

MONITORING THE RIGHT TO FREE ASSEMBLY

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2017
2018 ALBANIA

 #right2freeassembly



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I. EXECUTIVE SUMMARY

The right to organize and participate in a peaceful assembly is a constitutional right that enshrined the right of people to be organized for any legitimate purpose. In general, the legal framework in Albania is broadly in line with international standards, and enables this right in practice. Yet, the legal framework on free assembly needs improvement which would clear the need for “notification” versus “request”/“permission”. The law needs to address the right for spontaneous and counter – assemblies, which are part of the international standards, but missing in the current legislation.

The Police is the main public authority to ensure public order and security during the assemblies. The main need for improvement from the State Police with regards to assemblies, as evidenced from the two monitoring cycles (2016-2017 and 2017-2018) is the online publication of standard formats for notification and communication with the organizers of assemblies, in order to increase access, transparency and ease the procedures to enable the exercise of this fundamental right by the citizens. In addition, continuous training of police officers on observation of assemblies is needed.

Local government units/municipalities do also have some responsibilities to ensure public order. The practice shows that in addition to the Law on Assemblies, some municipalities approve internal regulations to ensure public order during assemblies, while some others play an intermediate role between organizers and police authorities in cases where people send notification to municipalities. It is important that local regulations are in line with the Law on Assemblies, and do not present obstacles for citizens to exercise their right to assembly.


The Ombudsman has played a pro-active role addressing a set of recommendations to police authorities concerning assemblies, in line with international standards and human rights. The recommendations are related with the standardisation of the notification procedures on assemblies, online publication of the notification procedure for the organization of an assembly, and online templates available for citizens to submit online notification for the organization of an assembly. This is a positive development that would enable broadly the right to organize and participate in peaceful assembly. Yet, better cooperation and coordination among civil authorities is

required with this regards.

The Ombudsman issued recommendations to police authorities to make available online for citizens and interested subject the notification procedures for the organization of assembly, and recommendations to standardize the notification procedures on assemblies and make available online templates for citizens to notify online for the organization of assembly. This is a positive development that would enable broadly the right to organize and participate in peaceful assembly. Yet, better cooperation and coordination among civil authorities is required with this regards.

With regards to criminalization of protests, there are few cases reported from the District Courts on assemblies. Mostly the cases are from public authorities against the organizers of assemblies. The court decisions are concluded in fines, ruling against the organizers. The fines are from 50,000 ALL (400 EUR) to 60,000 ALL (480 EUR).

Media and social media are important mediums to launch calls for assemblies, mobilize people and to build constituencies. Yet, media has to work more on investigation for assemblies.



II. BACKGROUND AND CONTEXT

Regarding data, similarly to the previous *Monitoring Right to Free Assembly, Albania Country Report 2016- 2017*, there are no public official data on the number, nature and geographical location of assemblies organized during 2017 – 2018. The figures are only provided by the General Directory of State Police, upon request for information based on the Law no. 119/2014 “On the right to Information”. Based on their response, 1,274 notifications for organizing assemblies were filed to the local police structures for the monitoring period. Divided through the years, the majority of assemblies were organized in 2017, respectively 1,060, and 214 during the first eight months of 2018. The high number of assemblies organized in 2017 is due to the Parliamentary Elections and most of the assemblies were organized in this political context. Comparing with the previous report, there is a slight decline of notifications for the organization of assemblies, from 1,369 assemblies to 1,274 for the monitoring period.

Apart from the assemblies organized in the frame of the electoral campaign in 2017, the majority of assemblies are organized in the form of protests, respectively 284 protests, followed by 13 marches, 4 demonstrations and 9 other

forms of organization. Regarding geographical location, assemblies are organized and held at places when the concerning issue is addressed, being urban or rural areas. Nevertheless, the majority are organized in Tirana, because most of the relevant public institutions are situated in the capital.

The subjects of assemblies are diverse in issues and problems that they addressed. In general, they are led by dissatisfaction towards government and performance of public institutions. Most of the assemblies have political, social, economic, cultural and environmental nature. Some assemblies have gained public leverage and media attention due to their “sensitive” nature. Some assemblies to illustrate this are the protests of Albanian artists against the demolition of the theater building, the protests against the Government decision to concessions in Valbona Valley and Vjosa Valley, the demonstration of residents in the north of Albania against the decision to concession for the maintenance of the Nation’s Road, etc.

In the monitoring period, 21 requests for organization of assemblies were refused by the state police; while there was only one case when the state police imposed some

restrictions on the assembly. The reasons for such refusal and restrictions are as follows:

1. The notification was not in line with the requirements stipulated in the Law on Assemblies;
2. Interference with traffic and blocking of transport means, because the assemblies were organized in the main streets and roads;
3. Engagement of police officers/structures in other services for the summer tourists season;
4. Organization and participation in unlawful assemblies and manifestation;
5. The notification was turned back to be completed with other information.

