

# MONITORING THE RIGHT TO FREE ASSEMBLY

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2017 REPUBLIC OF  
2018 Kosovo

 [#right2freeassembly](#)



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Published in January 2019



*The monitoring report was conducted as part of the ‘Monitoring the Right to Free Assembly’ regional project, managed by the European Center for Not-for-Profit Law (ECNL). The project is made possible by the International Center for Not-for-Profit Law (ICNL) through the Civic Space Initiative.*

*This publication is wholly financed by the Government of Sweden. The Government of Sweden does not necessarily share the opinions here within expressed. The author bears the sole responsibility for the content.*

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# I. EXECUTIVE SUMMARY

According to the Law on Public Gatherings any citizen of the Republic of Kosovo regardless of sex, race, color, religion, nationality, economic, financial, education and social state, political affiliation, or any other status, has the right to organize and participate in the public gatherings. However, the legal framework on freedom of assembly hasn't been updated since 2009. In October 2018, the Kosovo Government has approved a new Concept Document on Public Gatherings, which aims to better regulate the legal framework on peaceful assemblies, and to harmonize it with the international standards. According to the Concept Document, the institutions that are responsible for implementing the law on public gatherings have different interpretation of key terms, such as "public gathering" and "violence". Therefore, a better clarification is needed to avoid ambiguity. Furthermore, certain articles of the law that deal with penalty measures for people who carry weapons or sell alcohol at the place of gathering are not in line with the penalty measures of the Criminal Code of the Republic of Kosovo.





## II. BACKGROUND AND CONTEXT



The Kosovo Police categorizes peaceful assemblies in three main types: a) violent or peaceful protests<sup>1</sup>; b) manifests<sup>2</sup> and concerts, and c) gatherings in election campaigns. In 2017, the Kosovo Police has registered a total of 186 violent or peaceful protests, 967 manifests and concerts, and 3,635 gatherings in election campaigns. The number of election campaigns was very high in 2017 because both central and local elections were organized at the same year. Election campaigns are either organized in indoor premises or in public places. In Prishtina, where the main election campaigns are held, often two different parties organized their meetings at the same time very close to

<sup>1</sup> These terms are used by the police only, in their categorization of assemblies. In all three categories, the police are somehow involved, either in granting permits for the assembly such as the case with the first category or to provide security, such as the case with category two and three. Under 'violent or peaceful protests' they include protests, marches, parades, and demonstrations. Despite the usage of the term, this does not mean that violent protests are a norm. It is a matter of labeling and categorization done by the police.

<sup>2</sup> From discussions with the police, we understand that by manifests they refer to commercial and cultural gatherings in the public space. For example, beer fest is organized in the main square in Prishtina each year, where beer producers build their booths to sell beer. In such cases, the police are engaged, often in civil uniforms, to make sure that drunken people do not misbehave. There have been incidents in the past when drunken people have fired their guns in the air, and the crowd has panicked fearing a terrorist act.

one another in the main square. In such cases, the police make special plans and deploy more officers to make sure no incidents happen between party supporters. Since Kosovo has a multi-party system, the pre-election campaign period is very intense and tensions between party members and supporters are very high.

In all these assemblies, the Kosovo Police has been involved in providing permission and security. Looking at the first category alone, which includes protests, demonstrations, marches and rallies, the number of such gatherings in 2017 was nearly 26% lower in comparison to 2016.<sup>3</sup> However, that number has increased in 2018, and according to the Kosovo Police, during January-September period, a total of 180 such assemblies took place.<sup>4</sup>

