

MONITORING THE RIGHT TO FREE ASSEMBLY

Aleksandra Vavić
Institute Alternative

2017
2018 MONTENEGRO

 #right2freeassembly



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Author: Aleksandra Vavić (Institute Alternative)

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I. EXECUTIVE SUMMARY

This study aims to present how the right to peaceful assembly is exercised and respected in Montenegro. The timeframe in this report is the year 2017, although the author is referring to the year 2018 in the cases of the direct observation of the public assemblies, as well as the case studies which are necessary to present the context as a whole.

During the 2017, 304 assemblies were notified to the police. Out of that number, 18 were "temporarily banned". This is a significantly smaller number of temporarily banned assemblies in comparison to the previous reporting period.

Spontaneous assemblies are generally policed although in practice the police officers have a rigid interpretation of the article regulating these assemblies, which leaves space for dispersing them and filing misdemeanour charges against the citizens.

Although the Ministry of Interior has announced amendments to the legislation in the beginning of 2017, no steps have been taken to publish any proposed changes.

The brutal beatings of citizens during October 2015 in Podgorica still have not been investigated effectively while the identities of police officers who have beaten the citizens

remain a secret.

Of great importance was a landmark decision of the Constitutional Court of Montenegro, brought on October 24th 2018, which found that by upholding the ban of gay pride march in Nikšić, the Montenegrin Supreme Court violated freedom of peaceful assembly, as guaranteed by the Article 52 of the Constitution of Montenegro, Article 11 of the European Convention on Human Rights and Article 21 of the International Covenant on Civil and Political Rights.

II. BACKGROUND AND CONTEXT



Although there have been legal improvements in the area of freedom of assemblies in Montenegro, room for improvement in practice still exists. Protests that can be labelled as politically sensitive more often result in violence, and such assemblies are also often more heavily policed than others.

There were 304 notified assemblies in Montenegro during 2017. According to the Police, an additional 87 assemblies were also held but not notified in advance. 18 of them were temporarily banned, which could be considered an improvement when compared to previous years:

REPORTING PERIOD	NOTIFIED ASSEMBLIES IN TOTAL	BANS ISSUED
2018	518	7
2017	307	18
July 2016 - September 2017 ¹	1115	80
2015	141	26
2014	136	29

Number of notified and banned assemblies from 2014 - 2017²

During 2017, all assemblies were peaceful and none resulted in violence or disorder and none resulted in use of force by the police.

The majority of assemblies (206) took place in the capital Podgorica, which makes almost two thirds of the total number. The other assemblies were held in Pljevlja (16), Cetinje (15), Berane (15), Kotor (7), Budva (2), Bar (4),

² Data provided by the Ministry of Interior, gathered by Institute Alternative via Requests for Free Access to Information in the 2016-2018 period. See: Freedom of Assembly in Montenegro, ECNL & Institute Alternative, Podgorica, 2016, and Monitoring Right to Free Assembly Montenegro Country Report, ECNL & Institute Alternative, Podgorica, 2017.

¹ The given timeframe corresponds to the reporting periods for which the data was gathered under the framework of the projects on monitoring the freedom of assembly.

Herceg-Novi (1), Plav(8), Bijelo Polje (5), Ulcinj (2), Danilovgrad (3), Žabljak (3), Rožaje (4), Nikšić (7), Šavnik (1), Gusinje (1), Mojkovac (3), Andrijevica (1).

The general remark for the year 2017 is that the situation in this field has improved. However, it should be noted that there were no politically sensitive assemblies, or assemblies of any kind that would significantly endanger the political positions of the establishments, such as those in 2015.³

During 2018, a total of 518 public assemblies were held in Montenegro, while according to the Police Administration data, there were no assemblies that resulted in violence or riots, and there was no use of force by the Police. During that year, the Police did not allow assemblies in 7 cases. There were also 6 unannounced assemblies. During 2018 there were 13 simultaneous assemblies, but there were no counter-protests.⁴

Out of these 169 notified assemblies, 22 were on the move and 1 was spontaneous.

There were no assemblies that resulted in violence or the use of police force. When it comes to assemblies held at the same time, there were few cases in which 2 or 3 assemblies were held in the same place, but in a different time period, without overlap.

Police has no information that any assembly was held as counter-protest.

The right to peaceful assembly is largely

³ See more: Vavić, Aleksandra, Bogojević, Ivana, Freedom of Assembly in Montenegro, Institute Alternative, Podgorica, 2016, available at: <http://institut-alternativa.org/en/freedom-of-assembly-in-montenegro-2/>

⁴ Response to the request for free access to information, Ministry of Interior, Police Administration, General Police Department, Department for Public Order and Peace, Letter number 48/1-222/19-8229/1, Podgorica

protected in line with international standards, although different interpretations of the legal stipulation on spontaneous assemblies could pose a risk of endangering this right.

