



MONITORING  
RIGHT TO

# FREE ASSEMBLY

**Country Report  
2016-2017**

**Kosovo**





# **Monitoring Right to Free Assembly**

## **Kosovo Country Report**

### *2016-2017*

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## Brief Description of the Initiative

There is an increased number and intensity of protests and violations around them in the Western Balkans and Eastern Partnership region. To ensure that freedom of assembly rights are better understood and advocacy efforts are strengthened, the European Center for Not-for-Profit Law (ECNL) works with local experts from nine countries (Albania, Armenia, Belarus, Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Kosovo, Serbia) on mapping the existing environment for assembly in their respective countries. This assessment is a brief overview of topical issues and recent developments related to freedom of assembly in **Kosovo**.

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## SUMMARY

- The Law no. 03/L-118 on Public Gatherings has never been amended since it was approved in the beginning of 2009 even though certain institutions (e.g. Ombudsperson) have recommended such amendment. The law has also been recommended for amendment by civil society arguing that certain dispositions need to be changed in order to be in line with the International Human Rights principles pertaining to assemblies;
- The Law on Public Gatherings does not have any secondary legislation (sub-legal acts) which have been drafted after the law has entered into force aimed at facilitating the implementation of the law and a better transposition of the law in practice by several actors. The secondary legislation which would further regulate certain aspects of assemblies would be also easing the role of Police to play before, during and after the assembly. It also would be streamlining the legislation applicable in such cases;
- The Law on Public Gatherings provides for eight types of assemblies and does define only three types such as public gathering, protest and demonstration. This creates confusion for those organizing or aiming to organize public gatherings since they would not know based on the law which type their assembly belongs to and what are the steps to be followed according to the type of assembly (such as notification to be provided for the assembly, time in advance to be delivered to Police, and so on);
- The Law on Public Gatherings provides the right to organize assemblies to all Kosovo citizens but in a way this restricts the right of those who do not have Kosovo citizenship to exercise this right. This finding has been several times pointed out by the Monitoring Matrix on Enabling Environment for Civil Society Development, report on Kosovo, but has not been taken into account so far;
- Given the definition of the European Convention on Human Rights (ECHR) on freedom of assembly (Article 11) and the definition of the Law on Public Gatherings in Kosovo which limits the right of freedom of assembly to the citizens of Kosovo, it can be considered that the law is not ECHR compliant;
- The Law on Public Gatherings requires in each notification template (for public gathering, protest and public manifestation) to tell what the purpose of the assembly and if the notice has not been provided to Police in due time, it represents a ground to forbid the assembly. Moreover, the law requires a threshold of at least 20 people participating in order to be organized an assembly. This requirement is in contradiction with the Guidelines on Freedom of Peaceful Assembly according to which guidelines the number of participants is not defined (and it is not a criterion for a gathering to be considered a public gathering);



- The Law on Public Gatherings puts a few obligations to the organizer and duty guards (stewards) which are not in compliance with international related documents. According to the law, the duty guards are responsible for the protection of properties that may be damaged by the participants during the public gathering. Moreover, duty guards should immediately hand in to the police the participants or any other person violating peace and order.



# BACKGROUND INFORMATION

## LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

There are a number of legislative dispositions and institutions which are involved at various stages when it comes to holding an assembly or participating in an assembly in Kosovo. Since organizing and participating in an assembly is one of the fundamental rights and freedoms, this right is at first covered by the Constitution of Kosovo and later on detailed in primary legislation. According to Article 43 on Freedom of Gathering of the Constitution of Kosovo, *“freedom of gathering is guaranteed. Every person has the right to organize gatherings, protests and demonstrations and the right to participate in them. These rights may be limited by law, if it is necessary to safeguard public order, public health, national security and the protection of the rights of others”*.<sup>1</sup> Moreover, there are a number of international agreements and instruments which have direct applicability in Kosovo. According to Article 22 of the Constitution of Kosovo, *“human rights and fundamental freedoms guaranteed by the following international agreements and instruments<sup>2</sup> are guaranteed by this Constitution and are directly applicable in the Republic of Kosovo, and in case of conflict, have priority over provisions of laws and other acts of public institutions”*. The importance of this paragraph is threefold: 1) such international instruments cover in a way or another the right to assembly, 2) find direct applicability in Kosovo and therefore 3) overrule the national primary legislation over assemblies or public gatherings as the law in Kosovo stands for.

### ***Legislative framework***

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The Law on Public Gatherings in Kosovo is the main piece of legislation which regulates a number of elements related to assemblies. The law itself is approved by the Assembly in December 2008 and published in the official gazette in April 2009. According to this law, any citizen of the Republic of Kosovo has the right to organize and participate in public gatherings according to the rules set out by this law. However, given the definition of the European Convention on Human Rights (ECHR) which stipulates that “everyone has the right of freedom of assembly”<sup>3</sup> which does not limit this right to citizens (nationals) of one particular country, the Law on Public Gatherings may be considered not to be ECHR compliant. Besides the law, there is no secondary legislation which later has been drafted pursuant to the law. The law defines the public gathering as well as the protest and

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<sup>1</sup> Constitution of the Republic of Kosovo, Article 43: <http://bit.ly/2cdoyow> (last accessed: August 22, 2017).