<sup>3</sup> Kosovo Police, Annual Report 2017

<sup>4</sup> Interview with the Kosovo Police, 30.10.2018

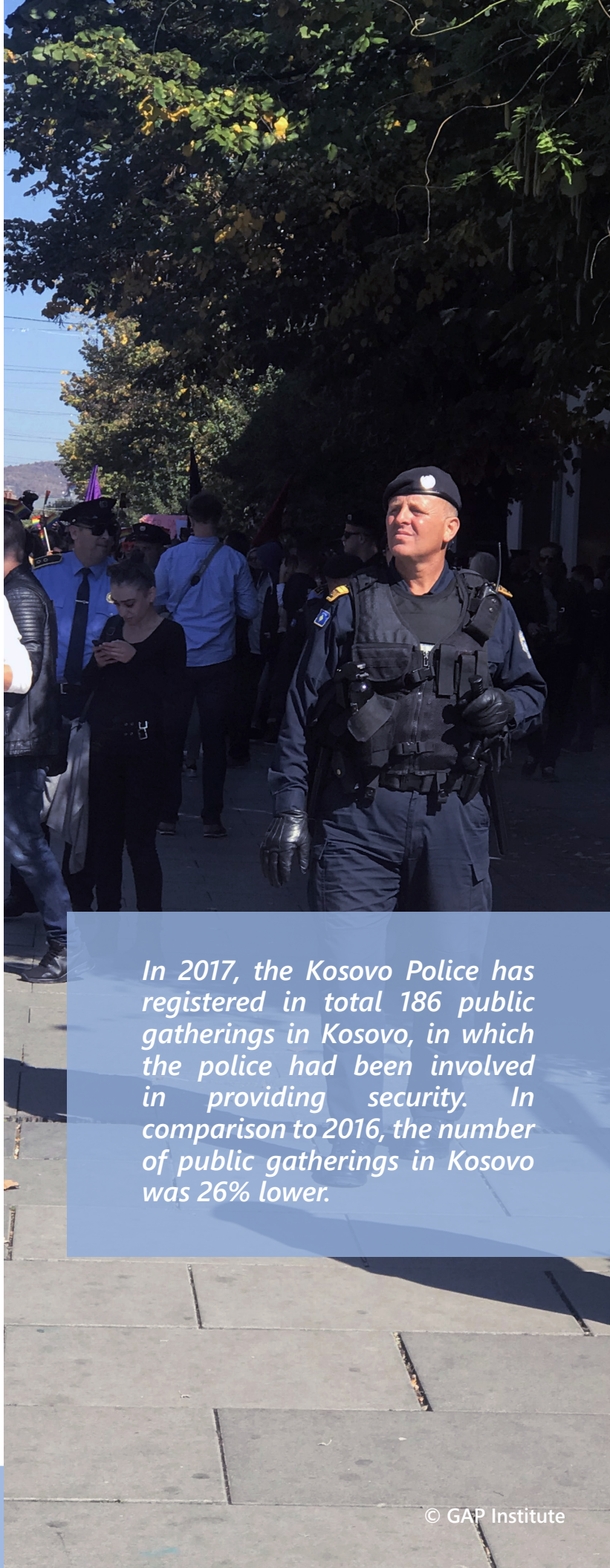




As Table 1 shows, the majority of assemblies happen in the Prishtina region, and in the capital of Prishtina specifically. That is where the main government institutions are based. The subject of protests during 2017 and 2018 varied between political reasons, economic issues or human rights. Most of 2018 assemblies were small, except the one organized by the opposition political movement Vetevendosje. On 29 September 2018, Vetevendosje organized a massive protest against president Hashim Thaci's proposal for a land swap with Serbia, in a process referred to as "border correction". On this occasion, thousands of Kosovo citizens protests peacefully in Prishtina's main square.<sup>5</sup> Compared to previous protests organized from Vetvendosje, some of which ended with clashes between the protesters and the police, the September rally ended without any incidents. Prior to the protest, the organizers were engaged in a dialogue with the police, in order to ensure the peacefulness of the assembly.<sup>6</sup> Regular police were present at the protest, while police special forces were close in standby. This time both the organizers and the police behaved differently. The organizers had promised that the protest would be peaceful and urged their supporters to refrain from any use of violence against the police or state institutions. In previous events, when protests escalated into violence, both the protesters and the police blamed one another for provoking the incidents.

5 <http://www.balkaninsight.com/en/article/thousands-citizens-protest-against-kosovo-president-09-29-2018>

6 <https://kallxo.com/vetevendosje-takohet-me-policine-dakordohen-per-proteste-te-qete/?fbclid=IwAR2uuFeTePu8PSK0tR9CF4vi8FpBwlu9ZqKKTcEZ1xk0hfBhDaWj1dbCsyI>



*In 2017, the Kosovo Police has registered in total 186 public gatherings in Kosovo, in which the police had been involved in providing security. In comparison to 2016, the number of public gatherings in Kosovo was 26% lower.*

