to act unlawful.

Nonetheless this chapter examined only the regulations of mandatory notification or authorization requirements. In order to achieve a complete answer to the research question it is important also to explore the practical aspect of the law. This translates into a necessity to analyze what consequences mandatory notification or authorization requirements impose in practice and to what extent they can be justified under the proportionality principle. This aspect is addressed in the next chapter, as well as in the last chapter of this thesis.

CHAPTER II

Implementation of freedom of assembly legislation

2.1 Policing assemblies: escalated force and negotiated management styles

A good written law is only a half of guarantee for respecting the right to freedom of assembly. The other half is enabled through practice, namely how public authorities and police act on the ground towards the participants and the event as a whole when the assembly is taking place. In this regard, the analysis of this chapter is focused on policing assemblies from a sociological and anthropological perspective. The aim is to identify to what extent the mandatory notification or authorization requirements can or cannot be justified in practice. Reviewing the existent literature on policing protests constitutes an adequate way of establishing the practical role of mandatory notification or authorization requirements and circumstances under which such requirements can or cannot be justified.

In light of the above, scholars identified and analyzed over time, basically two main styles of policing assemblies. These are connected and determined by a combination of factors that usually have been studied through direct observation of different mass assemblies, as well as through conducting interviews with different actors connected to those assemblies. There were noticed more similarities than differences in policing assemblies both in the United States of America and several western European countries, especially by analyzing certain transnational protests, like protests organized around the G8 Summit.[58] In this regard, this chapter treats different policing assemblies as common practices applied to large extent in most of the countries, regardless of what system of requirements is put in place in those countries. Therefore permit, mandatory notification or authorization requirements are used interchangeable in this chapter.

The first policing style was identified as *escalated force* and it is considered to be specific for the

[58]H.Gorringe and M.Rosie, It's a long way to Auchterarder! 'Negotiated management' and mismanagement in the policing of G8 protests, *The British Journal of Sociology,* Vol.59, 2008, pp.188-205

late 1960s. Escalated force is defined through the lens of zero-tolerance towards any attempt of not obeying the law. It is a style that "gives low priority to the right to demonstrate: innovative forms of protest are poorly tolerated, communication between police and demonstrators is reduce to essential and there is frequent use of coercive or even illegal methods."[59] These characteristics are a direct result of police philosophy of perceiving protests as a threat to the community order. In this regard, "the primary, and often only, tactic employed to control protest was the use of force, escalating in severity until the demonstrations ceased."[60]

This style began to be highly questionable after a decade of use, especially when it created more frustration among protesters that tended to respond back with violence when police was arresting peaceful participants and was acting with force. The effectiveness of such tactics did not rise to its expectations; to the contrary they led to more community disturbance. Moreover, "the integrity and legality of the escalated force"[61] started to be questioned from different perspectives, including the human rights one.

J.Noakes and P.F.Gillham argued in *Aspects of the 'New Penology' in the Police Response to Major Political Protests in the United State, 1999-2000* that "decisions about how to police demonstrations are mediated by police knowledge, or how police 'construct external reality, collectively and individually'."[62] Moreover, they pointed out that this construction of reality influences the determination of police role in the preservation of social control. Police knowledge is generated by its "perceptions and diagnosis of protesters, their tactics and their motives."[63] Given this argumentation, it is clear that since police have perceived protests as a threat to the community order it was justified in

[59]D. della Porta and H.Reiter, 'The Policing of Global Protest: The G8 at Genoa and its Aftermath', in D.della Porta, A. Peterson and H.Reiter (eds.), *The Policing of Transnational Protest*, Ashgate Publishing Company, Burlington (USA), 2006, pag.13

[60]J.Noakes and P. F. Gillham, 'Aspects of the 'New Penology' in the Police Response to Major Political Protests in the United States, 1999-2000', in D.della Porta, A. Peterson and H.Reiter (eds.), *The Policing of Transnational Protest*, Ashgate Publishing Company, Burlington (USA), 2006, pag.99

[61]Ibidem, pag.99

[62]Ibidem, pag.99

[63]Ibidem, pag.99

its judgment to act with violence and to try to dissemble protests as quick as possible.

However, the de-legitimization of escalated force as being a violent and coercive style brought a change in the police philosophy regarding protesters and their rights. This process shaped police knowledge about protests from a human rights perspective, meaning that protests started to be defined as the right to freedom of assembly - a right that is necessary in a democratic society. Moreover, the state through its institutions has the obligation to promote, respect and protect the right to freedom of assembly. In this regard, it was developed and adopted a new style of policing assemblies. This second style is called *negotiated management*.

Negotiated management prioritizes to contrast to escalated force, "the right to demonstrate peacefully: even disruptive forms of protest are tolerated, communication between demonstrators and police is considered basic to the peaceful conduct of protest, and coercive means are avoided as much as possible, emphasizing selectivity of operations."[64] This style reflects a different approach towards individulas who exercise their right to freedom of assembly. It seems to be based on a cooperation between police and protesters, rather than on the traditional dichotomy of us and our enemies, as it was reflected by escalated force.

According to the authors of the article, *Strategic incapacitation and the policing of Occupy Wall Street protests in New York City, 2011* the pillar of negotiated management was the assembly permit process. They developed out this point by stating that requiring permits meant to facilitate "the collection of information about protesters and planned event by the police, opened lines of communication with protest groups and helped police avoid on and in the job troubles like excessive force, brutality, burnout and high profile investigations of police conduct."[65] It appears that negotiated

[64]D. della Porta and H.Reiter, 'The Policing of Global Protest: The G8 at Genoa and its Aftermath', in D.della Porta, A. Peterson and H.Reiter (eds.), *The Policing of Transnational Protest*, Ashgate Publishing Company, Burlington (USA), 2006, pag.13

[65]P. F.Gillham, B.Edwards and J. A.Noakes, Strategic incapacitation and the policing of Occupy Wall Street protests in New York City, 2011, *Policing and Society:An International Journal of Research and Policy,* Routledge, London, 2012, pag.82

management is determined by the way police and participants exchange information regarding the planned assembly. This suggests that permit requirements stimulates participants and police to communicate.

Nonetheless, this communication should not be understood literally, but rather it should be seen as a negotiation. This means that each side, police and organizers of assembly tries to pursue its own strategy of how to conduct the event. How this negotiation prior assembly is taking place might influence the police and participants' attitude towards each other during the assembly. In this regard, a more detailed analysis of negotiation prior assembly is furthermore developed in the third chapter based on the interviews with three assembly organizers from the Republic of Moldova.

However due to already existent studies and research, scholars argued that negotiated management "reduced conflicts between police and protesters by making each other better known and more predictable to the other."[66] This indicates once more that negotiated management is a style of policing assembly that is expected to be based on a peaceful interaction between police and participants. Moreover, it is assumed that this can be achieved through the application of permit requirements as they create a link between police that is primarily concerned with maintaining public order and individuals that are primarily interested in exercising their right to freedom of assembly.

Given this argumentation, it could be stated that the application of permit requirements in the USA and the application of mandatory notification or authorization requirements in the European countries contributed to changing the style of police in managing assemblies. In this regard, it appears that such requirements can be justified in practice to the extent of representing a link between police and organizers of an assembly. In addition, this link is expected to serve a basis for communication and a source of information about the other side, in order to avoid incorrect assumptions and stereotypical perceptions.

[66]P. F.Gillham, B.Edwards and J. A.Noakes, Strategic incapacitation and the policing of Occupy Wall Street protests in New York City, 2011, *Policing and Society:An International Journal of Research and Policy*, Routledge, London, 2012, pag.82

Nevertheless, it is legitimate to ask whether organizers or participants of an assembly should enter the negotiations with police when the right to freedom of assembly allows individuals to choose the time, place and manner of assembly, while the state should comply with its positive and negative obligations. Such a question becomes even more relevant alongside the research question of this thesis by acknowledging the new styles of policing assemblies that do not resemble with either escalated force, or negotiated management. In this regard, it is reasonable to ask to what extent mandatory notification or authorization requirements can be justified, when their do not play any role in determining the style of policing assemblies. This particular aspect of mandatory notification or authorization requirements is explored further.

2.2 Post negotiated management era – less justification for mandatory notification or authorization requirements

Scholars started to talk about a post negotiated management era at the beginning of 2000 by analyzing different policing strategies and tactics that do not correspond and do not reflect the police philosophies specific either for escalated force, or negotiated management. In light of this, Noakes and Gillham have identified *strategic incapacitation* as a new style of policing protests, dominant for the post negotiated management era. They defined strategic incapacitation as "a variation of the selective incapacitation philosophy of social control, which is distinguished by two of it facets: first, the utilitarian focus on preventing deviance rather than avenging the offense, rehabilitation of the offender or deterring others from committing the same act and the second, its selective focus on those deemed most dangerous."[67]

According to Noakes and Gillham, a core element of this style is the perceptions of dangerousness attached to protesters that use some tactics, or are in a particular place and time. Based

[67] J. Noakes and P. F. Gillham, 'Aspects of the 'New Penology' in the Police Response to Major Political Protests in the United States, 1999-2000', in D. della Porta, A.Peterson and H.Reiter (eds.), *The Policing of Transnational Protest*, Ashgate Publishing Company, Burlington (USA), 2006, pag.112

on that, police tries to prevent demonstrations by incarcerating the offenders "without necessarily causing permanent harm or engaging in extensive punishment of protesters."[68] This suggests that the primarily goal of arresting protesters is to rearrange or temporarily incarcerate them, rather than to punish them.[69] In addition, protesters perceived dangerous by police face constricted access to public spaces, are disrupted in preparations for assembly and have "their demonstrations subject to less-lethal weapons."[70]

All these tactics and strategies indicate that communication and negotiation between police and protesters is missing. This shows that strategic incapacitation is a style that does not explore mandatory notification, authorization, or permit requirements as a bridge between two sides, that almost naturally perceive each other as enemies.

A similar observation can be noticed also in relation to other policing styles that were identified in the post negotiated management era alongside the strategic incapacitation. In this regard, Alex S. Vitale advanced the command and control style as another policing style that does not resemble with either escalated forces, or negotiated management. He argued that the command and control style reflects a different approach from negotiated management, because "it sets clear and strict guidelines on acceptable behavior with very little negotiation with demonstration organizers."[71] Moreover, Vitale pointed out that "use of force in this style of policing is under the direct command of high-ranking officers, leaving little room for discretion at lower levels of supervision."[72]

It seems that police is establishing its own rules rather than negotiating with organizers or participants of an assembly. In addition, this style shows how police attempts to micro-manage "all important aspects of demonstrations aiming to eliminate any disorderly or illegal activity during the

[68]J. Noakes and P. F. Gillham, 'Aspects of the 'New Penology' in the Police Response to Major Political Protests in the United States, 1999-2000', in D. della Porta, A. Peterson and H. Reiter(eds.), *The Policing of Transnational Protest*, Ashgate Publishing Company, Burlington (USA), 2006, pag.112
[69]Ibidem, pag.115
[70]Ibidem, pag.115
[71]A. S. Vitale, From Negotiated Management to Command and Control: How the New York Police Department Polices Protests, *Policing and Society*, Vol.15, No.3, 2005, pag.287
[72]Ibidem, pag.292

demonstrations."[73] Vitale explained these characteristics of command and control style through the lens of "broken windows" theory.