<sup>2</sup> Article 22 of the Constitution lists eight international agreements and instruments: 1) Universal Declaration of Human Rights; 2) European Convention for the Protection of Human Rights and its Protocols; 3) International Covenant on Civil and Political Rights and its Protocols; 4) Council of Europe Framework Convention for the Protection of National Minorities; 5) Convention on the Elimination of all Forms of Racial Discrimination; 6) Convention on the Elimination of all Forms of Discrimination Against Women; 7) Convention on the Rights of Child and 8) Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

<sup>3</sup> European Convention on Human Rights (ECHR), Article 11 – Freedom of assembly and association, available at: <http://bit.ly/1foTq0D> (last accessed: November 06, 2017).



demonstration in the section of definitions, but when it provides the types of public gatherings, it lists a number of eight types of public gatherings, such as: gatherings, manifestations, marches, protests, public celebrations, peaceful commemorations, manifestations and events of similar nature and demonstrations<sup>4</sup>. When it comes to the right of people to assembly, the law makes a mistake when it stipulates that every citizen of Kosovo has the right to organize or take part in assemblies, thus implying that this right is not to be exercised by non-nationals of Kosovo or those that are not citizens of Kosovo. The law states that *“every citizen of Kosovo regardless of sex, race, colour, religion, etc. has the right to organize and participate in public gatherings according to the rules set out in this law”*.<sup>5</sup> This loophole of the law has also been put forward by the Monitoring Matrix on Enabling Environment for Civil Society Development of 2015<sup>6</sup> which calls for an amendment of the law. However, since it has entered into force two weeks after it was published in the official gazette in April 2009, no amendments to its dispositions to regulate either this or other aspects put forward by the recommendations of the Ombudsperson reports have not been made so far.

There are no formal procedures when it comes to when a gathering should be considered as such besides that the law puts a threshold of 20 people as the number of people taking part in order for a gathering to be considered an assembly and obliges the organizer or the representative of the gathering to notify the competent bodies (meaning the Police) for any public gathering to take place. Based on this, it seems that the threshold criteria and the obligation to notify the authorities that a public gathering is to take place represent the criteria for a gathering to be considered an assembly. Moreover, always according to the Law on Public Gatherings in Kosovo, the organizer is responsible to maintain and organize the order of the public gathering. In terms of responsibilities and requirements imposed on the organizer that the law puts forward, the organizer is responsible for a number of issues around assemblies, such as: to undertake all measures for keeping peace and order at the public gathering, to secure a sufficient number of duty guards, to undertake all measures for the participants to come unarmed and not to cause damages, to protect the properties that may be damaged during the public gathering, to hand in to the police the participant or any other person violating peace and order, etc.<sup>7</sup>

Quite similar to the grounds for restricting the assembly provided by the Constitution of Kosovo, the Law on Public Gatherings provides that a public gathering may be restricted if it endangers order, peace and public security, freedom and rights of other people, moral and health.<sup>8</sup> However, there are other dispositions in the law which enables Police to restrict and

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<sup>4</sup> Law no. 03/L-118 on Public Gatherings, Article 3.

<sup>5</sup> Law no. 03/L-118 on Public Gatherings, Article 3.

<sup>6</sup> KCSF, Monitoring Matrix on Enabling Environment for Civil Society Development, Kosovo Country Report 2015, page 20: <http://bit.ly/2v5yg5p> (last accessed August 23, 2017).

<sup>7</sup> Law no. 03/L-118 on Public Gatherings, Articles 5, 9 and 12.

<sup>8</sup> Law no. 03/L-118 on Public Gatherings, Article 4.



even forbid the organization of an assembly, for instance, the Kosovo Police may forbid an assembly if the notice for it was not made on due time<sup>9</sup>. In terms of restrictions, there are other reasons related to the location and aims of the gathering which give the right to Police to restrict the assembly. In terms of the location, a public gathering is not allowed: 1) near hospitals and locations where first aid vehicles might be obstructed and the quietness of hospitalized persons might be spoiled, 2) near nursery schools and primary schools during the school hours, 3) in national and natural protected parks except when the public gathering has the purpose of protecting the environment, 4) near monuments and premises of high cultural and historical value with an aim of protecting them from possible damages, 5) in crossroads and highways in order not to obstruct the movement of vehicles and in other locations where, taking into account the time, number of participants and the purpose, the gathering might seriously disturb a large number of citizens. In terms of the aims as well as content of the speeches, there is another list of other restrictions to assemblies, such as: 1) if public gathering is used to incite violence, inter-ethnic or religious hatred or other incitement forbidden by the law, 2) if it is foreseen to be held in a place that is prohibited under this law, 3) if there are substantial reasons that the gathering might be used for violence, and 4) a spontaneous gathering having no organizer, which may turn into violent gathering.<sup>10</sup>

Notification for organizing the gathering or assembly is always required in the Law on Public Gatherings in Kosovo but when it is a "must" and when "should" differs depending on the type of the assembly. According to the law, the notification for the organization of the public gathering shall be made at Kosovo Police and at least 72 hours before the public gathering is held. The law provides that police authorities shall inform the organizer no later than 48 hours prior to gathering on permission or prohibition of the public gathering. However, if no decision on prohibition is issued, the gathering should be considered permitted.<sup>11</sup> The flexibility of notifying ("shall notify") or not the police about the assembly is different when it comes to public protests and public manifestations. According to the Law on Public Gatherings in Kosovo, the organizer of the protest must inform about the protest at least 72 hours in advance and a number of elements of the notification including the purpose of the protest are listed in the law as elements of the notification. Here, besides the above mentioned grounds for police to restrict the assembly, if another protest or public gathering is allowed at the same place and time, the police may refuse the request for organizing the public protest. The time for the communication of this decision to the organizers of protest is shortened to 24 hours. The notification for a public manifestation is also a "must" and even 96 hours notice must be given before the public manifestation takes place. If the police consider that for any of the reasons or grounds of restrictions provided above, the public manifestation should be prohibited, then it communicates that decision to the organizer 48 hours prior to the organization of the assembly.<sup>12</sup> An exception to the three cases provided

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<sup>9</sup> Law no. 03/L-118 on Public Gatherings, Article 8.

