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Implementation of Freedom of Assembly Policy in Moldova

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Table of Contents

1.	Executive summary	6
2.	Introduction	7
3.	Organizing Assemblies: findings	9
3.1.	Assemblies: types, forms	9
3.2.	Assembly organizers, participants and assembly coverage.....	18
4.	The Practice of Police Enforcement Assembly Rights.....	33
4.1.	Police actions on assemblies	33
4.2.	Police intervention with assemblies	36
5.	Court Jurisprudence on Assembly Rights	44
5.1.	Courts jurisprudence on assembly rights.....	44
5.2.	Concise discussion of some selected cases.....	45
5.3.	Prosecutor Investigations of Police Enforcement Practice.....	47
6.	Analysis of freedom of assembly policy implementation	49
6.1.	Summary findings from application of the old law.....	49
6.2.	Application of the new law on assemblies: improvements	50
6.3.	Application of the new law on assemblies: remaining and emerged concerns	55
7.	Conclusions and recommendations	60
7.1.	Conclusions on implementation of new law on assemblies	60
7.2.	Recommendations	61
8.	Annexes	62
8.1.	Overview of the new law on assemblies	62
8.2.	Comparative perspective of the old and new legal provisions	63
8.3.	Desegregated statistical data on assemblies	64
9.	References.....	65
10.	Endnotes	66

Table of Graphs

Graph 3.1 Monthly evolutions of assemblies	9
Graph 3.2 Peaceful and non-peaceful assemblies	10
Graph 3.3 Types of assemblies	11
Graph 3.4 Forms of assemblies	13
Graph 3.5 Duration of assemblies	16
Graph 3.6 Assemblies' peculiarities	18
Graph 3.7 Geographic coverage of assemblies	19
Graph 3.8 Places for holding assemblies in Chisinau	19
Graph 3.9 Organizers of assemblies	25
Graph 3.10 Most active organizers of assemblies	28
Graph 3.11 Number of participants at assemblies	28
Graph 4.1 Conditions and restrictions on assemblies	33
Graph 4.2 Police presence	34
Graph 4.3, 4.4 Police presence at the monitored assemblies	36
Graph 4.5 Police actions	36
Graph 4.6 Police intervention	37
Graph 4.7 Classification of charges by type	39
Graph 4.8 Prosecuting reasons	40
Graph 4.7 Organizers prosecuted	41
Graph 4.8 Law enforcements bringing charges	41
Graph 5.1 Court jurisprudence	44
Graph 5.2 Court jurisprudence- closer look	45
Graph 6.1 Cost benefit estimate for the more liberal approach in the organization of assemblies under the new law	53
Graph 8.1 Disaggregated statistics	64

Table of Case studies

Case study 1. Non-peaceful assembly: altercations with police, demonstrators blocking street	10
Case study 2. Non-peaceful assembly: intervention and violence by third parties, inaction of police	11
Case study 3. Spontaneous assembly in front of private facility	12
Case study 4. Spontaneous assembly, resulted from police action	12
Case study 5. Peaceful picket of embassy	13
Case study 6. Peaceful picket of court	13
Case study 7. Peaceful march against smoking	14
Case study 8. Peaceful manifestation for the rights of deportees	14
Case study 9. Peaceful manifestation for greater autonomy in Gagauzia by social movement	15
Case study 10. Flash-mob for media freedom	16
Case study 11. 3 hours march in front of National Square, Presidency by business association	16
Case study 12. Continuous assembly for 29 hours for social rights	17
Case study 13. Farmers protesting in front of Parliament	20
Case study 14. Political party protesting in front of Presidency	20
Case study 15. Pensioners organization protesting in front of Chisinau City Hall against raising of tariffs	21
Case study 16. Trade Unions for raising salaries protesting in National Square	21
Case study 17. Union of Journalists protesting in Opera and Theatre Square	22
Case study 18. Political Party forbidden to protest at Palace of Republic	22
Case study 19. Human rights ngos protesting at major state institutions for assembly rights	23
Case study 20. Civic group protesting in front of embassy	24
Case study 21. Civic group protesting in front of embassy 2	24
Case study 22. Politically affiliated group marching	25
Case study 23. Political group picketing national television	26
Case study 24. Political group protesting in National Square	26
Case study 25. Civic group protesting in public garden	26
Case study 26. Civic group protesting in front of embassy	27
Case study 27. Assembly by solitary protestor in center of Balti	28
Case study 28. Assembly by solitary protestor in front of Chisinau Municipal Council	29
Case study 29. Continuous assembly by solitary protestor in front of Trade Unions building	29
Case study 30. Assembly of 100 persons in a village	30
Case study 31. Assembly of 500 persons in Opera Square	30
Case study 32. Assembly of 1 200 persons in front of Trade Unions building	31
Case study 33. Assembly of 6 500 persons in National Square	31
Case study 34. Assembly in Orhei assisted by several policemen	34
Case study 35. Assembly and march in Chisinau assisted by a number of policemen	35
Case study 36. Solitary assembly partially curtailed by Police in front of Parliament	37
Case study 37. Assembly by civic group prevented by police intervention in front of Ministry of Interior building	37
Case study 38. Political party assembly in National Square impeded by police (limitation of use of sound equipment)	38
Case study 39. Solitary assembly prevented by police in National Square	41
Case study 40. Assembly portraying police and prosecutor corruption prevented by police before its start	42
Case study jurisprudence 1: Salvgardare Association protesting for salary increase in front of the Government	45
Case study jurisprudence 2: Veterans Association asking for continuous assembly, Prosecutor General asking annulment of Chisinau City Hall authorization	46

Case study jurisprudence 3: Hyde Park protesting for freedom of assembly in front of Ministry of Interior	46
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Table of Photos

Photos 1, 2 Non-peaceful assembly: altercations with police	11
Photo 3 Spontaneous Assembly in front of Moldova-Gaz	12
Photo 4 Assembly picketing in front of Russian Embassy	13
Photo 5 Assembly picketing in front of court	14
Photo 6 Assembly in form of marching	14
Photos 7, 8 Assembly in form of manifestation	15
Photo 9 Assembly in form of manifestation	15
Photo 10 Assembly in form of flash-mob	16
Photos 11, 12 Assembly in form of march and manifestation	17
Photos 13, 14 Assembly in form of picketing	17
Photos 15, 16 Assembly in front of Parliament	20
Photos 17, 18 Assembly in front of Presidency	20
Photos 19, 20 Assembly in front of City Hall	21
Photos 21, 22 Assembly in front of Government	21
Photo 23 Assembly in front of the National Square Place	22
Photos 24, 25 Assembly in front of the Russian Embassy	22
Photos 26, 27, 28, 29 Assemblies in front of Ministry of Justice (1), Parliament (2), Government (3), and Ministry of Interior (4)	23
Photos 30, 31 Assembly in front of the Chinese Embassy	24
Photos 32, 33 Assembly by a politically affiliated organization	25
Photos 34, 35 Assembly by a political party	26
Photos 36, 37 Assembly by a political party 2	26
Photos 38, 39 Assembly by a civic group	27
Photo 40 Assembly by a civic group	27
Photos 41, 42 Assembly by an individual	29
Photos 43, 44 Assembly by an individual 2	29
Photos 45, 46, 47 Assembly by an individual 3	30
Photo 48 Assembly with 100 participants	30
Photo 49 Assembly with 500 participants	31
Photo 50 Assembly with 1 000 participants	31
Photos 51, 52 Assembly with 6 500 participants	32
Photos 53, 54, 55 Assembly with presence of 10 policemen	34
Photos 56, 57 Assembly with 30 policemen	35
Photos 58, 59 Assembly prevented by police	37
Photos 60, 61 Assembly prevented by police 3	38
Photos 62, 63, 64, 65 Assembly partly obstructed by police	38
Photos 66, 67 Assembly interrupted by police	42
Photos 68, 69, 70, 71 Assembly prevented by police 4	42

1. Executive summary

In April 2007 the new law on public assemblies has entered into force in Moldova. The society and the decision-makers seek evidence on whether and to what degree the new law has managed to address the existed problems with regard to the exercise of the freedom of assembly rights. Therefore, the report objective is to produce the necessary evidence that would enable us to judge on how successful the new law on assemblies has been implementing. We present a systematic account of the quantitative and qualitative evidence on the positive and successful implementation of some provisions of the new law and also the evidence on what norms of the new law are still not implemented adequately.

The report is elaborated on the basis of the 7th month long project monitoring of assemblies carried out by the Resource Center for Human Rights (CReDO) with the support from the OSCE Mission in Moldova over the period of time July - December 2008. This project continues the previous 9th month project supported by OSCE/ODIHR with the monitoring the period of January-June 2008¹. The project has produced more than 350 individual observations of the assemblies covering the entire territory of Moldova.

The findings firmly establish that the new law on assemblies has improved the exercise of the freedom of assembly in Moldova. The law created important benefits to the society: the organizers and citizens and the society at large. Peaceful exercise of the freedom of assembly by citizens has increased. Cases of violence has remained at the level of the old law and even decreased in relative terms. The new law has generally been well received by the organizers and the local authorities and the society at large and police face few difficulties in its application.

Concerns still remain. Police proper enforcement of the assembly rights have been identified as presenting problems. The new tendency of the police wearing civilian clothes rather than uniform while policing assemblies is worrisome. Police presence at the assemblies decreased specifically when is needed in the case of counterdemonstrations or violent interventions from the third parties, resulting into police failing to exercise its positive obligation to protect the assembly. There are no cases of the prosecution of the freedom of assembly perpetrators.

A number of recommendations to further improve the exercise of freedom of assembly are proposed. These include: consolidation of police capacity to manage and facilitate assemblies, reassess the practice of police presence in civilian clothes at the assemblies, consolidation of capacity of local authorities and police to deal with notifications procedure, development of skills among members of the commission on assemblies to work with organizers, prosecutor to proceed firmly with prosecution of perpetrators of the freedom of assembly rights, education of the organizers as well as in case of several organizers and the police to interact.

We reaffirm earlier recommendations that have not been addressed properly: promotion of greater police awareness on a more coherent application of administrative sanctions in the conformity with the law on assembly; building further police skills in managing parallel and at times contradictory behavior of various manifestations and also explore opportunities to the institutional improvements. The monitoring of assemblies needs to continue specifically during the period prior and during the elections. The project has generated already good evidence on the application of the new law that shows that the public authorities increase learning in the use and the respect of the assembly rights.

Note from the author: While this report has been in its final stage of the elaboration, Moldova has witnessed the events of 6-7 April 2009 with the large scale manifestations, police involvement and also elements of violence. We are dedicated to produce a separate report on these stand-alone events from the freedom of assembly perspective. The current report is, therefore, stands as a good source to understand the general practice and tendency in freedom of assembly.

¹ Monitoring Freedom of Assembly Policies in the Republic of Moldova, Resource Center for Human Rights, January 2009, report is published on-line at www.CReDO.md.

2. Introduction

The application of the law on assemblies requires continuous collection of the quantitative and qualitative data and information in order to understand the conformity of the practice with the law. Therefore, a network of more than 50 observers throughout Moldova has continued to monitor the assemblies.

The assemblies are documented through an on-line monitoring platform, <http://www.credo.md/assembly/>², which hosts information about all public assemblies and all monitoring reports. Monitoring of assemblies follow both international and national standards, monitors abide a code of ethics. Each monitor drafts an individual confidential report, which is fed into the project database. The period of monitoring documented in this report extends from July 2008 to December 2008 and builds on the information collected from the monitoring of the assemblies during the period January-June 2008.

Objectives

The monitoring report has several specific objectives:

- systematization of existing freedom of assembly practice;
- analysis of how freedom of assembly practice and application of the existing legal and institutional is respected to ensure the freedom of assembly standards;
- elaboration of a set of recommendations to further improve respect for freedom of assembly in Moldova based on the new law.

The project has an important educational effect on those actors practically involved in freedom of assembly rights: the organizers, the police, the media and the general public. Finally the project helps generating information, data and consequently evidence in order to make an informed judgment regarding the standard of practice relating to freedom of assembly.

Methodology

The monitoring project has continued to produce a comprehensive database of assemblies for the period of July-December 2008. This information is based on the individual reports of each assembly monitored by one or several specially trained independent observers. The project has been monitoring more than 50% of all assemblies in Moldova, targeting particularly those that could have generated difficult situations.

The project targeted some difficult and generic situations through comprehensive case studies. Interviews have been held with the police officers and local authorities. Information has also been collected from the various specialized NGOs, from the media and from contacts among organizers about the assemblies, the law and the responses by the authorities. Statistical information and data has been compiled from the individual reports. The report discusses this information specifically in the context of the effective functioning of the new law, and from its conclusions, the report sets out a series of recommendations to improve the coherence of the application of the new law.

The following two sections (section 3 and 4) focusing on the description of findings of the assembly rights is based on:

- a) individual monitoring reports which have specific information on each event. The reports are written by trained and experienced monitors, with complex assemblies monitored by several monitors. Their reports cover events prior to and during the assemblies and activities following the assembly, and focus on the role and actions of various factors including organizers, participants, police, local authorities and the judiciary;

² For video documentation of assemblies in Moldova visit internet television www.PublicTV.md at http://www.publictv.md/ro/Public_Assemblies/ - partner organization in monitoring the assemblies

- b) collection of data and information (including observed facts, numbers, photos and assessments) are analyzed to form the core quantitative information on assemblies, while all individual reports are placed under the monitoring platform: <http://www.credo.md/assembly>;
- c) some individual reports have been complemented by case study research, including interviews with relevant actors, and collection of other relevant information;
- d) information provided by the Ministry of Internal Affairs and the Ombudsman Institute, and other stakeholders;
- e) compiling of the statistical data in retrospective (old law, new law first months and new law application at a later stage) and comparison of the statistics of the mentioned periods of time;
- f) presentation of the concise qualitative information on the case studies that explain the most representative situations.

The methodology of the analytical part of the report (section 5 and 6) focusing on the discussion and the interpretation of the previous sections is based on:

- a) legal analysis of the police practice and application of the new law in the light of the legal standards of the legislation and international human rights standards (conformity of practice with legal norms);
- b) legal analysis of the court jurisprudence of the new law in the light of the legal standards of the legislation and international human rights standards (conformity of practice with legal norms);
- c) economic and social analysis of the assembly rights policies;
- d) analysis of the statistical data and their interpretation in the light of the assembly policy implementation.

The authors thank Dace Lukumiete and Ludmila Samoila of the OSCE Mission to Moldova for the valuable observations on the report. The report was elaborated by Serghei Ostaf (research design, analysis, writing) and Florin Gisca (monitoring coordination, case studies).

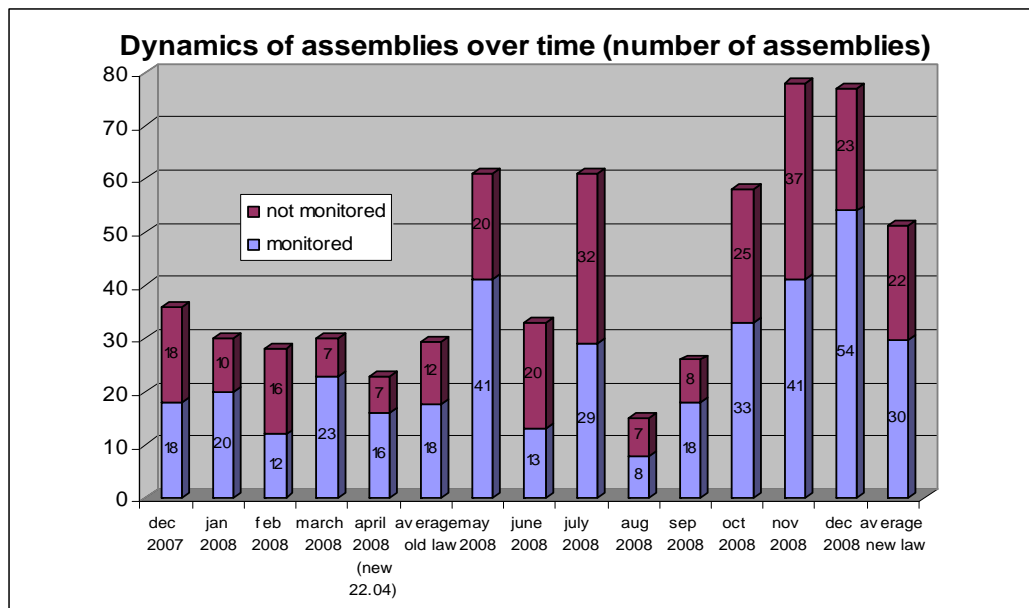
3. Organizing Assemblies: findings

This section contains a comprehensive overview of the assemblies during the period from July 2008 to December 2008. It also contains the statistics and the information collected from the period January –June 2008. The project managed to monitor around 55% of all assemblies that took place in Moldova. In the case of assemblies that have not been monitored, some information has been gathered from the media, the relevant authorities, or directly from the organizers. The direct contacts established by members of the monitoring project with various municipalities allowed the project to have access to the first-hand information on assemblies.

3.1. Assemblies: types, forms

After the introduction of the new law, the number of assemblies steadily increased showing increased civic activism. Under the old law, there had been an average of 30 assemblies per month, while under the new law the average has risen from 40 assemblies per month in the first months to more than 70 assemblies in late 2008. The autumn months of 2008 have shown a stable growth of at least 100% as compared to the period under the old law and a growth of at least 25%, as compared to the initial period of time when the new law has just entered into force.

Graph 3.1 Monthly evolutions of assemblies

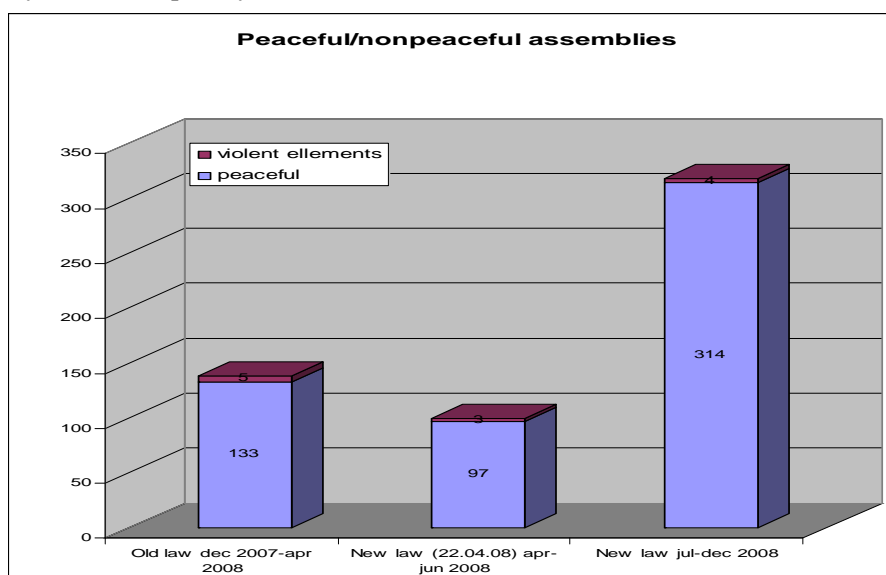


As graph 3.1 shows that, in the months of October, November and December, the number of assemblies reached 70-80 per month. Comparing December 2007 (under old law) – 35 assemblies and December 2008 - 77 assemblies, one can see more than double increase in the number of the assemblies.

- *peaceful vs. non-peaceful assemblies*

The overwhelming majority of the assemblies under the new law have been peaceful. The proportion of non-peaceful assemblies has lowered in the last months of 2008. The following graph (Graph 3.2) shows that more than 98% of all assemblies have been peaceful. Indeed, during the period monitored under the old law, there were only 5 assemblies with some elements of violence. Under the new law, only 6 assemblies have had some elements of violence¹. During the period of December 2007-April 2008 (5 months), there were 5 cases with some sort of violence, while during the period under the new law monitored – May-December 2008 (8 months) – there were only 6 cases with some violent elements. Therefore, there has been no change in the level of the violent assemblies since the transformation from the old to new law.

Graph 3.2 Peaceful and non-peaceful assemblies



Non-peaceful elements of the assembly can have various reasons and motives. As Salvgardare case shows, the origin of the non-peacefulness could be the organizers themselves, based on the behavior not provided in the assembly declaration or through a rather intensive dialogue with the police, in this case forcing the entrance in the Governmental building or by blocking intentionally the road. At the same time, the non-peaceful elements could spring from the actions of the third parties and the absence of the police on the scene to protect the organizers and separate the two parties. In the second case, the third party actors intervened with the organizers' peaceful intent and disrupted the assembly. In the later case, the police should be held accountable for the inaction to protect the organizers' right to assembly.