Points 2 and 3 are in violation with the Law on Assemblies, since State Police should guarantee and protect the right of each person to organize and participate in peaceful assemblies and take measures to protect this right being in public spaces and walkways. However, similarly to the *Monitoring Right to Free Assembly, Albania Country Report 2016-2017*, the State Police stressed that despite the decision to ban the assemblies, they were still organized. In some of these cases, based on the investigations from the Ombudsman, the police has dispersed protesters by force, and/or has made referrals to the prosecution office to initiate investigations against the organizers and participants in the protests for the penal act on "Organizations and participation in illegal gatherings and manifestations", anticipated in the article 262 of the Penal Code. Based on the information from the District Courts in Berat, Fier, and Shkodra, there are cases when the

organizers are sanctioned with fines for the organization of banned assemblies.

Concerning violent clashes during assemblies, 7 assemblies have ended in violence and clashes between the participants and the police officers. In the assembly organized on 31.03.2018, from the local government units and residents of the north of Albania against new tolls being imposed on drivers on the main artery of the Nation's Road between Albania and Kosovo, 37 participants in the assembly were detained at the Commissariat of Police based on a detention order from the prosecutor's office of the Kukës Judicial District. The State Police stated that police officers did not use any force towards the organizers and participants in the assembly, but the media and representatives from local government units of the northern region stated otherwise.

In general, the overall assessment of the right to organize and participate in peaceful assemblies during the last years is positive. To be noted is the fact that youngsters are more engaged and have participated in an assembly or petition when the main reason for attending a demonstration was for shared interest for the community whom they belong (IDM, 2018). Comparing with four years ago, the situation is improved in terms of administration of assemblies, maintenance of public order during assemblies, and respect to freedom of assemblies.

Even though this right is largely enabled, there is room for improvement in terms of legal and regulatory framework on assemblies, coordination between public authorities responsible for the protection and administration of peaceful assemblies, capacity building for public officials responsible for

the administration of assemblies; as well as increased accountability related to actions from public institutions.

III. LEGAL FRAMEWORK



In Albania, the right to organize and participate to peaceful assembly is a constitutional right that enshrined the right of people to be organized for any legitimate purpose. Alongside, this right is regulated through the Law "On Assemblies", "The Penal Code of the Republic of Albania" and Law "On the State Police", amended.

The legal framework did not change during 2017 – 2018. The Law on Assemblies is considered **"a law with a positive spirit"**, in line with international human rights and conventions ratified by the country. It guarantees the right for every citizen to organize and participate freely in legitimate assemblies, expressing their demands and views on problems for which they are interested.

The Law on Assemblies recognizes the organization of the following types of assemblies:

Assemblies organized in squares and public walkways;

Assemblies organized in places open to the public. According to the definition of the Law, *"place open to the public"* is a place at the disposition of other persons who may impose

conditions to permit entry into it or not (i.e. stadiums, cinema rooms, theaters, etc.); and, Assemblies organized in private areas.

In addition, the Law recognizes "urgent assemblies", when gatherings are organized due to dire circumstances.

The right to peaceful assembly is not absolute. Restriction on this right happens in cases when the national security, public security, protection of order and prevention of crime, preservation of health and morality, or protection of human rights and freedoms of others are at risk. In addition, the Law¹ stipulates prohibition of any mean or instrument during assemblies, the use of which may cause harm to the life and health to others; use of uniforms, signs or symbols referring to associations or groups that promote discrimination, and violence for racial, ethnic or religious reasons; and forbids participation in an assembly by using items or clothing with the purpose to hide the identity.

The organizers of assemblies must appoint a leader and at least one steward. According to the Law on Assemblies, the leader and his/her steward/s are responsible for the planning, conduction, and termination of an assembly.

¹ Ibid, articles 18, 19, and 20,

"Everyone has the right to be organized for any legitimate purpose"

Art. 46, Albanian Constitution

"Freedom of peaceful and unarmed assembly, as well as participation in them is guaranteed. Peaceful gatherings in the squares and in the public places are done according to the procedures provided by the Law."

Art. 47, Albanian Constitution



It is in his/her responsibility to give orders to the participants in assembly to preserve public order and if they do not respond to his/ her orders, the leader has the authority to terminate the assembly.

Referring to the notification, the organizer of an assembly must typically send a written notification letter to the local police department, informing them for the assembly that will be organized. In fact, the Law recognizes the State Police Structure as the authority that has a decision-making power for the organization of an assembly. However, the terminology used in the Law on Assemblies is very confusing and misleading, since in some articles it is expressed that the organizers of an assembly should sent a “written notification”, while in Article 6 it is mentioned “the request”² In addition, in article 261 “Organization and Participation in Unlawful Assemblies” of the Penal Code is used the term “permission”. This leads to confusion on whether it is just a written notification or an authorization process by the authorities to guarantee the assembly.

Another weak aspect of the Law on Assemblies is with regard to the organization of spontaneous assemblies and counter – assemblies. The Law does not recognize either of them. Moreover, in its article 2, the law stipulates that “*when a group of people spontaneously gathers and do not infringe public order, their activity is not considered an assembly*”. As a result, there is no guarantee that the state police structures will allow these assemblies to take place or

² Ibid, Article 6: Police State, after receiving “the request” should communicate to the organizers the prohibitions and possible limitations or other conditions, including the number of persons who will assist in the organization of the assembly, or give a copy of the official order for the assignment of the police officer responsible for helping and monitoring the development of the gathering.

guarantee it.

State Police authorities have the mission to maintain public order and security, guaranteeing the implementation of the legal framework.³ However, the legal framework does not stipulate for any engagement from the State Police to have a meeting, negotiations and/or communication with organizers within the whole process of an assembly.