The "broken windows" theory reflects a doctrine of eliminating disorder. It describes policing methods that are focused on controlling low-level disorder "through the use of a variety of policing tactics including zero tolerance enforcement of minor crimes, flexible deployment of officers to address specific crime trends, police enforcement of civil violations, and the creation of new laws and regulations criminalizing disorderly behavior."[74] In this regard, the symbiosis of "broken windows" theory with the police philosophy that is "quality of life" reflects how police sees its own role in the society, namely to restore the quality of daily life for average citizens by applying zero tolerance for minor crimes and criminalizing certain behaviors. Consequently, a perception as such explains police intention to micro-manage assemblies by commanding and controlling them.

The analysis of these two policing styles, strategic incapacitation and command and control shows that police became less and less interested in ensuring public order by communicating with protesters. The shift from negotiated management style denotes an increase of use of force by police towards protesters, little engagement with organizers in managing assemblies and the adoption of strategies that allow police to be informed about the planned events and their organizers, but without interacting with them. This certainly does not represent an appropriate change in policing assemblies and it seems to be detrimental in relation to the right to freedom of assembly.

Furthermore, scholars have identified additional new strategies and tactics developed in recent years that are very problematic and place the application of the right to freedom of assembly under even more control. In this regard, Patrick Gillham pointed out three new dimensions of policing protests, namely controlling space, surveillance and information sharing.[75]

[73] A. S. Vitale, From Negotiated Management to Command and Control: How the New York Police Department Polices Protests, *Policing and Society*, Vol.15, No.3, 2005, pag.287
[74] Ibidem, pag.291
[75] P. F. Gillham, Securitizing America: strategic incapacitation and the policing of protest since the 11 September 2001

The practical manifestation of these three dimensions have been observed and discussed by Gillham, Edwards and Noakes in analyzing the Occupy Wall Street protests that took place in New York City in 2011. In light of this, scholars have noticed that police in "the effort to control where demonstrations and protests would take place divided the public and private space into four types of securitized zones."[76] Moreover, it increased the use of surveillance, having in this way access to real time and static data about the protesters and their actions. This also has been done as a result of pre-event negotiations' cessation that formerly was conducted through the permitting process.

Since police found itself knowing less about protesters and their plans, it compensated by increasing surveillance.[77] In addition, surveillance helped police in controlling the dissemination of information about protesters among its services. Also, police "sought to manage the production of information about activists and about themselves relying on public relation techniques."[78] In this regard, it framed the protesters in the press as a potential or actual danger to the American society or security.[79]

The application of these tactics seems to give a big advantage to police. They helped police in controlling the space reserved for demonstrations, which included controlling the access to that space; in obtaining relevant data that was used against the protesters, and in disseminating convenient information that framed police as "good guys", while protesters as "bad guys".

These changes in policing assemblies are alarming and do not reflect a human rights approach towards organizers and participants.[80] Moreover, it appears that permit, mandatory notification or authorization requirements do not play anymore any role in determining the policing style. In this regard, it is legitimate to question the maintenance of such requirements. It seems that they are justified in theory as being necessary for facilitating the application of the right to freedom of assembly by

terrorist attacks, *Sociology Compass*, 5(7), 2011, pp.636-652

[76]P. F.Gillham, B. Edwards and J. A.Noakes, Strategic incapacitation and the policing of Occupy Wall Street protests in New York City, 2011, *Policing and Society:An International Journal of Research and Policy*, Routledge, UK, 2012, pag.94

[77]Ibidem, pp.96-97

[78]Ibidem, pag.97

[79]Ibidem, pag.97

[80]Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR, Warsaw/Strasbourg, 2010, para.145-146, pag.75

ensuring a balance between this right and public order and rights of others, when in fact – in practice they are not used correspondingly to this role. To the contrary, they can be used against protesters and their right to freedom of assembly as it was discussed in the first chapter.

However the new strategies and tactics used in the post negotiated management era have been criticized by different scholars and experts in policing assemblies as being inadequate and not in accordance with the human rights standards, as they supposed to be. In this regard, they called on returning to negotiated management style as an appropriate way of policing protests and ensuring the sought balance between state's obligations and individuals' rights.[81]

Alex S.Vitale have already observed some improvements in the policing style of the New York Department Police by analyzing the police activity and behavior during the People's Climate March and Flood Wall Street protest that took place in New York City in late September of the current year. He pointed out that "the police made no effort to arrest them (protesters), disperse them, or even to isolate them from onlookers. This was a major departure from past practice."[82] Indeed, this indicates a change in policing assemblies, especially in comparison with strategies and tactics specific for strategic incapacitation or command and control style.

However these improvements do not guarantee a full return to negotiated management style. A return to negotiated management would signify a human rights approach towards policing assemblies and a better use of permit, mandatory notification or authorization requirements. Moreover, the appropriate use of permit, mandatory notification or authorization requirements leads usually to negotiations between police and organizers and/or participants of an assembly. On one hand, the process of negotiation is beneficial in itself as it gives the chance to both, police and organizers to initiate communication. On the other hand, how the exchange of information between these two actors

[81]A.S. Vitale, From Negotiated Management to Command and Control: How the New York Police Department Polices Protests, *Policing and Society*, Vol.15, No.3, 2005, pag.302

[82]A.S. Vitale, 'NYPD Adopts Less Confrontational Posture at Climate Protests', *Gotham Gazette*, Sep.23, 2014, http://www.gothamgazette.com/index.php/opinion/5340-nypd-adopts-less-confrontational-posture-climate-protests-vitale

takes place influences the negotiation's outcomes that are not automatically positive.

Nevertheless the lack of negotiations seems to impact the relationship between police and protesters more negatively than positively. The limited perceptions about each other remain strong and there is developed a gap between police and protesters. These aspects contribute in creating and maintaining a lack of trust in police as a guarantee of order and protection; and in protesters as peaceful and well intentioned participants. Some scholars argued that negotiations play a significant role in developing and establishing trust between police and organizers of assemblies which consequently impacts positively the communication and its outcomes. This seems to be another argument in favor of negotiated management style. In this regard, the further discussion explores this assumption by discussing and analyzing negotiations as a potential "trust creator".

2.3 Negotiations - a potential "trust creator"

M.Wahlstrom and M.Oskarsson analyzed the practice of negotiation that occurred between police and protesters in connection with two EU summits that took place in Sweden and Denmark in early 2000s. They identified different aspects of negotiation and structured the description of these aspects "along three general stages of negotiation between police and protesters: entering communication, reaching agreements and the practical outcome and subsequent evaluation of the negotiation by the parties."[83] These stages were discussed and explored through Elinor Ostrom's "analysis of criteria that must be met to create an enduring solution to 'social dilemmas'."[84]

In this regard, according to Wahlstrom and Oskarsson, the Ostrom's criteria about finding a reasonable solution over a conflict concerning the use of finite collective goods exemplify the model of negotiation that should ideally take place between police and protesters. Hence, when police and

[83]M.Wahlstrom and M.Oskarsson, 'Negotiating Political Protest in Gothenburg and Copenhagen', in D. della Porta, A.Peterson and H.Reiter (eds.), *The Policing of Transnational Protest*, Ashgate Publishing Company, Burlington (USA), 2006, pag.117

[84]Ibidem, pp.117-118

protesters are in a dispute over the public space, public order, or the right to freedom of assembly - all being perceived as finite public goods – then the following criteria should be pursued: "(1) to supply new institutions that all the involved parties can accept; (2) the commitment of each party has to be credible and (3) the actions of the parties relating to the agreement must be monitored."[85]

Wahlstrom and Oskarsson argued that these criteria are interrelated and condition the successful application of each other. Therefore monitoring an agreement between police and protesters depends on the commitment undertaken by the parties; a credible commitment depends on established rules; and good rules depend on the existent commitment.

Given this analysis, Wahlstrom and Oskarsson went further by stating that "the notion of 'credible commitment' of the negotiating parties can be interpreted as a level of trust they have for each other in that given situation."[86] Moreover scholars argued that "trust" or "lack of trust" is a core element that influences all stages of negotiations between police and protesters, but especially the parties' intention to start negotiations. Also, "the evaluation of the outcome affects parties' future trust for each other."[87]

In order to understand the negotiation process and trust's role attached to this process, Wahlstrom and Oskarsson used Piotr Sztomka definition of trust. In light of this, they described trust as a bet - "a relationship between actors, as opposed to the psychological disposition to feel trust in others on general."[88] This means that trust as a relationship between actors implies the existence of interaction between those actors that can manifest itself through communication/negotiation. Nonetheless, the creation and maintenance of this relationship is influenced primarily by three factors: 1. reputation – what is known of an actor's past actions; 2. performance – the present actions and results of the actor;

[85]M.Wahlstrom and M.Oskarsson, 'Negotiating Political Protest in Gothenburg and Copenhagen', in D. della Porta, A.Peterson and H.Reiter (eds.), *The Policing of Transnational Protest*, Ashgate Publishing Company, Burlington (USA), 2006, pag.118
[86]Ibidem, pag.119
[87]Ibidem, pag.119
[88]Ibidem, pag.121

and 3. appearance – the actor's presence of her own trustworthiness. As scholars put it, these factors determine the choice of entering negotiations, as well as the process of reaching agreements.[89] On one hand trust seems to be an element that impacts directly negotiations, while on the other hand, it seems to be a result of negotiations. This indicates that negotiations as a process have a role to play in creating and/or increasing trust between police and protesters.

To sum up this short analysis, it is reasonable to affirm that trust is a relevant element in the equation of negotiations that impacts not only the present process, but also the future attempts of two parties, police and assembly organizers to communicate. However trust is not a granted element; rather it is created based on knowledge (reputation) and interaction (communication, performance). However, it seems legitimate to state that negations are potential "trust creators" as they allow police and protester to communicate and try to reach an agreement. Based on that, this legitimacy can be extended to negotiated management style as being a policing assembly style characterized through negotiations and opportunities of communication for police and protesters.

Nonetheless negotiations should not be treated only as a positive experience in itself. Although, at the international level from a legal perspective negotiations are seen as an appropriate way to institutionalize the process of reaching an agreement,[90] it is important to take into account certain practical aspects that laws cannot regulate. In this regard, P.Waddington talks about negotiations as a non-neutral process that advantages more police than protesters.

He argued that police acquire the "home ground advantage" as they try to bring the organizers of assemblies on the police premises. This equals to the perception of being in "the hands of police complying with their requirements and requests."[91] Moreover, according to Waddington, police is advantaged through bureaucracy and expertise. These aspects facilitate police to get access in a credible

[89]M.Wahlstrom and M.Oskarsson, *Negotiating Political Protest in Gothenburg and Copenhagen*, in The Policing of Transnational Protest, ed.Donatella della Porta, Abby Peterson and Herbert Reiter, Ashgate Publishing Company, USA, 2006, pag.130

[90]Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR, Warsaw/Strasbourg, 2010, para. 134, pag.70

[91]P. A. J. Waddington, *Liberty and order, Public order policing in a capital city*, UCL Press, London, 1994, pag.76

manner to more information about the planned assembly, namely by asking the organizers to fulfill more papers with additional information to that that was presented through notification and to use that information in order to pursue a more convenient way to conduct the assembly. For example, Waddington describes a negotiation process between police and organizers over an assembly in Scotland by emphasizing the expertise advantage by mentioning that "police had a more pressing concern: to follow a route that presented as *few* problems as possible."[92] In addition, he argued that police tried to influence the setting of the agenda and to put more responsibility on the organizers during the assembly.[93]

Given this analysis, it can be seen that all these aspects described and explained by Waddington are difficult to regulate through laws, but they are visible in practice. Moreover, they show that negotiations by definition do not ensure same tools for police and organizers of assemblies. To the contrary, police seems to be far advantaged regarding obtaining and possessing information by using its expertise and imposing its rules.