According to the Kosovo Police<sup>7</sup>, the majority of protests in 2017, 165 of them were peaceful protests, while 41 protests resulted in violence and disorder. It is worth noting that, the police classify violence and disorder as the same category. However, most of these protests involved small incidents where the protestors refuse to unblock the road, and therefore arrests are made, rather than violent clashes between protestors and the police.<sup>8</sup> Furthermore, 160 of protests were notified in advance, six were not notified and only in two cases the Kosovo Police did not grant permission for the assembly after they were properly announced.<sup>9</sup> In 2018, the majority of assemblies were peaceful and only on one occasion the Kosovo Police had to intervene. This is the case when a group of citizens from Gjakova protested against the visit of Serb pilgrims to the Orthodox Church.<sup>10</sup>

Only few protests resulted in penalties for offences related to the administration or organization of an assembly. In 2017, there were only four cases when criminal charges were pressed against people who carried written messages inciting hate speech.<sup>11</sup> Overall, the right to peaceful assembly in Kosovo is protected in line with international standards. However, the legal framework on

7 See Concept Document on Freedom of Assembly, <http://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40354>

8 If the police ask protesters to move away and they refuse to do so, they intervene by arresting someone. That protest is then categorized as violent. Hence, the definition of violence varies between parties. The ambiguity of terms is one of the main reasons behind the government initiative to change the Law on freedom of assembly.

9 See Concept Document on Freedom of Assembly, <http://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40354>

10 <https://telegrafi.com/fillon-protesta-kunder-pelegrineve-serbe-ne-gjakove/>

11 See Concept Document on Freedom of Assembly, <http://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40354>

freedom of assembly hasn't been updated since 2009 and there is a need for a better harmonization of all laws related to peaceful assemblies.



REGION	TYPE OF GATHERING	2014	2015	2016	2017	TOTAL
PRISHTINA	Violent or peaceful protests	151	176	143	78	548
	Manifests, concerts	174	225	367	231	997
	Gatherings in election campaigns - elections	214	39	28	556	837
GJILAN	Violent or peaceful protests	4	17	6	9	36
	Manifests, concerts	163	174	190	256	783
	Gatherings in election campaigns - elections	127	0	0	426	553
FERIZAJ	Violent or peaceful protests	20	33	8	18	79
	Manifests, concerts	24	23	12	20	79
	Gatherings in election campaigns - elections	186	0	0	465	651
PRIZREN	Violent or peaceful protests	38	12	18	23	91
	Manifests, concerts	53	55	56	54	218
	Gatherings in election campaigns - elections	265	0	0	610	875
GJAKOVA	Violent or peaceful protests	11	36	15	13	75
	Manifests, concerts	38	42	49	45	174
	Gatherings in election campaigns - elections	214	0	0	688	902

REGION	TYPE OF GATHERING	2014	2015	2016	2017	TOTAL
PEJA	Violent or peaceful protests	17	36	28	21	102
	Manifests, concerts	34	38	45	70	187
	Gatherings in election campaigns - elections	218	0	0	519	737
MITROVICA SOUTH	Violent or peaceful protests	16	23	28	18	85
	Manifests, concerts	174	179	115	92	560
	Gatherings in election campaigns - elections	113	0	4	333	450
MITROVICA NORTH	Violent or peaceful protests	19	11	5	6	41
	Manifests, concerts	157	173	191	199	720
	Gatherings in election campaigns - elections	7	0	2	38	47
TOTAL	Violent or peaceful protests	268	344	251	186	1057
	Manifests, concerts	817	909	1025	967	3718
	Gatherings in election campaigns - elections	1344	39	34	3635	5052

Table 1. Number of public gatherings (violent or quiet protests, manifestations, concerts, etc.) for the period 2014, 2015, 2016 and 2017, in the territory of Kosovo.

Source: Kosovo Ministry of Internal Affairs





### III. LEGAL FRAMEWORK

The international community's approval of Kosovo's unilateral declaration of independence in 2008 was conditional on guaranteeing human rights and fundamental freedoms for all its citizens. Therefore, the Constitution of the Republic of Kosovo was made as such to ensure direct applicability of international agreements and instruments on human rights and even give them priority over the national legislation. According to Article 22 of the Constitution "Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions: (1) Universal Declaration of Human Rights; (2) European Convention for the Protection of Human Rights and Fundamental Freedoms 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 the Child; (8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment".<sup>12</sup>

Freedom of assembly is specifically mentioned by the Constitution. Article 43, entitled "Freedom of Gathering", states that "Freedom of peaceful 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 or the protection of the rights of others."<sup>13</sup>

The Constitutional framework on freedom of assembly and association is to a large extent in line with the European Convention on Human Rights, which says "Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests (Article 11)."<sup>14</sup>

Furthermore, there are certain laws applicable in Kosovo which aim to regulate the practicality of peaceful assemblies. Chief among them is the Law no.03/L-118 on Public Gatherings.