<sup>10</sup> Law no. 03/L-118 on Public Gatherings, Article 8.

<sup>11</sup> Law no. 03/L-118 on Public Gatherings, Article 6.

<sup>12</sup> Law no. 03/L-118 on Public Gatherings, Articles 16, 17 and 18.



above is represented by the urgent gatherings which depending on the circumstances may be held without respecting the terms of 72 or 96 hours notifications, but necessarily must submit a notice in writing containing also the reason of this urgency. The notice should be given no later than three hours before the gathering takes place.<sup>13</sup>

Besides the Law on Public Gatherings, it is also of interest to briefly provide the stance of the Criminal Code of Kosovo and Law on Police regarding assemblies. The Criminal Code of Kosovo deals with assemblies only as far as preventing or hindering an assembly is concerned. According to this Code, *“whoever, by use of deception or in any other way, prevents or hinders the convening or holding a public meeting<sup>14</sup> to which persons are entitled by law shall be punished by a fine or by imprisonment up to one (1) year. If the offence is committed by an official person abusing his or her position or authorizations, the perpetrator shall be punished by imprisonment of up to two (2) years”*.<sup>15</sup> In relation to the Law on Police, it is of interest about assemblies as far as the video, audio recording and photography used by Police in a public gathering are concerned. According to this law, the *“Kosovo Police has the power to use video and audio recording and photography to observe and collect information at a public gathering when there is reasonable justification to believe that the public gathering will endanger persons or property”*.<sup>16</sup> One good legal disposition when it comes to recordings of police at the public gathering is that these recordings cannot be retained longer than thirty (30) days except when after the inspection it is determined that such recordings contain evidence of criminal activities.<sup>17</sup>

### ***Institutional framework***

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There is a range of institutions/agencies which are involved at various stages when it comes to assemblies organized and held in Kosovo. From the most up to the least involved, a list of such institutions may have the following order: Kosovo Police, Basic Court, Ombudsperson, and the Committee on Internal Affairs, Security and Supervision of Kosovo Security Force (KSF). Depending on the developments and circumstances in case by case basis, the Police Inspectorate may come into play by investigating the behaviour of police during the assembly, the Health care institutions in case of people injured, etc. Kosovo Police responsibilities derive mainly from the Law on Public Gatherings and very little from the Law on Police. According to the Law on Public Gatherings<sup>18</sup> in Kosovo, the Kosovo Police is the

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<sup>13</sup> Law no. 03/L-118 on Public Gatherings, Article 14.

<sup>14</sup> The Criminal Code in the English language uses this term “public meeting” but the same Code in the Albanian language uses the exact term as in the Law on Public Gatherings, “public gathering” so the latter is taken into consideration since we believe that this is a matter of translation from Albanian to English language.

<sup>15</sup> Code No. 04/L-082 Criminal Code of the Republic of Kosovo, Article 207: <http://bit.ly/2w7iwfy> (last accessed: August 24, 2017)

<sup>16</sup> Law no. 04/L-076 on Police, Article 25, point 2: <http://bit.ly/2kn4WjX> (last accessed: August 24, 2017).

<sup>17</sup> Law no. 04/L-076 on Police, Article 25, point 4.

<sup>18</sup> Law no. 03/L-118 on Public Gatherings: <http://bit.ly/2ipZYEq> (last accessed: August 23, 2017).



authority which is involved in the whole cycle from the notification to organize the assembly, giving the authorization to the organizer of the assembly, restricting and even forbidding the assembly, providing security measures when need be until the end of the assembly. The Law on Public Gatherings in Kosovo does not mention the Ministry of Interior in Kosovo, but the Kosovo Police in fact is an agency of the Ministry of Interior. As much as this institutional structure implies, we can say that the Ministry of Interior is involved in the process. However, given the organizational structure of the Ministry of Interior, besides a department on public safety which nevertheless does not have any divisions related directly to assemblies, the Ministry does not have any other structure which deals with assemblies at any stage. On the other hand, based also on the organizational structure, the Kosovo Police shows another story and level of involvement in assemblies. Kosovo Police is organized around five departments, out of which the Department of Operations with its internal offices and units plays the biggest role around assemblies. This department's second division is that of Division of Specialized Units which among others deals with *"controlling of peoples crowds during various manifestations, including: public gatherings, cultural-sport manifestations, and protests and demonstrations"*<sup>19</sup>.

According to the Law on Public Gatherings in Kosovo, another institution which may be involved in the process of assemblies is the Court. Based on the Law on Courts<sup>20</sup>, the courts are organized in seven regions which are formally called Basic Courts and then the Basic Courts have their branches in each municipality. Basically the role of the court according to the Law on Public Gatherings stands on the review of the decision of the authority (in this case of Kosovo Police) if the organizer of the public gathering is not satisfied with the decision of the authority. For instance, the Kosovo Police may forbid organization of a public gathering according to the grounds put forward by the law, and if the organizer or the representative of the public gathering is not satisfied with the decision of Kosovo Police, he/she may refer to the court. In this case, the court shall decide on a fast track procedure. There is no information how many such cases the court has and what the rulings are. However, besides these cases, the court may be involved if one or more persons would be detained and follow the procedures according to the Criminal Code and Criminal Procedures Code in Kosovo.

Ombudsperson Institution is another on the chain of institutions which has a role to play around assemblies. Given the Constitution of Kosovo which defines the role and competencies of the Ombudsperson, *"the Ombudsperson monitors and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities"*.