Nevertheless, these difficulties do not define the result of negotiations which means that they can make more difficult the process of reaching an agreement, but not to set up the final result. As it was mentioned earlier in this chapter, trust and perceptions of police about protesters seems to weight more in determining the decision to enter negotiations, as well as the process and its outcomes. These assumptions, however are explored more in the next chapter when into discussion are brought the experiences of assemblies participants from the Republic of Moldova.

Taken together, the issues examined in this chapter helped to understand the practical aspects of mandatory notification or authorization requirements that are less visible in law. It seems that mandatory notification or authorization requirements play a catalytic role in initiating the communication between police and protesters which in turn impacts on police perceptions of protesters

[92]P. A. J. Waddington, *Liberty and order, Public order policing in a capital city*, UCL Press, London, 1994, pag 78
[93]Ibidem, pag.80

and its style in policing assemblies. It appears that such requirements can be justified to the extent of serving as a mean to initiate communication between police and protesters that also has an impact on policing styles. This is available in relation to the assumption that communication has an intrinsic positive value.

Chapter III

Regulation and implementation of the law on freedom of assembly in Moldova

3.1 The adoption of the new law on freedom of assembly

As it is mentioned in the introduction, the analysis of this chapter explores from an empirical angle the regulation and implementation of the law on freedom of assembly in Moldova. The actual law on freedom of assembly was adopted in 2008, and even if six years already have passed since its adoption, it is still considered a new law. The old law was adopted in 1995 and was abrogated once the new law entered into force on 22nd of April in 2008.

Republic of Moldova is a young post-soviet country. Generally, the country political and social-economic evolution can be dived in three main periods, namely the accommodation to the new status of independent country (1991-2001), the communist era (2001-2009) and the democratic governance (2009-present). The communist era began in 2001 and continued until 2009 when a huge and violent mass protest and the impossibility to elect the president of the country required the organization of early elections. Those elections brought fewer seats to the communist party in the parliament and this represented the end of the communist era and the beginning of so called democratic governance.

The communist government was far away from respecting human rights and advancing domestic laws in accordance with international standards. In this regard, it was intriguing to find out how it was possible that a communist government known for its imposed restrictions and limitations on human rights adopted one of the most progressive laws on freedom of assembly. According to Serghei Ostaf one of the interviewees, who was involved directly in the drafting process of new law on freedom of assembly, the adoption of this law was possible due to internal and external factors.

Ostaf described this process as a complex and long process that requires taking into consideration the local political context of the country in order to understand the mechanism behind the final result.

He explained how several non-governmental organizations (NGOs) gathered together in 2005 to elaborate a strategy that will bring legal and societal changes towards the right to freedom of assembly. In light of this, he mentioned the following:

"*More NGOs got together in 2005 without having the practical analysis yet, but they understood that the existent law at that time was a bad and restrictive law. There were few assemblies. So we decided that there is a need to change the law on freedom of assembly. Moreover, the media was controlled by the communist government so there were no alternatives. In this regard, we decide that this will be the only way to create an alternative space, including a political one. Politicians at that time did not understand these things, but we saw it as a problem and therefore decided to change the law. We agreed that our strategic aim is to produce a change; this change should be realized first, by changing the existent legal frame or adopting a new law; second, by rising up the societal conscious about the importance of the law on freedom of assembly; and third, we need good technical solutions.*"[94]

Ostaf pointed out that there were three NGOs that took the responsibility to produce this change and one of the first steps was to agree on different tasks that were needed to be realized in order to achieve the desired change. In this regard, one NGO worked with national institutions, including Ministry of Justice to create space for designing a new law, another NGO was testing the existing law (at that time in 2005) through different protests, while he third NGO was monitoring and reporting internationally the abuses committed by police and public authorities in applying the law on freedom of assembly. Officially, these three NGOs were working separately without making formal and visible their common strategy.[95]

All these activities were tight to the political situation of Moldova, as well as to the international context. In this regard, Ostaf described how prime minister agreed to issue a disposal to the Ministry of Justice in order to create a working group to design the new law on freedom of assembly, while European partners were demanding from the communist government to produce some changes that will confirm its commitment to democracy.

The new elaborated law was very criticized by police and Secrete Internal Services (SIS) as being too liberal and almost nonfunctional in a post-soviet country. However, the working group did

[94]Serghei Ostaf, Annex 2, Transcription, (A3)
[95]Ibidem, (A3)

not step back and did not change the law after these criticisms; to the contrary they promoted it in relation to European partners as a good law and a positive result from the collaboration with the government. Ostaf explained that when European officials required the president V.Voronin to show how Moldova evolved towards becoming a democratic state, the bill on freedom of assembly was the only one positive achievement that could be used by the communist government as an example of change.

In this regard, it seems that under the pressure of European officials to show concrete achievements, the communist parliament adopted the new law on freedom of assembly. Ostaf described this process as following:

"*What had happened? At the end of 2007, Voronin was having bad relationships with Russia and he was seeking to show something positive to European partners; our product was positive; we were talking that it is a positive result; they did not have something else to show to EU. This was the single final product which could be shown. They were under pressure to show something positive. So this is how the law ended up in the parliament and it was voted. The parliamentarians changed some details, but we could not control anymore that process; however, they voted the law very quickly and showed to European partners: 'look, we have a good law'.*"[96]

This indicates clearly how internal and external factors have influenced the process of changing the law on freedom of assembly that took place almost three years. On one hand, civil society was aware of restrictions imposed by law and difficulties of applying that law when communist public authorities were using the power invested in them by law to ban and suppress intended assemblies. On the other hand, there was an external pressure on the national government to advance the country on a democratic path. The combination of these factors explains how it was possible that a communist parliament voted one of the most progressive laws on freedom of assembly.

3.2 The regulation of mandatory notification requirements

All three interviewees qualified the law on freedom of assembly from Moldova as one of the

[96]Ostaf, (A3)

most progressive laws of its kind.[97] They compared it to laws on freedom of assembly from different countries by arguing that provisions of Moldovan law are liberal and in accordance with international human rights standards. However, the appreciation of the actual law as a liberal and human rights oriented law was presented by interviewees also through the lens of the old law. They qualified the old as a restrictive law with different barriers that were impossible to pass. The main differences between the old law and new law on freedom of assembly from Moldova are presented in the following table:

Table nr.1

Comparative Provisions	**The old law[98]**	**The new law[99]**
Legal principles	No legal principles	Art.4: The actual law is applied based on the following principles: legality, proportionality, non-discrimination and the presumption in favor of holding assemblies
Place of assembly	Assemblies could be held in squares, streets, parks and other public places in cities, towns, villages, and in public places. It was forbidden to conduct assemblies at a distance of less than 50 meters from the parliament building, residence of the President of the Republic of Moldova, of the Government, Constitutional Court, and Supreme Court of Justice.	Art 5: 1) Meetings may be held in any place open to the public outside outdoors or indoors other open access. 2) Meetings can take place in one place or moving participants. 3) In the case of official events or repair works, local government, at the request of the authorities concerned, may declare temporarily closed public access of some sites that normally are open unlimited access to all persons.
Who can organize assemblies	Art.4: a)Only citizens of Republic of Moldova that reached the age of 18 years old b)political parties, other socio-political, economic entities, trade unions, churches and other religious organizations, public associations registered in the established manner	Art.6: 1) Organizers of meetings may be individuals with full legal capacity, groups of persons and legal entities. 2) Minors who have reached the age of 14 and persons deprived of their legal capacity may hold meetings only with a person with full legal capacity.

[97] Oleg Brega (A1/A2), Angelica Frolov (A11), Serghei Ostaf (A1)
[98] Law on freedom of assembly nr.560, 1995, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311689
[99] Law on freedom of assembly nr.26, 2008, http://lex.justice.md/md/327693/

Procedure	Authorization: "Assembly commission under the city Hall decides on conditions imposed on an assembly. The commission may impose conditions under threat of refusing a permit."[100]	Notification: "Assembly commission under the City Hall can only screen notifications. Simultaneous assemblies' allowed. Assembly commission may only recommend restrictions; the organizers must take the final decision."[101]

When Oleg Brega, a human rights activist that explores in practice the law on freedom of assembly was asked why he considers the actual law a progressive law, he responded the following:

"*Because I protested in Lisbon, Brussels, Warsaw and Bucharest and I saw what provisions have the laws from these countries. And I saw that those laws either are old, or have some imposed bureaucratic barriers that are not comparable with our law. Our law is the most appropriate in relation to European standards regarding freedom of expression and assembly. Our law just requires notifying assemblies and even not all of them, just those that have more than 50 participants and those that you intend to organize; spontaneous assemblies and those with fewer participants than 50 should not be notified. And I find this method of notification amazing because it does not allows public authorities to condition or limit freedom of assembly. It just gives public authorities 3 days to send a request to the Court and require eventually to ban the assembly or to change the place of assembly which in most of the cases does not happen because our courts move very slowly. This is very good. Assemblies should be treated as a priority because they represent the fundamental liberty of citizens to meet and to express themselves.*"[102]

Agelica Frolov, the third interviewee a LGBT activist, when she was asked whether the organization that she represents tried to organize LGBT marches following the provisions of the old law, she mentioned:

"*Yes, and it was horrible because according to that law you were required to go in front of a commission that was far away from human rights and that was deciding whether your assembly is worth to be organized or not. We never managed to have the allowance of that commission, so we never organize the pride based on the old law. It was a horrible law*."[103]

Given the information presented in the above table, as well as the answers of interviewees, it results indeed that the actual law on freedom of assembly from Moldova is a better law than the abrogated one. Moreover, it seems that the notification requirements included in this law play a

[100]Resource Center for Human Rights, Report, Implementation of Freedom of Assembly Policy in Moldova January-December 2008, pag.54
[101]Ibidem, pag.54
[102]Oleg Brega, Annex 2, Transcription, (A2)
[103]Angelica Frolov, Annex 2, Transcription, (A16)

significant role in qualifying it as a progressive law.