<sup>12</sup> Constitution of the Republic of Kosovo, Article 22

<sup>13</sup> Ibid. Article 43

<sup>14</sup> European Convention on Human Rights, Article 11



This law, approved in 2009, speaks about the right to peaceful assemblies, freedom of speech in peaceful assemblies, as well as the main duties and responsibilities of the organizers. According to the law, “any citizen of Republic of Kosovo regardless of sex, race, color, religion, nationality, economic, financial, education and social state, political affiliation, or any other status, has the right to organize and participate in the public gatherings.”<sup>15</sup>

Public gatherings allowed under the law are any peaceful assemblies namely gatherings, manifestations, marches, protests, public celebrations, peaceful commemorations, manifestations and events of similar nature and demonstrations. On the other hand, the law gives the right to the authorities to restrict or interrupt certain public assemblies when they endanger order, peace and public security, with regard to freedom and rights of other people, moral and public health. “The right to participation and speech in public gatherings is forbidden in cases when public gatherings are used to incite violence, inter-ethnic or religious hatred or other incitement forbidden by the Law. No public gathering may be held when it is forbidden from police, unless otherwise specified.”<sup>16</sup>

The legislation does not provide a clear view on the freedom for organizing spontaneous peaceful assemblies, since Article 8 gives the right to the Kosovo Police to forbid a calm peaceful assembly if they consider that “the notice of public gathering was not made on due time”. In addition, the Kosovo legislation does not include any rulings with regard to counter-assemblies.

<sup>15</sup> Law No. 03/L-118 on Public Gatherings, Article 3

<sup>16</sup> Ibid. Article 4

Another law that is related to the field of public assemblies is the Law on Public Peace and Order, whose scope is to preserve public peace and order by defining minor offences against public peace and order and providing penalties for committing the minor offences<sup>17</sup>. Other relevant laws are the Law on Police, the Law on Minor Offences and the Law on Local Self-Government. The latter obliges local governments for providing permits for using a public space for public gatherings of a commercial, cultural or sports character, in which case a public space is used for installing tents or other audio/visual equipment.

The legal framework on freedom of assembly hasn't been updated since 2009. However, this year there is a government initiative for a better harmonization of all laws related to peaceful assemblies. In March 2018 the Ministry of Internal Affairs provided for public consultation a Concept Document on Public Gatherings, which aims to better regulate the legal framework on public gatherings, and to harmonize it with the international standards.

The document was available for public consultation for three weeks on the online consultation platform of Prime Minister's Office. The platform does not provide any data on how many people commented on it. Eventually, the concept document was adopted on 30 October 2018. According to the procedures, this draft legislation will be added to the 2019 Legislative Plan. In that case, the draft law will be debated again in the parliament. Usually the Parliamentary Commission in charge organizes a public hearing, in which case the general public and civil society organizations will have a chance

<sup>17</sup> Law No.03/L-142 on Public Peace and Order

to comment on it.

According to the Concept Document<sup>18</sup>, the institutions that are responsible for implementing the law on public gatherings have identified certain loopholes. For instance, certain articles of the law that deal with penalty measures for people who carry weapons or sell alcohol at the place of gathering are not in line with the penalty measures of the Criminal Code of the Republic of Kosovo. Furthermore, the Concept Document says that during the implementation of the law, institutions had different interpretations of key terms, such as “public gathering” or “violence”. Therefore, a better clarification is needed to avoid ambiguity. In addition, the Document suggest that the new law should regulate the misuse of children and people with special needs in public gatherings, as well as the tendency to force employees to participate in public gatherings. Furthermore, the document suggests that the new law should foresee certain sanctions with regard to organization of public events for entertainment such as dog fighting. The Concept Document was approved by the government on 30 October 2018.<sup>19</sup>

<sup>18</sup> <http://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40354>, last accessed on 29.10.2018