<sup>21</sup> Moreover, according to the Law on Ombudsperson, this institution has the *"power to investigate complaints received from any natural or legal person related to assertions for*

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<sup>19</sup> Kosovo Police, Department of Operations, Division of Specialized Units: <http://bit.ly/2wkaWAZ> (last accessed: August 22, 2017).

<sup>20</sup> Law No. 03/L-199 on Courts, Chapter III: <http://bit.ly/2wuowlu> (last accessed: August 22, 2017).

<sup>21</sup> Article 132 of the Constitution of Kosovo.



*violations of human rights envisaged by the Constitution and other international instruments of human rights....*"<sup>22</sup> Among other reports such as ex-officio and special reports, the Ombudsperson Institutions compiles annual reports where it addresses the right or the freedom of assembly. However, the last two annual reports of 2015 and 2016 do not address the freedom of assembly as a right guaranteed by the Constitution of Kosovo. The previous reports such as of 2014 and 2013 address the freedom of assembly and provide recommendations to the Assembly of Kosovo to change certain dispositions of the Law on Public Gatherings. Specifically, the 2014 annual report recommends the Assembly of Kosovo to change the Article 12, point 3 which has to do with the responsibilities of the stewardship service but since the Law on Public Gatherings has not undergone through any amendments yet, it is considered that Ombudsperson recommendations have been ignored. Moreover, the same report recommends the Kosovo Police to set the communication contact with the organizers of the public gathering for information and planning purposes that have an effect in the organization and development of the assembly.<sup>23</sup> It is worth noting that according to its annual reports, this institution has not received any complaints on the restriction of assembly during 2014 while it has received one complaint during 2013<sup>24</sup>.

Committee on Internal Affairs, Security and Supervision of KSF does not have any particular role on the assemblies except that this committee has the power to invite the Minister of Interior and the Director General of Kosovo Police in committee meetings to report in front of the MPs whenever the committee deems it necessary. In this regard, upon misbehaviour of Kosovo Police during an Assembly, the respective committee may invite the Minister and the Director General to report in the committee in front of the MPs. Given the Rule of Procedure of the Assembly of Kosovo, this committee discusses upon all issues which relate to the internal security/affairs in Kosovo.<sup>25</sup>

Private security companies licensed from the Ministry of Internal Affairs (MIA) have some role to play in relation to assemblies, but assemblies of a different nature, such as gatherings of people in a stadium for a football match or a concert held in any hall and so on. The idea is that the private security company will check the entries and exit points in such places but will not have any other roles to perform. If in any case the situation deteriorates, they call the Police to put the situation under control. Private security companies are licensed based on the law<sup>26</sup> and basically the license for Security Services of Public Gathering is one the licenses provided by the MIA Department of Public Safety, Division of Private Security Services.

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<sup>22</sup> Law No. 05/L-019 on Ombudsperson, Article 16: <http://bit.ly/2vWXgW> (last accessed: August 23, 2017).

<sup>23</sup> Ombudsperson annual report for 2014, page 68: <http://bit.ly/2xbKiYA> (last accessed: August 23, 2017).

<sup>24</sup> Ombudsperson annual report for 2013, page 78: <http://bit.ly/2xbZBAk> (last accessed: August 23, 2017).

<sup>25</sup> Rules of Procedure of the Assembly of Kosovo, page 51: <http://bit.ly/2xrrVOA> (last accessed: August 23, 2017).

<sup>26</sup> Law no. 04/L-004 on Private Security Services: <http://bit.ly/2xm3czm> (last accessed: October 6, 2017)



Private companies which have been licensed over the past year to provide security services in public gatherings is the following.<sup>27</sup>

**Table 1:** the number of private security companies which provide private security services in public gatherings in Kosovo

Years	Number of companies
2017	2
2016	7
2015	4
2014	1

Source: Ministry of Internal Affairs, Department of Public Safety, Division of Private Security Services

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<sup>27</sup> Meeting with Agron Retkoceri, Head of Division for Private Security Services, September 21, 2017



# OVERVIEW OF THE RIGHT TO FREE ASSEMBLY IN 2016-2017

## **MAIN DEVELOPMENTS RELATED TO FREEDOM OF ASSEMBLY IN KOSOVO IN THE RECENT YEARS**

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There are several cases of assemblies which have been important for the study in terms of both the scale and development of the assembly and the issues related to what people assembled for. Beginning with the latest one, it is the protest of citizens but also called from opposition political parties which took place in January 2015 calling for the resignation of one of the Government Ministers. The second assembly is the protest of students and civil society organizations of February 2014 in front of the Rectorate of the University of Prishtina calling for the resignation of the Rector, and the third case is the protest of citizens and civil society organizations in front of the Kosovo Energy Distribution Services (KEDS) against the increase of price of electricity.

The first protest which happened mainly on the 24<sup>th</sup> and 27<sup>th</sup> of January 2015 was held under the call for the resignation of the Minister for Communities and Return in the Government of Kosovo. However, the protest had also another reason or issue why people assembled for, that of the privatization of the socially-owned enterprise called "Trepça". With these two requests, the protest's slogan became "the minister out and Trepça is ours". The two issues are not connected to one another but both became the request of the citizens which to a large extent were driven by opposition political parties. The issue why people were calling for the resignation of the Minister was that he had made derogatory remarks against a group of people in another city in Kosovo. According to the Freedom House report which is based on evidence from domestic sources of information, "the opposition parties led massive protests that left over 170 protestors and police injured, forcing the Government to sack the Minister from his position."<sup>28</sup> In relation to the other issue, that of Trepça, the Government saved the enterprise from liquidation and included in the Law on Public Enterprises and in fact changed its status from a socially-owned enterprise to a public enterprise regulated with the Law on Public Enterprises. The protest gathered thousands of people and became violent after protestors threw stones as well as Molotov cocktails at Police and Government building and the Police responded with tear gas and water cannon to disperse the protestors.