In this regard, according to the law on freedom of assembly from Moldova only assemblies with more than 50 participants should be notified in written at least 5 days prior-assembly. Spontaneous assemblies and those with less than 50 participants do not require to be notified. Assemblies can be ban or have the time, place and/or manner changed only through a court decision. If public authorities hold conclusive evidences that the planned assemblies violate the art.8 from the law[104], then public authorities can send a request to the court to ban or limit the time, place and/or manner of those assemblies. The court takes a decision within 3 days whether to ban, or change the time, place and/or manner of assemblies, or to hold the right to organize those assemblies. The court's decision can be appealed within 3 days.[105]

Moreover, Art.11 provides reasonable solutions for simultaneous assemblies. In light of this, when two or more organizers notify their intention to conduct an assembly in the same place and time, then public authorities are obliged to invite all organizers to discuss and to try to reach an agreement. If an agreement is not reached that can regard, either the possibility to organize all assemblies in the same place and time, or to change the time or place for some of those assemblies, then the organizer who notified first his or her intention to conduct an assembly is prioritized in doing so.[106]

Given that, as well as the interviewees' opinions, it can be affirmed that indeed such provisions qualify the law on freedom of assembly as a progressive law, at least from the perspective of notification requirements that are designed differently from the way they were regulated in the old law. In addition, all interviewees affirmed that it is justifiable to require individuals to notify their intention to organize an assembly and rejected the idea of introducing in Moldova a voluntary notification

[104] Article8. Prohibited assemblies. The following assemblies shall be prohibited that have as purpose: a) instigation to aggression war, national, racial, ethnic or religious hatred; b) instigation to discrimination or violence; c) undermining o national security, disturbance of public order, public morality, organization of mass disturbances, violation of human rights and freedoms, presenting danger to other lives, breach of public morals

[105] Law on freedom of assembly nr.26, 2008, Art.14, Art.15

[106] Law on freedom of assembly nr.26, 2008, Art.11

process. Hence Oleg Brega argued his opinion by stating the following:

"[…] *those who have the right to assemble also need protection from the state. And how can you ask the state to protect you if you did not notify the state in a reasonable time that will allow the state to facilitate the organization of your assembly. Moreover, we should be aware that there are different opinions and they can wish to express their opinions publicly, therefore the state should be able to manage this conflict of ideas; either ensuring protections by separating those two groups with opposite ideas through a cordon of policemen, or by separating them in time, namely some should protest earlier, others later, in order to avoid clashes. I do not have other reasons that will justify the existence of notification.*"[107]

Serghei Ostaf mentioned that there are still attempts from different institutions of the state to change the law on freedom of assembly. He pointed out that SIS and a conservative group within police initiated already several bills aiming to change the actual law in a more restrictive law. In this regard, he believes that any abuses of the law committed by individuals constitute additional arguments in support of those who want to change the law; therefore it is important, in his opinion, to react and to point out when individuals also abuse the law.

Given this situation, Ostaf argued that to introduce a voluntary notification process in Moldova is too soon and too difficult.[108] Moreover, he mentioned that notifying "*represents a way of creating a safer space for you and in this way police gets obliged to respect its role. If you do not notify, then the police can say that they did not manage to react to the change of the circumstances. Once notified, it leads police to have positive obligations*."[109]

Angelica Frolov said that she considers the process that results from notification requirements stipulated in this law a correct process. In her opinion, to be required to notify assemblies that have more than 50 participants and not to be required to notify those with less than 50 participants, as well as to have spontaneous assemblies free from notification are justifiable procedures that do not restrict individuals' liberties.[110]

[107]Brega, (A8)
[108]Ostaf, (A9)
[109]Ibidem, (A9)
[110]Frolov, (A1)

However, when interviewees were asked whether public authorities' power to change the time, place and manner of an assembly by referring this issue to court is justified, they did not rush to present it as a justified power. In this regard, Angelica Frolov stated the following:

"*It depends. It can be justified and it can be discriminatory, therefore we need to see separately any decision. If to talk about our case when Chirtoacă required the court to change the place of our pride, then I consider that this is discrimination. Chirtoacă required the court to change our place when we were peaceful, while those who notify after us that they want to assemble in the same place and at the same time and they suggested that they will act violently were allowed to organize their assembly, were given priority. This is discriminatory and incorrect and I hope that Chirtoacă will be accused of discrimination based on sexual orientation. However, I believe that this power can be useful in solving specific situations. For example when two persons require the same place for their assemblies, then the court should decide who is going to organize the assembly first, if those two do not reach an agreement by themselves.*"[111]

Serghei Ostaf, found instead justification to this power in the way it is structured and in its hidden aim. He mentioned that giving the power to public authorities to require the court to change the time, place or/and manner or ban an assembly it was a compromised solution.[112]

He mentioned that according to the old law police had more power in deciding upon assemblies therefore in the drafting process of the new law it was decided to move certain powers from police to public authorities. Public authorities, namely the mayor office from Chișinău was the only democratic force at that time, while police was highly politicized. In this regard, in Ostaf's opinion the aim was to balance somehow public authorities and police in their engagement with assemblies. Moreover, he pointed out that in fact, the court takes the final decision; public authorities just require, while the court decides whether to change the place, time and/or manner of an assembly, to ban it or to hold the right to organize it as it was planned.[113]

Given the answers of these two interviewees, it is significant to notice how a solution believed to be democratic and appropriate is applied contrary to its aim only because those who have the power do not share the same views with those who have the right. These answers show how on one hand the new

[111]Frolov, (A2)
[112] Ostaf, (A4)
[113]Ibidem, (A4)

law on freedom of assembly from Moldova contains adequate procedures that allow individuals to exercise their right to freedom of assembly, while on the other hand the application of these procedures is arbitrary and abusive, especially in relation to groups that do not share same views with public authorities.

3.3 The implementation of mandatory notification requirements

The law on freedom of assembly from Moldova seems to be indeed a progressive law, especially by comparing it to the old law, as well as to laws from other countries. Nonetheless, when it comes to practice, namely how this law is implemented by public authorities and police it appears to be a deficient application. In this regard, Oleg Brega mentioned that one of the causes for deficient implementation of the law is police illiteracy. He argued that police does not know the provisions of the law and do not consult their superiors when they take decisions to interfere with certain assemblies. Brega mentioned that this is happening often when people assemble together and they do not need to notify public authorities as they are less than 50 participants.[114]

Moreover, he believes that high positioned politicians are still controlling police and influence their activity by giving illegal orders, especially when they do not want to see certain people protesting. In this way, police is acting based on verbal orders and not following the law on freedom of assembly.[115] When Brega was asked if police acted illegally in relation to his protests, he answered the following:

"*It happened very often; even in the first day after the adoption of the new law, on 22nd of April four of us were arrested in front of the presidency building having an innocent written message "Protest". Such cases happened a lot during the communist era and Moldova lost some cases before the ECHR. After the communist era, it happened to other people, but not to us, because we owned these cases before the ECHR and in this way police begun to recognize us and does not touch us*."[116]

[114] Brega, (A5)
[115] Ibidem, (A5/A6/A7)
[116] Ibidem, (A6)

However, Serghei Ostaf believes that police have changed its practices since 2008 once the new law was adopted. He mentioned:

"*[...] now police's attitude is 80% in favor of freedom of assembly which was missing in 2008 when we adopted the law. Many assemblies were banned and restricted in 2008 even under the new law, because police was still highly influenced politically. Now, police has a correct attitude. They agree that their role is impartial, that they just create conditions for people to express themselves peacefully and non-violently. This is an immense change of paradigm. Now, their abilities and tactics for applying this change of paradigm may be inadequate. They are not every time appropriate; the selected tactics may not lead to the aim of facilitating the conduct of the assembly.*"[117]

Also, Angelica Frolov shared this idea of police changing its attitude towards assemblies and their participants. When she was asked if police acted in accordance with their expectations during the LGBT pride in May 2014, she answered that they did their job very well and completed by saying:

"*One of aggressive opponents tried to enter the march and police immediately took him off from there and arrested him. They did not allow anyone to come close to us. We saw videos after the march and we saw how police was reacting to what homophobic people had to say to them. They were saying to police: 'do you know who you protect? They are sick people!' and policemen were responding that everyone has the right to freedom of expression/assembly. Policemen did not know that they were recording.*"[118]

As a result of this answer she was asked whether she thinks that police have changed their perceptions towards LGBT people, or it is a changed towards the right to freedom of assembly. To this question she answered the following:

"*I do not know if this is a change of perceptions, but at least it is a change regarding their professionalism. They do their job regardless of what they think. I do not need to know what police thinks about me or other LGBT people, it is more important that police act in accordance with its responsibilities. This is rather a change towards the right to freedom of assembly. If we compare with what was happening in 2007, when people were arrested and persecuted for organizing assemblies, now it is different. It is a good change. I believe that our law on freedom of assembly is a progressive law.*"[119]

Based on interviewees' answers, it seems that the new law on freedom of assembly brought some

[117]Ostaf, (A7)
[118]Frolov, (A10)
[119]Ibidem, (A11)

changes into police attitude towards the right to freedom of assembly. It appears that police took to a large extent the position of respecting the right to freedom of assembly, as long as it is manifested peacefully. However, it seems that there are still situations that do not indicate any change in police attitude or behavior. In this regard, Oleg Brega explained that "*police like the majority of people from this country does not understand what a protest is and they associate protests with disturbing the public order; with disturbing other citizens and public authorities.*"[120] This indicates that a progressive law on freedom of assembly does not translate automatically into a progressive police approach towards those who exercise their right to freedom of assembly.

As it has been discussed earlier in this chapter police is one of two institutions that share power over facilitating the implementation of the law on freedom of assembly. In light of this, public authorities are the second institution that shares this power with police through managing the notification process. This means that in practice those who intend to organize an assembly with more than 50 participants notify their intention to public authorities; public authorities inform police and police call the organizers to discuss details about the place, time and route of the assembly.[121]

Public authorities are entitled to request the court to change the place, time and/or manner of an assembly if they have conclusive evidences that the planned event threatens the public order, the rights of others or incites to hate and discrimination. The City Hall of Chișinău used this power in 2013 and required the court to change the place of the planned LGBT pride.

According to the City Hall, the request was justified in the context of preventing public disorder and avoiding potential violence between participants of LGBT pride and their opponents. In the public notice of the City Hall was mentioned that public authorities received from different groups of people

[120]Brega, (A15)

[121]I organized a march against street harassment on 19th of October, 2014. I notified public authorities by fulfilling a standard form where I indicated the time, place, manner of assembly and the number of participants. I was requested to leave my contacts in order to be contacted by police. I was called by police and was asked where we will start the march, what is the final point, how many participants will attend the march and I was offered names and phone numbers of policemen in order to call them during the march. On the march day, around 5 policemen were walking alongside us at distance.

the request of banning the LGBT march, as well as one organization informed the public authorities about its intention to organize a protest in the same day having as a place the Ministry of Internal Affairs. This place was part of the route planned for the LGBT pride.[122]

Given this information, it appears indeed that those two groups, participants of the LGBT pride and their counter-protesters could meet or be in the same place at one moment. However, it is not very clear how requesting to change the place of the planned LGBT pride could stop the counter-protesters to protest against this event and to avoid the potential violence between these two groups. Also, it is legitimate to ask why public authorities did not require to change the place of the second group that notify their intention to organize an assembly on the route of the LGBT pride; or why did not the public authorities invite these two groups to discuss and reach an agreement as the law allows to do when situations of simultaneous assemblies appear.