<sup>19</sup> <http://kryeministri-ks.net/themelohet-keshilli-per-pronesi-intelektuale-dhe-miratohet-projektligji-per-ndryshimin-dhe-plotesimin-e-ligjit-per-financimin-e-subjekteve-politike/>, last accessed on 31.10.2018



*The legislation does not provide a clear view on the freedom for organizing spontaneous peaceful gatherings, since Article 8 gives the right to the Kosovo Police to forbid a calm public gathering if they consider that “the notice of public gathering was not made on due time”.*



## IV. ADMINISTRATION OF FREEDOM OF ASSEMBLY

According to the Law, peaceful assemblies are considered to be those gatherings which comprise more than 20 persons with the aim to express public political, social, national or racial concerns. The law does not specify what happens in case less than 20 people organize an assembly. In practice, in many cases an assembly was announced and only a few people gathered. However, it was still carried out and with the police present.

The organizer of a peaceful assembly is responsible to maintain and organize the order of the peaceful assembly. The notification for organization of peaceful assemblies, aim of the gathering, time and place of organization should be made at the Kosovo police in the place where the gathering shall be held. The notification should be made at the latest seventy two (72) hours before the peaceful assembly is held. According to the law, the Kosovo Police authorities should inform the organizer no later than 48 hours prior to the gathering on permission or prohibition of the public gathering. If the decision on prohibiting the public gathering is not issued within the foreseen time, then such gathering shall be considered as permitted. There is no specific form to be filled for organizing a public gathering, nor a specific form of providing

advance notification. Our research found out that organizers often draft a notification about the organization of public gatherings and they present it the local police station, along with the agenda of the event. The permission to it usually comes in the form of an oral approval.

Although, the Kosovo Police has its own special form on a public gathering, which is sent to the highest police instances (according to the command hierarchy) for approval, in the majority of cases, the assemblies are given an oral approval. In cases of refusal, the claimant is notified in written form. The law allows for certain gatherings to be held without notice, such are those which take place in indoor premises or premises foreseen for purposes like: meetings, tribunals, round tables of registered political parties and unions.

Despite the lack of a specific form, the notice for peaceful assemblies must comprise of the following elements:

- the purpose,
- time and location,
- duration of the peaceful assembly,
- data on the organizer or the representative,
- data on the leader of the peaceful assembly,





- number of duty guards,
- approximate number of participants.

Moreover, the organizer is responsible to maintain and organize the order of peaceful assemblies. 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 peaceful assembly, 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 peaceful assemblies, to hand in to the police the participant or any other person violating peace and order, etc.<sup>20</sup>

The police actually expect organizers to take responsibility for public order. In the past, when protests have escalated into violence, and police property was damaged, the police have sued the organizers for compensation for their loss of property. For this reason, in such cases when organizers expect a massive turn out of protestors, they provide stewards. These are not professional stewards, but mostly volunteers among organizers with clothing identifying them as a steward.

Depending from the nature of the assembly, the role of the police varies from providing security for protestors by stopping the traffic or potential incidents, such as in the case of an LGBT parade, to providing security for state institutions or the group against whom the protest is organized, such as in the case of Serbs pilgrims visiting religious sites and monuments.

<sup>20</sup> Law no. 03/L-118 on Public Gatherings, Articles 9 and 12.

The following state institutions deal directly or indirectly with the freedom of assembly:

- The Parliament (Parliamentary Committee on Human Rights)
- The Central Government (Ministry of Internal Affairs)
- Local Governments
- The Police
- The Judiciary
- The Ombudsperson

Local governments have a limited involvement on the organization of peaceful assemblies, because they are contacted by the organizers only in such cases when a specific public space is required for the assembly. This means the organizers have to notify both the police and the local government. The office responsible for providing such permits<sup>21</sup> is the Office for Public Services within the local government. Kosovo has a decentralized system of local governance, composed on 38 municipalities. Each municipality elects directly its own mayor. Most of public gatherings are organized in the capital of Prishtina, as Table 1 shows. This year, the municipality of Prishtina, for instance, did not provide a permit for the beer festival to be organized in the main square like in previous years. The local government instead provided another location for it.