Case study 1. Non-peaceful assembly: altercations with police, demonstrators blocking street³

On 15.07.2008 "Salvgardare" Association carried out an assembly in the National Square in front of the Government's building with around 70 participants, majority being the elderly. The assembly has been organized to protest against the Government failure to create descent conditions for life of the pensioners. The organizers stepped on the staircase of the building, the police requested the later to withdraw from the staircase. 30 policemen lined up in front of the Government building. The demonstrators and the police started the exchange of bad words and later, the demonstrators moved towards Banulescu-Bodoni Street blocking it for 15 minutes. The police tried to clear up the street by pushing peacefully the demonstrators off the road and finally managed. During the clear-up, the police and demonstrators exchanged mutual push-ups, aggressive wordings, some demonstrators hit the policemen. As a result a number of demonstrators' clothes were turn-out and some had small injuries. The demonstrators de-blocked the street and went to demonstrate in front of the Presidency building and the OSCE mission. After the demonstration end, the organizer of the meeting and the two participants has been detained.

³ Case study 1 video registration can be found at: http://www.publictv.md/ro/20080715_salvgardare-17.03.2009

Photos 1, 2 Non-peaceful assembly: altercations with police



photo 1: police confronting demonstrators



photo 2: demonstrators in the square

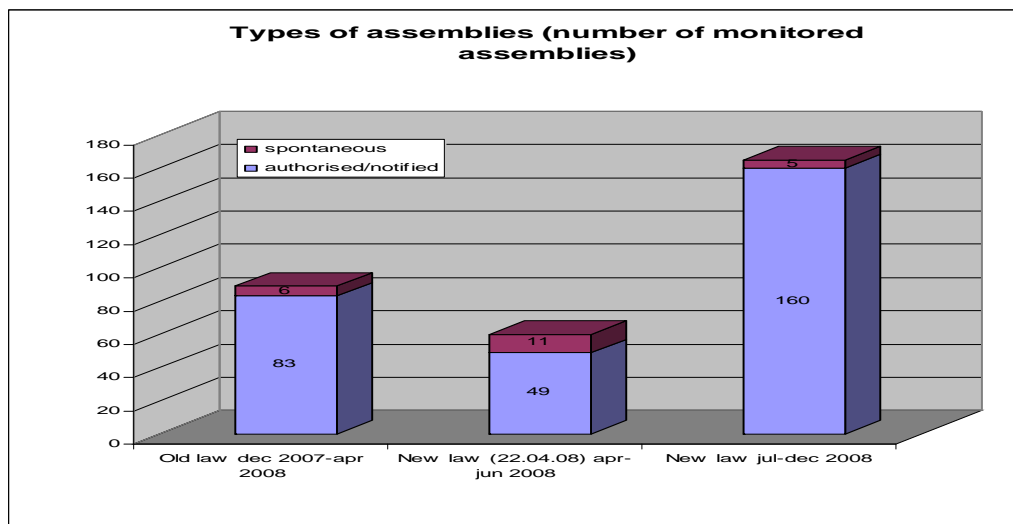
Case study 2. Non-peaceful assembly: intervention and violence by third parties, inaction of police.

On 05.10.2008 Liberal Party has organized a protest action in Balti in front of the entrance in city park next to the City Hall. The decision to protest in this place followed the refusal to allow the protest in the front of the Stefan cel Mare statute. The meeting had as an objective the protest against the presence of the Russian Army in Transnistria and calling for its withdrawal. Around 20 policemen participated in the demonstration, carrying posters and disseminating flyers. Around 15 minutes later, a group of 30 persons approached the demonstrators and started to verbally aggress the demonstrators, they have also attached the posters, turned them down, destroyed, have seized the informational materials and have left the place. The protest has continued. In a while, the violent group returned and deprived the demonstrators of the rest of the materials by physically aggressing the demonstrators. Both groups have entered into violent clashes. The demonstrators had to stop the protest. The police have always been present on the spot and had not intervened. The protest has been dully notified.

- *spontaneous assemblies*

The number of the spontaneous assemblies has not increased under the new law if compared with the number under the old law. A moderate increase in the number of spontaneous assemblies has been registered under the new law during the first months after the introduction of the new law, yet later, this number stabilized to the level comparable to the situation under the old law. As the Graph 3.2 shows, under the old regime, there were 1-2 spontaneous assemblies per month, and under the new regime there have been on average 1-2 spontaneous assemblies per month.

Graph 3.3 Types of assemblies



The application of the spontaneous assembly provisions by the organizers could not depict the practice of the abuse. The organizers have used this form when there was not any possibility to comply with the general declaration procedures as a result of the imminent action of the state or of the authorities.

Case study 3. Spontaneous assembly in front of private facility.

On 10.11.2008, around 20 persons started a 20 minutes picketing-up of the building of the Moldova-GAZ. The protest has started as a result of the preceding day refusal by Moldova-GAZ to supply gas for Termocom by connecting it to the gas-pipe. The demonstrators have carried out with them posters. No police intervention followed.

Photo 3 Spontaneous Assembly in front of Moldova-Gaz



photo: demonstrators carrying posters

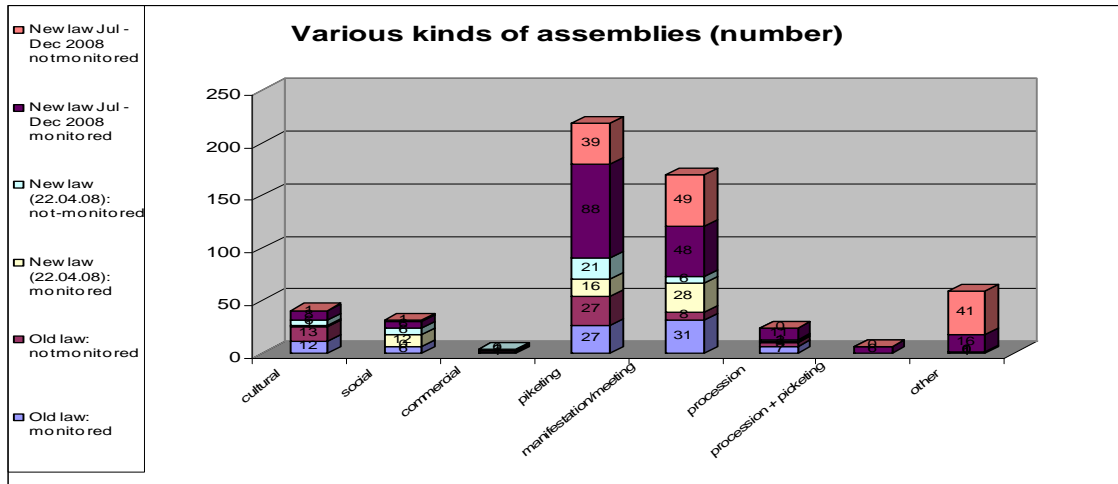
Case study 4. Spontaneous assembly, resulted from police action

On 21.12.2008, a group of 200 persons from Balti have indented to participate in a demonstration to be organized in Chisinau National Square in support of the Pro-TV broadcaster. The police have blocked the departure of the demonstrators; the busses were not allowed to go. The demonstrators organized the manifestation on the spot in front of the supermarket, the place of departure. The protest has lasted for an hour.

- *various forms of assemblies*

Most assemblies take the form of picketing or manifestations/meetings, no change has been observed following the introduction of the new legal regime² as the graph below (3.4) illustrates. Processions and marches are the most complex form of assemblies, but this form of event was present under the old as well as under the new legal regime. The absolute number of processions has not changed. The number of other forms of assemblies has not changed. Apart from mentioned forms of assemblies, one can distinguish solitary demonstrators and protests.

Graph 3.4 Forms of assemblies



One cannot distinguish very clear one form of assembly from another one. The form of the assembly is not a critical factor. The number of people, the place and the type of procession where a number of locations are involved is far more complex and critical in the management of the assemblies.

Case study 5. Peaceful picket of embassy

On 12.08.2008, a group of Popular Christian Democratic Party has organized a picketing of the Russian Embassy protesting Russian actions against Georgia. Around 80 participants protested for an hour, scolding „Russia go home”, used posters and amplifying instruments.

Photo 4 Assembly picketing in front of Russian Embassy



photo: demonstrators protesting across the street of the embassy, carrying posters

Case study 6. Peaceful picket of court⁴

On 16.12.2008, two persons (mother and son) have protested for 4 hours in front of the Ciocana court of Chisinau. The protestors carried poster with written message about the incompetence, corrupt and nepotism actions of judges, police. The action was peaceful. The protest continued in the following two days.

⁴ Case study 6 video registration can be found at: http://www.publictv.md/ro/20081216_perjunca_judecatorie_ciocana-17.03.2009

Photo 5 Assembly picketing in front of court



photo: demonstrators protesting in front of court building carrying poster:
“judges corrupt, incompetent, falsifying documents; step down”

Case study 7. Peaceful march against smoking

On 23.11.2008 Association for Education and Family, together with the Christian Church of the 7th day, have organized a march against the smoking in public space. The march has lasted for 1 hour and 40 minutes, the demonstrators marched on the route Train station-State Pedagogical University. The demonstrators have used the pedestrian path, more than 100 participants have attended. They displayed poster with the messages about the bad effects of the smoking on the body and coffin collecting in it cigarettes from the path-passers. A police care went all long way together with the demonstrators.

Photo 6 Assembly in form of marching



photo: demonstrators marching, carrying posters:
“stop smoking in public places”, “smoking kills”, “no
smoking”

Case study 8. Peaceful manifestation for the rights of deportees

On 06.07.2008, the Association of victims of Stalinist regime and former deportees has held a demonstration to commemorate the victims of the deportation to Siberia in the Stalinist times. The manifestation has taken place for 2 hours in front of the train station. Around 400 participants have taken place. Participants held posters, carried Moldovan flags and signs.

Photos 7, 8 Assembly in form of manifestation



photo 1: demonstrators in front of monument of deportations – poster with Stalin blamed as evil photo 2: demonstrators taking floor)

Case study 9. Peaceful manifestation for greater autonomy in Gagauzia by social movement

On 19.07.2008, the Movement „United Gagauzia” has organized a manifestation in the Victoria Square in Comrat. The demonstration was held against the central authorities in Chisinau that claimed to infringe upon autonomy of Gagauzia. The participants have proposed to declare the Gagauz autonomy into the independent Republic of Gagauzia as part of the Republic of Moldova. The proposal has been symbolically voted unanimously by all participants. The demonstration duration was for 1 hour and gathered more than 1 700 participants.

Photo 9 Assembly in form of manifestation



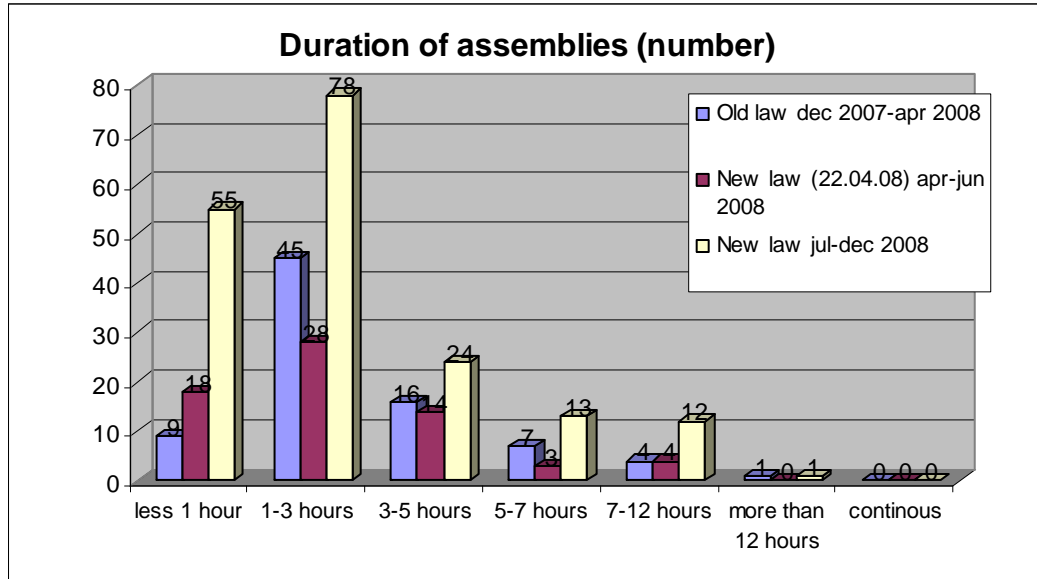
photo 1: demonstrators carrying Gagauzia flags

photo 2: demonstrators facing improvised scene

- duration of assemblies

The duration of most of the monitored assemblies is about half a day and this pattern has not changed following the introduction of the new law. More specifically, more than 70% of all assemblies duration is less than 3 hours. Graph 3.5 (below) shows the law favors the short-term assemblies of 1 hour or less, this type of assembly has increased in numbers under the new law. Second place as numbers take place the assemblies with 1-3 hours, this pattern has not changed as compared to the old law. The rest of assemblies' duration remained the same.

Graph 3.5 Duration of assemblies



The number of the longer assemblies of more than half day-to-whole day remains small. Short-time events of less than 1 hour and up to 3 hours dominate. Flash-mob assemblies of even smaller duration are also present in Moldova.

Case study 10. Flash-mob for media freedom⁵

On 03.12.2008, at 12 a.m., 35 representatives of the young wing of the Liberal Democratic Party in front of the Parliament building. The young, being completely silent, exposed various posters and graphical signs. On 12.05, the demonstrators have dispersed. The scope of the event was to commemorate press-freedom and against the media censorship.

Photo 10 Assembly in form of flash-mob



photo: demonstrators line in front of Parliament (across Presidency) on pedestrian path-way, carrying posters: “Free Press, Democracy in Moldova”

Case study 11. 3 hours march in front of National Square. Presidency by business association⁶

On 07.07.2008, 300 patent holders have gone out on the streets on a protest for 3 hours. The protesters have marched on the Stefan cel Mare street on the right side of the care-path way passing the National Square and reaching the Government and the President buildings. The protestors have asked for the abolition of the law

⁵ Case study 10 video registration can be found at:

http://www.publictv.md/ro/20081203_pldm_flash_mob_parlament-17.03.2009

⁶ Case study 11 video registration can be found at: http://www.publictv.md/ro/20080707_patentari-17.03.2009

dated 2008 that prohibits entrepreneurial activity on the basis of the patent. The protestors have used various posters and slogans. The action has been coordinated by the Association of Small Business. At the beginning of the demonstration, the organizers have explained carefully the rules and mode of behavior of the demonstrators for about an hour.

Photos 11, 12 Assembly in form of march and manifestation



photo 1: demonstrators marching carrying posters: “keep the patent”



photo 2: demonstrators in front of Presidency carrying posters with some police in uniform

Case study 12. Continuous assembly for 29 hours for social rights⁷

On 30.10.2009, 50 representatives of the Association of the Veterans of 1992 armed conflict „Tiras Tighina” have started to picket the building of the Parliament. They asked for the improvement of their pension, conditions of their life and additional payments. The participants wanted to install courts in front of the Parliament, however, have been talked out by police. The demonstration continued through 31.10.2008, 15.15, upon the calls of the organizers. Over the demonstration, there were at least 20 participants and maximum 75. The Prosecutor General petitioned the court to annul the decision of the City Hall to authorize the meeting that was satisfied.

Photos 13, 14 Assembly in form of picketing



photo 1: 3 organizers addressing the demonstrators with Parliament building in a background



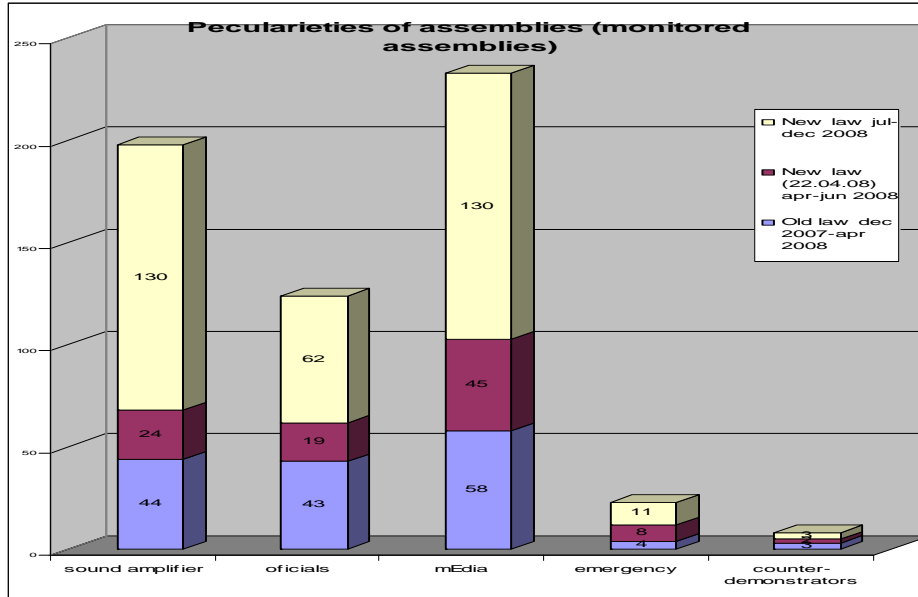
photo 2: demonstrators listening carrying poster: “Mafia, Traitors, Fakeness, Liars” and symbols of Communist and Christian Democratic Parties (heart) intertwined

⁷ Case study 12 video registration can be found at: http://www.publictv.md/ro/20081030_31_tiras_tighina-17.03.2009

- *peculiarities and complex elements in the assemblies*

The following graph shows the presence of distinctive elements at assemblies. The graph shows specifically to what extent the new law has influenced the presence or use of: 1) sound amplifiers, 2) officials, 3) media, 4) medical emergency service, 5) counter-demonstrations. Overall, the situation has not changed. One can see no change in the use of the sound amplifier, presence of media in relative terms slightly increased, and there is a more substantial presence of the emergency service. More liberal new legislation has not seemingly changed the presence of the counter-demonstrations.

Graph 3.6 Assemblies' peculiarities

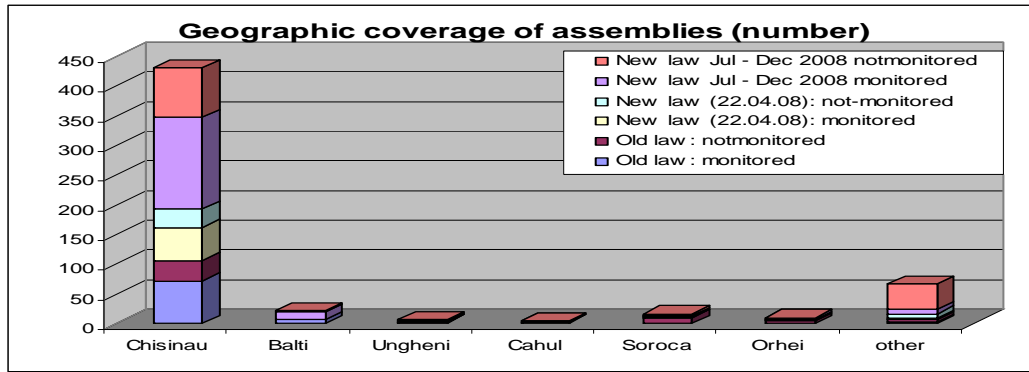


The sound equipment and amplification is almost a vital part of any assembly, therefore, necessary arrangements to supply electricity is important for the organizers. Media coverage of the assemblies is very frequent. Medical services are present in few cases. Overall the relative presence of these facilities and services remain comparable to the situation under the old law. The absolute number of these elements of the assemblies has not changed. The number of counterdemonstrations in relative terms has not increased, while in absolute terms, there is slight increase. Of all complex elements discussed, only the counterdemonstrations represent an issue of capacity building of the police. As one can see later in the report capacity to manage counterdemonstrations and parallel demonstration is not adequate with the Moldovan police.

3.2. Assembly organizers, participants and assembly coverage

Most of the assemblies take place in Chisinau - the capital of Moldova. The new law has not changed the pattern in the geographical distribution of assemblies. More than 90% of all assemblies take place in Chisinau, Balti and Soroca follow.