The police may record voices and make films or photographs at assemblies in squares and places of public passage or in places open to the public, only in cases when an immediate potential of risk to order and public security is believed to happen. The police officers appointed to assist and observe the assembly may order the organizers to stop the assembly and to immediately leave the venue of the gathering if there is evidence of the violation of public order.⁴ The recordings, films, and photographs shall be destroyed immediately after the demonstration if they are not needed for the following two purposes:

to begin a penal proceeding for participants;

to prevent a danger, when it is believed that the person filmed may in the future commit penal acts connected to assemblies. ⁵

The responsible police officer may order to disperse the gathering by force after three unsuccessful “clear calls” to the participants to leave. According to the Law on Assemblies, in any case of dispersal, the use of force should always be limited to a minimum⁶.

Regarding sanctions, the Law on Assemblies

³ Article 2 of Law no. 108/2014 “For State Police ”

⁴ Article 21, section 1, Law on Assemblies

⁵ Ibid, Article 21, section 2

⁶ Ibid, Article 23, section 2

foresees sanctions for four types of penal misdemeanors. For the participation in banned assemblies and failure to respond to the orders of the police officers to disperse an assembly, there are sanctions with fines that vary from 1000 ALL (approx. 7.5 EUR) to 10,000 ALL (approx. 75 EUR). Referring to the use of items and clothing aiming to hide the identity of the participants, and use of uniforms, signs or symbols referring to associations or groups that promote discrimination and violence for racial, ethnic or religious reasons are sanctioned with fines or imprisonment up to six months. Concerning the fines, the Law does not foresee any range of amounts for the above cases.

In addition, the Penal Code of the Republic of Albania stipulates other sanctions. For organizing an assembly without permission from the authorized bodies, the organizers are sanctioned with fines or up to one year of imprisonment. For the participation in an illegal assembly, the Penal Code foresees sanctions with fines up to three months of imprisonment. In cases when the misdemeanor is repeated, the sanctions vary from fines up to two years of imprisonments. Again, the amount of fines is not provisioned in the Penal Code and as expressed in the previous *Monitoring Right to Free Assembly, Albania Country Report 2016 - 2017*, the sanctions provisioned in the legal framework are not in line with the international standards.

In cases when the organizers are dissatisfied with the decisions from the State Police, they can appeal the decision.⁷ Still, the Law is very broad on the appeal, stating only that the appeal should be done respectfully to the

⁷ Ibid, Article 25

legal provision in force. It is not prescribed on how the appeal should be done, when, which is the authority where the complaint is filed, and when the decision should be made to enable the conduction of an assembly.

There were no initiatives for amendment of the existing law during the monitoring period. A positive development, that reflects also the recommendations provided in the *Monitoring Right to Free Assembly, Albania Country Report, 2017-2018* is the set of recommendations provided by the Ombudsman to the State Police to prepare and to publish online templates for notification of assemblies, and the readiness of the Police to reflect on such recommendations.



IV. ADMINISTRATION OF FREEDOM OF ASSEMBLY

In Albania, the State Police is the main structure responsible for the administration of assemblies, for submission of notifications for the organization of assemblies and for imposing restriction or ban them. For assemblies organized in squares and public walkways, as well as urgent assemblies, the organizers are obliged to notify in written form for the organization of an assembly. For other types of assemblies, the organizers are not obliged to send a written notification, but may ask the State Police to support them during the events. In cases of assemblies organized in places open to the public, the police officer must support them outside of the place where the assembly is being organized. In cases of assemblies organized in private areas, the police cannot enter without permission of the leader of the assembly or the owner of the private area, with the exception of flagrant cases to stop a stake risk for the life and health of the participants.

The written notification must be filed no later than three days before the date of assembly. The notification letter must contain the following elements:

- Identity and address of the organizers of the assembly;

- Identity and address of the leader of the assembly;
- The purpose of the assembly;
- The date, place, the scheduled time when the assembly will start and end, and the itinerary of the assembly;
- The approximate number of participants and number of stewards for the conduction of assembly;
- List of speakers.

In cases of urgent assemblies, the written notification letter must be submitted 3 hours before the assembly. The notification letter, apart from the above elements, must contain the reasons for its urgency.

The notification is submitted to the Office for Citizens Service (OCS)⁸ of Local Police Authority's premises. The OCS transfers the notification to the Chief of Police Commissariat that has under its jurisdiction the place when the assembly is going to be organized. In cases when the itinerary of an assembly includes more than one Commissariat, the notification is delivered to all the commissaries that are involved. The State Police should give the

⁸ Information is retrieved from the Albanian State Police website https://www.asp.gov.al/images/njoftime-deklarime/njoftime_tubimi.pdf

decision within 24 hours after the receipt of full information. In cases when the organizers fail to submit all relevant information, they are requested by the authorized body to complete it. Revision to the complete information should not be later than 24 hours before the assembly starts.⁹ . In this case, the decision is issued within 8 hours from the submitting of the request.

According to the Law on Assemblies, the Chief of the Commissariat of the Police notifies the Municipality and the Prefect in writing form about the assembly¹⁰. This implementation of this procedure in practice, is also confirmed by the Municipal's representatives, during the interviews with them. They do not play any role for the administration of an assembly since the Law on Assemblies gives the main authority for the administration of an assembly to the State Police.