The Judiciary too is decentralized in the

<sup>21</sup> The Law on Public Assemblies mentions both the terms permit and notification. Article 6.1 says "The notification for organization of the public gathering, aim of the gathering, time and place of organization shall be made at the Kosovo police in the place where the gathering shall be held", whereas article 6.3. says "Kosovo Police authorities shall inform the organizer no later than forty eight (48) hours prior to the gathering on permission or prohibition of the public gathering".

sense that local courts can deal with matters pertaining to peaceful assemblies. In case the police forbid a peaceful assembly, they must notify the organizers at least forty eight (48) hours before the peaceful assembly. If the organizer or announcer of the peaceful assembly is dissatisfied with the decision of the body that has forbidden the peaceful assembly, they may appeal within three days before the competent court for the examination of the case. The court hereby decides by an expedited procedure. The number of peaceful assemblies that were denied is very small.

The Ombudsperson Institution is another one 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 it monitors and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities".<sup>22</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 violations of human rights envisaged by the Constitution and other international instruments of human rights...."<sup>23</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. The role of the Ombudsperson in helping a party to exercise its right to public gathering has not been tested in recent years, because in general there has been no complains of denial to public gatherings.

<sup>22</sup> Article 132 of the Constitution of Kosovo.

<sup>23</sup> Law No. 05/L-019 on Ombudsperson, Article 16: <http://bit.ly/2vWXgW> (last accessed: July 2018).

In the past few years, especially during 2015-2016 when more violent protests were organized, there have been various complaints against the police for violating the rights of the protestors, and where the Ombudsperson has reacted to these cases. On a number of occasions, with the request of the family members of the protestors who were imprisoned during the protests, the Ombudsperson monitored their cases; the Department of the National Mechanism for the Prevention of Torture exclusively deals with these cases. This department also monitors detention centers, hospitals, etc. The Ombudsperson monitors court hearings too with the police requests. Overall, in the last three years, the right on public gatherings in Kosovo has improved considerably, based also on the Ombudsperson reports 2015 - 2017, where no violation of the right to the freedom of assembly were addressed.<sup>24</sup>

The Ministry of Internal Affairs, has received special attention in violent protests organized before 2017, due to the use of force by the police against protestors. In early 2015, Vetvendosje organized a protest in Prishtina against the election of Hashim Thaci as Kosovo's President. The protest turned into a violent one and the police was accused of using extensive force on protestors. Many of protestors were arrested. For this reason, the Minister of Internal Affairs was asked to report before the Parliamentary Committee on Human Rights. In such cases, the Minister of Internal Affairs is called for reporting before parliamentary committees.

<sup>24</sup> Ibid.





## V. POLICING OF ASSEMBLIES

As the law on public gatherings specifies, the national police is the main institution that deals directly with the organization of an assembly. Again, each of 38 municipalities has its own local police station, which is responsible for providing permits to organizers of peaceful assemblies as well as provide security during the gathering. The police make their assessment on the probability of violence of each assembly, in order to prepare for providing security. For this reason, the organizers not only have to notify the police of the planned assembly, but, in most cases they also meet the police to discuss the agenda.

According to the assessment of the police on the probability of violence, different police units are used. In some cases, police in civil uniforms are mixed with the protesters in order to protect the organizers from counter-protesters. A case at hand is the organization of the Pride parade by the LGBT community on 10 October 2018. The parade kicked off at Pristina's Skanderbeg Square amid increased police presence and ended some 500 meters away, at Zahir Pajaziti Square.<sup>25</sup> Despite the sensitive issue and the fact that such an event was organized for the second time in Prishtina (the first Pride took

place in summer of 2017) the march ended up with no incidents. One of the organizers says that the Kosovo Police has been very supportive in providing security during the event, as both undercover police and police with uniforms were present at the rally.<sup>26</sup> One reason why no incidents were reported, was due to the participation of local and international political actors in the Pride, which means the security was tight and there were no counter protesters.

In general, the police try to facilitate and enable all assemblies, including simultaneous assemblies and peaceful assemblies that block roads/traffic. In cases when the police have to use force, they usually engage in dialogue with the organizers and issue verbal warnings before taking any action. The police typically only use force when the protesters damage public property or attack the police. With regard to the weapons the police use, the first weapon the police use against protesters is pepper spray and rubber sticks. Tear gas and water cannon may also be used to disperse massive protests. No bullets or rubber bullets are used during the protests, although the police carry real guns during each assembly.

