

FREEDOM OF ASSEMBLY IN CZECH REPUBLIC

*The foregoing information was collected and prepared by
Ivana Rosenzweigova, ECNL's Legal Associate,
who provided research assistance to ICNL Freedom of Assembly thematic portal.*

One of the Constitutional freedoms in Czech Republic ensured by the Article 19 of the Charter of Fundamental Rights and Freedoms is the Freedom of peaceful Assembly (hereinafter "FoA"). Czech legislation is operating with different terminology by using "Right of assembly" even though its character is more corresponding with the term *freedom*. Its nature as one of the fundamental rights of human beings protected and regulated in several international treaties classified it as a part of the Czech Constitutional order. The basic framework of FoA is established in the special law – Act No. 84/1990 Coll. on Freedom of Assembly. This Act has been amended several times, with the last amendment in 2009 which included a word "working" in front of the time limit of 3 days to decide on the prohibition of the Assembly. Criminal code also protects this freedom by ruling that using violence, threat of violence or other severe harm in order to restrain somebody from exercising his right to assembly will be punished.

Freedom of assembly in Czech Republic is generally in compliance with the international standards and best practices. The Law on Freedom of Assembly provides a protection of the peaceful assembly, requires only notification without prior authorization and allows spontaneous assemblies. However, it restrains aliens and stateless persons, infants, people without full legal capacity and non-residing legal entities from organizing an assembly. Imposing the liability on the organizer when he fails to preserve the peacefulness of the assembly is also not deemed to be proportional.

Article 1 par. 2

"The performance of this right shall serve citizens in the exercise of their freedom of expression and other constitutional rights and freedoms, in the exchange of information and views, and in the participation to the governance of public and other common matters through the expression of their opinions and positions."

DEFINITION: Although there is no clear definition of the assembly provided by this law, there could be one derived from its provisions. *The assembly is a voluntary meeting of at least two persons in a public area with the purpose anticipated in the Article 1(2).*¹ Importance is thus put on the purpose of the assembly – only a specific group of purposes for organizing an assembly are relevant for application of this Act. Consequently, Article 2 brings a negative definition of the assemblies falling within the regulation under this law:

"Not considered as the assemblies under this Act are:

¹ Černý, Petr and Lehká, Markéta: *Zákon o právu shromažďovacím. Komentář*. C.H.Beck, 2010

- a) assemblies of persons related to the activities of public bodies regulated in other laws;
- b) assemblies related to the provision of services;
- c) other assemblies not serving the purpose anticipated in the Article 1(2)."

NOTIFICATION: An organizer of the assembly is obliged to submit a notification to a regulatory body determined by the location (e.g. town, region or the whole state). Article 5 provides that the notification shall be submitted at least 5 days prior to the presumed date of the assembly. In certain cases the notification could be considered admissible also in the shorten period of time (e.g. notification is not submitted to the responsible authority, but in the required 5 days period). The notification has to contain basic information like date, starting time, purpose and location. Article 1 is prohibiting all the assemblies closer than 100m far from the buildings of the legislation bodies or the places where they meet.

There are several exemptions from the notification requirement. These are usually private assemblies not taking place in the public area with the limited access of participants. Special provision of the Article 4(3) regulates a legal delegation of power to the regional offices (bodies) to regulate the admissibility of the assemblies without notification in the specific areas and under certain conditions, while still being in compliance with the Article 1(2). For example the Regulation of the city of Prague No. 19/2004 provides the possibility to organize an assembly in the limited area of Palacky square without notification each day from 10 a.m. to 8 p.m.

SPONTANEOUS ASSEMBLIES: Generally, spontaneous assemblies are allowed under the Czech legislation. To classify the assembly as spontaneous, there have to be fulfilled two requirements: the purpose has to comply with one of those anticipated in Article 1(2) and it has to be risen spontaneously, without having an organizer. Only certain provisions of this Act enumerated in the Article 15 then apply on such assemblies, together with the exemption from the notification requirement. This Act is not providing any information about counter-assemblies, so by using the rule "what is not expressly forbidden is permitted" we can deduce that they are allowed.

ORGANIZERS: In case of notified assemblies, there are eligibility requirements imposed on the organizer restraining infants, non-Czech citizens, persons without full legal capacity and legal entities not residing in Czech Republic to organize an assembly. Requirements on who could be an organizer are stipulated in the Article 3: "The organizer of the assembly shall be a citizen over the age of 18 or a legal entity with the residency in Czech Republic, or a group of people." It does not directly require full legal capacity of the organizer, however according to the doctrine it is indirectly required by the age limit and thus by the capacity to legal action.²

This provision is considered as too intrusive because of several reasons. Firstly, the criteria of being a citizen do not allow aliens and stateless persons to organize an assembly (there is not even an exception for those who have a residence permit, since the provision directly requires a Czech citizenship). The same applies to legal entities, as they are obliged to have the residency in Czech Republic when they want to be eligible organizers of an assembly. The age limit does not allow young people under 18, for example high school students, to organize an assembly to protect their rights. Similar is the situation with people without full legal capacity, even though it is not directly mentioned in the law. Finally, all this could be considered as unconstitutional, since the Charter of Fundamental Rights and Freedoms is in the Article 19

² Černý, Petr and Lehká, Markéta: *Zákon o právu shromažďovacím. Komentář*. C.H.Beck, 2010.

ruling that *“The right of peaceful assembly is guaranteed.”* The only exception is regulated in the section 2 of this Article, which states that this freedom could be limited only if the measurements taken are necessary in the democratic society for the protection of rights and freedoms of others, protection of public order, health, morals, property, or the state safety. The assembly cannot be conditioned with the authorization requirement. The interpretation of this provision bringing the age or citizenship requirement of the organizer as indispensable is hardly deemed to be proportional.