The local authorities are not required to meet with the organizers of an assembly. The only cases when they are entitled to call the organizers of an assembly are when public property is damaged because of clashes and violations that happened during the organization of an assembly. In these cases, the local authorities do collaborate with the state police to document the violation of the public property and to impose fines in line with their internal tax regulations. While the municipal's representatives said that the Municipal Police do not have any role during assemblies, according to the article 8 of the Law for the Organizational and Functioning of Municipal Police, the municipal police should take all necessary measures for the

⁹ Article 5, section 3, Law on Assemblies

¹⁰ Ibid

protection of public order, in places where people gather such as markets, fairs, in public, artistic, religious, athletic ceremonies, in movie theaters, other theatres, athletic buildings and halls, building for religious use, and other public environments¹¹.

According to the Law on Assemblies, the organizes of assemblies should submit the notification only to the State Police, as the main structure for the administration of an assembly. Nevertheless, in practice it is noticed that in some cases the organizers of assembly do submit notifications for the organization of an assembly to the Municipality also. The procedures vary from municipalities.

According to the Municipality of Tirana, the decision- making for the organization of an assembly is done accordingly with the Law on Assemblies and in compliance with Order no. 10663¹² of the Municipality of Tirana. Chapter VI of the Order foresees the use of public spaces for the development of artistic, cultural, promotion activities, *political demonstration*, etc., in the frame of regulation of public space. According to this document, the subject that wants to organize such activities must have permission from the Municipality of Tirana,¹³ based on the request submitted at the Tirana License Center.¹⁴ The request should be submitted 25 days before the organization of

¹¹ <http://www.vendime.al/wp-content/uploads/2015/08/LIGJI-Nr.-8224-dat%C3%AB-15.5.1997-P%C3%8BR-ORGANIZIMIN-DHE-FUNKSIONIMIN-E-POLICIS%C3%8BT%C3%8B-BASHKIS%C3%8B-DHE-T%C3%8BKOMUN%C3%8BS.pdf>

¹² Order no. 10663, dated 21.03.2017 "Some amendments and additions to the Mayor's Order No. 255850, dated 26.08.2016" On the Rules and Conditions for Use of Public Space in the Municipality of Tirana". <http://www.tirana.al/publimepdf/rregullorja.pdf>

¹³ Ibid, article 66, point 1

¹⁴ Ibid, article 66, point 3

the activity, and in cases of urgent activities, the request should be submitted 7 days before. As it is observed, the timeframe stipulated in the Order of Municipality of Tirana, in cases of assemblies (political manifestations) is not in line with the timeframe stipulated in the Law on Assemblies (three days before the assembly), by hindering this right.

Asked on the permissions given for assemblies organized in 2017 – 2018, the response from the Municipality of Tirana is as follows:

1. During 2017, the Municipality of Tirana gave 6 permissions in total for the organization of assemblies, from which 2 had political nature and 4 were marches, having awareness-raising nature.
2. During 2018, the Municipality of Tirana gave 7 permissions in total for the organization of assemblies, from which 2 had political nature and 5 were marches, having awareness-raising nature.

Asked about banned assemblies, the Municipality of Tirana has not banned any assembly. The interviewed civil society organizations that have organized an assembly in Tirana expressed that they did not submit all the documents required in the Order. Moreover, they expressed that the representatives from municipal police have accommodated CSOs' needs in placing equipment for the organization of assemblies, even without submitting the notification to the Municipality of Tirana.

The representative of the Municipality of Berat, expressed that the Municipality does not have any internal regulation in place for the organization of assemblies. However, at the One Stop Shop service within the Municipality,

citizens have deposited request for the organization of the assembly. In these cases, the Municipality has played an intermediate role and informed the police officials to take measures for the protection of the order and to communicate with the organizers. At Shkodra municipality there are no cases of notifications submitted at the municipality during 2017-2018, and no information from the Police on the assemblies organized in the territory of the Municipality, as requested by the law.

Regarding the monitoring process relating to assemblies, the Ombudsman Office in Albania plays an important role. This authority has the right to closely supervise the processes and procedures, receive complaints and make recommendations and proposes measures when it is observed a violation of human rights and freedoms by public administration.¹⁵

During the monitoring period, the Ombudsman Office has played a pro-active role in monitoring this right, and issuing of recommendations for the state structures. It has issued two recommendations to the State Police on the conduction of assemblies based on two protests organized in 2018, (i) the protest of Kukës organized by the local government units and north residents against the new toll imposed for the national road, and (ii) the protest organized by Youth Roma and Egyptian Movement for the death of a younger in the premises in the Police Commissariat of Korça.

1. The protest of Kukës was organized on 31 March 2018, and one of the organizers of the protest was the Municipal Council of Kukës. Respectfully with the Law on Assemblies

¹⁵ Constitution of Albania, article 63, paragraph 3.

three days before the organization of the assembly they have filed the notification for the organization of an assembly to the Kukës Commissariat Police¹⁶. But, 48 hours after receiving the notification, the Chief of the Commissariat of Kukes sends a letter to the Municipal Council for further information, missed in the notification letter, such as the expected number of the protesters and the nominal names of persons who will speak. In addition, the place for the organization of the assembly was considered inappropriate, because of the interference to the means of transport and citizens. Within the same day, two meetings were organized between both parties for the organization of the assembly. The Municipal Council within the last 24 hours resent the notification letter, fulfilling the police requirements. Within the same time, as observed and expressed by the Ombudsman, the Chief of Commissariat of Kukes did not take an administrative decision to ban the assembly or to appoint the time and place for the organization of the assembly, as it was the pretense from the Chief Commissariat. In addition, he has exceeded the deadline foreseen in the law to respond to the notification within 24 hours, leaving less time for the organizers to fulfill the elements of the notification.