The issue of the accountability of the police for

<sup>25</sup> <https://www.rferl.org/a/pristina-to-host-second-ever-gay-pride-parade/29535674.html>

<sup>26</sup> Interview with Blert Morina, one of the organizers of the march.



their behavior and action (especially on use of force) is mostly done through an internal process. Each police officer has an identification number on his upper arm which is visible all the time, which aids accountability. In cases of complaints from the protesters, it is the duty of the Kosovo Police Inspectorate to investigate the matter thoroughly. In such cases, mostly CCTVs and reports from the media are used as evidence. As the number of violent protests was relatively low in 2017-2018, there are no recent examples when police have been held to account for their actions related to policing an assembly. Undercover police are typically used by the Kosovo Police in such assemblies that are thought to be violent. In such cases it is difficult to recognize the police.

With regard to freedom of media to report at assemblies, there are no legal restrictions on them. Usually journalists have their identification cards on display, but citizen journalists are also able to report freely at assemblies. Social media are more and more used for organizing protests, due to the high Internet penetration rate in Kosovo and the high usage of social networks. For example, during 2018, a group of non-governmental organizations and civil society activists used Facebook to organize a series of protests against the Kosovo Chief Prosecutor. The organizers called that the Chief Prosecutor be held accountable for not protecting a special prosecutor who was investigating irregularities on the distribution of pensions to war veterans. The special prosecutor was intimidated by members of the ruling elite and eventually left the country. The rally was organized every Wednesday for three weeks in the main square on Prishtina. The organizers

of the event claimed the lack of people's interest in participating was the main reason for stopping the organization of protests in the fourth week. However, they claim that the police provided all the necessary measures for the protest.<sup>27</sup>

Lastly, human rights defenders are allowed to freely observe the assembly. Here it is worth mentioning the case of the Kosovo Council for the Protection of Human Rights and Freedom (KMDLNJ). KMDLNJ, which operates as a non-governmental organization, monitors all assemblies in Kosovo.<sup>28</sup> They claim that the police informs them in advance when they are about to intervene in a protest. Comparing to five years before and with other countries in the region, Kosovo is a very safe environment for peaceful assemblies, says the director of KLMDNJ.<sup>29</sup>

Overall, our research shows that the trust between organizers of assemblies and the police has increased in recent years in Kosovo. Compared to some years ago, when the police and the protests were seen as antagonistic forces, on the one hand with the government using the police to crash the protestors for political reasons, and on the other hand with the protestors using violence against the police in order to reach their political goal, the relationship between the two groups has improved in recent years. Hence, the Kosovo

<sup>27</sup> Interview with Adea Kondirolli, one of the organizers of the protest. 25.10.2018

<sup>28</sup> Typically they issue public statements or press releases after the protests, and especially when protesters are detained. They visit protesters in custody and report on their conditions. They engage their own staff to monitor assemblies, however, no regular or annual report are published by KMDLNJ on freedom of assembly.

<sup>29</sup> Interview with Behxhet Shala, director of KLMDNJ, 15.08.2018

case could serve as a *good practice case study* of the 'normalization' of relations between protestors and the police over the years. Now the police are considered as a partner in helping the organizers in organizing peaceful assemblies. One reason for the improvement of relationship is that the organizers are less confrontational than they used to be. The most massive and potentially violent protests organized in Kosovo in the last few years were organized by Vetevendosje. However, prior to entering the 2017 central elections, Vetevendosje has denounced the use of violence in their future assemblies in order to change the public perception of being a violent political force.



*"Comparing to five years before and with other countries in the region, Kosovo is a very safe environment for any public gatherings." Behxhet Shala, director of the Kosovo Council for the Protection of Human Rights and Freedom*



## VI. CRIMINALIZATION OF PROTESTS



The Law on Public Assemblies foresees a several restrictions and penalties for assembly related offences. One restriction has to do with the citizenship of the organizers. According to this law, any citizen of the Republic of Kosovo has the right to organize and participate in peaceful assemblies. However, given the definition of the European Convention on Human Rights (ECHR) which stipulates that “everyone has the right of freedom of assembly”<sup>30</sup> which does not limit this right to citizens (nationals) of one particular country, the Law on Public Gatherings limits it to “every citizen of Kosovo regardless of sex, race, color, religion has the right to organize and participate in public gatherings”. The research did not identify any examples where non-citizens were restricted in organizing or participating in an assembly.