2015 PROTESTS

The protests in October 2015 were initiated by the opposition parties which requested fair elections and a transitional government. The opposition coalition Democratic Front organised continuous protests which culminated in a large protest in Podgorica on 24 October, which many citizens, non-partisan activists, NGO representatives, academics joined. After a while, the organisers stated that they were not able to control the masses anymore, and which was followed by the escalation of force on streets, by both protesters and police. The police used teargas which left numerous consequences. Some of the citizens, on the other hand, threw flares and stones at the police. In response to the excessive use of force during the protests, international actors such as the European Commission, the OSCE and Amnesty International issued appeals for investigations into incidents that happened during the protests.⁵ Due to the violence, and as neither the excessive use of force by the police was investigated effectively, nor the accountability of police officers established, the 2015 protests present a bad example of handling assemblies.

⁵ See more: Montenegro Police Fire Tear Gas at Protesters, Balkan Insight, October 24 2015, available at: <http://www.balkaninsight.com/en/article/montenegro-opposition-protest-against-government-10-24-2015-1>





III. LEGAL FRAMEWORK

The Constitution of Montenegro safeguards the possibility of public assemblies under Article 52, which states that the freedom of peaceful assembly, without approval and with prior notification to the competent authority, shall be guaranteed. Freedom of assembly may be **temporarily** restricted by a decision of the competent authority in order to prevent disorder or the execution of a criminal offence, threat to health, morality or security of people and property, in accordance with the law.⁶

The Law of Public Assemblies and Public Performances⁷ was adopted in 2016 and it has brought major changes in comparison to the previous law. These include: stronger positive obligations for the state in issues related to the safety of people, property, protection of human rights and freedoms, health, which must be performed by the police in cooperation with other competent bodies and services, in contrary to previous legal provisions which obligated the organisers to undertake these tasks (Art. 10). Additionally, public assemblies now could be organised closer to the premises of the Government, Parliament, Constitutional

⁶ Constitution of Montenegro, Official Gazette of Montenegro, No. 01/07, od October 25th 2007 and No. 38/13 of August 2nd 2013

⁷ Law on Public Assemblies and Public Performances, Official Gazette of Montenegro, No 52/16, August 9th 2016

Court and the President, although a permanent blanket ban still exists in the law. Lastly, the Law has recognized the possibility for spontaneous assemblies.

It can be seen that Constitution of Montenegro foresees the possibility of **temporary prohibition of assemblies only in exceptional cases** - to prevent disorder or crime, protection of health or moral, or for the safety of people and property, in accordance with the law.

However, the Law on Public Assembly and Public Performances limits this freedom in terms which are not recognized by the Constitution, introducing permanent prohibition of assemblies in locations listed in the Article 14. For example, the Law states that an assembly cannot be held closer than 15 metres from the buildings of the Parliament of Montenegro, President of Montenegro and the Constitutional Court of Montenegro, while an assembly cannot be held closer than 10 metres from the building of the Government of Montenegro.⁸

Therefore, while the Constitution of Montenegro regulates this area in accordance

⁸ Law on Public Assemblies and Public Performances, Official Gazette of Montenegro No. 52/16 of August 9th 2016

with international standards, the legislator has failed to harmonize the law with the Constitution or with international standards, and has introduced additional limitations on the right to peaceful assembly.⁹

AMENDMENTS TO THE LAW – WHISPER DOWN THE LANE

During 2017 the Ministry of Interior announced that amendments would be introduced to the Law on Public Assembly and Public Performances. The amendments were announced during the session of the Parliament dedicated to the MPs’ questions, and would focus on banning the assemblies taking place on roads.¹⁰ Apart from the CSOs who voiced their concerns in public statements, warning that these amendments would be contrary to the Constitution as well as ODIHR standards and the ECHR, none of the authorities or other stakeholders have reacted to these ideas. So far, no official steps have been made towards publishing draft amendments.

Although the Police Administration should be one of the first to know about any potential amendments, they have not been consulted about any changes:

“It is early for law amendments - it was adopted just recently, in 2016. It is in line with European standards. We can do the analysis and then decide if anything needs to be changed, but the small number of banned assemblies

9 Law on Public Assembly, Official Gazette of Montenegro No. 01/15 of January 5th 2015

10 Minister’s answer to the MP’s question during the Parliamentary session, March 24th 2017, available at: <https://goo.gl/B2TH8a>

shows that the Law is well designed. We do not know about those amendments.”¹¹

The Police Commander from the Podgorica Security Center agrees:

“I think that the Law in force is fine. We would react and initiate amendments if it was not the case.”¹²

Additionally, the Government Work Programme for the next three years 2018-2020 neither does envisage any changes in this regard.¹³

If the Ministry insists on amendments on the Law on Public Assembly and Public Performances, the draft should be submitted for a public consultation and the process should be open and participatory in line with international best practice, while any proposed changes are expected to be in line with international standards in the area of human rights.