The court accepted the request of the public authorities and the place of the planned LGBT pride was changed. When Angelica Frolov was asked whether public authorities explained their request to change the place of the planned LGBT pride, she answered the following:

"*They told us that they requested to change the place for our own safety, whereas we talked with police about that place where Chirtoacă wanted to send us and police said that that place is very dangerous, because it is a closed place. It is surrounded by fence and it has only one entrance and one exist and if the protesters against us would block the entrance, then they (police) could not help us. We would be blocked and beaten there. So based on this, we can see that Chirtoacă did not care that much about our own safety. This was a homophobic act and our rights were completely ignored.*"[123]

Moreover, she added that sending them to the new place was a try to marginalize them, because their message was dedicated to politicians and public authorities, but the new place was almost outside of the city and it was surrounded only by trees.[124]

Oleg Brega mentioned that the decision of public authorities to request to change the place was a

[122]Public authorities notice of requesting the court to change the place of the planned LGBT pride, Chișinău, 2013 http://www.chisinau.md/libview.php?l=ro&idc=403&id=5472
[123]Frolov, (A4)
[124]Frolov, (A5)

political decision and was not justified by the law on freedom of assembly.[125] As a result of this situation, Serghei Ostaf was asked whether there is a risk that public authorities can abuse the power of requesting the court to change the place, time and/or manner of an assembly. He gave the following response:

"*They can abuse this power from a procedural point of view; however the court takes the final decision and if the Court acts correctly and in accordance with the international standards, then it can sanction these abuses by refusing the public authorities request that does not prove what they claim. So I think that this procedure should stay in place, because the public authorities only require, but the court decides. The Court should act more responsible and decides in accordance with the law and based on evidences.*"[126]

It can be seen that the public authorities request to change the place of the planned LGBT pride in 2013 and the court decision to uphold this request breached the law on freedom of assembly. Public authorities and the court applied arbitrarily the power invested in them. They changed the place of an assembly without having conclusive evidences that that assembly aims to violate art.8 of the law. Public authorities tried to diminish the visibility of the LGBT pride by requesting to move this event in a hidden place from public audience and away from all state institutions.

However, the LGBT pride took place in 2013. It was possible due to ability of organizers to use the decision of the court in their favor. Angelica Frolov pointed out the following:

"*[...]police advised us not to respect the court's decision, because that place is dangerous, then we saw ourselves in the situation of manipulating that decision in our favor. We said that in order to reach the new place (Teatrul Verde) established by the Court as a place where we can assemble we need to meet with all participants in one place and together to move towards Teatrul Verde. So we decided with police to gather all in front of the USA embassy and from there to go to Teatru Verde and there to organize the assembly, if this is what the Court wants.*"[127]

Furthermore, asked whether they have met the police prior-assembly and what role police had played, Frolov mentioned:

"*We met several times. We collaborated with police; we discussed everything, the time, place, and route; all details in order to be sure that we will be protected from different attacks. Police listen to us. They did not impose their opinions on us, they just were advising us. In fact, we did what we wanted,*

[125]Brega, (A11)
[126]Ostaf, (A6)
[127]Frolov, (A7)

excepting the fact that we did not reach to the final destination of our march because police told us that there are aggressive opponents at that point and we can be attacked. So we finished our march in the middle of the route because police did not want to protect us. It was our first LGBT pride therefore we decided to accept this argument from police, however it seemed a wrong strategy because instead of protecting us from attacks, they "advised" us to stop from marching till the end. We did so because we wanted to show to police that we want to collaborate with them, that we are peaceful and for us it is important to march, launching in this way the message that the LGBT pride is possible in Moldova and this pride will take place regardless of people's desire of not seeing LGBT prides in public."[128]

In addition, she described the communication with police as a discussion, rather than a negotiation. They met with high level people from police and even from Ministry of Internal Affairs that came to their office at 8pm. As a result of those discussions, police asked the organizers not to disclose what they have discussed in order to diminish the chances of opponents to find out details about the march.[129]

Serghei Ostaf and Oleg Brega expressed a similar opinion when they have been asked whether organizers of an assembly should enter the negotiation with police. They emphasized that communication is a positive and necessary tool of balancing competing interests of the state with those of individuals.[130] In relation to this, when Angelica Frolov was asked what lessons she took away after two years of interacting with police prior conducting the LGBT prides in 2013 and 2014, she mentioned that she learned how important it is to start communication with police.[131]

Moreover, all interviewees expressed their trust in police even though police does not act every time in accordance with the law on freedom of assembly. They mentioned that they feel a change in police behavior after entering into force of the new and it is worth to trust police that it will maintain its impartial role, namely the role of the facilitator in relation to assemblies.[132]

Given the interviewees' answers that reflect their experiences and opinions on how the law on freedom of assembly functions in practice, it can be concluded that the national context of the country

[128]Frolov, (A6)
[129]Frolov, (A7)
[130]Ostaf, (A10), Brega, (AA14)
[131]Frolov, (A12)
[132]Ostaf (A8), Brega, (A18), Frolov, (A17)

and its level of democracy influence directly the way certain laws are implemented. It could be seen that a restrictive government can easily breach a progressive law; it could be seen that the alleged democratic public authorities can apply arbitrarily and discriminatory the law on freedom of assembly and it could be seen that negotiating with police is an appropriate way to balance competing interests.

Moreover, analyzing all this information through the lens of the research question of this thesis, it can be concluded that notification or authorization requirements are justified to the extent of respecting the right to freedom of assembly. This means that such requirements are recognized as justifiable only if they serve their role of facilitating the organization of assemblies and balancing the competing rights. Also, they appear to be justified as a mean for states to comply with their positive obligations, especially ensuring protection for those who exercise the right to freedom of assembly.

However notification or authorization requirements will maintain their justification only if there are put in place appropriate procedures that allow individuals to exercise their right to freedom of assembly without being discriminated and having to prove that the assembly is worth to take place.

The procedures included in the Moldovan law seem to represent an example in this sense: individuals have to notify only if the assembly is bigger than 50 participants; the court has the final decision on banning or changing the place/time/manner of an assembly; the court decision can be appealed within 3 days and police ensure protection and public order without deciding whether or not the assembly should take place.

Nonetheless the implementation of the law on freedom of assembly is still not a good practice. It could be seen how different groups might have their right to freedom of assembly violated only because public authorities and courts apply arbitrarily and abusive mandatory notification requirements. As a result of this, as well as of the power invested into judiciary through the law on freedom of assembly, the progress on the implementation of the law depends directly on the quality of judicial institutions. For example, the courts should be independent and act non-discriminatory in order to

decide in accordance with the law, even if public authorities may try to abuse their power by requesting to ban an assembly without having conclusive evidences to support such claim. Moldova is still an underdeveloped country and the quality of judicial institutions is low. Probably, it will be interesting to analyze again the implementation of the law on freedom of assembly in five or ten years.

However, this analysis showed that in the case of Moldova the principle of proportionality can be easily breached as public authorities use the law to advance its political interests, instead of respecting its provisions. In addition, the application in a non-arbitrary manner of the law on freedom of assembly is determined by local political context which seems to represent an ineffective approach to ensure proportionality.

CONCLUSION

The regulation and the implementation of the right to freedom of assembly are the core elements that indicate the level of exercise of this right. This translates into the existence of effective procedures and adequate approaches undertaken by the states in order to ensure the application of the right to freedom of assembly. This thesis has investigated when and how notification or authorization requirements become reasonable and legitimate. In this regard, returning to the research question posed at the beginning of this study, it is now possible to say that mandatory notification or authorization requirements can be justified to the extent of ensuring the implementation of the right to freedom of assembly equal to all individuals, in a non-arbitrary manner and proportional to legitimate restrictions.

This study has shown that the justification of the mandatory notification or authorization requirements depends on provisions that regulate such requirements, as well as on their role played in determining different styles of policing assemblies. In light of this, the analysis developed in Chapter 1 has indicated that unclear provisions that regulate mandatory notification or authorization requirements invest arbitrary power into public authorities and/or police which impacts detrimental the right to freedom of assembly.

Ambiguous regulations contribute in diminishing the justification of such requirements. One of the more significant findings to emerge from Chapter 1 is that mandatory notification or authorization requirements are justified to the extent of playing the role of a facilitator in giving the states the chance to comply with their positive obligations and in allowing individuals to exercise their right to freedom of assembly. These requirements should be regulated narrowly, foreseeably and reasonably.

The comparative perspective of the ECHR approaches with the Supreme Court approaches have shown that even though such requirements are similarly interpreted by both judicial institutions, there are some differences in judging the cases with alleged violations of the right to freedom of assembly because of an inappropriate regulation or implementation of such requirements. As a result, this study

has found that generally the Supreme Court decisions seem to constitute a good source of inspiration for drafting adequate regulations on mandatory notification or authorization requirements.

The findings of Chapter 2 suggest that in general mandatory notification or authorization requirements play a role in determining different styles of policing assemblies. In this regard, they appear to play a role in initiating communication between police and protesters which impacts positively reciprocal perceptions that both parties have about each other. This indicates that such requirements can be justified only to the extent of facilitating communication between police and protesters and contributing in establishing a balanced style of policing assemblies, like negotiated management. In addition, entering the negotiations with police might lead to the creation of trust which represents an important element in changing perceptions.

However, the second major finding of Chapter 2 has shown that different styles of policing assemblies that are applied in the post negotiated management decrease the justification of such requirements. In this regard, the role of a facilitator of mandatory notification or authorization requirements becomes less credible as police engages in applying strategies and tactics that restrict the right to freedom of assembly and not facilitate its application.

The results of the analysis of Chapter 3 have indicated that a progressive law on freedom of assembly does not guarantee a progressive application of that law. These results support the idea that justification of mandatory notification or authorization requirements depends on how such requirements are regulated, as well as how they are implemented. In addition, the findings of Chapter 3 have responded to operational questions addressed at the beginning of this thesis. In this regard, it could be concluded that different groups are affected differently by application of mandatory notification requirements in Moldova. This is possible because of abusive use of power by public authorities and courts and because of a non-democratic political context existent currently in Moldova. Therefore the effective approaches necessary to ensure the application of proportionality principle

depend directly on the quality of judicial institutions that have the power to take the final decision regarding the ban or change of the time, place and manner of an assembly in Moldova.

Although the empirical analysis developed in Chapter 3 is based on a small sample of participants, the findings has suggested that the law on freedom of assembly from Moldova justifies mandatory notification requirements in relation to their role of a facilitator. In this regard, this law might become a good practice for other states on how to regulate the right to freedom of assembly, especially for other former soviet republics. Nonetheless, a future study investigating the implementation of this law would be very interesting as it is still a new law.

Taken together the findings of this thesis contribute to existing knowledge about the right to freedom of assembly by providing relevant insights regarding the justification of mandatory notification or authorization requirements. In this regard, such requirements can be justified to the extent of facilitating the implementation of the right to freedom of assembly by being regulated reasonable. Otherwise, such requirements lose their justification.

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2. Angelica Frolov, member of GenderDoc-M
3. Oleg Breg, journalist and human rights activist

Annex 1

Topic guide

Introduction:

The interview is being undertaken for the purpose of my thesis research, in part-fulfilment of the requirements of a Masters in Human Rights Law at Central European University. I am interested in finding out more about the practical aspects of mandatory notification or authorization requirements relating to freedom of peaceful assembly. There are no wrong or right answers. Rather, I hope to learn about and understand your opinions about the practical operation of the law governing freedom of assembly. Our discussion will likely take around one hour, but it can, of course, be interrupted if you would like to pause, or indeed to end, the interview. (*Your anonymity is guaranteed and no information that might reveal your identity will be disclosed, unless you give your express consent to do so)*. Thank you very much for accepting to be an active part of this research. If there are no other issues, then we can start.