RIGHTS AND OBLIGATIONS OF THE ORGANIZERS: Article 6 stipulates that each organizer has to ensure that the whole assembly will be kept peaceful. For preserving this, he is allowed and also obliged to do all necessary steps and when being unsuccessful, he shall ask the regulatory authority for the help. Besides that, he is obliged to ensure the presence of co-organizers above 18 years of an age, necessary according to the type and extent of the assembly. This provision is a limitation towards the protests of infants where is no possibility of fulfilling this condition. Article 7 is regulating participants of the assembly saying that they are obliged to follow the instructions of the organizer and co-organizers and abstain from such conducts that could disrupt the peacefulness of the assembly. They are not allowed to hold guns, explosives or other objects that could cause a physical harm.

LIABILITY OF THE ORGANIZERS: If the organizer does not submit the notification, fails to preserve peacefulness of the assembly without demanding for immediate help or if he does not provide the instructions to the participants he might be held liable for committing an administrative contravention against the freedom of assembly. Consequently, there are several situations mentioned in the Article 14, where a participant might be held liable for committing this contravention, for example for his inappropriate behavior towards other participants or using facial covers restraining to identify them. The punishment has a form of pecuniary fine from 5000 up to 10 000 Czech crowns (€180- 360, \$250- 500).

RESTRICTIONS ON THE ASSEMBLY: In case of ineligible organizer, unlawful purpose of the assembly or banned location notified assemblies could be prohibited by the regulatory body prior to their presumed starting time. The unlawful purposes of the assemblies listed in the Article 10 are for example those denying personal, political or other rights and freedoms of the citizens because of their nationality, sex, race, religion etc. The banned location could be a place that is potentially dangerous for the participants. The decision about the prohibition of the assembly has to be taken immediately, within 3 working days from the delivery of the notification. Consequently, Article 11 gives organizer a right to appeal within 15 days from issuing this decision to the Court which has to deliver a decision in the shorten period of 3 days. If the Court rules that the assembly is allowed, organizer shall arrange it within 30 days from this judgment.

Already arranged assembly could be dissolved in situations specified in the Article 12, one of them being a case of holding a previously prohibited assembly. A notified and approved assembly could be dissolved when its purpose noticeably differs from the anticipated one. The dissolving authority is either a representative of the regulatory body or the police officer. Even here is given to organizer or to participants a right to appeal. According to Article 13 they can file the complaints against the unlawful dissolution within the period of 15 days to the administrative body superior to the regulatory authority.

IMPLEMENTATION PRACTICE: Generally, there are not many cases of breaching this Act, however regulatory authorities are sometimes acting arbitrary when prohibiting or dissolving an assembly. In a view of how all these provisions work in practice, some of the decisions of the regulatory authorities could be considered as restrictive. Most commonly, they are prohibiting the assemblies without having justifying reasons to do so. In these situations organizers are often using a possibility to appeal to the Court representing the superior authority. Courts are using more proportional interpretation of the Act on Assemblies in order to protect this fundamental right. One of these cases is a judgment of the Supreme Administrative Court from 2011, allowing the assembly of the Labor party, more precisely of the Labor's youth. They were aiming to celebrate the Labor's day by organizing a parade on the 1st of May as it was previously celebrated in the former regime. The regulatory authority was not successful with the claim that period of 3 days for proving that this parade is heading to propagate extremism and violence is too short and thus failed to bring the relevant evidence. Court ruled that the decision of the regulatory authority is too restrictive towards the rights of citizens to assemble and allowed the parade.³

Arranged assemblies are also objects of the restrictions from the authorities. In most of the cases it is through the unlawful intervention of the police. One of the recent cases from 2011 was held unlawful by the Regional Court in Plzen. The Court ruled that police wrongfully qualified the statement of facts when it unlawfully dissolved the blockade of demonstrators protesting against the wood chopping without relevant permission in the protected forest area of *Šumava*. There is also one unfinished criminal procedure taking place that is linked to this blockade of one of the participants being accused of attacking the police officer. According to the information portal Econnect, focusing on the news from civil society, it is considered to be a show trial.

NATIONAL LAWS AFFECTING THE SECTOR:

- *Charter of Fundamental Rights and Freedoms No. 2/1993 Coll.*, available at: <http://www.usoud.cz/en/charter-of-fundamental-rights-and-freedoms/>
- *Act No. 84/1990 Coll. on Freedom of Assembly*, available at: http://www.mu-mohelnice.cz/VismoOnline_ActionScripts/File.ashx?id_org=9803&id_dokumenty=210747
- *No. 40/2009 Coll. Criminal Code*, available at: <http://www.zakonyprolidi.cz/cs/2009-40#cast2>

ASSEMBLY RELEVANT NEWS:

- Web portal Econnect: <http://zpravodajstvi.ecn.cz/>
- Movement for Direct Democracy: <http://www.hzpd.cz/tiskove-zpravy/>
- <http://www.romea.cz/en/news/czech/czech-republic-prague-14-calls-on-citizens-not-to-interfere-with-neo-nazi-assembly-and-march-today>

³ This trial has been supported by The League of Human Rights, source of information: <http://llp.cz/2011/03/zakazat-pochod-neni-reseni/>