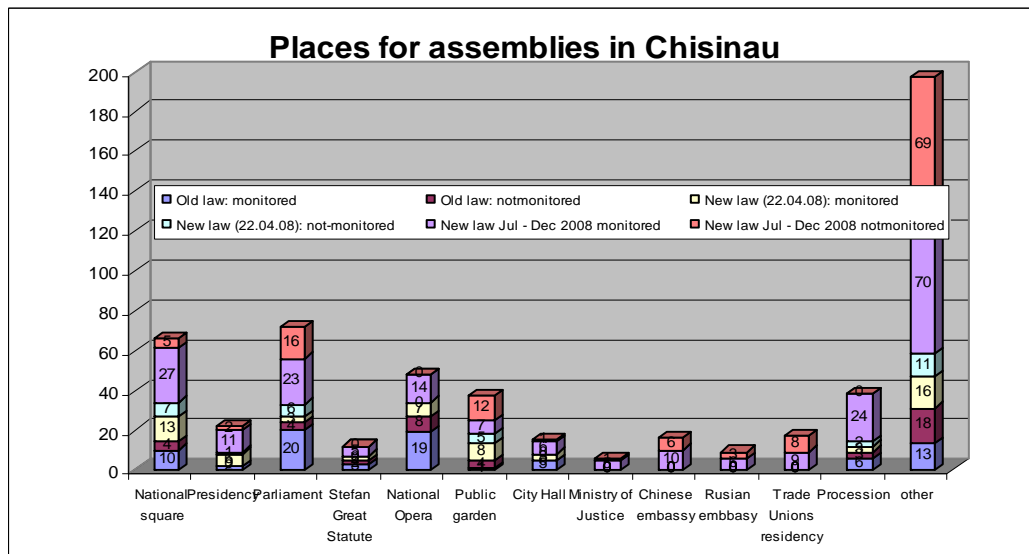
Graph 3.7 Geographic coverage of assemblies



- locations for assemblies in Chisinau

The new law has resulted in more assemblies being organized at the key public locations in the central part of Chisinau: in National Square (an important location for people to call for actions from the executive or protest against the government), in front of the Presidential building (home of an important institute of the state) and in the Public Gardens (where many people pass by) (Graph 3.8). The old law required authorization for holding the assemblies and evidence suggests that assemblies were only reluctantly authorized in front of the government buildings in National Square, in front of the Presidency or in the Public Gardens. The data indicates that the new law, therefore, has facilitated the organization of assemblies in each of these prominent places.

Graph 3.8 Places for holding assemblies in Chisinau



Problems remain regarding holding assemblies and the distance to the important state buildings. Particularly problems refer to the holding of assemblies targeting actions towards the Presidency, the Parliament and the Government. Although the new law does not provide for the minimal distance to the buildings, police enforce substantial distance when assemblies organized in front of these buildings. Case studies show that assemblies targeting Parliamentary building are kept at a distance of at least 200 meters, at the staircases near the road, assemblies targeting Presidency are kept at the pedestrian pathway at lower staircases, assemblies targeting Government building are kept at a distance of at least 200 meters, actually in the National Square. The distance problem does not exist in the case of other institutions, including Ministry of Justice, Ministry of Foreign Affairs, and Prosecutor General Office and finally even at the Ministry of Interior.

Case study 13. Farmers protesting in front of Parliament

On 25.09.2008, 50 agricultural producers, representatives of the National Farm Federation of Moldova, have carried out a demonstration of protest in front of the Parliament. They protested against the current agricultural policy. They accused the Government of the indifference that has as a consequence low price for grape and no market to sell the grape.

Photos 15, 16 Assembly in front of Parliament



photo 1: demonstrators in front of Parliament building carrying posters: “government indifference destroys country economy”, “government made us beggars”



photo 2: same place with posters: “grapes that have no price and no need in”, “grapes collected is of no use”

Case study 14. Political party protesting in front of Presidency

On 16.12.2008, Chisinau branch of Liberal Party has organized a protest against the dictatorship in front of the Presidency. The protestors have carried out the slogans „Jos Dictatura” („Down with Dictatorship”). The demonstrators carried the photos of well known dictators and had posters for the freedom of press and against the dictatorship. The demonstrators stood right before the beginning of the staircases of the Presidency.

Photos 17, 18 Assembly in front of Presidency



photo 1: demonstrators in front of presidency carrying posters “take off hands from PRO TV” and with Moldovan and EU flags



photo 2: in front of Presidency and posters: “free press against dictatorship”

Case study 15. Pensioners organization protesting in front of Chisinau City Hall against raising of tariffs

On 18.12.2008, „Salvgardare” Association has organized picketing of the Chisinau City Hall at the time of holding of the Municipal Council session. Around 70 persons (most the elderly), have protested against the possible decision to raise the cost of the energy. After an hour and a half, the participants have entered in the hall of the Chisinau Municipal Council and stayed there for 30 minutes. The mayor, the president of the Council and a councilor has gone in front of the protestors to talk to the persons. Another individual protestor – protested separately nearby with the same objective.

Photos 19, 20 Assembly in front of City Hall



photo 1: demonstrators in front of Chisinau City Hall carrying posters: “pensions, salaries, tariffs, prices - kill”, organizer address participants



photo 2: demonstrators crowded at the entrance of Chisinau City Hall, carrying posters

Case study 16. Trade Unions for raising salaries protesting in National Square

On 05.09.2008, Trade Unions from Education have organized a protest in the National Square, in front of the Government to ask for the raising of their salaries. The demonstration has brought more than 250 participants, and has been the 5th on the row this week.

Photos 21, 22 Assembly in front of Government



photo 1: demonstrators in National Square, in front of Government building, arch of triumph in the background, carrying out posters: “no corruption”, etc



photo 2: same place, demonstrators in the square with government building at background

Case study 17. Union of Journalists protesting in Opera and Theatre Square

On 23.11.2008, the Union of Journalists of Moldova has organized a protest in the Opera and Theatre Square. The scope of the meeting was the crises in agriculture and the upcoming Parliamentary elections in Romania. In the course of 2 hours, there were more than 250 participants. The organizers have used amplification equipment. Some of the demonstrators carried flags. Similar events have been organized in the following days.

Photo 23 Assembly in front of the National Square Place



photo: demonstrators in front of Opera Square

Case study 18. Political Party forbidden to protest at Palace of Republic

On 13.11.2008, more than 130 persons protested in front of the Russian Embassy calling the Russian Army withdrawal from Transnistria region of Moldova. Liberal party has organized the demonstration, the protestors carried flags, slogans. The demonstrators came to the Russian Embassy after they have been forbidden to demonstrate in front of the Palace of Republic where, CIS summit have been taking place. General Prosecutor office announced some of the public places closed for public access for the time the summit, including the Palace of Republic.

Photos 24, 25 Assembly in front of the Russian Embassy



photo 1: demonstrators in front of embassy, across the street, carrying posters: “Russian army out”, “Ask for free movement in security zone”, some police in uniform



photo 2: same place, another group of demonstrators nearby the embassy, just across the first group of demonstrators

Case study 19. Human rights ngos protesting at major state institutions for assembly rights⁸

On 24.12.2008, as a reaction for the numerous violations of the freedom of assembly, human rights ngos have carried out a march and demonstrations in most of the problematic public places. Around 50 representatives demonstrated in front of the Ombudsman office, Ministry of Justice office, and Ministry of Foreign Affairs office, Parliament, Presidency, Government and Ministry of Interior. Each time they have recited folklore poetry written with the freedom of assembly context, carrying Christmas trees and other symbolic signs. The demonstrators came close and manifested freely in front of all buildings with exception of Presidency, where they have not been allowed to come close to the entrance of the building. Police has followed the demonstrators all the time.

Photos 26, 27, 28, 29 Assemblies in front of Ministry of Justice (1), Parliament (2), Government (3), and Ministry of Interior (4)



(photo 1: demonstrators in front of Ministry of Justice,



photo 2: demonstrators in front of Parliament

⁸ Case study 19 video registration can be found at:
http://www.publictv.md/ro/mars_de_finalizare_a_intrunirilor_nefinalizate-13.01.2009



photo 3: demonstrators in front of Government



photo 4: demonstrators on the staircases of Ministry of Interior, all the time carrying posters: "freedom of assembly", carrying Christmas trees and Christmas hats and addressing speeches

Case study 20. Civic group protesting in front of embassy

On 22.11.2008, several representatives of the Association Falun Gong have protested in front of the Chinese Embassy Chişinău. The demonstrators have practiced some spiritual exercises and listened to some oriental music. They carried some photos and slogans against the repressions of the Chinese authorities. The association picketed the embassy in the course of the whole 2008. Most of the demonstrations have been organized on Saturdays. Police restricted taking photos of the building.

Photos 30, 31 Assembly in front of the Chinese Embassy



photo 1: demonstrators in front of embassy, across the street, carrying posters: "stop repression of Falun Dafa in China", photos of killed persons;



photo 2: same place, 3 demonstrators

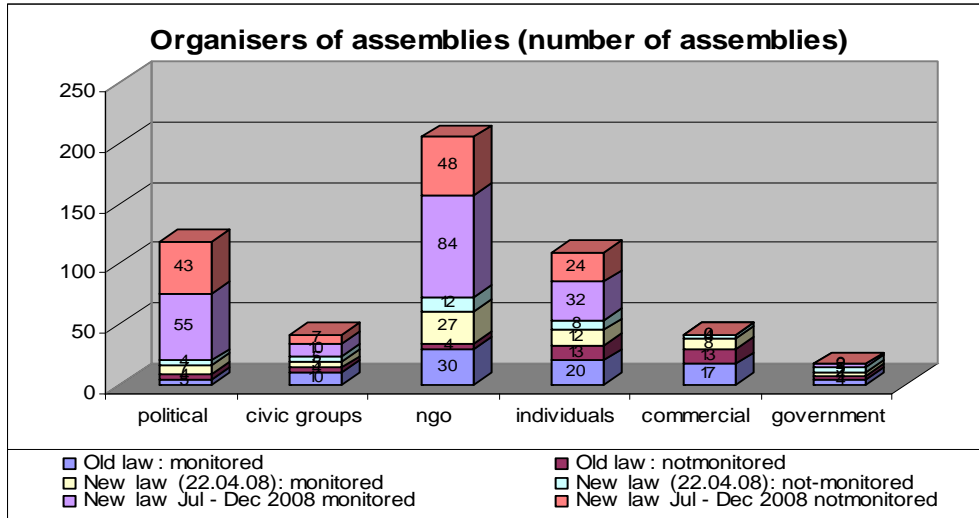
Case study 21. Civic group protesting in front of embassy 2

On 25.08.2009, Amnesty International Moldova has carried out a picketing with theatrical elements of the Chinese Embassy, protesting against human rights violations in China. The action has taken place to raise the awareness of the world around the days of the Olympic games. The meeting was attended by 12 representatives for about an hour. The organizers carried a number of signs and written materials.

- *organizers of the assemblies*

The new law has also facilitated the increase in the organization of the assemblies by the political parties, the civic groups and NGOs (Graph 3.9) as well as by the private individuals. The top three organizers of assemblies remain unchanged: NGOs, individuals and the political parties are the primary organizers of such events. One can also see that the absolute and relative activism of NGOs and political groups has increased more than twofold, and there has been an increase in the levels of activism among civic groups.

Graph 3.9 Organizers of assemblies



Case study 22. Politically affiliated group marching⁹

On 29.10.2008, Komsomol Youth Organization of Moldova celebrated the 90 years from its foundation and marched in Ciocana district of Chisinau along Mircea cel Bătrîn avenue – Alecu Russo street. 40 participants, among which the young and the elderly carried red flags and shouted revolutionary slogans. The demonstrators joined the other celebration taking place at the monument of the Heroes of Leninist Komsomol.

Photos 32, 33 Assembly by a politically affiliated organization



photo 1: demonstrators marching carrying poster: "Ciocana"- district of Chisinau, flags with Che Guevara,



photo 2: same place and demonstrators

⁹ Case study 22 video registration can be found at: http://www.publictv.md/ro/20081030_utcm_ciocana_renasterii-17.03.2009

Case study 23. Political group picketing national television

On 7.09.2008, a group of 35 young persons from Liberal Democratic Party picketed „Moldova 1” national broadcasting station, protesting its editorial policy on airing football championship. They were requesting the broadcasting of the Romanian team Steaua Bucharest and Ukrainian team Dinamo Kyiv.

Photos 34, 35 Assembly by a political party



photo 1: demonstrators in front of national television, carrying EU flags and posters: “want free press and free public television”



photo 2: same place, demonstrators being watched closely from behind by two policemen in civilian.

Case study 24. Political group protesting in National Square

On 30.11.2008, around 350 members of the Our Moldova carried out a demonstration in the National Square, protesting against the youth policies of the current Government. The demonstrators expressed disagreement with the policies by shouting slogans and symbolically places dried flowers in front of the building.

Photos 36, 37 Assembly by a political party 2



(photo 1: demonstrators in front of Government building carrying EU flag



photo 2: same place with government building at the back

Case study 25. Civic group protesting in public garden¹⁰

On 26.07.2008 Association against Molotov-Ribbentrop Agreement, Unionist Movement of Moldova, and Association of Deportees have co-organized a demonstration on the liberation of Basarabia. The meeting has taken place in the Public Garden. The demonstration participants shouted slogans in favor of the unification

¹⁰ Case study 25 video registration can be found at: http://www.publictv.md/ro/20080726_murm-17.03.2009

with Romania, carried posters and flags aiming at the unification with Romania. The meeting gathered around 60 participants.

Photos 38, 39 Assembly by a civic group



photo 1: organizer making speeches with greater Romania flag at the back



photo 2: demonstrators in Public garden listening

Case study 26. Civic group protesting in front of embassy

On 30.10.2008, Amnesty International has carried out a protest in front of the Republic of Belarus building, expressing disagreement with the limitations on human rights and abrogation of the art. 193-1 of the Penal Code of the country.

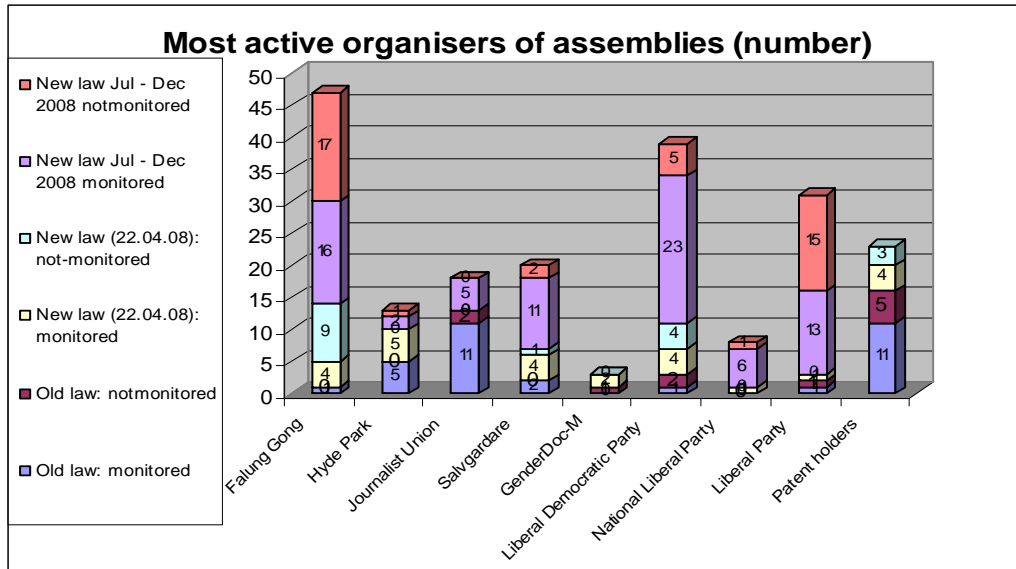
Photo 40 Assembly by a civic group



photo: protestors in front of embassy across the street carrying photos of politically detained persons

The profile of the most active organizers has changed. Apart from the ongoing activism of some individuals involved in longstanding protests, Association Falun Gong has championed in the use of assemblies, followed closely by Liberal Democratic Party and by Liberal Party. Another association, Salvagardare and Journalist Union, have also become increasingly active, while traditional organizers, such as Hyde Park and various patent holders have remained active.

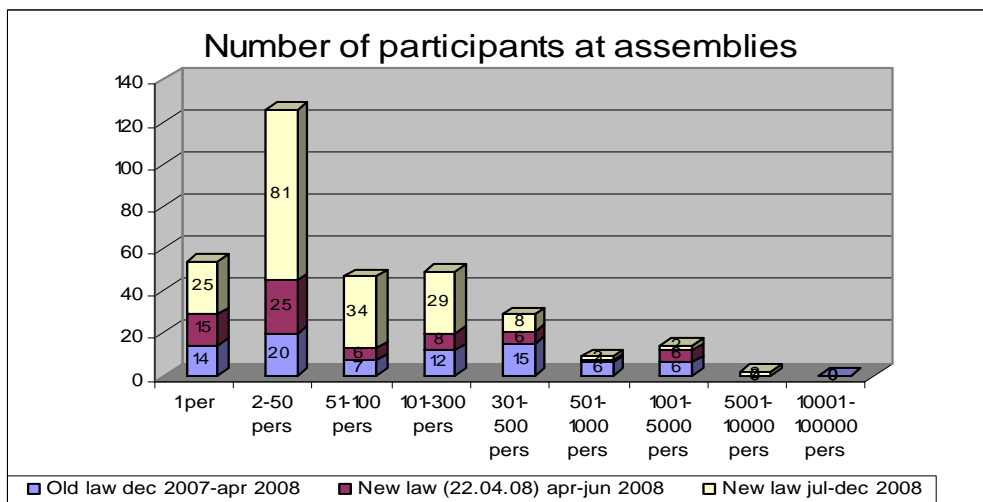
Graph 3.10 Most active organizers of assemblies



- number of participants

The number of participants at the assemblies has had some changes (Graph 3.11). Most notably there has been a greater number of assemblies with participation of up to 50 persons. The number of assemblies with fewer than 50 persons increased considerably in relative terms: under the old law there were about 5 such assemblies per month, now there are around 10 per month. There has also been a slight increase in the number of the assemblies from 51-100 and 101-300 persons under the new law.

Graph 3.11 Number of participants at assemblies



Case study 27. Assembly by solitary protestor in center of Balti

On 27.09.08, Serghei Banari has organized a demonstration in the square Vasile Alecsandri in Bălți. The demonstration has gathered around 200 persons, majority have been the elderly and patent holders. The objective of the meeting to ask for additional compensations for pensioners and for the maintaining of the patents for the entrepreneurs.

Photos 41, 42 Assembly by an individual



photo 1: demonstrators in City square carrying posters for raising pensions,



photo 2: organizer addressing the demonstrators

Case study 28. Assembly by solitary protestor in front of Chisinau Municipal Council

Elizaveta Trunov has picketed Chisinau Municipal Council on 03.12.2008. She asked for not revising the method of calculation of the tariff for energy. She has been joined by 3 other persons. Elizaveta Trunov is a frequent organizer of various solitary manifestations in various places of Chişinău.

Photos 43, 44 Assembly by an individual 2



photo 1: demonstrator in front of Chisinau City Hall carrying poster: “deprive state criminals to suffocate us with tariffs”



photo 2: same place, demonstrators carrying posters

Case study 29. Continuous assembly by solitary protestor in front of Trade Unions building¹¹

Vladimir Gaidău has organized continuous demonstrations in front of the Trade Unions building for one month during October – November 2008. Starting 17 November 2008 he started to picket the building of the Parliament. He protests against his firing from the Railway Service and against a penal case investigation against his son. He carries slogans „Jos violența” („Down with violence”).

¹¹ Case study 29 video registrations can be found at: http://www.publictv.md/ro/20081029_gaidau_sindicat-17.03.2009 and http://www.publictv.md/ro/20081210_gaidau_zingan-17.03.2009

Photos 45, 46, 47 Assembly by an individual 3



photo 1: police in uniform talks to demonstrator

photo 2: demonstrator in front of Parliamentary building



photo 3: several policemen in uniform talk to the solitary demonstrator, other policemen seen at the background

Case study 30. Assembly of 100 persons in a village

130 persons have gathered on 06.07.2008 in front of the Culture House from Costuleni town of municipality of Ungheni. Manifestations asked for the signature by the Government of the Convention on Small Border Trafficking with Romania. The meeting has been organized by European Movement – MAE. Initially, the meeting was scheduled within the Culture House, yet, later the administration refused it. The meeting adopted a resolution.

Photo 48 Assembly with 100 participants



photo: demonstrators carrying EU flag in front of the Culture House

Case study 31. Assembly of 500 persons in Opera Square

On 01.12.2008, around 500 persons have come to Opera Square to participate in a demonstration celebrating 90 years from the day of Romanian state unification. The meeting was organized by the Liberal party. The meeting had a number of national dancing and speeches.

Photo 49 Assembly with 500 participants



photo: demonstrators dancing in National Opera Square carrying Romanian flags

Case study 32. Assembly of 1 200 persons in front of Trade Unions building

On 25.09.2008, around 1 200 persons have been gathered by the Trade Unions from Education in Opera Square. The participants came from various places of Moldova and for two hours have called to raise the salaries of the teachers.

Photo 50 Assembly with 1 000 participants



photo: demonstrators in front of Opera Square

Case study 33. Assembly of 6 500 persons in National Square

On 26.10.2008, around 6 500 persons have participated in the manifestation organized in the National Square. The demonstrators protested against failed agricultural policies of the Government. Participants came from various places of Moldova. This event has been among the most populous event. Police has been present in mass. The event culminated with the march towards the presidency. The assembly has been organized by the Liberal Democratic Party.

Photos 51, 52 Assembly with 6 500 participants



photo 1: demonstrators in front of Government building in National Square



photo 2: demonstrators marching on National Square

4. The Practice of Police Enforcement Assembly Rights

This section begins by discussing the involvement of the police in relation to the freedom of assembly. It discusses the policing practices, the enforcement of laws, the roles of local authorities and the intervention of third parties.