Warming up phase

Q: How would you describe the notification process introduced through the new law adopted in 2008?

Q: Do you think that the public authorities' power to change the time, place and manner of an assembly by referring this issue to the Court is justified? Why?

Elaboration Phase

Q: How would you explain that the communist government adopted this progressive law?

Q: What is your opinion about the public authorities request to change the place of LGBT pride in 2013?

Q: Do you think that there is any risk that the public authorities can abuse its power?

Q: Do you think the law on freedom of assembly is applied correctly? If not, then what are the causes for a bad implementation, in your opinion?

Q: Do you think that our police are ready to ensure protection to participants during the events where there are counter-participants?

Q: Should organizers or participants of an assembly enter the negotiations with police, in your opinion?

Q: How do you think the decision of the mayor to request the court to change the place of the LGBT pride in 2013 was a justified decision?

Q: The mayor of Chișinău addressed the Court in 2013 with a request to change the place of the planned march. Did he inform you about the reasons for requesting this change of place? (Did you receive an explanation?)

Q: Did he invite you to talk about the planned march and his intention to change the place? Was this before or after the request to change the route of the march?

Q: What specific arrangements were made to ensure the safety/protection of participants in the march? Were any services either offered or requested? Do you know whether the procedure followed in this case is also followed in relation to all other kinds of assembly?

Q: How would you describe the communication process with the public authorities/police?

Q: Who from the public authorities/police was communicating with you?

Q: What exactly was discussed/regarded as negotiable?

Q: What lessons did you take away from this 'negotiation' process?

Q: Do you think police is trustworthy?

Q: Do you think it is legitimate for the authorities to require advance notification? If one goal of such notification is to enable the authorities to better protect and facilitate the right to freedom of assembly, do you think that (in this case) the prior notification served that goal?

Cool down phase

Q: Would you prefer to have rather a voluntary, rather than a compulsory, notification process? Why? Should this be for all types of assembly, or just certain types/sizes of assembly?

Q: Are there particular aspects of the law on assemblies that you think ought to be changed?

Thank you!

Annex 2

Transcription: interviewee Serghei Ostaf

Introduction:

The interview is being undertaken for the purpose of my thesis research, in part-fulfilment of the requirements of a Masters in Human Rights Law at Central European University. I am interested in finding out more about the practical aspects of mandatory notification or authorization requirements relating to freedom of peaceful assembly. There are no wrong or right answers. Rather, I hope to learn about and understand your opinions about the practical operation of the law governing freedom of assembly. Our discussion will likely take around one hour, but it can, of course, be interrupted if you would like to pause, or indeed to end, the interview. (*Your anonymity is guaranteed and no information that might reveal your identity will be disclosed, unless you give your express consent to do so)*. Thank you very much for accepting to be an active part of this research. If there are no other issues, then we can start.

Q1: How would you describe the notification process introduced through the new law adopted in 2008?

A1: This law is the best law in the Central-Eastern Europe. It is better than the Romanian law; law from Slovakia, Czech Republic, Poland, and Hungary. I would say that it is the best law regarding the procedures in the European space, even OSCE space. However, when it comes to its application this is another issue, but from the perspective of procedures it is probably the best. For you to know, Armenia changed its law on freedom of assembly in 2011 being inspired by our law. Moreover, Kyrgyzstan changed its law in 2013 again being inspired by our law. So we can talk about an impact of this law among the former Soviet countries that took our law as an example. Also, Kazakhstan tried to change its law based on our law, but it did not realize. Now, why I am saying that this law from procedures perspective is a liberal and democratic law? Well, because there are 4 or 5 principles that changed totally the old law and created this democratic frame in Moldova. First and the most important is the notification requirement, not authorization. This is a consistent mechanism that allows you to inform about your intention to organize an assembly and once you informed you obtain this right to organize an assembly. There is no any way that the authorities could use in order to speculate that you did not satisfy certain requirements and in this way to stop your assembly. Moreover, if public authorities want to intervene with your right to freedom of assembly, they need to ask the court to decide this. This double guarantee that this liberty is protected once you notified. In addition, there are exceptions. This means that if the assembly is smaller than 50 people, then you should not notify. Also you should not notify if the assembly is spontaneous. Another element that exists in this law and was absent from the old law, it is the possibility to organize more assemblies in the same place, but respecting the principle of 'sight and sound'. For example, I saw one assembly organized on Stefan cel Mare and another one in front of the government office. So there were two assemblies organized in the same place and time and they did not clash, but could take place simultaneous. This principle is still not understood in some democratic countries. The last aspect is the reversed burden of proof. This means that if public authorities want to restrict this right, then they should ask the court to decide on this aspect and also they have to prove in court that exist solid reasons for banning this assembly.

Q2: What it is present in our law and it is missing in other laws?

A2: In Romania you need authorization, you need an NGO in order to organize an assembly, but I am talking about procedures and not practice. Because there are some procedures that are not very liberal, but in practice it is quite easy to organize an assembly. However, the law from Moldova from procedure perspective is much better than in Romania and other countries.

Q3: How would you explain that the communist government adopted this progressive law?

A3: In 2005 more NGOs got together without having the practical analysis yet, but they understood that the existent law at that time was a bad and restrictive law. There were few assemblies. So we decided that there is a need to change the law on freedom of assembly. Moreover, the media was controlled by the communist government so there were no any alternatives. In this regard, we decide that this will be the only alternative to create an alternative space, including a political one. Politicians at that time did not understand these things, but we saw it as a problem and therefore decided to change the law. We agreed that our strategic aim is to produce a change; this change should be realized through: 1.changing the existent legal frame or adopting a new law; 2. rising up the societal conscious about the importance of the law on freedom of assembly; 3. we need good technical full solutions, not just partial solution as it happens in most of the cases. We have distributed different tasks for each of all those three main organizations engaged in realizing this change. So we decide that CReDO will play a constructive role by monitoring the existent law and in the same time I was already member of the panel of experts so I will try by using the international influence to work with the Minister of Justice and Minister of Internal Affairs. Hyde Park will test the limits, will challenge by contributing through individual cases in rising up the conscious about the importance of such activities and Amnesty International will try to bring the support of other international NGO and write reports. This was the allocation of tasks. So we produce reports in 2006, 2007 – showing how problematic was that law. Hyde Park has tested the limits of the law; they have been arrested; media started to write little by little about this; Amnesty was writing about these abuses in their reports. So during 2 years this process was existing– we have agreed to do something, but we were not showing that we act together. It was like each of us was working separately, but we were meeting temporarily to talk about what it is happening. At that time, there was an international process which interested Moldova and the government wanted to show that it made some progresses. We and Amnesty worked with the international decision-makers to determine them to require the Moldovan government to make changes regarding certain liberties. The European Commissioner responsible of external affairs told Voronin that there is a need for some changes. So at the end the focus was put on the freedom of assembly and this was introduced in the EU-Moldova plan. On the other hand I was approaching Esanu; Esanu was the communist Minister of Justice. Esanu also was member of the Venice Commission so he needed to show some openness. Tarlev was prime minister at that time. Tarlev and Voronin were having a difficult relationship. I knew some people that were working in high level state institutions and through them I got to meet Tarlev. I brought with me more organizations and we met Tarlev. Tarlev at that time was seeking for an opportunity to talk with civil society as he was having difficulties with that and Tarlev asked how is possible for him to improve his imagine. As a result of this he wrote an instruction to the Ministry of Justice, this was one of our conditions to create a working group to examine the necessity of to change the law on freedom of assembly. This helped him to improve his imagine. It was like a win-win situation-he gave us something, we gave him something. Esanu created the working group based on Tarlev's indication as the prime minister. We were part of this working group. This group had two tasks, first to see whether the law should be changed and second, if it should be changed, then what might be the solutions. We had some discussions with Esanu, but it did not work out. Then Greceanii came as a prime minister, we lost the connection with Tarlev, but something started to appear. I do not know how, but Voronin said that we should do something. Esanu again created the working group for the second

time after 6-7 months from the first group and members of this group were almost the same members as in the first group. There was a person from SIS, police, Ministry of Justice. Esanu left somehow the work in our hands and we have built the law on healthy principle from the beginning. Esanu did not like the process as I understood he was saying that we can work, but it will not pass. However, it is important that during 5 or 6 months we have met and worked on framing this law. When first draft was ready it was sent for the informal control. As a result of this, many criticisms have come from SIS and police. They said that it is a bad law, that we are a post-Soviet country and such things never will function. We did not give up and said that we continue in this way. What had happened? At the end of 2007, Voronin was having bad relationships with Russia and he was seeking to show something positive to European partners something positive; practically he was looking what can be positive. So our product was positive; we were talking that it is a positive result and it happened so that they did not have something else to show in relationship with EU. This was the single final product which could be shown. They were under pressure to show something. So this is how the law ended up in the parliament and it was voted. The parliamentarians change some details, but we could control anymore that; however, they voted the law very quickly and showed Europeans partners: "look, we have a good law". SIS and police were against this law and Ministry of Justice also was not happy, especially Esanu. Now, the implantation of the law and different attempts to diminish, abroge or modify the law – it is another story, but this is how it happened with adoption of this law.

Q4: Do you think that the public authorities' power to change the time, place and manner of an assembly by referring this issue to the Court is justified? Why?

A4: This aspect was a compromised solution. At that time, Chirtoacă was already the mayor of Chișinău, basically he was on our side and when they tried to express some concerns we said to them to be quite-let us to control the process. They wanted that public authorities to have more power on deciding the circumstances/conditions under which assembly should be conducted. We promoted a solution by saying that the public authorities agrees with the position that it should exist a communication process between those who notify and public authorities as a political institution which under takes the responsibility to facilitate the organization of assemblies. Why at that time police yielded? Well, police at that time was in conflict with public authority from Chisinau and based on this tensioned situation, we said that public authorities will take certain responsibilities to manage the notification process; in this way taking some responsibilities from police, because according to the old law police was deciding everything. We said that police however can participate in this process, notification process by consulting the public authorities to take the right decision. So we took away police from this process, even though the public authorities were not very happy with this because they were not ready from a logistic point of view to undertake those responsibilities, we told them to be quite. In this way, we transferred the responsibility of managing notifications to the public authorities and gave to them the primary role of taking decisions and police just executes them. There are different models, however, in most of the countries police is the main actor in this process, but we decided to transfer this role to public authorities, because at that time public authorities rom Chisinau were the only democratic force. We did not work with other mayor offices because they were less interested in what is happening and then in the capital city most of the assemblies take place. This is a result of a political context and from this perspective giving more power to public authorities than to police it was justified.

Q5: How do you think the decision of the mayor to request the court to change the place of the LGBT pride in 2013 was a justified decision?