2. The second case is on the death of a young Roma citizen in the premises of the detention room at the Police Commissariat of Korca. Youth Roma and Egyptian Movement, a civil society organization,

has disseminated the information for the organization of an assembly in front of the Ministry of Interior to protest for the death of the young boy and invited other groups and citizens to join them. The Local Directory of Tirana Police has banned the conduction of the assembly with the pretense that the request was sent one hour prior to organization of the assembly and not all the elements (the timeframe to submit a notification; identity and address of its leader and steward, and name of speakers) as per law were reflected in the filed request. After the monitoring from the Ombudsman resulted that the request was sent three days prior to organisation of the assembly by post and the police structure actions are not in compliance with the Law on Assemblies.

¹⁶ The information is retrieved from the following source <http://www.avokatipopullit.gov.al/sites/default/files/REKOMANDIME/VITI2018/Kuk%C3%ABs%20Rekomandim%2019%20prill%202018.pdf>

CASE STUDY

POSITIVE DEVELOPMENT: STANDARDIZATION AND PUBLICATION OF PROCEDURES ON NOTIFICATIONS FOR THE ORGANIZATION OF ASSEMBLIES

The *Monitoring Right to Free Assembly, Country Report for Albania 2016-2017*, recommended that notification requirements should be simple and the requested information should be reduced and relevant to ensure peaceful assemblies; that all laws, regulations, policies, decisions and other related information to exercise the freedom of peaceful assembly should be publicly available and easily accessible to the public; and communication process between responsible institutions/agencies and organizers of an assembly should be regulated through legal procedures that are publicly accessible.

Following that, based also on its investigations and complains from several subjects for not being allowed to exercise their right to free assembly by the State Police for several reasons, the Ombudsman issued a set of recommendations from the State Police, after noticing that there are uncertainties from citizens as well as for police authorities with regards to the procedures. The main problematic relies upon a wrong perception from the citizens of the "notification" as a request for a special permission, and on the other hand, wrong treatment from the police as a right to or not to allow the exercise of this basic right of the citizens.

So, considering as above, the Ombudsman asked for the State Police to take the necessary measures for the preparation of standard templates for "Notification to the

Police Commissariat for the organization of assemblies in squares and public walkaways", and "Notification to the Police Commissariat for the organization of an urgent assembly in squares and public walkaways", and their publication on the General Directorate Police website to be accessible for all the citizens and create opportunities to online notification for the organization of assemblies.

Another recommendation was related to the preparation of standard templates, such as "Administrative decision for communication with the organizer or leader of the assembly on prohibitions and possible limitations or other conditions, including the number of persons who will assist him/her", in accordance to the Law on Assemblies.

Through an official letter issued on 3rd August 2018, the General Directorate of Police expressed that the recommendations from the Ombudsman Office were welcomed and accepted, and a Working Group to review the standard procedures of "Planning police service for the organization of assemblies", was established. The internal procedure was approved on 31st October 2018, setting standard procedures for police officials before the organization of assemblies, general procedures for the management of the assembly and its services, procedures to ban and diffuse an assembly, and other procedures. The document includes also annexes of all standard templates, in line with the recommendations of the Ombudsman office. The decision entitles the sector responsible for communication with media and public at the General Directorate of Police to make available and publish online the templates at the Police State website.



V. POLICING OF ASSEMBLIES

The statistical data for this monitoring report is received from the General Directory State Police. They are the first instance to gather information for the conduction of assemblies, as well as the authority to restrict or ban an assembly. Based on their response they do have a register with data on assemblies, according to an approved format, but this information is not public.

The police authorities expressed that they do organize meetings before and during an assembly with the organizers of the assembly, while they expressed that organization of the meeting after the conduction of an assembly is done in rare cases. The dialogue on these meetings is focused on necessary measures to take for a peaceful assembly, discussion on the participants, place, and obligation from the organizers. At the same time, these meetings serve to familiarize with the police officer, who is appointed to observe the assembly and collaboration with the leader and other stewards for its administration. In cases of assemblies that are banned from the police or organized without prior notification, and there is no collaboration between organizers and police officers, the communication is done with the megaphone from the head of

the police service.

In addition to the information provided in the notification letter by the organizers of an assembly, the police officers gather information on the physical characteristics of the area, before the conduction of an assembly. The police officers do engage as civil during the organization of an assembly, in order to observe, photograph and document materials in cases when there is a potential risk for public order and security. In addition, with the order form the Prosecution Office, the police can sequester even other filming documents used in cases of a violent assembly.