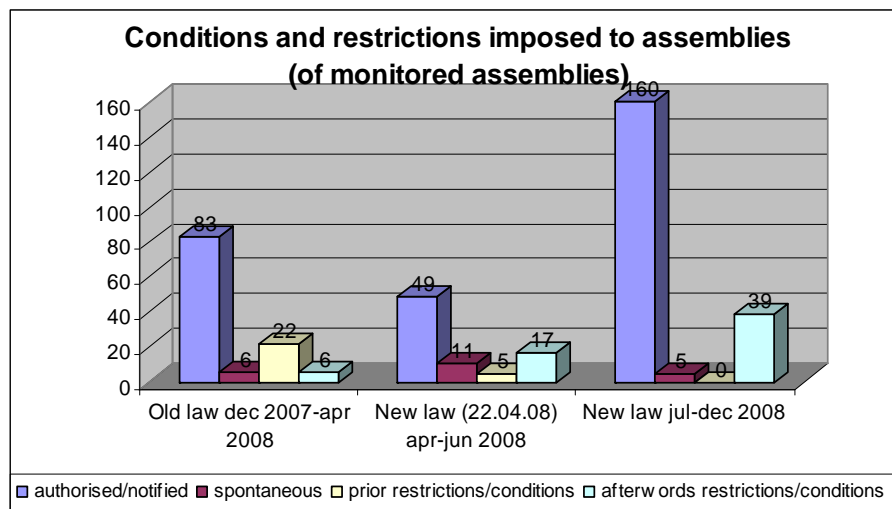
4.1. Police actions on assemblies

The new law shifted the practice of the imposition of the restriction on the assemblies. Under the old law, the restrictions have been largely imposed at the stage of the authorization of the assemblies, while after the introduction of the new law, most of the conditions started to be imposed by the police in the course of carrying out of the assemblies (on-going assemblies). Restrictions on holding the assemblies are no longer possible; instead, police resorts to the application of the conditions on the on-going assemblies such as: arrests, detentions, barriers, etc. Graph 4.1, below, presents the information on the assemblies that have been monitored. It shows how the number of afterwards restrictions and conditions imposed on assemblies increased following the adoption of the new law.

- *conditions imposed on assemblies*

Under the old law 31 out of 89 assemblies (31%) had restrictions imposed on them. During the first 2 months of the application of the new law, 22 out of 60 assemblies or 36% of all events had received some sort of restrictions, mostly imposed afterwards by the police. In the course of July-December 2008, under the new law, 39 assemblies out of 165 (24%), have received some kind of restrictions imposed by the police. One can see (Graph 4.1) a decrease in the intervention in the assemblies by the police as compared to the first months of the application of the law and as compared to the period of time under the old law. Overall, after the introduction of the new law, the police imposition of the restrictions slightly decreased to 28% (from 31%) of cases.

Graph 4.1 Conditions and restrictions on assemblies

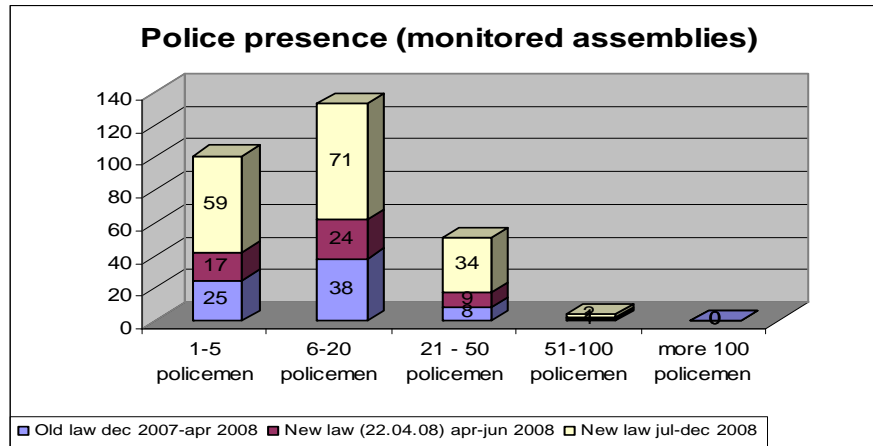


Under the old law, most restrictions or conditions were imposed prior to the event, with only 7% of conditions being imposed during an assembly. Most conditions had thus been imposed under the authorization procedure. Under the new law, the proportion has been reversed. Initially, in the first 2 months, there were only 77% of restrictions imposed and later 100% while the assemblies were underway.

- *numbers of police officers involved*

The number of the police officers at the assemblies has initially slightly increased since the change in the legislation (Graph 4.2), yet later stabilized at the level prior to the introduction of the new law. Most events are attended by 5 to 20 police officers. There is a notable increase in the number of events attended by police officers between 20 and 100. Overall, as the number of assemblies has increased, therefore the police presence has increased correspondingly. From the data available, one cannot draw a firm conclusion as to whether overall police presence has increased.

Graph 4.2 Police presence



Almost 30% of events are attended by between 20 and 100 police officers, whereas under the old law, fewer than 11% of assemblies were policed to this extent.

Case study 34. Assembly in Orhei assisted by several policemen

On 17.11.2008, in Orhei city, 40 young persons from Democratic Party have organized a march on Vasile Lupu street. The young have protested against the youth policies of the Government. The youth has been accompanied by the popular guards and special clothes – one in front and another one at the end – Another 10 policemen went all way along with one policeman filming the whole event.

Photos 53, 54, 55 Assembly with presence of 10 policemen



photo 1: police in uniform and police in civilian clothes watching the demonstration



photo 2: demonstrators on the march in Orhei,



photo 3: policemen in civilian clothes filming the demonstration and the project observer

Case study 35. Assembly and march in Chisinau assisted by a number of policemen¹²

Association Salvagardare numbered 35 participants has carried out on 10.12.2008 a march starting from the National Square towards the UNDP office in Moldova. Another group from Association “Deponenții Intercapital”, numbered 50 persons, has marched towards the UNDP office separately. Most of the participants have been the elderly. Most of the police have been in civilian clothes. Additionally, 2 police cars came, the whole event has been filmed by two policemen. Police facilitate the crossings of the streets.

Photos 56, 57 Assembly with 30 policemen



photo 1: police in civilian clothes and one in uniform assisting at the demonstration



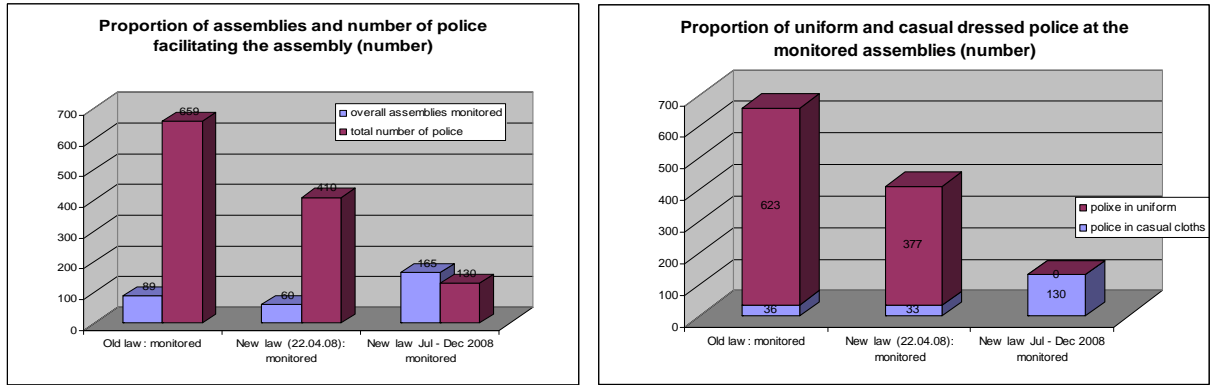
photo 2: demonstrators on the march carrying posters and some policemen in uniform

A closer analysis of the police presence at the assemblies (below graph) shows that the number of police present at the assemblies substantially decreases. Police presence, during the time of the old law, has been substantial, on average at least 7-8 policemen, yet the number of assemblies has been low as well. After the adoption of the new law on assemblies, on average, the number of police decreases to 6-7, while during the summer and autumn of 2008, the presence of police decreased substantially on average to 1 policeman per assembly. It is true, that the number of all assemblies has decreased, yet even the absolute number of policemen involved in the policing of the assemblies has increased, as compared to the situation under the old law. This situation proves the reality that the police started to adopt the tactic of the hand-off approach in the facilitation of the assemblies. In legal terms, this situation might amount to the police refrain from the legal positive obligation, including under the new law, to facilitate the carrying out of the assemblies, when the police presence and involvement is needed.

Further analysis of the police absence from the assemblies' scene, shows that police started to not wear uniform during the assemblies. The graph that follows show that police starts to be present at the assemblies in plain clothes rather than in the uniform. During the first months, after the introduction of the new law, one can see the pattern of the decrease of the number of the police, yet with the police uniform rather than in the non-police uniform. At a later stage, the police, apart from the decrease in presence, switched almost completely to wear non-uniform and plain clothes at the assemblies.

¹² Case study 35 video registration can be found at: http://www.publictv.md/ro/20081210_salvgardare_intercapital_pnud-17.03.2009

Graph 4.3, 4.4 Police presence at the monitored assemblies



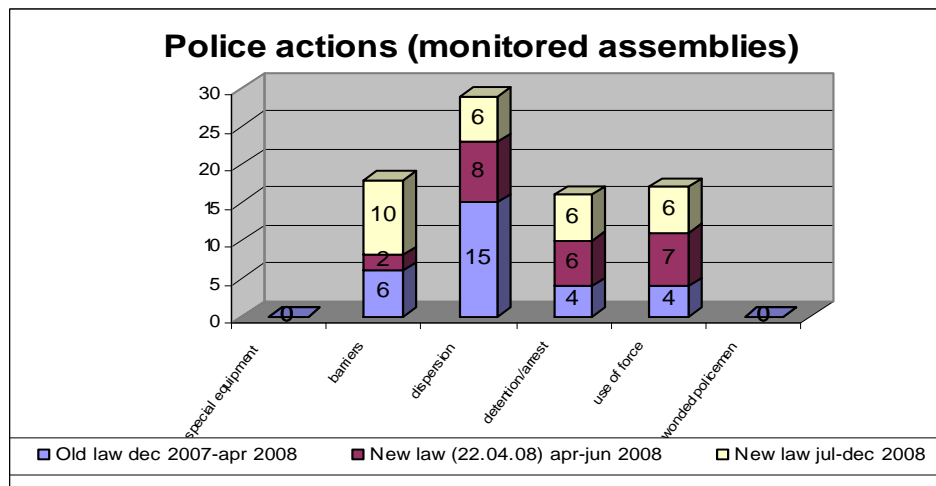
4.2. Police intervention with assemblies

This section presents the evidence of the police actions and the interventions in the exercise of the assembly rights

- *Police use of detentions, arrests and other restrictions*

The use of force, detentions or arrests and the dispersal of assemblies have moderately increased since the adoption of the new law (Graph 4.5). Immediately after the adoption of the new law, the use of force increased substantially, afterwards, the tendency returned to the situation as it has been under the old law. Thus, the force was used in 13 (7 first months and 6 in the following) cases, compared to 4 cases under the old law. Detention or arrests were used in 6 cases, as compared to 4 cases under the old law; and dispersal was used in 8 cases, as compared to 15 cases under the old regime. Furthermore, as the qualitative research shows (below) use of force, dispersal or detention and arrests have been used against a limited group of organizers.

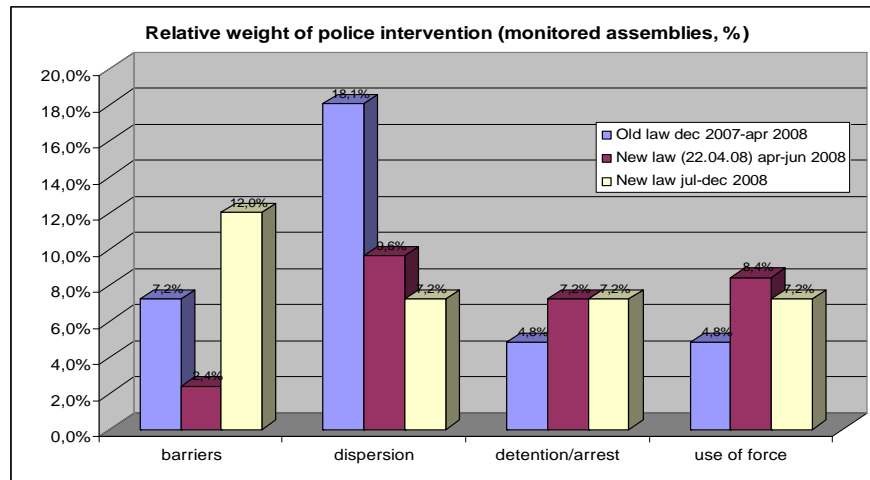
Graph 4.5 Police actions



Analysis of the quantitative statistical data shows that after the introduction of the new law, the intervention of the police is about similar to the situation under the old law. The practice of the dispersion has a stable decline pattern from 18%, under the old law, to 9,6% in the first months of the new law and to 7,2% in later months, under the new law. The use of detention has increased after the adoption of the new law from 4% to 7,2% and remain unchanged throughout the monitoring period under the new law. The use of force has increased, under the new law, from 4% to 8,4% initially but decreased to 7.2% at a

later stage. Use of barriers by the police has increased to 12%, under the new law. Overall, one can see a good tendency for lowering the intervention of the police in the manifestations.

Graph 4.6 Police intervention



Case study 36. Solitary assembly partially curtailed by Police in front of Parliament

V. Zingan carries out on-going, non-stop picketing of the Parliament for already a year. On 30.05.2008, V. Zingan came at around 08.00 to the Art University (deposit entrance) to pick up her posters and other visual materials, where she held them at night. She has been faced by 3 policemen wearing civilian clothes. The policemen have questioned the night-watches of the University allowing the storage of the posters, the police forbid the demonstrator to take her posters. At around 9.00, mass-media came to the place, the police withdrew to the building. The demonstrator took her posters and arrived at the Parliament building at 10.40 to continue to protest.

Photos 58, 59 Assembly prevented by police



photo 1: protestor near the deposit

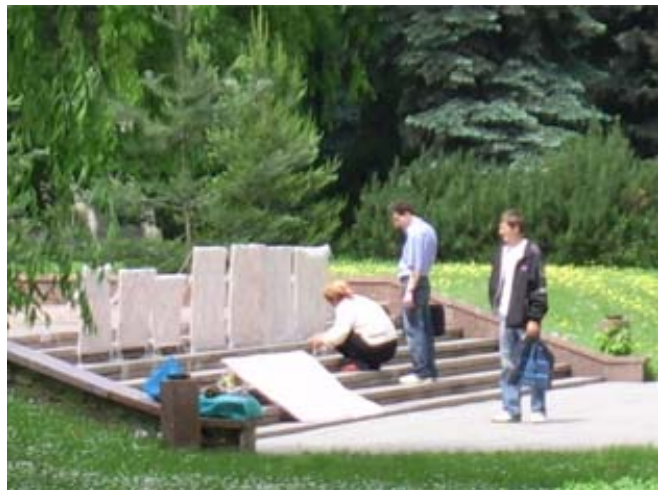


photo 2: protestor in front of Parliament building, at the staircases with passers watching the protestors posters with claims

Case study 37. Assembly by civic group prevented by police intervention in front of Ministry of Interior building¹³

On 18.12.2008, Association Hyde Park plans to carry out a flash-mob with the scope to protest against the abuse behavior of the police in the last years. They want to install the so called „brad al păcatelor” (Christmas tree of vices) in front of the building of the Ministry of Interior. In the morning of the day, there were around 40 policemen in civil clothes, including the chief of SOP General Police Commissariat of Chişinău. The police present forbid the access of the demonstrators to the pedestrian path in front of the building of the Ministry of Interior. At around 09.25, with 5 minutes before the meeting start, one of the

¹³ Case study 37 video registration can be found at: http://www.publictv.md/ro/Retinut_in_troleibuz_de_politisti-20.12.2008

demonstrators from Hyde Park has been detained at the cross-road Ștefan cel Mare avenue and V. Alecsandri street, forced in the police car. The other demonstrator situated across the street of the building of Ministry of Interior, has been detained by 6 policemen in civilian clothes, who have not been identified and acted with force brought him to the trolleybus. This demonstrator has been forced and abused verbally and physically for around 10 minutes on the way of the trolleybus. At one of the bus stations, the policemen in civilian clothes stepped down. The other 4 demonstrators who came to the building have been pushed out of the building and stayed across the street for an hour, after dispersed.

Photos 60, 61 Assembly prevented by police 3



photo 1: protestors pushed in the trolleybus by policemen



photo 2: policemen in civilian and uniform in front of the entrance to Ministry of Interior

Case study 38. Political party assembly in National Square impeded by police (limitation of use of sound equipment)

On 21.12.2009, Liberal Democratic Party intended to organize a demonstration in support of harassment of ProTV in National Square. The day before, the organizers installed an improvised scene for speeches, yet it has been disassembled in the eve by Ministry of Interior representatives. In the eve of the day, the car transporting audio equipment has been detained by police. In the morning of the day of demonstration, at least 5 buses transporting the participants to the demonstration have been detained in various towns of Moldova. The organizers managed to improvise an ad-hoc acoustic system and persuaded it connection to the electric power. The demonstration brought more than 7 000 participants.

Photos 62, 63, 64, 65 Assembly partly obstructed by police



photo 1: organizers carrying sound equipment



photo 2: demonstrators in front of Government building on an improvised scene carrying EU flags



photo 3: police detaining the microbus with sound equipment



photo 4: demonstrators in National Square, near the Christmas tree and Arch of Triumph carrying EU and Moldovan flags and posters

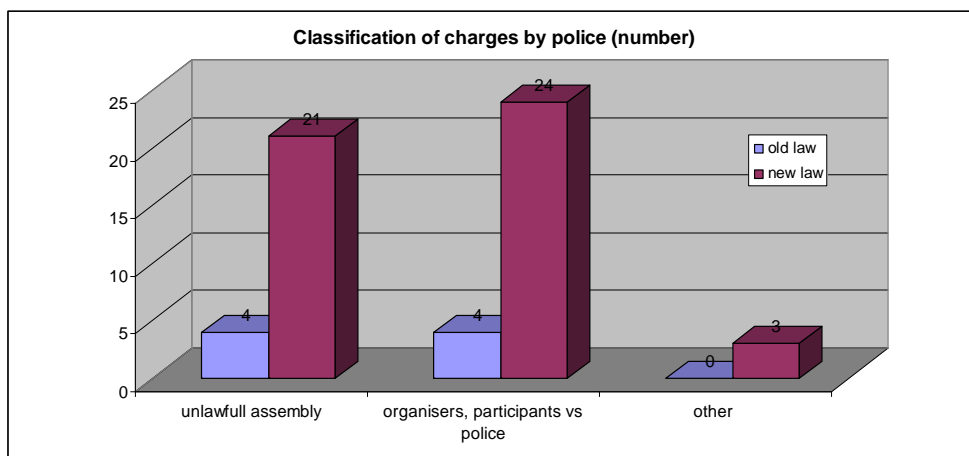
- *Police intervention practice*

Police intervention has increased after the adoption of the new law on assemblies. Against the background of the absolute rise of the number of assemblies due to more liberal law, the number of the police interventions has also increased almost 5 times. Police practice to bring charges against assembly organizers could be grouped into 3 types of charges:

- 1) unlawfulness of assembly,
- 2) actions against police by organizers and participants, and
- 3) other (residence permit, material damage, etc).

One can see that there are two types of charges that predominate: actions of the organizers or of the participants against the police. These charges will be subject of the more detailed look through case studies from the perspective of the justification of these interventions. After the introduction of the new law - the number reached 24. Here the primary issue is whether the police itself act in a manner not to provoke the organizers and the participants. The second group of the charges relate to the alleged unlawfulness of the assemblies. The number of charges brought is 21. These charges are the most relevant to the alleged violation of the assembly conditions.