A5: As procedure was a correct procedure, but form the point of view of the substance of that request it was an unjustifiable request. The public authorities did not present any proofs to support its request. Moreover, they did not present any proof in order to show that police would not be able and could not manage and protect the participants. There were indeed some tensioned situations and aggressive contra-protesters announcing their participation at this assembly. So it was a difficult situation, but it could be managed, especially that they know those aggressive people and they could request responsibility for such behaviors, but they did not do it. The Court decided as the public authorities request, namely to change the place of the assembly. Again, this decision as the request presented by the public authorities was unjustified. The Court decided without having presented any proofs that will justify the request. So basically the Court breached the law.

Q6: Do you think that there is any risk that the public authorities can abuse its power?

A6: They can abuse this power from a procedural point of view; however the Court takes the final decision and if the Court acts correctly and in accordance with the international standards, then it can sanction these abuses by refusing the public authorities request that does not prove what they claim. So I think that this procedure should stay in place, because the public authorities only require, but the court decides. The court should act more responsible and decides in accordance with the law and based on proofs.

Q7: Do you think that our police are ready to ensure protection to participants during the events where there are counter-participants?

A7: Now in 2014, police from Moldova are very well prepared, not very much in terms of technical preparation, but rather in terms of attitude. It is important their attitude and their abilities related to tactics. Police's attitude now is 80% in favor of freedom of assembly which was missing in 2008 when we adopted the law. Many assemblies were banned and restricted in 2008 even under the new law, because police was still highly influenced politically. Now, police has a correct attitude. They agree that their role is impartial, that they just create conditions for people to express themselves peacefully and non-violently. This is an immense change of paradigm. Now, their abilities and tactics for applying this change of paradigm may be insufficient. They are not every time appropriate; the selected tactics might not lead to the aim of facilitating the conduct of the assembly.

Q8: Do you think police is trustworthy?

A8: Yes, I do. Of course, there are still situations that do not make sense. People do not feel safe 100% with police, but they understand that police has a facilitator role in relation to assemblies. Police positioned it as an actor that facilitate and do not express political interests, with small exceptions, but it is not as it was in 2007, 2009 or 2010. Now, it is much better. If to compare this domain with penal activity of police, then it is very different. Criminal police is highly politicized and corrupt. So we have a change of quality in this domain of public security even though it is a very sensible domain.

Q9: Would you prefer to have rather a voluntary, rather than a compulsory, notification process? Why? Should this be for all types of assembly, or just certain types/sizes of assembly?

A9: In my opinion, at this moment to change and make the notification voluntarily it is a difficult process. There are still ideas and attempts to change the actual law, because it is too liberal, according to SIS and a conservator group of people within police. Such groups want to change the law to make it

more restrictive. Any abuses of the law committed by the citizens might represent arguments for the opponents of the law to change it. For example, we reacted towards abuses committed by a group of communist participants who changed their place of the assembly without notification. They notified one place and assembled at that place, but after some time decided to change their place and moved from government office towards presidency. According to the law assemblies bigger than 50 people that were not notified should be tolerated by police as long as they are peaceful and police did well in this case. However, we mentioned that this was an abuse of law by the citizens. Moreover, there is another argument; the fact that you notify represents the way of creating a safer space for you and in this way police gets obliged to respect its role. If you do not notify, then the police can say that they did not manage to react to the change of the circumstances. Once notified, it leads police to have positive obligations.

Q10: Should organizers or participants of an assembly enter the negotiations with police, in your opinion?

A10: Communication is a very important element for reducing some tensions. It is an instrument that gives a chance to reduce misunderstandings among parties. Of course, that during communication one of the actors can try to impose his or her point of views. This is a problem, but it should be diminished through other tools. However, I believe that communication is a very positive aspect. Might be two actors that have good intentions, but if they do not communicate, then they can act on perceptions which are positive.

Q11: Do you think that there are risks of changing the law after the parliamentary elections on 30th of November?

A11: No, I do not think so, because they tried already for 3 times in the recent years and they did not succeed. Civil society reacted against such attempts and international actors also expressed their concerns about such ideas. So they did not have any support. The actual government cannot come up with such ideas because they used this law at its maxim capacity, especially in the pre-election campaign.

Q12: Why do you if think SIS is interested in changing the actual law on freedom of assembly?

A11: Sis is a hyper-sensible institution towards any activities that might put under danger the state security. For example, they use 7 April as an example for what might happen, but we should not talk about 7 April in the context of the law on freedom of assembly. In addition, it is a very conservative institution that functions on a paradigm of restrictions.

Thank you!

Transcription: interviewee Angelica Frolov

Introduction:

The interview is being undertaken for the purpose of my thesis research, in part-fulfilment of the requirements of a Masters in Human Rights Law at Central European University. I am interested in finding out more about the practical aspects of mandatory notification or authorization requirements relating to freedom of peaceful assembly. There are no wrong or right answers. Rather, I hope to learn about and understand your opinions about the practical operation of the law governing freedom of assembly. Our discussion will likely take around one hour, but it can, of course, be interrupted if you would like to pause, or indeed to end, the interview. (*Your anonymity is guaranteed and no information that might reveal your identity will be disclosed, unless you give your express consent to do so)*. Thank you very much for accepting to be an active part of this research. If there are no other issues, then we can start.

Q1: How would you describe the notification process introduced through the new law adopted in 2008?

A1: Notification process is simple and liberal. You can notify public authorities only if you need police protection, when there are more than 50 participants; when you want to use the main street where traffic is big; when you have certain issues that can be solved with the help of public authorities. In fact, if you do not notify public authorities, I do not think that you will have problems especially that you do not need to notify if the assembly is smaller than 50 participants. If it is a spontaneous assembly and any assembly can be spontaneous, again you do not need to notify public authorities. However, if you notify you are not obliged to organize that assembly. So I consider this process a correct one because it does not impose on you or limit any of yours liberties or rights. I think that there are not problems with this process.

Q2: Do you think that the public authorities' power to change the time, place and manner of an assembly by referring this issue to the Court is justified? Why?

A2: It depends. It can be justified and it can be discriminatory, therefore we need to see separately any decision. If to talk about our case when Chirtoacă requested the court to change the place of your pride, then I consider that power discriminatory. Chirtoacă requested the court to change our place when we were peaceful, while those who notify after us that they want to assemble in the same place and at the same time and they suggested that they will act violently were allowed to organize their assembly; were given priority. This is discriminatory and incorrect and I hope that Chirtoacă will be accused of discrimination based on sexual orientation. However, I believe that this power can be useful in solving specific situations. For example when two persons request the same place for their assemblies, then the Court should decide who is going to organize the assembly first, especially if those two do not reach an agreement by themselves.

Q3: The mayor of Chisinău addressed the Court in 2013 with a request to change the place of the planned march. Did he inform you about the reasons for requesting this change of place?

A3: No, but he was not obliged to inform us. We just received via fax an informative note that we are invited in court in relation to this case. The judge was homophobic too and he took a wrong decision contrary to what the law says.

Q4: Did you receive an explanation?

A4: Yes, they told us that they requested to change the place for our own safety, whereas we talked with police about that place where Chirtoacă wanted to send us and police said that that place is very dangerous because it is a closed place. It is surrounded by fence and it has only one entrance and one exist and if the contra-protesters would block the entrance then they (police) could not help us, we would be blocked and beaten there. So based on this we can see that Chirtoacă did not care that much about our own safety. This was a homophobic act and our rights were completely ignored.

Q5: What place did you indicate in your notification? Was it a place in the center of the city?

A5: Yes, we wanted to assemble in front of the USA embassy because we thought that that place can be a safe place being close to the embassy and police would be in that situation under double pressure to protect us. Moreover, sending us to that dangerous place was a bad decision and a try to marginalize us, because our message was dedicate to politicians and public authorities, but the new place was almost outside of the city and it was surrounded only by trees. So our messages would be heard only by trees.

Q6: Did you meet with police prior-assembly?

A6: We met several times. We collaborated with police; we discussed everything: the time, place, and route; all details in order to be sure that we will be protected from different attacks. Police listened to us. They did not impose their opinions on us, they just were advising us. In fact, we did what we wanted, except the fact that we did not reach to the final destination of our march because police told us that there are aggressive opponents at that point and we can be attacked. So we finished our march in the middle of the route because police did not want to protect us. It was our first LGBT pride therefore we decided to accept this argument from police, however it seemed a wrong strategy because instead of protecting us from attacks, they "advised" us to stop from marching till the end. We did so because we wanted to show to police that we want to collaborate with them, that we are peaceful and for us it is important to march, launching in this way the message that the LGBT pride is possible in Moldova and this pride will take place regardless of people's desire of not seeing LGBT prides.

Q7: How would you describe the communication process with the public authorities/police?

A7: It was not a negotiation. It was rather a discussion with two days before the march. We were having already the decision from court that our place was changed and police advised us not to respect the court's decision because that place is dangerous. We saw ourselves in the situation of manipulating that decision in our favor. We said that in order to reach the new place (Teatrul Verde) established by the court as a place where we can assemble we need to meet with all participants in one place and together to move towards Teatrul Verde. So we decided with police to gather all in front of the USA embassy and from there to go to Teatru Verde and there to organize the assembly, if this is what the court wants. Police was sure that we will not reach until Teatru Verde because there were already people waiting to attack us. And I do not understand to be honest why police did not arrest those people once they were seen with different dangerous objects in their hands being in this way ready to attack. This made us to believe that in fact police was not interested too in this march to happen. However, because many international officials came to support our activity they could not avoid to protect us.

Q8: Who from the public authorities/police was communicating with you?

A8: We discussed with high level people from police and even from Ministry of Internal Affairs. They asked us not to disclose what we have discussed; even ordinary policemen should not know what we have discussed because among them there are some with homophobic views and they can convey this information further to dangerous individuals. So they came to our office at 8pm and we discussed more than one hour. It was a beginning and we understood that we should be strategic. We showed that we respect their work and this helped because it was better in 2014.

Q9: How would you describe the communication process in 2014?

A9: In 2014 we tried again to use the law in our favor in order to avoid public authorities' possibility to request again to change the place. In this regard, we as organization notified that we will organize the Pride in the same place as last year, namely in front of the USA embassy; this information appeared on the website of the mayor office and all homophobes saw this information and were waiting for us at that place. Our friends, Anti-discrimination coalition notified that they want to organize an assembly mentioning the place where we were intending to organize the Pride; and other friends of ours, CIDO – Centre of Information on Human Rights also notified that they want to organize an assembly, in this way saving the third place. We said that if public authorities will require again to change our place then we will organize the Pride in the place notified by Anti-discrimination coalition, but if this place will be changed, then we will organize the Pride in the place reserved by CIDO. The mayor did not send any request to Court to change our place; however we decided to organize the Pride in the place reserved by Anti-discrimination coalition. When we went to police to discuss with them, we entered a room with 8 to 10 high level positioned people and we discussed sincerely with them about everything. We told them about our strategy and intention to organize the Pride in a place notified by our friends and not there where we have notified and they said that this was a good tactic. They asked us not to disclose this information to anyone even to the mayor office. Also, not to refuse the place that we notified about, just to leave it as it was notified. We talked for 15-20 mins. They also asked us not to disclose this information to media. Journalists were calling me to ask where the march will take place and I told them to call me back on that day with 15 min before the start and I will indicate to them where to come.

Q10: And did they protect you during the march as you expected?