According to the information received from the Public Security Department of the General Directory of State Police, some of the main challenges faced by the police officers during assemblies are:

- The leader and other organizers do not fulfill their legal obligations prescribed in the Law on Assemblies;
- Derivation from the initial plan presented to the police structure, associated with traffic jam on the streets, and delivery of messages that are different from the ones presented in the notification letter;

- Assemblies organized in front of main public institutions such as Prime Minister Office, Parliament, Municipality, Interior Ministry, National Theater, boulevards, squares and public walkaways in Tirana are associated with deviations and traffic jam and have hamper the job of the police officers in guaranteeing the public order and public security;
- The organizers do not know the Law on assemblies, their rights, and responsibilities;
- The notification is filed with delay, and missing information.

Based on the above challenges, the Police also give some suggestions to improve the situation with the administration of assemblies, as follows:

- Increase collaboration between the Chief of Police and organizers of the assemblies;
- Awareness raising campaigns through media and police structure with regards to the rights and responsibilities of the organizers of assemblies before, during and after the assembly;
- Better interaction and collaboration between public institutions in fulfilling their legal and institutional responsibility;
- Coordinate the work during the assembly and correctness from the organizers to not deviate from the initial plan presented to the police;
- The organizers of assemblies should keep continuous contact with the appointed police officer, before, during and after the conduction of the assembly;
- Prohibition of problematic and violent persons from the organizers of the assembly, and collaboration with the Chief

of Police for their identification.

There is no special police unit within the State Police structures for the administration of assemblies. Administration of assemblies is part of the curricula of Security Academy,¹⁷ and every year there are trainings organized with police officers, who have leadership position within the police structures. In addition, special trainings are organized with police officers of Operational Forces. The police officers, especially those who are appointed to observe the assembly are instructed on the administration of the assembly based on lesson learned from previous assemblies. However, there is need for further training on both aspects: theoretical and practical.

Some of equipment's that police officers can use during the conduction of an assembly are megaphone, cuffs, whistles, rubber stick, walkie-talkie, scaffolding, shields, tear spray, anti - gas equipment, and water dispenser machine. Depending from the place when the assembly is organized, the police officers can use wharf age for restriction and orientation for the participants in the assembly. In addition, an ambulance with medical staff is present to give the first help to police officers, participants and other people that are hurt during the assembly. For the health assistance, the police notify the health service of the regional hospital on the date, time and place where the assembly will be organised.

The police officers present at the assembly can use force when:

1. Exist a real danger for the live and health

¹⁷ The Security Academy (AS) is a public institution of higher education that aims at educating police officers. It deals with studies, research and publications in the fields of policing and security.

of participants or to police officers engaged on assemblies, preventing the proportionality principle during the use of force;

2. Exist evidence of armed people among the participants in the assembly;
3. In cases when the assembly turns violent, and the organizers do not obey the implementation of the law. The police officers may intervene till the situation is back to normal, using the proportionality principle during the use of force;
4. In cases when people oppose with violence acts, the decision-making for dispersal of the assembly is made.

Police officers use the force only when other methods (communication, negotiations, restriction and control) are ineffective.

The state police is accountable to act with the highest professional standards in an impartial manner and in respect with human dignity, human rights and fundamental freedoms¹⁸. In cases where the police officers break the law, the organizers of an assembly can submit a complaint to state police authorities or may bring the case to the court. The police officers have badges on their uniform, with names, surnames, number of identification, position and structure (local or central) where the police officer exercises his/her duty. The complaint is registered in the register of complaints, held in every police structure. After the registration of the claim, the head of the structure begins the verification of the complaint¹⁹. The information provided is sent to the Professional Standards Department that takes the decision towards

¹⁸ Decision of the Council of Minister no. 750, dated 16/09/2015 "On the Approval of the Regulation of State Police", article 105

¹⁹ Ibid, article 218, point 3

the police officer. For the monitoring period, from the information received from the General Directory of State Police there is no complaint received by the organizers for police officers who have been appointed or participated in the administration and protection of order during an assembly. For the protest organized in Kukës, the Ombudsman only expressed that the number of police officers to protect order was exaggerated, but the Police action has been conducted to protect the spirit of the protest.

MEDIA AND ASSEMBLIES

The role of media in providing information on the assemblies is very important. The freedom of speech is a Constitutional right and legal framework in place does not restrict the use of information, but similar with the *Monitoring Right to Free Assembly, Country Report for Albania 2016- 2017*, a better implementation is needed in practice. This sector is vibrant, having over 20 daily newspapers, 71 radio stations, 70 television stations, and 109 cable television outlets—not to mention numerous online media outlets²⁰

In general, as stressed from media representatives, media is free to participate and report on assemblies. There is no limitation imposed by the police authorities towards media to reporting on assemblies. Journalists and human rights defenders are able to participate and report freely during the conduction of assemblies.

However, during 2017 on the Parliamentary Election this right was restricted by the

²⁰ http://www.mediacenterbg.org/wp-content/uploads/2017/05/Media-Literacy-and-Education-Needs-of-Journalists-and-the-Public_REPORT_FINAL.pdf

political parties. The media representatives stated that they were not informed and did not participate in the political demonstrations organized by the political parties during the electoral campaign. Instead footage from political demonstration were prepared by the political parties and given to the media. The amendments of the Law on Audiovisual Media²¹ stipulated free airtime to political parties during the electoral campaign. The amendment was -contradictory with the Electoral Code, which did not stipulate free coverage for political campaigns in private media outlets²². The amendment was opposed from the Association of Electronic Media, arguing that this amendment was against the Albanian constitution and violated freedom of the media²³.