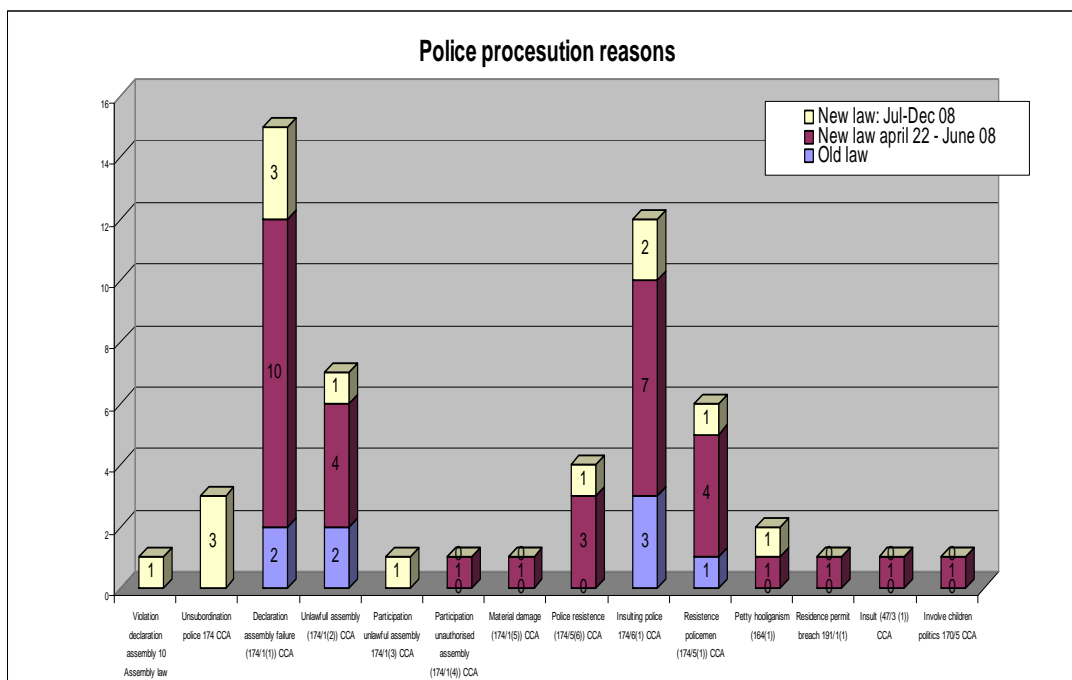
Graph 4.7 *Classification of charges by type*



A more detailed look on the practice of police intervention shows that the police invokes the provisions of the administrative offences legislation³ when de facto suspending the assemblies or detain some or all assembly organizers. The organizers have been detained and charged under the following provisions of the administrative offences:

- 1) breach of legislation regarding assemblies⁴,
- 2) insulting police⁵,
- 3) resistance to police⁶,
- 4) involvement of children in public actions⁷,
- 5) breach of residency rules by a foreign citizen⁸,
- 6) insult⁹, and
- 7) petty hooliganism¹⁰.

Graph 4.8 Prosecuting reasons



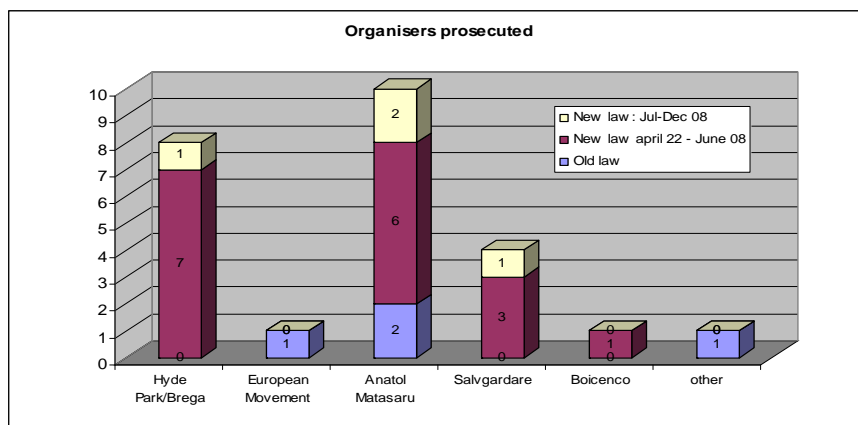
Following the adoption of the new law, the number of accusations for failing to comply with the notification procedure, staging illegal assemblies, insult of and resistance to policemen have all increased. New types of charges under the new law have been brought against the organizers as: insubordination to the police and participation in the unlawful assembly. Among accusations, brought under the new law, there have been: 1) causing material damage, 2) organization or participation in an illegal assembly, 3) petty hooliganism, 4) the involvement of children in political activities, 5) insubordination to police, 6) violation of declaration of assembly provisions, and 7) causing insult to others.

Failure to properly notify an assembly has been the most frequent accusation of the breach of the law by the police. With 2 charges, under the old law, after the adoption of the new law, 10 cases of charges have been brought, while later it decreased to 3 cases; thus, overall 13 cases of charges under the new law. The tendency shows the decrease of the use of this charge against the organizers which is a positive sign. Unlawfulness of the assembly has been increasingly used – 5 times – under the new law to suspend de facto the assembly. This is a clear increase as compared to the situation under the old law.

Insult of police, in the course of the assemblies, has been used by police in 12 cases, 3 under the old law and 9 under the new law. There is a decrease tendency in the use of this charge under the new law which represents a good sign. Resistance posed to police has been used frequently – 5 times – to suspend de facto the assembly, a clear increase as compared to the situation under the old law.

Many of the charges have been brought against Hyde Park and its members, particularly under the new law (Graph 4.7). Other organizers, who have been charged, include Mr Matasaru (an individual protestor), Mr. Boicenco (also an individual protestor) and a civic organization – Salvgardare – believed to be composed of pensioners. A qualitative analysis of the cases would shed light on the nature, discourse content and actions that led to a prosecution by the police.

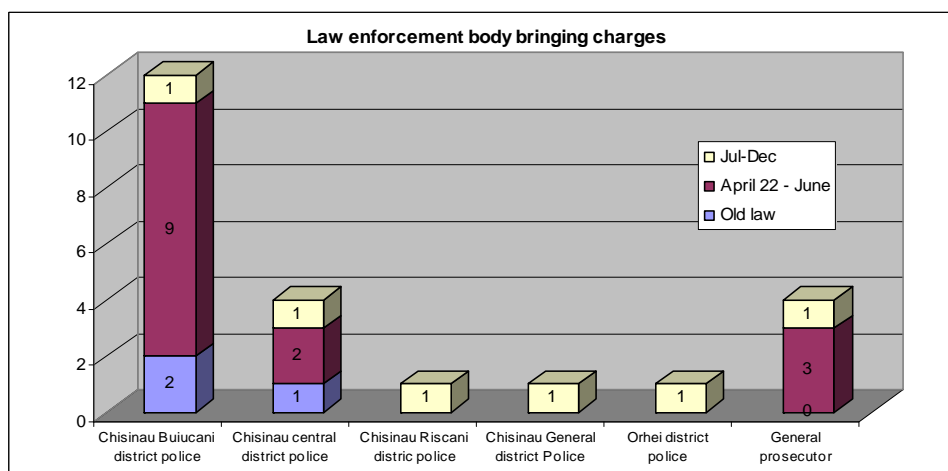
Graph 4.7 Organizers prosecuted



Hyde Park is a civic group that practices imaginative ways to carry assembly activities criticizing the government and employing a medium designed to appeal to the media through use of figurative and hyperbolic content. The group also aims to test the various provisions of the law, one example being the protest organized in front of the Presidency building, on the day the new law entered into force (cited above). The event was not notified, as it was a small assembly and therefore did not require notification under the new law. However, the police intervened and removed the organizers from the scene.

Most of the accusations for breaches of the law have occurred in the Buiucani police district in Chisinau. Buiucani is the police district with the territorial responsibility for the central part of Chisinau city where the most of the assemblies take place. As the geographic coverage of the events spreads to other parts of Chisinau, one can see charges brought by other police commissariats.

Graph 4.8 Law enforcements bringing charges



Case study 39. Solitary assembly prevented by police in National Square¹⁴

On 10.05.2008, Ghenadie Brega has come out to protest on National Square, as a result that he could not find out where his brother Oleg Brega, had been. His brother had been detained for 2 days under the administrative arrest for the peaceful manifestations carried out earlier. Gh. Brega asked to be communicated where his brother had been. After 15 minutes of peaceful assembly, - 2 policemen approached (V. Olaru – deputy chief operational police Chişinău and C. Avornic chief special police “SCUT”). The later aggressed verbally and physically the demonstrator and detained him transporting to Buiucani police station. Gh. Brega has been detained for 48 hours, the court acquitted him. The two policemen have been sanctioned disciplinary later on.

¹⁴ Case study 39 video registration can be found at: http://www.publictv.md/ro/20080510_ghenadie_brega-17.03.2009

Photos 66, 67 Assembly interrupted by police



photo 1: two policemen in civilian clothes aggressing the protestor – the moment being filmed by the protestor himself



photo 2: protestor taken in the police car, from inside)

Case study 40. Assembly portraying police and prosecutor corruption prevented by police before its start¹⁵

On 18.12.2009, Anatol Mătăsară intended to carry out a peaceful assembly using a donkey and a big in police and prosecutor clothes showing his attitude towards the work of these institutions. Anatol Mătăsară has been detained before the demonstration at his place, so that the animals and his car were blocked by police. Police limited Matasară right to movement, no charges have been brought. At a moment, one policeman declared that Matasară urinated in public space and immediately 3 policemen in civilian clothes detained him, while the other policemen in police clothes watched the happening. Overall, there were more than 10 policemen in uniform and 9 policemen in civilian clothes, 2 road policemen, 5 police cars and a special operational police from General Police Commissariat.

Photos 68, 69, 70, 71 Assembly prevented by police 4



photo 1: protestor detained by police in civilian clothes and assisted by police in uniform



photo 2: protestor with donkey clothed in police uniform and a big clothed in prosecutor uniform

¹⁵ Case study 40 video registration can be found at: http://www.publictv.md/ro/Protest_Mulitioner_Porcuro-19.12.2008



photo 3: police in uniform and in civilian at the place of protestor detention



photo 4: police in uniform and some in civilian clothes at the place of protestor detention

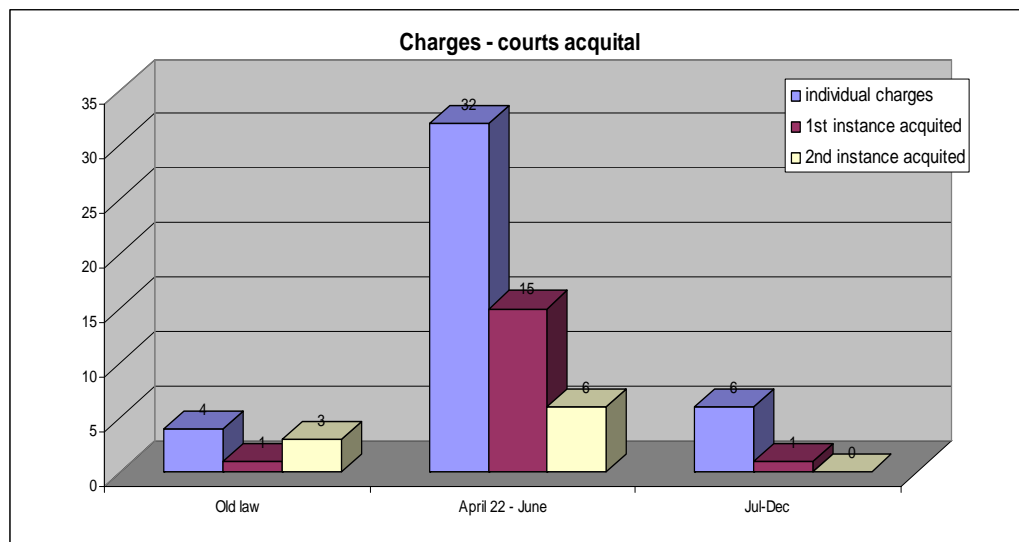
5. Court Jurisprudence on Assembly Rights

This section continues with a review of legal proceedings initiated against the people involved in organizing or participating in the public assemblies.

5.1. Courts jurisprudence on assembly rights

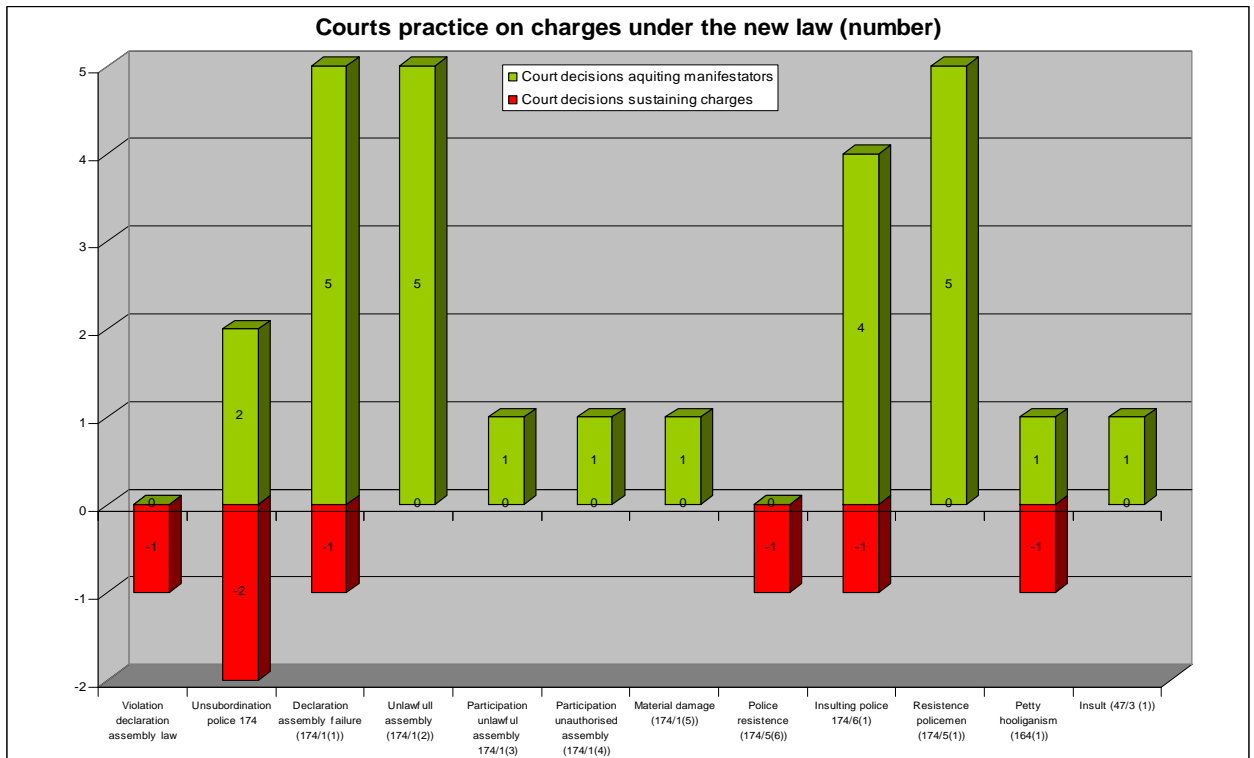
Most of the accusations brought by the police have not been upheld by the courts (Graph 5.1). Of the 20 cases brought by the police under the new law during the first two months, 13 have been rejected by the courts in the first instance courts and 6 have been rejected in the course of the appeal procedure. This means that 2/3 of the accusations brought by the police have been settled in favor of the organizers in the first instance procedure. The remaining cases have been rejected by the appeal courts. In the period of July-December 2008, number of cases brought against the organizers decreased significantly. During this period of time, only 6 cases of charges have been brought against the organizers, most of the courts decisions are not known yet, though, already in one case charges have been invalidated by courts of the first instance. This evolution can be seen as a clear positive sign.

Graph 5.1 Court jurisprudence



Courts enforcement of the assembly rights is a good result to ensure there is greater respect for freedom of assembly. The below graph shows that there are two types of cases where the courts sustain the charges against the organizers and participants: 4 cases of actions against the police while the later police the assemblies (insubordination to police, resistance to police, insulting police), 2 cases relating to the violation of assembly law and assembly declaration and 1 case of petty hooliganism. While comparing graphs 4.8 and 5.2, one can see that the overall tendency of the type of case charges remain unchanged, most charges brought on actions of the assembly organizers and for the violation of assembly organization. Most convictions come on the same type of charges.

Graph 5.2 Court jurisprudence- closer look



The courts, in the mentioned cases, enforce the assembly rights within the period of time from 2-3 week to 3-4 months¹⁶ (including appeal procedure). This is unfortunately a significant delay in the administration of justice and the provision of the effective remedy for the assembly rights holders. Therefore, the time for the administration of justice in these cases represents a problem to be discussed.

5.2. Concise discussion of some selected cases

In this section we will discuss two cases to exemplify and at the same time to give some flavor of the administration of justice on assembly cases. First case will be Salvgardare Association protesting in front of the Government building and a case of Prosecutor General asking annulment of the Chisinau City Hall authorization of the notification from Association of Former Combatants.

Case study jurisprudence 1: Salvgardare Association protesting for salary increase in front of the Government

Facts:

On 21.10.2008 “Salvgardare” Association, at 10.10 started an assembly in the National Square in front of the Government’s building with around 70 participants, majority being the elderly. The demonstrators asked for the rising of the pensions. Chisinau City Hall has been notified properly. At around 10.20 the organizers declared they would like a meeting with the prime-minister of another leadership of the Government. At around 11.15, the organizers promoted the participants to head towards the central entrance of the Government. The demonstrators have been stopped close to the entrance by police invoking the Governmental Decision number 1514, dated 29.12.2007 on the access to the central authorities’ buildings that allows access to the buildings only on the basis of permits. The demonstrators continued to force the entrance, yet stopped by the police. The leader has continuously forced the police cordon, breaking it, as a result the leader has been detained and charged with: “resistance to police” (art.175/5(1) of Administrative Code), “insubordination to

¹⁶ See case files of the judicial proceedings

police” (art. 174(1) of Administrative Code), “participation in unlawful assembly” (art. 174/1(3) of Administrative Code).

Legal Proceedings:

Court of first instance – Buiucani district court of Chisinau- examined the case on 05.12.2008. Police brought evidence of two witness and photos of the moments when the organizer and some participants forced the police-line and tried to broke into the building as well as the reports and witness presented by policemen. The organizer pleaded not guilty on all charges and refuted the facts presented by police. The court found the organizer guilty on all accounts and established also the payment of fines on all accounts, with overall amount to 500 lei. The court found that all evidence presented by police are sound and prove the facts invoked.

The organizer has appealed the decision, invoking that the court trial could not be monitored even by OSCE, she has been effectively detained between 11.40 and 17.00 in police commissariat, witnesses presented have changed their depositions in court, forcible actions could not be performed due to physical inability of the organizer to perform them, facts presented have not been adequately assessed.

On 29.01.2009, Chisinau Court of appeal examined the case and annulled the court of first instance decision, sending the decision for the re-examination in the court of first instance. Chisinau Court of Appeal substantiated its decision with the failure of the first instance court examine all evidence presented, especially by the organizers, the examination has not been performed for each charge separately.

Another examination in the court of first instance is pending.

Case study jurisprudence 2: Veterans Association asking for continuous assembly, Prosecutor General asking annulment of Chisinau City Hall authorization

Facts:

On 30.10.2009, 50 representatives of the Association of the Veterans of 1992 armed conflict „Tiras Tighina” have started to picket the building of the Parliament. They asked for the improvement of their pension, conditions of their life and additional payments. The participants wanted to install courts in front of the Parliament, however, have been talked out by police. The demonstration continued through 31.10.2008, 15.15, upon the calls of the organizers. Over the demonstration, there were at least 20 participants and maximum 75. The Prosecutor General and Ministry of Local Public Administration territorial Office petitioned the court to annul the decision of the City Hall to authorize the meeting that was satisfied.

Legal Proceedings:

The General Prosecutor and the Ministry of Local Public Administration asked the annulment of the Chisinau City Hall authorization intending to stop the assembly itself. The Court of Peal examined the case on 31.10.2008. The petition invokes that the Mayor of Chisinau violated the procedural provisions of the law on assembly and therefore the assembly un-lawful. Mayor’s representative refuted the petition, maintaining the legality of the authorization. The organizers of the assembly stated in favor of maintaining the legality of the assembly and the assembly to continue.

Court of Appeal found the Chisinau City Hall decision is illegal and contravenes the law on assembly. Subsequently, the assembly itself is illegal.

Case study jurisprudence 3: Hyde Park protesting for freedom of assembly in front of Ministry of Interior

Facts:

On 18.12.2008, Association Hyde Park plans to carry out a flash-mob with the scope to protest against the abuse behavior of the police in the last years. They want to install the so called „*brad al păcatelor*” (Christmas tree of vices) in front of the building of the Ministry of Interior. In the morning of the day, there were around 40 policemen in civil clothes, including the chief of SOP General Police Commissariat of Chişinău. The police present forbid the access of the demonstrators

to the pedestrian path in front of the building of the Ministry of Interior. At around 09.25, with 5 minutes before the meeting start, one of the demonstrators from Hyde Park has been detained at the cross-road Ștefan cel Mare avenue and V. Alecsandri street, forced in the police car. The other demonstrator situated across the street of the building of Ministry of Interior, has been detained by 6 policemen in civilian clothes, who have not been identified and acted with force brought him to the trolleybus. The other 4 demonstrators who came to the building have been pushed out of the building and stayed across the street for an hour, after dispersed.