Moreover, there are restrictions based on the number of participants as well as the timing of notification. The law puts a threshold of 20 people<sup>31</sup>, as the minimum criteria for a gathering to be considered as an assembly.

<sup>30</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).

<sup>31</sup> The Law on Public Assemblies, Article 5: “Peaceful public gatherings are considered those gatherings which comprise more than twenty (20) persons with the aim to express public political, social, national or racial concerns.”

However, the police do facilitate small protests. Typically when someone notifies the police for organizing an assembly, they have to give a rough number of potential people, in which case usually more than 20 people are expected to gather. There have been protests with just a few people, and the police showed up for security reasons only.

With regard to timing, the law allows the police to restrict or even prohibit the organization of an assembly if the notice was not made on due time<sup>32</sup>.

<sup>32</sup> Law no. 03/L-118 on Public Gatherings, Article 8.





YEAR	NUMBER OF PROTESTS AND PUBLIC GATHERINGS
2018 (Jan-Sep)	180
2017	186
2016	251
2015	344
2014	268
2013	342

Table 2: Total number of protests and public gatherings along the years<sup>33</sup>

Source: Kosovo Police annual reports

The intended location and the motive for gathering are other factors that could restrict the organization of an assembly. In terms of the location, the law states that a public gathering is not allowed: near hospitals and locations where first aid vehicles might be obstructed and the quietness of hospitalized persons might be spoiled; near nursery schools and primary schools during the school hours; in national and natural protected parks except when the public gathering has the purpose of protecting the environment; near monuments and premises of high cultural and historical value with an aim of protecting them from possible damages; 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

33 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”.

disturb a large number of citizens.

Although these are blanket restrictions, they have been challenged from time to time by protesters. There have been cases when people have protested at a crossroads or on a highway, and the police have showed up to regulate the traffic and negotiate with the protesters to move away.

In terms of the purpose of gathering and its messages, the law restricts assemblies if a peaceful assembly is used to incite violence, inter-ethnic or religious hatred or other incitement forbidden by the law; if it is foreseen to be held in a place that is prohibited under this law; if there are substantial reasons that the gathering might be used for violence, or if it is a spontaneous gathering having no organizer, which may turn into violent gathering.<sup>34</sup>

In terms of penalties related to assembly offences, the law foresees that the person who carries a gun in the assembly is fined between 700 to 1,000 euros, the organizer who carries on the public gathering despite the police prohibition is fined between 100 to 200 euros, the leader who does not call for an end of the public gathering is fined between 200 to 500 euros.<sup>35</sup>

34 Law no. 03/L-118 on Public Gatherings, Article 8.

35 Ibid. Article 21.



# VII. RECOMMENDATIONS



Overall, Kosovo provides a safe environment for peaceful assemblies. However, there are certain improvements needed in this field in order for the law to be in compliance with international best practices, such as the responsibility of organizers for maintaining order, blanket restrictions on many locations, lack of clarity over assemblies with less than 20 people and lack of clarity over spontaneous assemblies. In addition, the following points need to be addressed:

- The Law on Public Gatherings needs to be amended. Since 2009 the law has not changed. The Concept Document prepared by the Ministry of Internal Affairs and adopted by the Government in late October 2018, shows that there is an urgent need for the harmonization of all laws that are related to the freedom of assembly.
- The Government and the Parliament should ensure an effective public consultation of all new draft legislation.
- The penalty measures provided by the Law on Public Gatherings are in conflict with the Criminal Code, such as the case with penalties on gun possession. Article 21 of the law on public gatherings says

that the person who carries the gun is fined in the amount of 700 to 1000 euros, while the Criminal Code stipulates that the possession, control or possession of weapons is punishable by a fine of up to 7,500 euros or by imprisonment of up to five (5) years.

- Moreover, the definitions of terms like “public gathering” and “violence” have been subject to different interpretation in recent years, which shows the necessity for the amendment of the law.
- The Kosovo Police should generally be more open to interested parties and Civil Society Organizations to provide information about the management of assemblies from the police. Also, it should compile reports and information related to assemblies for the public and interested stakeholders besides the annual reports of the police which have very little information about public gatherings;
- The Ombudsperson should monitor the implementation of the Law on Public Gatherings and include its assessment in each annual report.
- The Government should respond to reports and recommendations of the Ombudsman.





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*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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