A10: Yes, they did. They did their job very well. One of aggressive opponents tried to enter the march and police immediately took him off from there and arrested him. They did not allow anyone to come close to us. We saw videos after the march and we saw how police was reacting to what homophobic people had to say to them. They were saying to police: "do you know who you protect? They are sick people!' and policemen were responding that everyone has the right to freedom of expression/assembly. Policemen did not know that they were recorded.

Q11: Do you see this as a change of perceptions towards the right to freedom of assembly? Or towards you as LGBT people?

A11: I do not know if this is a change of perceptions, but at least it is a change regarding their professionalism. They do their job regardless of what they think. I do not need to know what police thinks about me or other LGBT people, it is more important that police act in accordance with its responsibilities. This is rather a change towards the right to freedom of assembly. If we compare with what was happening in 2007, when people were arrested and persecuted for organizing assemblies, now it is different. It is a good change. I believe that our law on freedom of assembly is a progressive law.

Q12: Thinking about your communication with police in 2013 and 2014 what lessons did you take away from this 'negotiation' process?

A12: I learned that policemen are people full of stereotypes and we need to work with them. Sometimes, it is good to take a small step back in order to achieve something of a bigger importance. It is important to begin communication with them. I am sure that it will be much better in 2015 and much easier to organize a march and even the opponents, I think understood that police is on the side of those who try to exercise their rights.

Q13: Did police try to propose another route for your march?

A13: No, they did not. They listened to us; asked more questions and talked among them to decide how they will act and that was all. They did not try to propose to change the place, time, day.

Q14: Do you think that notification requirements are justified in relation to their role of facilitator?

A14: I do not think that we need to notify public authorities. I think that we should notify directly police because public authorities do not play any role in our case. If you need any services from public authorities then it makes sense to notify them, but in our case I see public authorities as an additional barrier because it is full of homophobes. However, to notify about your intent to organize an assembly should be a requirement, because we need police protection. Notification should have a role of facilitating to organize assemblies, even two assemblies in the same time, but not to have a restrictive role.

Q15: Would you change something in the new law?

A15: No, I would not. I think that it is a good law and I would not change anything

Q16: Did you try to organize the LGBT march based on the old law?

A16: Yes, and it was horrible because according to that law you were required to go in front of a commission that was far away from human rights and that commission was deciding whether your assembly is worth to be organized or not. We never managed to have the agreement of that commission, so we never organize the pride based on the old law. It was a horrible law.

Q17: Do you think police is trustworthy?

A17: I gained trust in police that they will do their job regardless of their wish in relation to us.

Thank you!

Transcription: interviewee Oleg Brega

Introduction:

The interview is being undertaken for the purpose of my thesis research, in part-fulfilment of the requirements of a Masters in Human Rights Law at Central European University. I am interested in finding out more about the practical aspects of mandatory notification or authorization requirements relating to freedom of peaceful assembly. There are no wrong or right answers. Rather, I hope to learn about and understand your opinions about the practical operation of the law governing freedom of assembly. Our discussion will likely take around one hour, but it can, of course, be interrupted if you would like to pause, or indeed to end, the interview. (*Your anonymity is guaranteed and no information that might reveal your identity will be disclosed, unless you give your express consent to do so)*. Thank you very much for accepting to be an active part of this research. If there are no other issues, then we can start.

Q1: How would you describe the notification process introduced through the new law adopted in 2008?

A1: I know so far that the law nr.26 is the most progressive in civilized Europe.

Q2: Why do you say so?

A2: Because I protested in Lisbon, Brussels, Warsaw and Bucharest and I saw what provisions have the laws from these countries. And I saw that those laws either are old, or have some imposed bureaucratic barriers that are not comparable with our law. Our law is the most appropriate in relation to European standards regarding freedom of expression and assembly. Our law just requires notifying assemblies and even not all of them, just those that have more than 50 participants and those that you intend to organize; spontaneous assemblies and those with fewer participants than 50 should not be notified. And I find this method of notification amazing because it does not allows public authorities to condition or limit freedom of assembly. It just gives public authorities 3 days to send a request to the court and require eventually to ban the assembly or to change the place of assembly which in most of the cases does not happen because our courts move very slowly. This is very good. Assemblies should be treated as a priority because they represent the fundamental liberty of citizens to meet and to express.

Q3: Could you, please compare our law and laws of countries where you have been protesting? Please, give some examples of democratic and non-democratic provisions, in your opinion

A3: I found out when I have been in Portugal that they even do not have a law on freedom of assembly, but it is a presidential decree issued after their revolution in ’73 and which stipulates an authorization process. I tried to organize an assembly following the European standards, ECHR provisions and I had problems with the local police in front of the Russian embassy. In Brussels, I participated in an assembly and the organizers told us that the mayor office did not allow us to organize that assembly in place where it was required, but allowed us in another place. I found this very problematic, especially that it happened in Brussels, the capital of EU. Instead, I saw very courage protests which here, in Moldova are banned, but are allowed in Strasbourg, like people were burning a paper statute of Putin. I found this being a peaceful and legal form to protests and police from Strasbourg treats those people with respect and do not ban their actions. In Bucharest, the law is very old, adopted in ’91 also after revolution and requires authorization and police intervene very brutal to disperse assemblies which were authorized.

Q4: Do you think that in Moldova it will be possible to burn a paper statute of Moldova? Do you think that here are certain assemblies that are tolerated by police and others are not?

A4: In Moldova, it is possible everything. A picket for solidarity organized in front of government can be disperse by the police without having legal reasons, while an abusive assembly that breaches the law can be tolerated also because police is ignorant in terms of knowing the law and legal framework. But our law allows organizing an assembly like that one from Strasbourg –burning a paper statute Putin. So a protest as such should not have any legal consequences, but often police has an inadequate behavior which does not correspond to the law and it is possible to ban any form of assembly. Our police are illiterate

Q5: So based on what you said I understand that the law in theory is a very good law, but it is implemented faultily.What are the cases for bad implementation?

A5: Often the main cause is the ignorance of police. Our police are illiterate and take decisions ad-hoc without consulting their superiors and their decisions violate your rights. In addition, another cause is the orders or the bad intentions of high level people, like Minister, police commissioner who are unhappy with your actions and do not want your activity to be conducted and then they give illegal orders that are executed blindly by police and violate your rights even though this can attract penal consequences for them. There is art.184 from penal code that punishes the interference with a peaceful assembly.

Q6: Did it happen to you? Could you please give any examples?

A6: It happened very often even in the first day after the adoption of the new law, on 22nd of April four of us were arrested in front of the presidency building having an innocent written message "Protest". Such cases happened a lot during the communist era and Moldova lost some cases before the ECHR. After the communist era, it happened to other people, but not to us, because we owned these cases before the ECHR and in this way police begun to recognize us and do not touch us.

Q7: Could you give an example when police acted on verbal orders, as you mentioned?

A7: Varvara Zingal protests over 7 years in the center of the capital with peaceful written messages; she does not bring any harm to anyone, however, visually she creates discomfort to politicians and in the recent years she is protesting in front of the government building. Every time when any official delegations arrive, she is pushed far away from that place or her messages are stolen by the police. Tudor Pinzari also protests for more than 4 years and he also was pushed away by the police from different protests, especially when western delegations arrive.

Q8: Do you think that the request to notify your intention to organize an assembly is a justified request?

A8: Yes, I do because those who have the right to assembly also need protection from the state. And how can you ask the state to protect you if you did not notify the state in a reasonable time that will allow the state to facilitate the organization of your assembly. Moreover, we should be aware that there are different opinions and they can wish to express their opinions publicly, therefore the state should be able to manage this conflict of ideas; either ensuring protections by separating those two groups with opposite ideas through a cordon of policemen or by separating them in time, namely some should protest earlier, others later in order to avoid clashes. I do not have other reasons that will justify the

existence of notification

Q9: Would you prefer to have rather a voluntary, rather than a compulsory, notification process? Why? Should this be for all types of assembly, or just certain types/sizes of assembly?

A9: Taken into account that our law indicates that assemblies with more than 50 people should be notified and with less people than that should not and most of our assemblies are with less people than 50, then I do not see any problem. Moreover, when more than 50 people participate, and then some issues related to traffic can occur, in this situation it is important to have police present there in order to avoid any potential conflict.

Q10: Have you been in the situation to notify your intention to organize an assembly and then to meet police and discuss the conduct of assembly?

A10: The old law was obliging you to meet an ad-hoc commission that was deciding whether your assembly is justified or not in order to authorized or not that assembly. Now, such commissions are created only when assemblies imply big risks and there is a need for coordination in order to avoid potential conflicts.

Q11: How do you think, the decision of the mayor to request the court to change the place of the LGBT pride in 2013 was a justified decision?

A11: Politically his decision was justified. He showed that he disagrees with such assembly and tried to diminish the impact of such event, but from the point of view of human rights and in accordance with our law it was not justified to request to exile the participants in a park. Moreover, the police was unable to ensure protection to the participants in that place as we saw because the court accepted the request of the mayor and established Teatrul Verde as a new place for the pride. That place was full of opponents of gay pride that were attacking each other , but imagine what could happen if LGBT people would go there. It could be a tragic event that police could not manage. Probably, therefore the decision of organizers to change the place and not to go there were the court was sending them, and to organize instead a short flash mob in front of the USA embassy. However, this event also was coordinated with police.

Q12: Do you think that our police are ready to ensure protection to participants during events when there are counter-participants?

A12: Logistically, I think that it is ready to protect them and us, but professionally and practically they do not know how to react in such situations. We saw this in 2009 and they also do not realize what risks exist in such situations. So our police showed to be incompetent. They have necessary materials to act, but they do not have the knowledge.

Q13: What are the causes for this incompetence, in your opinion?

A13: Our police are controlled politically and those who control it have other concerns than to ensure public order. I called out police “mafia with epaulettes”. They are concerned to protect political oligarchs who control the parliament and the government and they are concerned about their own wealth.

Q14: Should organizers or participants of an assembly enter negotiations with police, in your opinion?

A14: Negotiations are absolute necessary because there are competing interests. Even the state has interests, for instance to maintain public order. So negotiations are normal and acceptable in order to avoid confrontations.

Q15: How do you think police perceives protesters? How do they perceive you when are you protesting?

A15: Police like the majority of people from this country does not understand what a protest is and they associate protests with disturbing the public order, with disturbing other citizens and public authorities. So very police is very ignorant in terms of protecting the right to freedom of assembly. There are some exceptions, but too few.

Q16: Are there particular aspects of the law on assemblies that you think ought to be changed?

A16: no, I would not change anything. Maybe more clear punishments or those who interfere with an assembly and try to ban it.

Q17: In terms of application of the law, would like you to see something changed?

A17: Police and public authorities should be trained about how they should react towards notification or when people are in street and protest. For example, some understand wrong thee right to freedom of assembly and abuse it, while others are banned by police to protest, because police understand wrong the right to freedom of assembly. However, public authorities and police should know the law because they are those who are applying it. Citizens are fined for abuse, but any public authorities or policemen have not been punished for not applying correspondingly the law on freedom of assembly.

Q18: Do you think police is trustworthy?

A18: I trust police because there is no other solution. However, I do not trust very much police because I realize that they are not very capable to understand the law, but I cannot encourage citizens to trust some else, because police is the institution that protects us. So we should accord them the presumption of innocence

Thank you!