Legal Proceedings:

One of the protestors has been charged by police with insubordination to police (art. 174/1 of Administrative Code), the court of Center district of Chisinau on 18.12.08 acquitted the protestor and Chisinau Court of Appeal on 14.01.09 reconfirmed the acquittal examining the appeal lodged by the Center district of Chisinau Police Commissariat.

One can see various types of judicial cases related to the freedom of assembly situation in Moldova. In the first case Court of Appeal reversed the decision of the first instance court, mostly on the procedural grounds of failure to examine the evidence presented by the demonstrators. The case is set to be re-examined. It is clear that appeal courts provide a better scrutiny and the quality of justice. The third case shows that failure to present evidence and de-facto illegal actions by police have been confirmed by both courts. Therefore, in most cases reaching courts so far, freedom of assembly has received adequate judicial protection.

Second case represents a sad example when courts have failed to see the essence behind the possible procedural irregularities in actions of the Chisinau mayor, particularly, courts failed to consider the principle of the presumption in favor of holding of an assembly, in the interest of the organizer of the assembly.

5.3. Prosecutor Investigations of Police Enforcement Practice

Prosecutor offices have not brought charges in a single case against the policemen interfering with the assemblies. According to the law, Prosecutor office has the mandate to investigate the wrongdoings of the actions of the police while enforcing the freedom of assembly legislation. Penal Code in article 184 provides for criminal responsibility for the violation of the right to freedom of assembly. As Graph 5.2 shows, there are more than 22 cases of acquittals of the demonstrators wrongly persecuted by the police.

Case study Prosecutor refusal to open criminal investigation against police. Case is referred above: Hyde Park protesting for freedom of assembly in front of Ministry of Interior. Following the acquittal by first instance and appeal court, one of the demonstrators, have petitioned the Prosecutor office on the wrongdoings of the police officers preventing the demonstrators to exercise the freedom of assembly. The case has been examined in two instances by a prosecutor in district center of Chisinau and by head of Prosecutor district center of Chisinau (as the administrative appeal procedure). The demonstrator asked for a criminal investigation of the policemen who have violated his right to freedom of assembly. Both prosecutors (first on 06.02.09 and second on 09.04.09) refused to open a criminal investigation against the policemen. The core arguments of the prosecutors were: 1) the demonstrators have violated the public order legislation, however, the policemen have failed to properly document the violation and therefore, no responsibility of police could be incurred, 2) the doings of the policemen do not make up necessary constituency elements of the criminal offence. The final decision is the subject of the court review.

One can see from the case study that courts decisions and Prosecutor evaluation contradict each other. Courts find that the evidence presented does not have all constituting elements of the administrative or criminal offence, while the Prosecutor deliberates that the charged actions fall under the realm of the administrative or criminal offence, yet the police has not documented them properly. The question arise them, how the prosecutor could have known of the existing evidence, if the police had not presented

them, or why if the prosecutor had them, the later had not presented them to fortify the charges? The presented arguments makes the Prosecutor reasoning somewhat contradictory and seem to involve Prosecutor's bias and insufficient impartiality of the position regarding the cases of the violation of freedom of assembly. Further investigation and collection of the appropriate evidence will be necessary for a more substantiated conclusion.

6. Analysis of freedom of assembly policy implementation

The aim of this section is to provide a further analysis of the evidence presented in the previous sections. We identify the concerns that have been addressed by the new law, remained problems under the new law and emerged areas of concern. This section identifies the improvements needed in terms of the police and legal solutions.

6.1 Summary findings from application of the old law

This subsection will analyze the information and data to identify the problems and concerns that existed under the old law. This will show that the legal provisions did not support or facilitate the implementation of freedom of assembly.

6.1.1 Holding assemblies, types of assemblies

The frequent denial of assemblies, under the old law, - implying authorization procedure - represented a systematic violation of freedom of assembly¹⁷. The incompatibility of the old law with the international human rights standards has been one of the sources of a systematic violation of the freedom of assembly. This situation was created by a restrictive interpretation of the freedom of assembly rights, including intentionally restrictive use of the vague legal provisions by the regulatory authorities and a decision-making process that allowed decisions to be made with limited facts. European Court of Human Rights cases against Moldova, under the old legislation, [Hyde Park - 1¹⁸, para 30; Hyde Park - 2¹⁹, para 26; Hyde Park - 3²⁰; Hyde Park - 4²¹], recognized the violation of the freedom of assembly rights and therefore proved that the denial of the authorization is a malpractice of the local authorities²².

The social cost for the refusal of the freedom of assembly, under the old law, has been substantial for the society. The direct cost for the state budget only, given the denial of assemblies and due to the national and international legal proceedings, under the old law, is around 35 000 euro (0.5 mln of Moldovan lei) per annum. The indirect cost to the society, for the failure to exercise freedom of assembly rights, has been larger and included the social cost for the refused assemblies, standing, as reported, around 25% of all requests' cases on the yearly basis (around 50 cases per year)²³.

6.1.2 Places of holding assemblies

Under the old law, the local authorities determined preferred and recommended places of holding the assemblies in combination with the authorization procedure and therefore hindered the exercise of freedom of assembly. The choice of the locations for an assembly for the organizers has been influenced by the local authorities under the old legislation. Graph 3.8 (places for assemblies in Chisinau) illustrates that the most popular location for assemblies subject to authorization (under old legislation), have been the Opera Square, the Parliament, and the National Square.

¹⁷ See Monitoring Freedom of Assembly Policies in Moldova, Jan 2009, by Resource Center for Human Rights (CReDO).

¹⁸ 33482/06, 31.03.09 (assembly considered not relevant of the subject and therefore refused)

¹⁹ 45094/06, 31.03.09 (assembly claimed to be carried out in parallel with another assembly and therefore refused)

²⁰ 45095/06, 31.03.09 (grounds for holding assembly already exhausted not relevant and therefore refused)

²¹ 18491/07, 07.04.09 (continuous assembly for 30 days and therefore deemed unjustified and therefore refused)

²² See Monitoring Freedom of Assembly Policies in Moldova, Jan 2009, by Resource Center for Human Rights (CReDO).

²³ *ibid.*

The same graph shows that after the switch from the authorization to notification procedure, the most popular places for assemblies became the National Square, the Parliament, the Public Garden, the Presidency, the Stefan cel Mare statute and the City Hall. This suggests that the procedures and the institutions of the old law influenced (acted by local authorities and police) the location of the holding of assembly. The old law did not have the clear legal protection of the assembly rights choice to hold assemblies in the preferred place, the court jurisprudence have not compensated its absence and the authorities overall restrictive interpretation of the freedom of assembly rights prevailed²⁴.

6.1.3 Police intervention, court jurisprudence

Police intervention in the assemblies has been frequent; it ranged from the use of barriers, the dispersal of participants, the arrests, the detentions and the use of force. The old law provided for the police intervention, suspension and dispersal of the assemblies. Graph 4.5 (police action) and 4.6 (police intervention), under the old law, show that the police barriers in about 4% of assemblies, constrained the demonstrators' in moving within the assembly space. More than 10% of the assemblies were dispersed by the police partially or totally, detentions and use of force were used in 2% of assemblies. Qualitative analysis of the police intervention shows that in a number of cases their intervention lacked legal justification, as the activities could not amount to a disturbance of public order or constitute a serious threat to public health²⁵.

Police intervention often involves dispersal or detention and charging of the organizers for the holding assemblies, which de facto again results in the suspension of the already authorized assembly. In a number of cases, the police interventions have not been sustained by courts. Court acquittals of the organizers, charged by the police, suggests that in most cases police intervention lacks justification. Provisions of the Code of Administrative Sanctions regarding assembly rights needed improvement, yet the most importantly the change of the police attitude in the application of the law.

6.2 Application of the new law on assemblies: improvements

This subsection will discuss the evidence to understand to what extent the new law addressed the key problems identified²⁶ under the old law, concerns that still remain under the new law that will have to be addressed yet.

6.2.1 Holding and places to carry out the assemblies

In this subsection we discuss the changes in the legal provisions that switched from the authorization to the notification of the assemblies. We explore how this provision switch has worked in practice.

Comparative provision	Provision of the Old law	Provision of the New law (as of 22.04.2008)	Perspective for the application
Notification- Authorization The definition is built on forms of assembly, does not permit simultaneous and spontaneous	Assemblies are authorized by City Hall if requested 15 days in advance. Permits provide for the specific conditions to satisfy by the organizers. The definition is built on forms	Assemblies do not require authorization. Notification of City Hall with 5 days prior the assembly, with an exception for small or spontaneous assemblies that do not require the notification. Accommodation of plurality of assemblies, meaning several	The new law is liberal and permissive. The new law facilitates the exercise of assemblies and aims to accommodate multiple events including oppositional assemblies.

²⁴ See Monitoring Freedom of Assembly Policies in Moldova, Jan 2009, by Resource Center for Human Rights (CReDO).

²⁵ *ibid.*

²⁶ *ibid.*

events.	of assembly, does not permit simultaneous and spontaneous events.	assemblies could be carried out simultaneously respecting some non-interference rules. A temporary, intentional gathering provides for simultaneous and spontaneous assemblies.	
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The statistics show that the local authorities' denials, under the old law, have been used in such manner as to restrict the assemblies. Graph 3.1 (evolution of assemblies) depicts more than 100% of growth in the number of assemblies, as compared to the old law similar periods. Furthermore, graph 3.2 (peaceful/non-peaceful assemblies) shows that there has not been any increase of the non-peaceful assemblies, as a result of the introduction of the new law. Moreover, as graph 3.3 (spontaneous assemblies) shows, the fear that the new law would be abused by the organizers of the organizing spontaneous assemblies has proved to be false, the number of spontaneous assemblies remained the same as has been under the old law.

Analysis of the assemblies' peculiarities and their duration prove that the new law has not brought any changes. The duration of the assemblies by the types of the assemblies remained the same. Indeed, graph 3.5 (duration of assembly) shows that there is only a slight increase of the number of the short-term assemblies for 1 hour or less. Another graph 3.6 (peculiarities of assemblies) provides that the use of the sound equipment and the presence of the media has remained the same. One exception remains with regard to the number of counterdemonstrations. Graph 3.6 demonstrates a very slight increase in the absolute numbers of the counterdemonstrations; this indeed presents a challenge for the local authorities and the police to manage the assemblies. So far, the organization of the parallel assemblies has not presented a difficulty for the organizers and the authorities, yet the absence of the active role of the police to ensure the right of the organizers to manifest peacefully in the presence of the aggressive third party could represent a problem in the future.

The switch from the authorization to the notification procedure for holding assemblies has had a positive impact. Spontaneous assemblies are now legal and small assemblies are not required to be notified; citizens, NGOs and other actors have begun to use these forms of assembly. The denials of the authorization have disappeared, so had the associated legal conflicts. The statistics presented in the previous section show a moderate change in the type of the assemblies, the number of the participants and even the number of police involved in securing public order.

The evidence presented reconfirms that the new law encouraged the freedom of assembly. Graph 3.1 (pace of assemblies) and graph 3.8 (places of assembly) prove that civic and public activity of the organizers has grown substantially and restriction problems remain in the past. The lift of the restrictions, due to the switch to the notification procedure, has not caused management of the assemblies by the local authorities and by the police, as discussed from section 3.1 show.

The new law has encouraged a more active citizenship. Specifically, graph 3.9 (organizers of assembly) shows a wide diversity of the organizers actively involved. Estimations based on the graph 3.1 and graph 3.11 (number of participants) prove that the number of assemblies has grown almost three-fold and there is also a substantial increase in the number of the people involved in and at the assemblies. The diversity of the public messages brought by the organizers has increased as well. The type of the messages widened covering great variety of issues: from economic, social, political, democracy and human rights aspects.

The police presence at assemblies has increased under the new law: graph 4.2 shows the increased deployment of police officers. A professional assessment is required to determine whether the additional police presence is justified or whether it is a simple case of over-compensating for insufficient skills and limited capacity to deal with the uncertainties of public assemblies.

Policing of assemblies requires further development of relevant policing skills. Most assemblies are held in fewer than a dozen of locations in Chisinau, with most events taking in place in one of four or five sites. Appropriate policing skills and specific tactics could be devised for each of these places.

Places for holding assemblies. It has become easier for the organizers to hold assemblies, and particularly to hold assemblies in the places desired by the organizers. The evidence from the graph 3.8 shows that, since the organizers have had greater choice in location for assemblies, they have chosen to focus on the executive (the National Square) and the Presidency (President's building). The new law has therefore managed to more effectively secure and protect the right to organize assemblies in the place of the organizers' choice.

Comparative provision	Provision of the Old law	Provision of the New law (as of 22.04.2008)	Conclusions, risk factors
Places of holding assemblies. Distances to some buildings to hold assemblies. Recommendations by authorities to hold assemblies in some places.	Authorities may decide on some recommended places for holding assemblies as a part of the authorization procedure and by adopting of special ordinances. Assemblies could not be held closer to 25-50 m towards some governmental buildings.	Assemblies could be held in any public place and in the near vicinity of the governmental buildings. Authorities are not allowed to recommend places for holding of the assemblies.	The new law establishes a more liberal regime. Authorities are not allowed to restrict places of holding of assemblies.

The new law application reversed the existed restrictive pattern and created conditions for the better exercise of the assembly, yet some restrictions are still applied regarding the distance for holding of assemblies. Qualitative case studies presented, following graph 3.8, shows that the new law is yet to be applied coherently in the case of the buildings of the Parliament, the Presidency and the Government. Holding of the assemblies in front of these buildings is limited distance-wise by the police against the provisions of the new law.

Provisions in the new law addressed adequately the wide discretion of the authorities to limit places for holding of the assemblies.

The direct public benefit after the introduction of the new law can be estimated taking into the consideration:

- 1) savings of legal and court costs for not denied cases due to restrictions,
- 2) potential imposition of the obligation to pay damages by the European Court in Strasbourg,
- 3) benefit of the society and for citizens' rights to exercise freedom of assembly²⁷,
- 4) reduced costs for the compliance with the authorization procedure.

The direct costs could be estimated in terms of:

- 1) administrative procedures associated with assemblies within local authorities and police, as well as additional administrative costs related to the increased number of the assemblies,
- 2) increased allocation of police due to the rise of the assemblies and perhaps less predictability of the nature of the assemblies,
- 3) potential violence and therefore additional police force needed, and
- 4) provision of services, including cleaning and medical.

There is no direct evidence of any increased complexity or additional demands required to manage the new notification procedure. Graph 6.1 compares the potential costs and benefits between the old and new legal provisions²⁸.

²⁷ The interrelationship among civil liberties, civil strife, and project performance suggests that the possible mechanism of causation is front more civil liberties to increased citizen voice to better projects. This result acids to the evidence for the view that increasing citizen voice and public accountability—through both participation and better governance—can lead to greater efficacy in government action.

²⁸ The methodology for the cost-benefit analysis is based on [3] and in practice uses the data and information contained in the graph 3.1 (pace of assemblies) in 2008 as compared to pace of assemblies in 2007 for the comparable period of time.

Graph 6.1 Cost benefit estimate for the more liberal approach in the organization of assemblies under the new law

	Old law (status quo)	New law	Explanations
A. Benefits			
A1. Saved legal costs for of denial assemblies ²⁹	0	240 000 Euro	2 000 Euro per denial, potentially 120 “denied” in 2008. ³⁰
A2. Saved damages due to European Court in Strasbourg decisions	0	80 000 Euro	10 000 Euro per case, 5-8 cases annually ³¹ , the number could be higher
A3. Citizens benefit for liberty	0	Could not be monetized in short or medium-term	World Bank study shows 8% GDP increase in freer societies ³²
A4. Reduced costs for organizers to comply with proceedings	0	25 000 Euro	50 Euro per case, around 500 assemblies annually under the new law
B. Costs³³			
B1. Commission on assemblies meetings	Same	Almost the same	No evidence for increase in costs (time, complexity), yet as the absolute number increased twice, some increase in cost could be associated
B2. Increased police force allocation and less predictability of the assembly	Base-line	Around 20% increase in police presence	In absolute numbers police presence increased (see graphs 4.2, 4.3, 4.4) and p.35 discussions given the greater number of assemblies organized, more police involved, gradually police presence decreased, even below the police present under the old law
B3 Cost of violence as additional police action	Base-line	Same	Non-peaceful assemblies rate has diminished as shown in graph 3.2 and in absolute terms remained the same (see discussions p.10)
B4 Cost for cleaning and other services (medical) to ensure the assemblies	Base-line	Slight increase	As graph 3.6 shows, emergency services provision increased several times given the number of assemblies as did the use of the sound amplifier
(A-B). Net social value/benefit for society		Around 300 000 Euro annually plus benefit for freedom of assembly	The real net social benefit is many times higher given the increasing confidence of the people and particularly in the long-term

²⁹ The basis is the percentage of denied assemblies under the old law (20-25% or around 40 cases in 2007 of all requests – see Footnote 13), projected onto the % of the potentially denied assemblies under the new law (around 120 cases, if the total number of assemblies in 2008 stands at 550).

³⁰ Based on average cost of lawyers, judges, proceedings and perhaps opportunity costs of the parties involved as per hours at 10 euro cost per hour per this type case at national level

³¹ Based on the estimation of art. 11 ECHR sanctions against Moldova, see details in subsection 6.1.1, accounts for around 10 000 euro per case in pecuniary and non-pecuniary damages.

³² Civil Liberties, Democracy, and the Performance of Government Projects, Jonathan Isham, Daniel Kaufmann, and Lant H. Pritchett, *The World Bank Economic Review*, 1997, Vol. 11, No.2, pp.219-44.

³³ The research has not taken into consideration the cost for the police training and capacity building to deal with the assemblies under the new law.

The switch from the authorization to the notification procedure and more inclusive definition of the types of assemblies including spontaneous and simultaneous, under the new law, has addressed successfully the prior existed deficient practice. The new legal provisions provided for a far better condition for the realization of the freedom of assembly rights for the organizers and did not require additional capacity from the local authorities and police to manage the increased numbers of the assemblies organized. The shift has produced a net social value of around 300 000 Euro in 2008 plus benefits of greater opportunities to exercise the freedom of assembly by the citizens³⁴. The introduction of the new law in the beginning of 2007 has most probably produced the net social value of around 500 000 Euro for the society. In few years, the net social benefit on yearly bases likely to increase to 1 mln. euro per year.

Other benefits relating to the greater confidence of the society could not be estimated in short or mid-term perspectives. Their contribution becomes visible in the longer-term perspective.

6.2.1 Police intervention and courts jurisprudence on assembly rights

In this subsection we discuss the changes in the legal provisions regarding the restrictions and the conditions imposed on the assemblies. We explore how this provision switch has worked under the new law during the monitored period of time.

Comparative provision	Provision of the Old law	Provision of the New law (as of 22.04.2008)	Conclusions, risk factors
Conditions and restrictions imposed on assemblies	Assembly commission under the City Hall decides on conditions imposed on an assembly. The commission may impose conditions under threat of refusing a permit. Conditions imposed prior on forms, time, place and manner and during the assemblies by police, special places recommended.	Assembly commission under the City Hall can only screen notifications. Simultaneous assemblies' allowed. Assembly commission under the City Hall may only recommend restrictions, the organizers must make final decision	The new law removes censorship on assemblies. Allows for subsequent scrutiny of authorities involvement of conditions on assemblies. Risks remain due to insufficient capacity of local authorities and police to apply new law in practice and refrain from undue influence.
Ban, limitation, suspension of assembly	Authorization effectively used as ban, recourse to courts fails to ensure the exercise of the right as decisions come later. Grounds broadly formulated: defamation of nation, order, constitution. Same broad grounds applied to limitation or suspension of assembly. Suspension is decided by police, with some involvement by local authorities in forcible dispersion.	Authorities can only ban or impose a limitation to the assembly by a court decision, which is a substantial guarantee. Suspension of ongoing assembly is prescribed as matter of last resort, when other measures have been tried out. Decision to disperse is taken by local authorities and police.	The new law provides substantial increase in guarantees and make possible legally suspension only in very limited number of cases. Risks remain in insufficient capacity of local authorities and police to apply new law in practice and refrain from undue influence. Another risk results from hostility between central and local authorities in some cases.

Under the new law, the restrictions on the assemblies are now mainly imposed during the event rather than prior to the event. The number of the restrictions and the conditions decreased. The evidence from the monitoring in graph 4.1 (conditions and restrictions on assemblies) shows a direct reversal in the time and stage of the assembly when the restriction is imposed. Prior restrictions on assemblies have just

³⁴ Under the condition that the intensity of civic and political activism will remain the same

disappeared, while the restrictions on the ongoing assemblies in absolute terms increased several times, yet in relative terms to the number of assemblies decreased to 27% from 33%, under the old law. The application of the restrictions on the ongoing assemblies by the police in most cases lack legal justifications. The new law provides that restrictions may only be imposed by a court or if recommendations from the regulatory authorities are accepted voluntarily by the organizers.