There are different estimations regarding the number of people injured and arrested. According to the Balkan Transitional Justice which refers to the data from the hospital in Prishtina and where the Freedom House report on Kosovo is based too, there were 107 policemen, 53 protestors and 10 others injured in the assembly. With regard to the number of people arrested, according to this source of information from the media, the six hour unrest near the Government building during protests in central Prishtina resulted in 120

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<sup>28</sup> Freedom House, Nations in Transit, section on Kosovo: <http://bit.ly/2xiRCaV> (last accessed: October 5, 2017).



arrests.<sup>29</sup> According to the Voice of America news which refers to the data from Police, 19 policemen and four protestors were injured while the number of protestors arrested by the Police is 22<sup>30</sup>. In terms of how the Police behaved during the protest and if there was any excessive use of force or any other element which is not in line with the standards of actions by Police in such situations, it is work referencing to the Country reports on Human Rights Practices for Kosovo of the U.S. State department. According to such a report *"the Police Inspectorate of Kosovo (PIK), an independent body within the Ministry of Internal Affairs (MIA), has responsibility for reviewing citizen complaints about Police behavior. PIK investigated 40 charges of excessive use of force by Police in dispersing a demonstration on January 27. Police used tear gas and water cannon after being attacked by protestors throwing stones and Molotov cocktails. PIK completed the investigations and, in consultation with the prosecution office, submitted four cases to Police's Department for Professional Standards for disciplinary action. PIK's report listed nine cases that contained elements of criminal mistreatment and causing bodily injury while performing official duties. As of December 7, the prosecutor's office was reviewing these nine cases"*.<sup>31</sup>

The second protest, that of students, citizens and civil society representatives in front of the Rectorate of the University of Prishtina has been much smaller in all aspects compared to the previous one and also there are no reports available criticizing the Police behaviour during the assembly. The protest took place in front of the Rectorate in February 2014 and it was developed during a few days, but two days are more critical which have also been covered by the Ombudsperson Institution in Kosovo. In fact, the protestors were calling for the resignation of the Rector since based on a series of articles in one of the daily newspapers in Kosovo, the Rector had done plagiarism and more importantly had falsely published in a fictive academic journal. The protest was developed mainly on the 5<sup>th</sup> and 7<sup>th</sup> of February 2014 and both days have been monitoring by Ombudsperson Institution. According to the reports of this institution, there were between 600-800 protestors in the assembly which took place on the 5<sup>th</sup> and the assembly was calm and without any clashes between the protestors and the Police.<sup>32</sup> The situation has deteriorated on the 7<sup>th</sup> of February where around 800-1000 participants were gathered in front of the Rectorate calling for the immediate resignation of the Rector. The protestors tried to break the Police cordon and enter the Rectorate but the Police reacted with spray and also backed by special Police units. According to the report of Ombudsperson, the injured people were treated with milk from other protestors and that the ambulance had arrived fifteen minutes later. The Police had

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<sup>29</sup> Balkan Insight, Balkan Transitional Justice: <http://bit.ly/2xj8arS> (last accessed: October 5, 2017)

<sup>30</sup> Voice of America, news titled: Incidents during the protest in Prishtina: <http://bit.ly/2yZL4sq> (last accessed: October 5, 2017).

<sup>31</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor, Kosovo 2015 Human Rights Report: <http://bit.ly/2y1zvD4> (last accessed: October 5, 2017)

<sup>32</sup> Monitoring report of the Ombudspeson, February 6, 2014, which is in fact an internal document and has not been published so far; Access to this report has been given after an official request for access to public information.



arrested 31 protestors who have also been visited in the Police Station by the Ombudsperson, and according to the report drafted for this case based on interviews conducted with the protestors within the Police Station, the behavior of Police during the way to the station as well as in the Police station has been correct and no complaints have been registered. The protestors have been given the medical assistance and been told about their rights in that case<sup>33</sup>. Such protests have led to the resignation of the Rector who after a series of protests at the same place, had resigned from the position as a Rector of the University of Prishtina.

The majority of protests happen in the capital city of Kosovo, Prishtina, and mainly in the main boulevard towards the Government building in central Prishtina. According to annual reports of Police, the number of protests and public gathering in the last four years has been as the following.

**Table 2:** Number of protests and public gatherings along the years<sup>34</sup>

Year	Number of protests and public gatherings
2017 (so far)	161
2016	251
2015	344
2014	268
2013	342

Source: Kosovo Police annual reports of 2016, 2015 and 2014

Based on the annual reports from Kosovo Police, the number of protests according to the places where they have been taking place is registered for the period 2013-2014. The following table depicts the situation as the following.

**Table 3:** number of protests in seven regions in Kosovo

Regions	Prishtina		Prizren		Peja		South Mitrovica		North Mitrovica		Gjilan		Ferizaj		Total	
Comparative period	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014
Number of protests	149	151	53	44	40	20	31	16	16	13	16	4	37	20	342	268

Source: Kosovo Police annual report 2014

<sup>33</sup> Monitoring report of the Ombudsperson, February 10, 2014, which is in fact an internal document and has not been published so far; Access to this report has been given after an official request for access to public information.

<sup>34</sup> From the reports of Kosovo Police, the Police collates and in fact numbers the public gatherings in Kosovo under the name "protests and public gatherings".