Similarly to the *Monitoring Right to Free Assembly, Country Report for Albania 2016 - 2017*, media coverage of the protests has generally been considered neutral, and rarely their reports go in depth of the cause of protests. According to the media representatives, the law on assemblies needs to be amended with regards to the notification on assemblies. There are unnecessary specifications requested in the notification form, which sometimes lead to delays from the police authority to issue its decision on the organization of assemblies. Moreover, the law on assemblies is unclear with regards to competences among civil

21 <http://ama.gov.al/wp-content/uploads/2018/10/LIGJI-NR.-972013-%E2%80%9CP%C3%8BR-MEDIAT-AUDIOVIZIVE-N%C3%8B-REPUBLIK%C3%8BN-E-SHQIP%C3%8BRIS%C3%8B%E2%80%9D-I-NDRYSHUAR.pdf>
22 <https://freedomhouse.org/report/nations-transit/2018/albania>
23 <http://www.gazetatema.net/2017/05/23/reagon-ashper-shoqata-e-mediave-elektronike-ligji-per-reklam-at-gjate-fushates-grabitqar-mos-e-njihni/>

public institutions.

Media reported that initiators for many assemblies are civil society organizations (CSOs) and media has reported their protests. To mention some of “popular” assemblies organized by them are the protest against the demolition of the National Theater building, several protests on environment issues, protest for the right of work and gender equality, ect.

From the other side, due to limited financial access for local and national media coverage, most civil society organizations and citizen’s groups use social media to launch their advocacy campaign, mobilize people and to build constituencies. Facebook remains the main domain to organize and coordinate an assembly. To mentioned, during 2018 was created the Alliance for National Theatre’s Protection.²⁴

It is an informal group of actors, film directors, activists, civil society organizations and media representatives to stop the project of the Albanian Government for the demolition of the National Theater building, and build a new National Theatre as part of a high-rise commercial complex. The artists claim that the pre-selection of the company for the building of the new theatre is not done in a transparent manner, and the actual building symbolizes the history of the theater in Albania since its creation in 1932. In February 2018²⁵, 70 artists signed a petition calling on the government to reconsider the plan to demolish the National Theater building. The Ministry of Culture and the Municipality of Tirana organized open

24 <https://www.facebook.com/mbroteatrin/>
25 <https://www.calvertjournal.com/news/show/9644/albanian-actors-storm-national-theatre-government-reform-protest>

meetings with artists to discuss on the issue. The issue is still unresolved; the parliament is still discussing the law, while the Alliance for National Theater Protection is still organizing daily protests to protect the building and its surrounding territory.

One positive note for the long month’s protests is that there are no incidents reported through media and through the Facebook account of the Alliance for National Theater Protection with the state police.

VI. CRIMINALIZATION OF PROTESTS



Regarding the criminalization of protests the Prosecution Office, Administrative Courts, and District Courts are the main public authorities responsible for the respective issues to a varying level of degree. In addition, the Ombudsman - after performing an investigation on its side - has the right to recommend to the Prosecution Office to start an investigation if it finds that a criminal offense has been committed, or to resume investigations that have been closed or suspended.

The judiciary system in Albania is going through a comprehensive transitional re-evaluation process (vetting)²⁶. The Independent Qualification Commission, one of the vetting institutions, started an investigation of judges giving hope that the judicial system will be independent and with high professionalism. However, yet, the judiciary system is characterized by the high level of corruption and low level of efficiency, and this system is the least trusted system in Albania.²⁷ As mentioned from the EU Progress Report for Albania "Consolidated reports are still lacking on the efficiency of the justice system, which

includes the length of proceedings, clearance rate and pending cases at all court levels including the Constitutional Court. The clearance rate is lowest for the appellate courts, particularly for the Appeal Administrative Court (37 %), due to a high number of appeals and the low number of judges allocated to the Court"²⁸. In addition, public trust of this system is low.

During this monitoring exercise, there are no cases reported of people being subject to preventive arrest before the organization of an assembly. From the response received from 14 district courts²⁹, only four responded that they had issued court decisions concerning assemblies. The Shkodra District Court during 2017 has registered a trial for "Organization and Participation in Illegal Gathering and Manifestation" and based on Penal Acts against security and public order of the Penal Code, the Court took the decision, against the organizers, appointing a fine on the amount of 60,000 ALL³⁰ (approx. 480 EUR). For 2018,

²⁸ <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf>

²⁹ Partners Albania sent a request for information with a set of question to district court, asking information on the decision that have taken during the monitoring period on assemblies

³⁰ According to the article 406, Penal Code of Republic of Albania

²⁶ <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf>

²⁷ <https://freedomhouse.org/report/nations-transit/2018/albania>

"Consolidated reports are still lacking on the efficiency of the justice system, which includes the length of proceedings, clearance rate and pending cases at all court levels including the Constitutional Court. The clearance rate is lowest for the appellate courts, particularly for the Appeal Administrative Court (37 %), due to a high number of appeals and the low number of judges allocated to the Court"

EU Progress Report

within the same district court another case was registered in, but it is still in process.