The restrictions imposed by the police during assemblies, under the new law, mostly relate to the need to respect the agreed terms of the assembly. In this respect the new legal provisions have started working adequately. An issue still remains with the capacity of the police and the regulatory authorities to effectively manage an assembly and in many cases the preferred choice of the police is to restrict the assembly. A counter-option would be to negotiate and co-operate with the organizers with the aim of facilitating their preferred options for an assembly.

Police intervention with the assemblies has some slight improvements but also negative elements in its application. Number of dispersal slightly decreases and the detention of the organizers and participants remained unchanged as shown in graph 4.5 (police actions). At the same time, the use of force and of barriers increased. The later could be perfectly explained by the increased number of the assemblies.

Courts generally upheld organizers rights overruling police interventions. The new law puts the burden of proof on the local authorities to ban the assemblies through a court procedure. To the moment, none of the cases initiated to ban an assembly is known. Courts, in the overwhelming majority of cases, acquitted organizers of the charges brought by the police and enforced assembly rights. This practice, as graph 5.1 (court jurisprudence) has substantially improved after the introduction of the new law. Generally appeal courts upheld assembly rights even more vigorously as compared to the first instance courts.

Police interventionist and at times abusive practice required policy and legal solutions in the first place, the new law – in its legal perspective -, has only partly addressed the problems. Court jurisprudence in most cases provide for the enforcement of the assembly rights.

6.3 Application of the new law on assemblies: remaining and emerged concerns

This subsection will discuss the evidence that depicts the remaining and also emerging problems that occur in the course of the application of the new law.

6.3.1 Police intervention, suspension, dispersal and prosecution

In this subsection we examine the conditions for the suspension of an ongoing assembly.

Comparative provision	Provision of the Old law	Provision of the New law (as of 22.04.2008)	Conclusions, risk factors
Suspension of assembly	<p>Grounds broadly formulated: defamation of nation, order, constitution. Same broad grounds applied to limitation or suspension of assembly.</p> <p>Suspension is decided by police, with some involvement by local authorities in forcible dispersion.</p>	<p>Suspension of ongoing assembly is prescribed as matter of last resort, when other measures have been tried out.</p> <p>Decision to disperse is taken by local authorities and police.</p>	<p>The new law provides substantial increase in guarantees and make possible legally suspension only in very limited number of cases.</p> <p>Risks remain in insufficient capacity of local authorities and police to apply new law in practice and refrain from undue influence.</p> <p>Another risk results from hostility between central and local authorities in some cases.</p>

Police intervention resulting into the de facto suspension of the assemblies represents a clear pattern of the undue use of the Code of Administrative Offences (CAO) and of the freedom of assembly legislation. The law on assembly requires close scrutiny and solid justification for suspension of an assembly, but if

the CAO is used, this can lead to the detention of the organizers of the assembly and consequently to the suspension of the assembly. The threat presented by the sanctions contained in the CAO are clearly not reconcilable with the higher threshold contained in the law on assembly, and therefore one could conclude that this will result in a violation of the provisions of the law on assembly. Graph 4.5 (police action) representing the number of the assemblies dispersed or organizers detained on the grounds contained in the CAO. Graph 4.8 shows (prosecuting reasons) that the police avoids the law on public assemblies and uses only the provisions of the CAO. Charges under CAO result into the effective suspension of the assemblies.

The provisions of the CAO could not be applied in isolation of the law on assemblies. The hierarchy of laws, provided in the Constitution, ensures that the CAO material provisions supersede organic laws and therefore the material provisions of the CAO are considered superior to the provisions of the law on assembly. At the same time, as the law on assembly is a specialized law, the later provides a specific explanation on how the specific material provisions of the CAO should relate to the exercise of freedom of assembly. Therefore, the law on assembly provide for the specific procedural provisions and the conditions for the application of the material provisions of the CAO. Consequently, the law on the assemblies disallows the isolated application of the CAO, the later should be applied, if relevant, in connection of the exercise of the freedom of the assemblies provisions. In conclusion, the law on the assemblies does not allow, the suspension of the assembly rights of the organizers or the participants at the expense of the application of the CAO.

The new law has substantially strengthened the protection against the suspension and dispersal of the assemblies, yet in practice these provisions have been poorly interpreted and this suggests that other laws require modifications to bring the overall practice into the line with the new standards. Graph 4.5 (police action) shows that, under the new law, the police intervention in the ongoing assemblies have slightly increased. This possibly depicts the police desire to exercise the control over the assembly, comparable to the control they exercised using the prior restrictions, under the old law. As the organization of assemblies has become simpler for the organizers and prior censorship, imposed by the regulatory authorities, is subject to better procedural and material scrutiny, the police appear to be trying to compensate lost control by applying restrictions or intervening during the assemblies.

The new law has yet to address the problems related to the unjustified police intervention and restrictions during assemblies. Indeed, the dispersal, the use of force and the detention has continued, although largely directed at a limited number of the organizers who use symbolic and expressive means of appealing to the society. Police interventions in the course of the holding of the assemblies could be seen as either 1) incorrect interpretation of the assembly rights provided in the new law, or 2) as a very formal approach in the enforcement of the interests that are protected under the CAO, not related to the law on assembly. Under the later provisions, the police interventions amount to the de facto dispersal and suspension of an assembly, neglect the legal protection established in new law. This raises questions over whether this is due to either the lack of the police goodwill in interpreting the new law, in conjunction with the administrative sanctions legislation, or due to the insufficient precision and clarity in the new law.

Police de facto suspension of the assemblies on the ground of the violation of the Code of Administrative Code, interferes unjustly with the assembly rights. Change in the attitude of the police is required. Capacity building work with the police seems to be crucial to ensure the correct application of the provisions of the new law and particularly to encourage greater compliance with the spirit of the law.

6.3.2 Police presence and facilitation of assemblies

Police increased its presence in the plain clothes and decreased its facilitation role with the assemblies. The new law provides that the police have the obligation to protect the organizers of the assembly and at

the same time to facilitate the organizers assembly rights^{35, 36}. The last tendencies in the application of the new law prove that in a number of cases, the police refrain from these positive obligations³⁷.

Police presence at the assemblies decreases. Police generally switched to the practice to wear plain clothes rather than police uniform. Graph 4.3 (proportion assembly-police presence) and 4.4 (uniform-plain cloth police) depicts the tendency for the decrease of police presence in general and particularly in uniform at the assemblies. Overall, the police presence at the assemblies decreased as much as 4-5 times per assembly and the ratio of the police in the uniform against the police in the plain clothes has reversed, and now stands at 90% (plain clothes) to 10% (uniform) as the later graphs show.

The decrease in the police presence in itself does not present a problem, yet it might yield a problematic situation under some circumstances. Indeed, excessive police presence can have a chill out effect, yet, the police presence in adequate numbers and with adequate behavior has generally a positive effect giving confidence to the organizers. Qualitative case studies show explicitly how the presence of the third parties and particularly aggressive actors (see Case study 2), who want to distract the assemblies', the absence of the police to guarantee freedom of assembly rights amounts to the failure of the police to exercise their positive obligations.

The police presence in plain clothes rather than in uniform hinders the perception of the protection guaranteed by the state to the exercise of the assembly rights. Indeed, the police uniform presence has two effects: 1) hindering effect on the demonstrators emanating from the fact that police is perceived as the actor to intervene with the assembly, and 2) effect to create the sense of security in front of the aggressive action of the third parties or counter-demonstrators. Police presence has to balance these two considerations in its positive obligation to exercise its duties in the facilitation of the assembly rights.

Plain clothes police sends wrong messages to the organizers. The presence of the police mostly in plain clothes sends the message to the assembly organizers that the police is present in order to collect evidence of the potential wrong-doings of the organizers of the assembly (police has the right to wear plain clothes during some operative investigations) and not in order to give the organizers the sense of the security to hold the assemblies.

Police absence from the scene creates the sense of insecurity with the assembly organizers. Substantial decrease of police presence with assemblies, under the circumstances of the cases of aggressive intervention on behalf of third parties, makes the assembly organizers feel insecure and vulnerable. Increasing numbers of the cases, when the aggressive parties intervene and disrupt the assemblies, calls on the police to fulfill its positive obligation role to protect the assembly organizers.

Police presence at the assemblies should facilitate the assemblies and provide the security for the assembly organizers. Failure to intervene to protect the assemblies represents police violation of the positive obligation to protect the assemblies from third party interventions.

6.3.3 Prosecution of perpetrators of assembly rights

The evidence presented in this report demonstrates that police is responsible for a number of the unjustified interferences with the assemblies. Aggressive third parties have also intervened with the assemblies. Unjustifiable intervention with the exercise of the assembly rights is a penal, administrative

³⁵ "The state has a positive duty to actively protect peaceful assemblies and this should be expressly stated in any relevant domestic legislation to freedom of assembly and police powers, para 26, OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, 2007,

³⁶ "The role of the law enforcement officials goes beyond recognizing the existence of fundamental rights and includes positively safeguarding those rights", para 115, OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, 2007.

³⁷ "Police officers should also be held liable for failing to intervene where such intervention may have prevented other officers from using excessive force", para 146, OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, 2007.

and disciplinary responsibility of the police and is also a penal responsibility of the third parties. The prosecutor's office is responsible for the enforcement of the penal responsibility against the illegal actions of the police. The police are responsible for the bringing charges against the third parties who interfered with the assembly rights. Finally, the police internal service is responsible to bring disciplinary charges against wrongdoings of the police itself.

Civil responsibility, to claim moral and material damages for the violation of the assembly rights, is the procedure that is dependable on the outcome of the criminal conviction of the perpetrator of the assembly rights. The civil responsibility could not be invoked as a separate case using the shared evidence established and therefore to claim damages for the violation of the assembly rights from the police for the failure to execute the positive obligations or from the third parties for the interference with the assembly rights.

Few cases of assembly rights perpetrators prosecution are known. To the moment, public is informed of only one case when the policemen has been sanctioned under the disciplinary responsibility (see case study 39) and several civilians sanctioned under administrative penalty who disrupted an assembly (see case study 2, details of the sanction are not available). None of the cases are known when civil or administrative cases are initiated due to the failure of the police to respect its positive obligations to protect the assembly rights.

Subsection 4.2 presents cases and statistics of a number of cases that should be subject of the investigation regarding the police interference with the assembly rights. Case studies 36, 37, 39, 40 represent police prior intervention with the organizers of the assemblies. None of the investigations followed. Graph 4.8 (prosecuting reasons) presents the account of the administrative charges brought by the police against the organizers of the assemblies that in most cases resulted de facto in the suspension of the assemblies. The mentioned graph shows the increase of the use of the wide spectrum of the administrative charges against the assembly organizers. The current practice stands on that the violation of Code of Administrative Sanctions (CAS) is enforced immediately by the police at the expense of the assembly rights of the organizers. This practice has not been challenged in the courts so far, yet represents a very contradictory and vulnerable application of the freedom of assembly legislation.

Court jurisprudence upholding the freedom of assembly rights represents another confirmation in favor of the prosecution of the assembly rights perpetrators. Graph 5.1 (court jurisprudence) statistics show that the absolute majority of the charges, in the circumstances of the de facto disruption of the assembly, brought by the police, have not been upheld by the courts. The assembly organizers charged have been acquitted either in the first instance or definitely in the appeal courts. In none of these cases, where relevant and where the actions of the police have been evidently abusive, investigations have been lodged by the prosecutor office against the policemen.

Prosecutor refusal to investigate the police abusive intervention in the freedom of assemblies represents the practice of the police impunity and encourages the police to recourse to the unjustified intervention with the assemblies. Some organizers, who have been acquitted, lodged complaints against the police abusive interventions that resulted into the de facto suspension of the assemblies (case study in subsection 5.3). Prosecutor refusal to investigate and where relevant indict the involved policemen, indirectly excuses the police interferences with the assemblies. In most cases, the prosecutor justifies the absence of the investigation with the absence of the proper evidence, the evidence that have been presented earlier by the police in supporting the charges against the organizers of the assemblies; prosecutor falling short of collecting of the additional evidence. The refusal grounds, as one can see, contradicts the earlier court decisions.³⁸

Police enjoys impunity and is not accountable for the illegal interference with the freedom of assembly rights, this is a result of the incoherent interpretation by the prosecutor of the law on freedom of assembly

³⁸ One can distinguish two situations in this regard: 1) Prosecutor is in possession of the evidence that confirms that the organizer's actions qualify under the Code of Administrative Sanctions and the de facto suspension of the assembly is justified under the law on assembly provisions, however this evidence is not available to the court. or 2) Prosecutor disagrees with the decision of acquittal delivered by the court based on the assessment of the evidence and arguments presented. In both cases, Prosecutor's inaction represents the problem.

and of the Penal Code as well as of the absence of right attitude to prosecute the police where relevant for unjust interference with the assembly rights. Assembly organizers do not enjoy effective remedy (civil and penal) for the violation of the right to freedom of assembly, as a result of the interferences in their actions, on behalf of the police or aggressive third party actors. Civil remedy or administrative remedy to claim damages is not accessible as a separate procedure under the Moldovan law.

6.3.5 Local administration and police capacity and cooperation on managing and facilitating of the assemblies

Absence of cooperation between the local authorities and the police in Chisinau municipality hinders the application of the law and the insurance of the assembly rights. The problems arise from the political tensions that exist between the leadership of the City Hall and of the Ministry of Interior (part of the tensions with the central authorities in general). These tensions strike against the good implementation of the assembly rights.

Police capacity to communicate with the assembly organizers is also crucial and is currently underrepresented. The communication should have several stages: 1) prior to the organization of the assemblies and 2) during the assembly itself and particularly while some complications or third parties intervene. Management of the simultaneous assemblies is of a particular importance given the existing practice of the tensions produced already in Moldova.

Police lacks necessary skills in communicating and facilitating the assemblies. Local authorities and the police fail to communicate on the issue of the assembly rights in the detriment of the exercise of the assembly rights.

7 Conclusions and recommendations

This section contains conclusions of the report and an outline of the recommendations for the continuous and improved implementation of the assembly rights in Moldova.

7.1 Conclusions on implementation of new law on assemblies

Overall, the new law on assembly implementation marks positive developments in the exercise of the freedom of assembly. There is a substantial increase in the civic activism and people expression of the opinion through the assemblies. In a nutshell the public authorities and the police have received well the law and managed to implement a good part of it. Concerns remain with regard to the positive obligations of the police to protect and facilitate the assemblies, the cooperation of the police with the local authorities and the prosecution of the perpetrators of the freedom of assembly rights.

The introduction of a notification procedure and the broadened definition of the assemblies have produced significant benefits for the assembly rights and for the society in general. In practical terms, it has ensured greater respect for the freedom and rights and an improvement in the public image of the authorities. The available quantitative information combined with the case studies and observations from monitoring assemblies proves that the modification has been well received by the regulatory authority (local authorities), the police and the organizers and overall functions satisfactory³⁹. *Therefore, the switch from the authorization to the notification procedure is justified also from the perspective of social and economic benefits; the approach saves yearly hundreds of thousands of Euros in possible losses to the society.*

The evidence shows that in practice there is some progress regarding the use of restrictions by the police. The monitoring shows that the police still intervene unjustifiably with assemblies. The courts' rejection of police interventions proves this hypothesis, while the imposed restrictions rely on the legislation on administrative sanctions rather than on the new law on assemblies. *This means that the new law has managed to outlaw unjustifiable police intervention, under the law on assemblies, and has imposed more scrutiny on the police to intervene with the assemblies, yet the police have started to unjustly use the administrative sanctions law to recourse to the imposition of the restrictions. This situation will require awareness-raising and a shifting in police attitude to ensure they work to the spirit of the new law.*

Excessive intervention by the police with the assemblies creates additional social costs, which will amount to a social burden and represents a clear abuse of freedom of assembly rights. The social costs are associated with the cost of the judicial proceedings on behalf of the police, the courts on the organizers, in particular when cases are quashed by the courts. This practice also has chilling effect on the potential organizers of the assemblies and creates an alienation of the sections of society from the authorities. *The unjustified intervention by the police remains a continuous challenge for the new law and its application.*

Growing number of the aggressive third party intervention in the assemblies is not properly matched by the police actions. The positive obligations of the police to enforce the law by facilitating assemblies remain one of the critical problems. These could be possibly explained by the lack of the sufficient capacity and not adequate attitude towards the role of the police in facilitating the assemblies. *The failure to exercise the positive obligation jeopardizes the exercise of the freedom of assembly rights.*

Prosecution of the perpetrators of the freedom of assembly rights has not been endorsed in practice by the Prosecutor's office. The evidence presented shows that there is an increasing unjust interferences with the exercise of the assembly rights on behalf of the aggressive third party actors as well as by the police. In both cases the assemblies result into de facto suspension and/or seizure not agreeable to the organizers of

³⁹ In the course of 2008, Promolex and CReDO with the support of the OSCE Mission in Chisinau and Soros Foundation have carried out a number of the training seminars with the local authorities and with the police on the new law on assemblies that has had a positive effect for the application of the notification procedure.

the assemblies. In some cases courts even endorse that interferences with the assemblies are illegal. Relevant complaints to the prosecutor to act on the cases of the violation of the freedom of assembly rights remain unanswered. *The failure to prosecute the perpetrators of the freedom of assembly rights creates the police and aggressive third party impunity and unaccountability.*

7.2 Recommendations

This subsection presents recommendations based on the discussions and conclusions of the report.

Regarding strengthening of the organization of the assemblies, there is a need for:

- 1) Consolidation of local authority and police capacities to deal with notifications, facilitation of the notification procedure, developing skills of the members of the commission on assemblies to work and deal with the organizers still remain the priority,
- 2) Collection of the disaggregated information and statistics, comparable to those presented in this report, in order to understand the development of the functioning of the notification procedure,
- 3) Introduction of an on-line platform to announce lodging of notification and to publicize notified assemblies helping local authorities and the potential organizers to plan assemblies; the on-line platform could be modeled to the one that is used by the monitoring project,
- 4) Publication by local authorities and police of the annual and bi-annual reports with detailed information on assemblies comparable to the information included in statistical information section.

Regarding holding assemblies and interventions in assemblies there is a need for:

- 1) Development of police awareness of the incompatibility of the use of administrative sanctions legislation with freedom of assembly legislation;
- 2) Capacity-building and confidence-building among the police to deal with conflict situations, particularly when aggressive third parties are involved;
- 3) Developing skills and tactics in managing confrontational, aggressive and contradictory behavior;
- 4) The creation of specialized assembly-management policing groups, with a maximum of 50 persons who could be deployed to manage assemblies,
- 5) Learning from the court decisions on invalidating police interventions during assemblies, including dispersal, detention, etc;
- 6) Organizing capacity-building activities for the local authorities, police, organizers and media;
- 7) Organizers' of the assemblies should undergo trainings and capacity building exercises to manage effectively the assemblies.

Regarding creation of generally policy-learning process there is a need for:

- 1) Prosecutor General firm actions to investigate the cases of the violation of the freedom of assembly rights, including of the non-enforcement by the police;
- 2) Improvement of the law on assembly provisions regarding the positive obligations of the police to facilitate the assemblies;
- 3) Greater political enforcement of the existing law on assemblies, the law is among the best in OSCE countries in terms of legal regulation of the freedom of assembly,
- 4) Greater co-operation between the police and local authorities in policing and facilitating freedom of assembly,
- 5) Production by the police and local authorities of annual reports including statistics and information on assemblies to inform the public,
- 6) Annual reports, which can be used for a review of practice and lessons relating to developments around freedom of assembly,
- 7) Consideration for the modification of the civil or/and administrative law to create the straightforward procedure for claiming damages for the violation of the assembly rights in the absence of the penal conviction and independent of it; this will create the effective remedy for the assembly rights.

8 Annexes

8.1 Overview of the new law on assemblies

For a detailed analysis and discussion of the old law and the new law legal provisions one can read “*Monitoring Freedom of Assembly Policies in the Republic of Moldova*” by Resource Center for Human Rights, published at www.CReDO.md⁴⁰.

1. *Definition of assembly (art. 2, 3)*¹¹. The new law defines an assembly as a temporary, intentional presence of participants, and assemblies with fewer than 50 persons and spontaneous assemblies are not required to give notification and the law provides for the occurrence of more than one assembly in one location at the same time. The law does not include religious, commercial and sporting assemblies within its remit. As a result the definition of different types of assembly is more precise and it is easier to apply in practice.

2. *Freedom of assembly principles (art. 4)*¹². The new law is based on 4 core principles: 1) a presumption in favour of holding an assembly (non-regulation, duty to protect); 2) legality (limitation); 3) proportionality (balancing public interest test, “less intrusive alternative”); and 4) non-discrimination.

The provision of these “principles” constitutes clear progress compared to the previous law. The principles help to 1) interpret the grey zones and situations that may be undesirable or impossible to regulate and 2) guide the interpretation and application of the provisions of the law, and ensure they are consistent with it. The presence of the guiding principles should ensure fewer restrictive and less abusive interpretations of the law and over time should encourage a development away from conservative interpretation of the law that would be inconsistent with the fundamental aims of the law.