## Legislation and implementation

***Have there been any changes (or proposals for change) to the law relating to freedom of assembly in the timeframe covered by this report?***

***Have there been any positive / negative developments in relation to how the law is administered (including policing of assemblies)?***

There have been no developments in the last years in relation to changing and amending the Law on Public Gatherings in Kosovo. According to the Kosovo Police feedback in the questions related to legislation concerned in dealing with assemblies, the Law on Public Gatherings is one among the legislative acts which are followed in dealing with assemblies. Moreover, there have not been any political or social initiatives to change the law including any initiatives from CSOs which in their portfolio cover the human rights issues and which are to some extent active in this regard. The recommendations of the Ombudsperson Institution which repeatedly during two years (2013-2014) have reiterated the amendment of the Law on Public Gatherings, specifically the law dispositions which concern the responsibilities of the organizers during the assembly, have not been taken into account. It is worth noting that annual reports of Ombudsperson Institution which contain the respective recommendations are submitted to the Assembly including the Committee on Human Rights, Gender Equality, Missing Persons and Petitions and so far these recommendations have been ignored.



## Policing of Assemblies

***Do the police usually engage in forms of dialogue/communication with organisers before, or during an assembly?***

***Do the police generally facilitate and enable spontaneous / non-notified assemblies; simultaneous assemblies; counter protests; peaceful assemblies that block roads / traffic; sit-ins or occupations of buildings?***

***Do the police ever use force at assemblies? What is the range of weapons and the types of other equipment used? Is there generally medical assistance available to people who might need it?***

***Are undercover police ever used at assemblies?***

***What types of surveillance & imagery collection do the police use at assemblies? Do the police permit participants in assemblies to video / film / photograph police actions?***

As also provided above about the role of Police at assemblies according to the Law on Public Gatherings, the police's role is of crucial importance during the whole process, from the organization of the assembly until it is ended. The Police engage in communication with the



organizers of the assembly in a collaboration of police activities which aim at keeping and maintaining peace and order and public safety during and after the assembly. This is the reason why the Police engage in communication with the organizers of the assembly including the regulation of the traffic by securing that organizers have the necessary conditions to be safe in traffic while protesting. According to the Police's feedback, it is not known if the Police engages in communication after an assembly has ended and also what is the role of Police if spontaneous and non-notified assemblies occur, simultaneous, counter protests, assemblies which block roads/traffic and so on. On this particular question, according to the Police, there is a broad legislative framework<sup>35</sup> based on which the Police does its job but there is no concrete answer to the specific question.

There have been cases when the organizers of the assembly have changed the time and place of the assembly but the Police has been flexible and has not imposed any restrictions on the organizers and the assembly has been managed according to the situation created on the ground. On the other side, in terms of the question when the Police may impose restrictions on the spot, according to the Police, the restrictions are imposed when the life is endangered as well as the public and private property is at stake. In relation to possibility of using force at assemblies, the Police reiterate that it conducts all its activities in such situations in compliance with the guidelines and positive laws in Kosovo. Neither had it provided the range of weapons it use at Assemblies but based on monitoring and observation of several assemblies, the range of weapons used have been: pepper spray, tear gas, water cannon and in some cases the batons.

Also based on observation, the Police use riot gear, barriers and shields but have never observed to have used horses and dogs. In cases of assemblies associated with people injured, there is generally medical assistance available to people who may need it and this is done via the Medical Health Centers and the Hospital. The police also use its own equipment for surveillance and imagery collection but it did not provide the types of such surveillance. However, the Law on Police provides that the recordings of Police realized during assemblies cannot be retained longer than 30 days except the cases when it is determined that such recordings contain evidence of criminal activities.<sup>36</sup> However, it is worth pointing out that except such dispositions in the Law on Police, this issue is not covered by the Law on Personal Data Protection or any other legislation pertaining to personal data protection at assemblies.

In cases when the Police detain the protestors, it provides them with their rights which they are entitled to in such cases as well as the provision of medical assistance. Such a situation is described also by the visit of Ombudsperson in the report of the 7<sup>th</sup> of February 2014 when he had visited a few participants of the protest against the Rector of the University of

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<sup>35</sup> Constitution of Kosovo, Law on Public Gatherings, Law on Public Order and Safety, Law on Minor Offences, Law on Road Traffic Safety, Law on Sport, Law on Local Governance, Law on Police, Criminal Code and Criminal Procedures Code and Guidelines, procedures and other internal regulations.

<sup>36</sup> Look at footnote 16 above for the law disposition.



Prishtina and that they were provided with health assistance and their rights in such situations.



## Media and Assemblies

*Is the mass media able to report freely at assemblies?*

*Are citizen journalists or non-accredited journalists able to report freely at assemblies?*

*Are human rights defenders and or monitors able to observe freely at assemblies?*

The mass media is free and able to report at assemblies. According to the Head of the Association of Journalists in Kosovo, there are no cases registered during the past two years when journalists have been restricted to cover and report on the assembly. Neither there is any case registered when any of the journalists have been arrested or when their equipment has been damaged. Each journalist (accredited or not) is free and thus able to cover and report on the assembly. However, sometimes the police have restricted certain journalists to enter a certain place when they actually have failed to show their IDs or other documents which may have proved their accreditation. Usually, the Kosovo Police before the assembly takes place designates a place for journalists where journalists can observe the protest from and also to increase the safety of the journalists.<sup>37</sup>

On the contrary, as far as the situation and position of journalists during protests is concerned, the protest of January 2015 (provided above), has registered a case when two journalists who report for the second channel in Serbian language of the Radio Television of Kosovo (RTK) have been attacked by the protestors. The incident was condemned by RTK, political parties and the Association of Journalists in Kosovo.<sup>38</sup> Besides the mass media, the social media is often used during the protest by citizens and whoever is interested to cover any moment or action on its own is free and able to use it. The main source of social media used is Facebook and can be used also for organizing purposes, during and after the assembly. The Government has not imposed any restrictions on the use of social media in relation to assemblies.

