

CHALLENGES & RECOMMENDATION

MONTENEGRO

on Freedom of Assembly

PERMANENT PROHIBITION OF ASSEMBLIES



Legal framework limits freedom of assembly introducing permanent prohibition of assemblies in locations listed in the Law, which is not in accordance with the Constitution of Montenegro, nor with the international standards.



Existing limitations of place/location of the assemblies are in conflict with international standards, and it is recommended by the Venice Commission and the OSCE/ODIHR report on Monitoring of Freedom of Peaceful Assembly¹ that no blanket bans regarding places of public assemblies should exist.² Blanket restrictions, such as prohibiting all assemblies at locations, are not in accordance with the principle of proportionality.



The place and time of assemblies should not be restricted for specific locations and time. The Venice Commission explicitly stipulates that the burden of proof for restrictions on time and place for holding a particular assembly lies on the state (responsible bodies), and that restrictions need to be proportional to the situation.

International standard

How it should be implemented?

SIMULTANEOUS ASSEMBLIES & COUNTER ASSEMBLIES



Law does not recognize simultaneous assemblies or the counter assemblies.



If one or more organizers submits a notification to hold an assembly at the same time and at the same location or at locations that are close to each other, the Police should be obliged to carry out the assessment of possible risks and develop a strategy for securing all of them, without any discrimination between them. Thus, the fact that one assembly is notified to the Police should not be justification for a temporary ban on others. Such solutions are recommendations of the OSCE-ODIHR.³



Simultaneous assemblies should be recognized, allowed, and adequately secured without discrimination.



EXCESSIVE USE OF FORCE BY POLICE



There were several documented cases of excessive use of force by police officers towards participants of assemblies and there is a lack of institutional capacities to deal with such issues.



Excessive use of force by the police constitutes a violation of international human rights standards. According to the European Court of Human Rights, *“an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behavior”*.⁴



The police should be well educated on the legislative framework and the restrictions it allows, as well as continuously trained in order to increase their capacities to deal with stressful situations. The police force should also develop skills for non-violent conflict resolution. Any instances of use of force by the police should be independently investigated as part of a process of public accountability.

COMMUNICATION BETWEEN POLICE & ORGANIZERS



Police does not communicate well with the organizers the exit strategies for the citizens present after dispersing an assembly and using tear gas. This prevented the citizens in exercising their right to peacefully leave the assembly.



Such actions constitute a violation of international human rights standards. According to the European Court of Human Rights, *“an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behavior”*.⁵



The police should further develop tactics for dispersal of an assembly, which should be used very rarely. In addition, the police should work on maintaining effective communication with organizers during an assembly.



¹ OSCE/ODIHR Report *Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States*, December 2014, available at: <http://www.osce.org/odihr/132281?download=true>, p. 8

² *Compilation of Venice Commission opinions concerning Freedom of Assembly*, CDL 2012, p.21, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2012\)014rev2-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2012)014rev2-e)

³ The ODIHR and Council of Europe’s Venice Commission Guidelines on Freedom of Peaceful Assembly, <http://www.osce.org/odihr/73405?download=true>

⁴ ECtHR, *Ziliberberg v Moldova* (2004).

⁵ *Ibid.*

This material was produced under the project ‘The Western Balkans Assembly Monitor’ managed by ECNL which was made possible by the International Center for Not-for-Profit Law through the Civic Space Initiative, implemented in partnership with ARTICLE 19, CIVICUS: World Alliance for Citizen Participation, and the World Movement for Democracy.

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