3. *Notification (art. 10, 11, 12, 13)*¹³. The new law incorporated a shift from an authorization to a notification procedure. Organizers notify within 5 days of an intention to hold an assembly and in the case of small and spontaneous assemblies notification is not required. If more than one notification is submitted the local authority must negotiate with the organizers, but if there is failure to reach an agreement they may deal with them on a first-come-first-served basis. Simultaneous assemblies should be facilitated and diverse interests accommodated wherever possible. The local administration can only forbid an assembly by seeking a court injunction. These elements all represent a substantial liberalization in the administrative regime.

The work of the commission on assemblies will continue. The commission will review declarations and should meet with the organizers to discuss and advise on the organization of assemblies. Police and state security agents may also be present and provide input at such meetings.

4. *Organizers and participants (art. 6, 7)*¹⁴. Any person, including minors of 14 years and over and persons with limited juridical capacity, may organize an assembly, and no restrictions may be placed on participation in an assembly. This represents a significant development as all restrictions have been removed on organizers and participants.

5. *Conditions for assemblies (art. 5, 9, 14, 16)*¹⁵. The new law provides for holding an assembly in any public space, with no restrictions on specific sites or locations, for the use of appropriate sound or visual equipment and allows for the erection of temporary structures. The local authorities can only recommend prior changes to the form of the assembly. Restrictions imposed during an assembly must be justifiable, necessary, specific and in the interest of the assembly. This represents substantial regulatory progress.

6. *Ban, limitation, suspension of assembly (art. 8, 14 (5), 21, 22)*¹⁶. These three articles provide for forms of interference at different phases of the assembly:

- a) banning an assembly (article 8, article 14 and article 40 of the Constitution),
- b) suspending an ongoing assembly (article 21 (2, 3)) or spontaneous assembly (article 12(4)),
- c) dispersal of an ongoing assembly (article 22).

Banning an assembly (prior to the event)

Substance: An assembly can be only banned or restricted (article 4(c)) under *existing legal provision, namely:*

- a) article 8 (a) *instigation to aggression, war, national, racial or religious hatred*, b) *instigation to discrimination or public violence*, c) *undermining national security, disturbance of public order, public morality, violation of human rights and freedoms, jeopardizing lives and health of others*, or

⁴⁰ Direct link is here:

<http://credo.md/arhiva/documente/Moldova%20Assembly%20Monitoring%20Report%20final%20170109-clean.pdf>:

- b) article 40 of the Constitution (*conduct of assemblies in a peaceful manner and without the use of any kind of weapon*).

Procedure: Article 14 provides for drawing attention of concerns to the organizers and if unsuccessful instigating a judicial procedure to ban the public assembly:

- a) step 1): based on facts or information contained in the notification, advise the organizers of their responsibility, and suggest actions to modify the assembly, and only after step 1)
- b) step 2): based on *solid evidence* of the violations of article 14 or article 40 of Constitution seek a judicial injunction of the assembly.

Generally, the substantive provisions for limiting a public assembly comply with international standards and represent a substantial legislative improvement.

Suspending an ongoing (spontaneous¹⁷) assembly (art. 21 (1, 2))

Substance: The assembly can be suspended as an exceptional measure when:

- 1) there are serious violations of materials grounds of article 8 (a) *instigation to aggression, war, national, racial or religious hatred*, b) *instigation to public discrimination or public violence*, c) *undermining of national security, disturbance of public order, public morality, violation of human rights and freedoms, jeopardizing lives and health of others*), and
- 2) Measures other than suspension are insufficient to make the assembly legal.

Procedure: Article 21(1) provides for the representative of local authorities to declare the assembly suspended and asks the organizer to comply with the order. It provides an obligation to discretely address isolated incidences that violate article 8. The regulation of conditions for suspending an assembly has improved qualitatively with more material and procedural guarantees put in place.

Dispersal of an ongoing assembly (art. 22)

An assembly may be dispersed after a declaration of suspension if the organizers do not comply with requests to disperse. The police may execute dispersal only after warning participants to leave, and if they do not comply with the warning.

This is an improvement in the regulation of dispersal of assemblies; however, uncertainties remain regarding the potential use of armed force and the manner in which participants may be dispersed.

7. Responsibilities of organizers, participants (art. 17, 18, 19)¹⁸

The overall responsibilities and liabilities of the organizers and participants remain the same with one exception.

Under the new law the organizers may be exonerated from responsibility for the actions of the participants, when the latter have not adhered to their requests. Additionally the organizers, as well as the media and observers, have a right to record the activities at an event.

8.2 Comparative perspective of the old and new legal provisions

Comparative provision	Provision of the Old law	Provision of the New law (as of 22.04.2008)	Conclusions, risk factors
1. Definition of assembly and assembly principles	The definition is built on forms of assembly, does not permit simultaneous and spontaneous events. It excludes religious, commercial, sporting, cultural and political meetings.	A temporary, intentional gathering provides for simultaneous and spontaneous assemblies. It includes political but excludes religious, sporting, cultural and commercial meetings. Establishes principles of legality, non-discrimination, proportionality and presumption in favor of freedom of assembly.	The new law is more inclusive and generic in covering all possible forms of assemblies. It additionally includes political assemblies within its remit. Assembly principles in the new law provide better interpretation of the provisions of the law.
2. Notification/ Authorization	Assemblies are authorized if submitted 15 days in advance. Permits provide for specific conditions to be made.	Assemblies do not require authorization, only 5 days prior notification, with an exception for notification of small or spontaneous assemblies. Accommodation of plurality of assemblies.	The new law is liberal and permissive. It facilitates the exercise of assemblies and aims to accommodate multiple events including oppositional assemblies.

3.Organizers and participants	Only citizens with full legal capacity. Children cannot be involved.	Everyone including minors and persons with limited legal capacities can organize events.	The new law removes all restrictions on the organization and exercise of assembly, and empowers vulnerable groups.
4.Conditions for assemblies	Special commission decides on conditions imposed on an assembly. The commission may impose conditions under threat of refusing a permit. Conditions imposed prior on forms, time, place and manner and during the assemblies by police, special places recommended.	Special commission only screens notifications. May hold meetings with the simultaneous assemblies' organizers. May only recommend restrictions, the organizers must make final decision	The new law removes censorship on assemblies. Allows for subsequent scrutiny of authorities involvement of conditions on assemblies. Risks remain due to insufficient capacity of local authorities and police to apply new law in practice and refrain from undue influence.
5.Ban, limitation, suspension of assembly	Authorization effectively used as ban, recourse to courts fails to ensure the exercise of the right as decisions come later. Grounds broadly formulated: defamation of nation, order, constitution. Same broad grounds applied to limitation or suspension of assembly. Suspension is decided by police, with some involvement by local authorities in forcible dispersion.	Authorities can only ban or impose a limitation to the assembly by a court decision, which is a substantial guarantee. Suspension of ongoing assembly is prescribed as matter of last resort, when other measures have been tried out. Decision to disperse is taken by local authorities and police.	The new law provides substantial increase in guarantees and make possible legally suspension only in very limited number of cases. Risks remain in insufficient capacity of local authorities and police to apply new law in practice and refrain from undue influence. Another risk results from hostility between central and local authorities in some cases.
6.Responsibilities of organizers, participants	Organizers are responsible to maintain order and to pay for services. Some liability for the actions of participants and damages caused.	Organizers responsible for their own actions, including towards the participants, must cooperate with police. Authorities have to provide necessary services. Most of penal, administrative liability remained unchanged.	New law partly limits organizers responsibility, and provides for positive obligations of police and local authorities. Risks remain in practicalities of the application of the new law in practice and ability to refrain from undue influence.

8.3 Desegregated statistical data on assemblies

Graph 8.1 Disaggregated statistics

Disaggregated statistics could be found at: www.CReDO.md/assembly

9 References

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10 Endnotes

¹ The case of LGBT parade taken place during the new regime is an extraordinary stand alone case

² In this report: 1) picketing is small or medium size gathering in protest in front of the particular institution, 2) manifestation/meeting is a medium or large size gathering uniting people for a particular cause or policy agenda, 3) proceedings are movable processions, passing a number of places ending with a meeting or picketing.

³ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=327751>

⁴ **Article 174¹ of the Administrative Contraventions Code. Breach of legislation regarding assemblies.**

1) *Breach of terms and ways of examination of declarations for carrying out assemblies – fined with 20-30 conventional units.*

2) *Organization and carrying out of unauthorized assemblies or breach of conditions (place, form and time) indicated in the authorization – fined with 20-50 conventional units.*

3) *Failure of organizer to comply with provisions of law – fined with 20-30 conventional units.*

4) *Active participation in unauthorized assemblies or those that breach authorized conditions - fined with 10-15 conventional units.*

5) *Participation in assemblies of persons with ammunition that can cause physical burden or material damage – fined with 5-50 conventional units or administrative arrest up to 15 days.*

6) *Preclusion under any form by the participants of the circulation of public transport or of functioning of institutions, organizations – fined with 20-59 conventional units or administrative arrest up to 15 days.*

7) *Involving children in the unauthorized assemblies or breach of conditions (place, form and time) indicated in the authorization – fined with 10-20 conventional units.*

⁵ **Article 174⁶ of the Administrative Contraventions Code. Insult of policeman ...**

1) *Insult of policeman, intentional insult of the honor and dignity, insult of other deeds of police or of a person that is in charge to maintain public order, combats criminality, expressed verbally or in written – fined with up to 10 conventional units or with up to 15 days of administrative arrest.* 2) ...

⁶ **Article 174⁵ of the Administrative Contraventions Code. Resistance to policeman...**

1) *Putting resistance to a policeman or of a person that is in charge to maintain public order, combats criminality, expressed verbally or in written – fined with up to 15 conventional units or with up to 30 days of administrative arrest.* 2) ...

⁷ **Article 170⁵ of the Administrative Contraventions Code. Involvement of children in political actions.**

Involvement of children in political actions – is fined with 20-50 conventional units.

⁸ **Article 191¹ of the Administrative Contraventions Code. Breach by foreign citizens or stateless persons of residence rules**

1) *Residence with no valid or expired identity card, entrance with the expired, terminated visa or stay beyond the 3 month term limit when visa is not necessary - fined with 30-50 conventional units.* 2) ...

⁹ **Article 47³ of the Administrative Contraventions Code. Insult**

1) *Insult, intentional depreciation of person's honor and dignity by verbal or written actions – fined with 7-15 conventional units or administrative arrest up to 15 days.* 2) ...

¹⁰ **Article 164 of the Administrative Contraventions Code. Petty Hooliganism**

1) *Petty hooliganism, words and insulting expressions in public places, depreciative anchoring of citizens or other similar actions that disturb public order and citizens peace – fined with 5 conventional units or if considered ineffective or given specific circumstances of the person fined with administrative arrest up to 15 days.* 2) ...

¹¹ **New law Article 2. Scope of application**

This Law stipulates the procedure for arrangement of processions, meetings, assemblies, pickets or other forms of assemblies organized in public, hereinafter referred to as meetings.

2) The provisions of this Law do not refer to organizing and holding of:

- a) religious meetings, in form of public worship or other traditional manifestations;
- b) sport, cultural-artistic manifestations and other relaxation activities,
- c) commercial cultural events, sports competitions, concerts and entertainment activities.

New law Article 3. Definitions

For the purposes of this Law:

- Assembly shall mean a temporary and intentional gathering of a group of persons together to express some attitudes and ideas,
- Less numerous assembly shall mean assembly with less than 50 persons,
- A spontaneous assembly shall mean an assembly, that has been arranged or organized as a direct and immediate response to social events, which, in the opinion of participants, cannot be postponed, and as a result the usual notification procedure is not practical or possible;
- Simultaneous assemblies shall mean assemblies organized in the same place and time, which may or may not have the same motives and purposes, and whose organizers may have similar, different or controversial opinions.

¹² **New law Article 4. Principles**

This Law applies with respect of the following principles:

1) proportionality, that envisages application of any restriction in freedom of assembly, authorities should respect the balance between the necessity of the restriction in a democratic society and the exercise of the right to assembly.

2) non-discrimination, according to which the right to assembly is guaranteed to all citizens, irrespective of their race, nationality, ethnic origin, language, religion, gender, opinion, political affiliation, wealth or social origin;

- 3) legality, according to which as justifying reasons for any form of prohibition or limitation of the freedom of assembly shall serve only the legal provisions, without the possibility for authorities to question the opportunity of an assembly.
- 4) the presumption in favour of organization of an assembly, according to which at the examination of a request by the authorities, as well as during the insurance of the public order at the meetings, such actions shall be taken as to remove only illicit elements of the meeting, otherwise granting to the possible extent the right of assembly.

¹³ New law **Article 10. Notification procedure**

- (1) Any person intending to hold an assembly, shall notify the public authorities from the respective region or territorial-administrative unit, in writing, by a prior declaration, with at least five days prior to the meeting.
- (2) Prior declaration shall contain the name or, in case of a legal entity, the title of the organizer, purpose of the meeting, date and place of the meeting, form of assembly, and, when necessary, the route of the assembly, the hour it starts, an estimative number of participants, envisioned duration of the meeting, services requested from the authorities.
- (3) The local authority body responsible for the registration of the requests shall register the prior declaration and shall issue the organizer a stamped copy of it, containing the number, date and hour of registration of the prior declaration.
- (4) The local public authorities shall take necessary actions to ensure required by the organizers services, that are provided regularly through the organs and institutions that are subordinated.

New law **Article 11. Declaration of simultaneous assemblies**

- (1) If there are more applicants that have registered prior declarations regarding the organization of meetings in the same place and time, the competent local public authority shall organize a sitting with the participation of all applicants in order to find the adequate solution for organization of each simultaneous meeting.
- (2) If, depending on the declared place for holding more meetings in the same time, and on the estimated number of participants, the conclusion will be reached that all simultaneous meetings are possible, the organizers shall be given recommendations as to the portion of the territory where the assembly will be held, as well as indications to police for maintaining public order.
- (3) If after discussions among the public authorities, police and all the organizers of the assemblies, the decision is reached regarding the impossibility to organize all meetings simultaneously, the competent public authority shall propose the organizers to change the hour or place of the assembly.
- (4) If after the discussions as stipulated in par. (3), none of the applicants wishes to change the hour or place of the meeting, priority shall be given to the organizer that has first submitted the prior declaration.

New law **Article 12. Exceptions to notification procedure**

- (1) In case of spontaneous assemblies notification is admissible even without respecting the conditions regarding the written format or the time limit provided in art. 10 (1). In this case it is sufficient to provide information on the date, hour and place of the meeting, its organizers, as well as services requested from authorities.
- (2) Organizers shall exercise the right to assembly as stipulated in conditions of par. (1) with good faith and shall inform the competent authorities about the intention to organize a meeting once it has become known in order to facilitate the guarantee of the freedom of assembly by the competent public authorities.
- (3) Authorities shall take all necessary measures to ensure the security of all spontaneous assemblies.
- (4) Competent public authorities may file lawsuits in order to challenge the conditions and terms in which spontaneous meetings have taken place. The judicial procedure does not have a suspensive effect on the meetings and the burden of proof is on the initiator of the lawsuit.
- (5) It is not mandatory to notify the local public authorities through a prior declaration for the assemblies that have less than ten participants and which do not cause restriction of the traffic on the public roads. If organizers of a meeting with limited number of participants require certain services from the authorities or wish to set a temporary construction, they shall submit a prior declaration in this regard at least one working day prior to the date of the assembly.

New law **Article 13. Notification of the public**

Any person has the right, even prior to place the declaration, to disseminate information regarding the organisation of the assembly, place, time and its purposes or any other relevant information, to encourage the public to take part at the meetings through speeches, flyers, announcements, information campaigns, other legal methods.

¹⁴ New law **Article 6. Assembly organizers**

- 1) Persons with full legal capacity, groups of persons, as well as legal entities, have the right to organize meetings.
- 2) Minors of age 14 as well as persons with no full legal capacity together with a person vested with full legal capacity can organize assemblies.

New law **Article 7. Participants to assemblies**

- 1) Any person is free to actively participate or assist at an assembly.
- 2) Nobody can be forced to participate or assist in an assembly.

¹⁵ New law **Article 5. Place of assembly**

- 1) Assemblies may be organized in any open to the public place, outside buildings and outside spaces closed for free access.
- 2) Assemblies could be organized in one place or in procession.
- 3) In case of carrying out of some official actions or of some repair works, local administration, upon the request of the interested authority, can declare temporary limited access to places where ordinarily access is free.

New law **Article 9. Necessary equipment for holding an assembly**

- (1) During the assemblies, any graphic or sound device for expression of attitudes or opinions, any special sound amplifiers and other objects specific to organization of an assembly may be used.

(2) It should also be allowed to set any temporary constructions. In this case, the organizer shall take necessary measures in order to prevent causing of disproportionate inconveniences to participants or by-passers and not to cause damages to the environment, in the end removes the construction from the place.

New law Article 14. Modification of conditions for holding the assemblies and prohibition of the assemblies

(1) If, based on the prior declaration or based on a request to ensure public order in the time of carrying out of the assembly, authorities will only act to isolate or remove discretionary the illegal elements, facilitating the organization and continuation of the assembly.

(2) If information from prior declaration or from any other information, follows that the scope and the form of organizing the assembly contravene to the Constitution of the Republic of Moldova or can follow the violation of legislation, local public authorities immediately inform the organizer on the circumstances and the legal consequences.

(3) If considers necessary for the insurance of peaceful assembly, local administration can recommend the organizers to modify the conditions of carrying out of assembly regarding time, place or its form. The final decision belongs to the organizers.

(4) Local authorities can seek judicial recourse if are in possession of the information that the assembly will be carried out with the violation of art. 8. Local authorities can seek to ban the assembly, modify the time, place, form of organization. The start of the judiciary proceedings does not suspend the assembly.

(5) Courts hear the request to ban or modify the terms of the assembly and adopt within 3 days a decision.

(6) Courts can adopt one of the following:

- a) ban the assembly,
- b) maintain the assembly.

New law Article 16. The manner of holding the assemblies

1) The assemblies shall be held only in a peaceful manner.

2) The organizer has to ensure access to houses in the immediate proximity of the place of assembly.

3) No explosives, weapons or objects that can harm lives are allowed.

4) Assemblies held between 23.00-7.00 are not allowed the use of the sound amplifier equipment.

¹⁶ **New law Article 8. Prohibited assemblies**

(1) 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 of 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.

New law Article 21. Ensuring the public order. Suspending assemblies

(1) If during the holding of the assemblies some participants public order or the provisions of article 8 have been violated, the organizer, or in case of necessity together with police, shall remove participants that take such actions.

(2) If during the meetings there are actions that seriously violate the provisions of article 8, the representative of the local public authority shall request the organizer to cease the meeting. This being the extreme measure that can be used only if other measures are not sufficient to ensure holding of an assembly in a legal manner.

(3) The lack of the prior declaration is not a reason for suspending a meeting.

New law Article 22. Dispersing assemblies

1) If the organizer does not comply with the request of local administration or does not manage the suspension of the assembly, representative of local authorities will ask for the dispersion of the participants.

2) In case when after the request of the local authority, participants to the assembly do not leave the place for the assembly, the police can warn the participants about the possible use of the special means and a forcible dispersal of the meeting, offering a reasonable period of time to comply with the request, afterwards the dispersal request will be reiterated.

3) In case when after the reiterated request for the dispersal, the participants to the assembly do not leave the place, upon the request of the representative of the local authority, the police will disperse the participants.

4) In case of the forced dispersal of the assembly, police writes up a motivated conclusion that provides with the motives and reasons of the dispersal.

¹⁷ The suspension of the spontaneous assembly is done through a judicial procedure based on the nonconformity with the formal procedures for notification. The burden of proof lies with the local authorities.

¹⁸ **New law Article 17. Registration of meetings**

(1) Any person may register the meetings on audio or video devices.

(2) Access of the press to the meetings shall be ensured by the organizers and authorities.

(3) Seizure of the technical means, audio and video registrations of assemblies is allowed only under the provisions of equality.

New law Article 18. Duties of the organizer

(1) The organizer Of the assembly has the following obligations:

a) to carry out assemblies only in forms, places and terms indicated in prior declarations and do not allow substantial deviations.

b) to designate a coordinator of the assembly and to communicate, within reasonable terms, to local public authorities, his/her name.

(3) Organizer can designate marshals to maintain the order during the assembly, who will bear distinctive signs and will be easy identifiable.

New law Article 19. Duties of participants

Participants have the following duties:

a) to respect the legislation, public order and legitimate requests of the organizer,

b) to abstain from the actions that can impede the carry out of the assembly and from the incitement to this kind of actions,

c) to leave the assembly upon the request of the organizer and/or of the representative of local administration or of the police as stipulated in art.21 and 22.