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<sup>37</sup> Written answers provided to a few questions by the Head of the Association of Journalists in Kosovo, Shkelqim Hysenaj, September 22, 2017.

<sup>38</sup> The incident has been reported among others by Voice of America and is available in Albanian language along with the whole story of the protests of January 2015: <http://bit.ly/2yZL4sq> (last accessed: October 5, 2017).





## Responsibility of Organisers

### ***Are the organisers of an assembly held liable for behaviour of others?***

#### ***If there is no identifiable organiser, how do the police respond?***

The Law on Public Gatherings stipulates a number of responsibilities for the organizers of assemblies. Many of these responsibilities are grouped under one article of the law and they include: responsibility of the organizer to undertake all measures for keeping peace and order during assemblies; the organizer must provide a sufficient number of duty guards; the organizer must undertake all measures that participants are unarmed and not causing damages; the organizer must create space for Kosovo Police vehicles, first aid, fire rescue vehicles during the time of gathering.<sup>39</sup> While some of them are logic and may be vested to the organizer such as creation of space for vehicles of first aid, fire rescue and else, it is confusing how the organizer can be kept responsible for the behaviour of others, such as the responsibility upon the organizer to undertake all measures that participants are unarmed and they will not cause any damages. Further to that, the organizer may be advising the participants how to behave and what are the principles/rules that they should follow before and during the assembly, but it is impossible for the organizer to control the behaviour of the participants in order not to cause any damages.

In relation to the damages that may be caused during assemblies, the law holds responsible the duty guards for the protection of properties that may be damaged by the participants during the assembly<sup>40</sup>. Furthermore, point three of the same paragraph goes even further in making responsible the duty guards who have been assigned in this role by the organizer. According to this, the duty guards should immediately hand in to the police the participants or any other person violating peace and order, carrying weapons or any other dangerous items or prohibited signs during the public gathering. Moreover, according to the law, the duty guards are entitled to control persons entering the location of a public gathering. Such dispositions are merely impossible to be followed or respected by the organizer and the duty guards also because the duty guards simply cannot hand over to the police the participant who may be violating order and it is also impossible for them to control persons entering the location of an assembly. In mass assemblies with thousands of people joining the assembly from various streets it is also impossible for the duty guards to control the mass, let alone controlling persons entering the location of the assembly.

In cases when there is no identifiable organizer, convey of messages from the police to the assembly is harder since there is no point of contact between police and the assembly

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<sup>39</sup> Law 03/L-118 on Public Gatherings, Article 9

<sup>40</sup> Law 03/L-118 on Public Gatherings, Article 12



particularly if the assembly tend to be violent. On the other side, there have been cases when the Police has conveyed messages to the participants (especially if the assembly has been big) through the organizer to stay calm and not provoke the situation. These cases have sometimes been successful and sometimes not since it is difficult to exercise control and authority over the mass and controlling over individuals entering the assembly is impossible.



## Detention and Prosecution

***Are people ever arrested or detained in advance of an assembly? If so, are they given easy access to legal advice or medical assistance?***

***Has there been an increase in the scale of punishments imposed on people arrested at assemblies in recent years?***

***Are the courts generally seen as neutral and impartial?***

There are several cases when during and after assemblies, participants to the assembly have been detained and prosecuted afterwards. One example which was also mentioned above was the protest in front of the Rectorate of the University of Prishtina where participants were calling for the resignation of the Rector. In this case, the Ombudsperson Institution has visited a few people who were detained at Police and the Ombudsperson finds out (according to case-specific report) that detainees haven't complained about the behaviour of Police, they were given the medical assistance and they were also briefed about their rights in this regard. However, in another report of the Ombudsperson Institution one year later for another protest, it provides that force has been used by Police during interviewing the detainees after the latter have been arrested as participants to the protest. According to the report, during 2015 the Ombudsperson Institution had visited/monitored seven detention centers in seven police stations.<sup>41</sup>

In terms of punishments and their scale, the data was not made available from the division on minor offences of the Basic Court of Prishtina<sup>42</sup>.

There are several reports which can be of reference in this report about the neutrality and impartiality of the justice system in Kosovo. One of the assessment reports is the European Commission country report published annually which includes assessments and developments in various sectors including functioning of the judiciary in Kosovo. According

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<sup>41</sup> Ombudsperson Institution, Annual report 2015 (no. 15), published in 2016, available at: <http://bit.ly/2At4uaa> (last accessed: December 04, 2017).

<sup>42</sup> GAP Institute has requested a meeting with the Division on Minor Offences of the Basic Court of Prishtina in early October (initially through the public communication officer), and the request was forwarded to the respective judge of the respective division, but there was no answer to our request. The same request was repeated in late October and to date there is no reply to our request.



to the latest report, in relation to the independence and impartiality of the judiciary, the legal safeguards on the independence and impartiality of judges and prosecutors are enshrined in the Constitution, the Law on courts and the legislation governing the judicial and prosecutorial councils. However, strong concerns remain with regard to public comments by high-level officials on ongoing court proceedings that are tantamount to interference with the judiciary and there are many corruption-related offences involving members of judiciary and prosecution service.<sup>43</sup>



## Accountability

### ***Is it possible to hold any state authorities (ministry, municipality) or the police to account for their behaviour and actions relating to assemblies?***

Accountability is an important process in democratic society relevant for various aspects including the accountability of state authorities engaged in assemblies. Among the relevant institutions which exercise control over the Police in cases of managing assemblies are the Police Inspectorate, the Court<sup>44</sup>, Ombudsperson and the Assembly of Kosovo.