The Berati District Court has issued a court decision for one case with the same nature as that of Shkodra "For Organization and Participation in Illegal Gathering and Manifestation". At the end, 10 people were found guilty and they have paid a fine of 50,000 All (approx. 400 EUR).

Vlora District Court has stressed only one case that has been registered for the monitoring period for assemblies. The nature of the case has been upon "Interfering on the circulation of means for transport" for the protests organized from the citizens of Mbostar village (near Fier) against a decision of the Municipal Council of Fier. The villagers were against the construction of the recycling factory near the village. Based on the information of Vlora District Court, the protest was organized without the "permission" from the police. At the end, the Court made the decision, against the organizers, with a fine in the amount of 60,000 ALL (approx. 480 EUR).

During the organization of protests in Kukës, 23 people had been detained with the charge of "destruction of property" and "objection of police officers". From the investigation by the Ombudsman Office, the order issued from the Prosecution Office lacked the legal argumentation for their detention in violation with the Code of Penal Procedure. With regards to enjoy the rights during court procedures, the Ombudsman has identified that in the case of Kukës protest, this right has been violated. Based on the results of the investigation from the Ombudsman offices, the Prosecutor Office has not acted based on the law, violating the rights of protesters

since the order released from the Prosecutor Office has no base argumentation why 23 persons were deprived from their freedom; In addition, there is no documentation of the time when the Prosecutor Office has sent the order to the police authorities, none of the familiar and detainees were communicated the order of the Prosecution, and the high number of police officers in the court room has contributed to "intimidation premises" to the judges. The Ombudsman gave recommendation to Prosecutor Office to take administrative measures provided by the law in order to guarantee the procedural right for the detained persons.



VII. RECOMMENDATIONS

In order to further improve the freedom of assembly in line with international standards, the following recommendations are proposed:

1. Amendment of the legal framework on assemblies, to ensure protection to all citizens organizing and/or participating in peaceful assemblies, including spontaneous assemblies, counter assemblies and assemblies that do not have an identified organizer, in line with international guidelines on freedom of assemblies. More specifically, the amendments should consist on: Clarification of the terminology "notification" versus "request"/"permission";
 - a. Regulation of spontaneous and counter – assemblies;
 - b. Clearness and guidance on the appealing process to state authorities' decisions regarding restriction or banned assemblies;
 - c. Unification of sanctions to organizers and participants in the Penal Code and Law on Assemblies, in line with the international standards;
 - d. Reasons by police authorities to ban or restrict an assembly should be in

line with the Law on Assemblies, and should not restrict the right to free assembly;

2. All laws, regulations, policies, decisions and other related information to exercise the freedom of peaceful assembly should be publicly available and easily accessible for the public. In addition, data on assemblies (number, scope, nature, geographical areas, etc.) should be available and accessible online.
3. Implementation of the Ombudsman's recommendation to the State Police to prepare and make public these templates on line, to facilitate and enable every citizen to notify civil authorities for conduction of assemblies.
4. Standardize and unified regulations and procedures of different public authorities for the administration of assemblies, in line with the requirement stipulated in the Law on Assemblies. Municipalities should consult the Law on Assemblies when issuing decisions that affect the right to free assemblies, not to impose excessive requirements for the organizers of assemblies that surpass the requirements of the Law. Notification requirements should

be simple and the requested information should be reduced and relevant to ensure peaceful assemblies, and not to introduce unduly burdensome for the organizers.

5. Communication process between institutions/agencies responsible that are involved in various stages of the process of enabling an assembly and organizers of an assembly should be regulated through legal procedures that are publicly accessible.
6. Increase coordination and communication between public institutions responsible for the administration of assemblies, to fully guarantee the right to free assembly.

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4. European Commission (2018). *Albania 2018 Report*, retrieve from <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf>
5. Order no. 10663, dated 21.03.2017 "Some amendments and additions to the Mayor's Order No. 255850, dated 26.08.2016" On the Rules and Conditions for Use of Public Space in the Municipality of Tirana", retrieve from <http://www.tirana.al/publimepdf/rregullorja.pdf>
6. Law no, 8773, dated 23.04.2001 "On Assemblies"
7. Law no. 108/2014 "For State Police", amended

Useful links

1. Albanian Ombudsman Office <http://www.avokatipopullit.gov.al>
2. Albanian State Police <https://www.asp.gov.al>
3. AMA Agency <https://www.ama.gov.al>
4. BCSDN <http://www.balkancsd.net>
5. Freedom House Organization <http://www.freedomhouse.org>
6. Tirana Times Newsletter <http://www.tiranatimes.com>

7. Tema Newsletter <http://www.gazetatema.net>



The right to free assembly is an indispensable element of democracy and a healthy civil society. Recent years have seen a new era of mass protests, but also a significant increase in practical restrictions on the right in Western Balkan and Eastern Partnership countries. The European Center for Not-for-Profit Law (ECNL) supports its network of local partners (in Albania, Armenia, Belarus, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Montenegro, Kosovo, Serbia and Ukraine) to monitor local laws, observe protests, report challenges and engage in the legal reform process to protect and promote this fundamental right.

This year's monitoring reports build on previous efforts and explore issues that are of relevance for all the participating countries. Accordingly, beyond the legal framework, the reports also look at the role of civil administration, policing, criminalization of protesters, as well as the overarching issue of accountability manifesting in all of these aspects.



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