Police Inspectorate is an independent body under the Minister of Internal Affairs, established by a separate law and independent from the Police<sup>45</sup>. Both Police and Police Inspectorate are independent bodies separate from one another under the direct control of the Minister of Internal Affairs. The Police Inspectorate has compiled various inspection reports over Police including the inspection report over Police for the management of the protest in January 2015. According to such a report, the Police behaviour is estimated as proportionate and in accordance with the circumstances created during the protest. However, in terms of the identification of Police forces engaged in managing this protest, the Police Inspectorate concludes that Rapid Reaction Units have not had identification signs and the Reserve Units also engaged to manage this protest are not trained in such situations of dealing the assemblies. In relation to investigations conducted in this case, according to case-specific inspection report, a number of 40 cases have been investigated: four of them have been sent to the internal investigation unit of Kosovo Police for disciplinary treatment, nine of them

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<sup>43</sup> European Commission, Kosovo 2016 report, available at: <http://bit.ly/2INRFCL> (last accessed: December 04, 2017).

<sup>44</sup> The Court did not answer in our request for a meeting to discuss over the accountability of police at assemblies but also about the prosecution, punishments and so on.

<sup>45</sup> Law no. 03/L-231 on Police Inspectorate of Kosovo, available at: <http://bit.ly/2BA999P> (last accessed: December 05, 2017).



have been sent to the prosecution since they can be treated as cases with elements of criminal acts while for the rest of 27 cases there were no elements of criminal acts found.<sup>46</sup>

Ombudsperson Institution is also an important independent institution which investigates cases where citizens may raise and direct to this institution such cases concerning the violation of human rights. As provided above, the Ombudsperson Institution has been and is in fact active including the violation of human rights in cases of assemblies where citizens may complain about the use of force by the police at assemblies and so on. As far as the Assembly is concerned, the Committee on Internal Affairs, Security and Supervision of Kosovo Security Force (KSF) may call the Minister of Internal Affairs and the Police General Director in Committee meetings to report on matters which the Committee sees them necessary.

When policing an assembly, the police officers are identifiable by a number and based on this identification, police officers are individually identified and investigation cases may be initiated for in cases of uses of force, if the force has not been proportionate or in general for the behaviour of police at assemblies.



## Overall Assessment

### ***Is the right broadly respected, facilitated and protected by the state?***

Based on the elaboration of the situation with the freedom of assembly in Kosovo, the overall assessment in this report can be summarized in the following points:

- The freedom of assembly in Kosovo is respected and the Law on Public Gatherings in Kosovo is largely in compliance with the European Convention on Human Rights. However, in certain dispositions as provided above, the law is not in line with international guidelines related to freedom of assemblies;
- The state facilitates the organization of the assembly, assemblies are held no matter if they are notified or not although the Law on Public Gatherings provides that notification can be a ground why Police may forbid an assembly;
- The media is free to report and they are protected by Police and assigned a place from where to report freely without any interference. So it is the case with social media, they are used by the protestors, organizers, either before, during or after an assembly and there is no restriction over them by the state;

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<sup>46</sup> Police Inspectorate of Kosovo, Inspection report no. 1/2015, available in Albanian language only:

<http://bit.ly/2As5EoH> (last accessed: December 05, 2017).



- The availability of data and information related to the whole process of assemblies, from the organization stages, cases of detention and prosecution in particular, is not satisfactory. The Police as the main player in managing an assembly publishes through the annual reports only the number of protests and public gatherings which it has registered during the last year;
- From the institutions involved at assemblies, the Court has been the least cooperative institution and has not accepted to discuss about the role of courts played in cases of prosecution after people are arrested from assemblies or in cases of accountability of Police at assemblies;
- The police officers are individually identified and there is a number of institutions which keep the police accountable for its behaviour at assemblies;



## RECOMMENDATIONS

Given the findings summarized and the elaboration along in this report, a number of recommendations can be put forward:

- The Law no. 03/L-118 on Public Gatherings has to be amended at least in the dispositions which have been provided in this report as points not in line with International Guidelines on Human Rights and Guidelines on Freedom of Peaceful Assembly;
- The Law on Public Gatherings should then have a title institution from the range of ministries which would place the law under its portfolio (for instance, the Ministry of Internal Affairs); As of today, the law does not have any Government institution which is the authority to either monitor its implementation, report on implementation to the Assembly and initiate its amendment;
- During the process of amendment, the above mentioned international guidelines should be seriously taken into account. Moreover, reports of civil society organizations should be also taken into account and as well as CSOs which have expertise on freedom assembly, should therefore invited to take part in the working group to amend the law;
- The Assembly of Kosovo, namely the Parliamentary Committee on Human Rights, Gender Equality, Missing Persons and Petitions and the Parliamentary Committee on Internal Affairs, Security and Supervision of Kosovo Security Force should jointly establish a working group to monitor the implementation of the Law on Public Gatherings;
- The Ombudsperson Institution should cover at least in annual reports the freedom of assembly and deliver recommendations for the Government and Assembly in relation to law implementation as well as monitor certain public gatherings in order to draft case-based reports and deliver to the appropriate institutions;
- The Kosovo Police should generally be more open to interested parties and CSOs to provide information about the management of assemblies from Police. Also, it should compile reports and information related to assemblies for the public and interested stakeholders besides the annual reports of Police which have very little information about public gatherings;
- The freedom of assembly should be taken and considered as a human right issue and treated from this perspective; included in the research and reports of human rights related civil society organizations; the freedom of assembly is not a security related issue even though the police have a big role to play;



- The role and duty of Police related to assemblies should be seen in terms of providing safety during assemblies, make sure that the situation is favourable for organizing the protest and also for the participants, and not that the public gathering is of concern and threat to public safety.