11 Interview with Nikola Janjušević, Director Deputy, Assistant Director of the Police Administration of Montenegro, October 5th 2018

12 Interview with Ivan Stamatović, Deputy Commander of the Department of the Public Peace and Order, October 25th 2018

13 Government Work Programme 2018-2020, Government of Montenegro, January 2018

IV. ADMINISTRATION OF FREEDOM OF ASSEMBLY



In Montenegro, assembly organisers are required to provide advance notification of any planned assembly to the Police Administration, more specifically, the local Security Center. The Ministry has provided an electronic form for providing notification which is available on its website.¹⁴

The Article 11 of the Law lists what the notification should contain:

- information on the organiser: personal name, unique citizen number, contact phone, residence address
- information of the leader of the assembly: personal name, unique citizen number, contact phone, residence address
- information on the location, date, time and duration of the public assembly
- programme and the goal of the public assembly
- estimated number of the participants
- other information of interest needed for safe and uninterrupted public assembly

In the case of a moving public assembly, the organisers are required to state the itinerary as well as potential stopping points and means

of moving.

Hence, it can be concluded that the organiser is required to submit only basic information to the Police Administration Security Center and that the process is not overly complex as they are required to submit it to just one institution, five days before the assembly will take place.

The Law also envisages the **possibility of consultations** after a notification has been submitted: the police can invite the organiser to discuss any ambiguity, irregularities and confusions, although it is not mandatory for the organiser to follow up. However, in practice, such communication between the police and the organisers has been shown to be good practice, as confirmed by some of the organisers from the civil society.

*"We always have direct communication with the Police, prior to the assemblies, but also during the assembly via phone. Even if our route deviates from the original plan agreed upon with the Police in advance, they always meet our needs."*¹⁵

¹⁴ Ministry of Interior website, available at: http://www.mup.gov.me/upravapolicije/naslovna/Obrasci_prijave_javnih_okupljanja/

¹⁵ Interview with Maja Raičević, Executive Director of Women's Rights Center, September 21st 2018

The representative of the LGBT Forum 'Progress' states a similar attitude:

*"If there is anything to be lauded, it is the fact that the Police willingness to cooperate."*¹⁶

Police officers also share the attitude that the police is ready to cooperate:

*"When they come to the consultations, we write down the minutes, tell them everything about their rights and obligations as well. We have the communication during the assembly as well, there is a whole process in place."*¹⁷

In the process of deliberating on the notified assembly, any decisions to impose a ban are taken by senior police management, based upon the operational information provided by police officers.

LOST IN TRANSITION

After analysing almost 400 official documents of conversation between the police and the organisers of the assemblies in the first six months of 2017¹⁸, Institute Alternative has concluded that the police had been misinforming organisers on their rights by referring to the previous law that was no longer in force, and which regulated this area much more restrictively than the law currently

¹⁶ Interview with Bojana Jokić, Executive Director of LGBT Forum Progress, July 31st 2018

¹⁷ Interview with Ivan Stamatović, Deputy Commander of the Department of the Public Peace and Order, October 25th 2018

¹⁸ Information obtained through Free Access to Information Request by the Ministry of Interior, Decision UPI-007/17-2986/3, July 5th 2017

in force.¹⁹ Following Institute Alternative filing an initiative to the Council for Civic Control of Police to further investigate this behaviour, the police confirmed the omission and stated that their actions are now fully in compliance with the provisions of the current Law. However, external police control bodies, such as Protector of Human Rights and Freedoms or Council for Civic Control of the Police should monitor the process of informing citizens on their rights on regular basis to ensure a proper application of the law.

Administrative court

Out of 304 notified assemblies, only 14 were temporarily banned, which could be considered as an improvement on previous years. The assemblies were banned either due to reasons of late notification or because they would result in the blocking of the streets for a long time which could produce major traffic issues, according to the published decisions. However, it should be noted that international standards state that causing disruption to traffic **is not a legitimate ground for banning an assembly**, but rather the police should aim to manage the traffic while facilitating the assembly.²⁰

The Law adopted in 2016 also introduced the right to take a lawsuit to the Administrative Court directly, while it is to be considered as urgent and has to be deliberated upon in 72 hours. This represents a better legal solution since it forces the Administrative Court to take

¹⁹ The Police misinform citizens on their rights, Aleksandra Vavić, Institute Alternative, <http://institut-alternativa.org/en/the-police-misinform-citizens-on-their-rights/>

²⁰ See: Case of Balçık and others v. Turkey (Application no. 25/02) (2007), paragraph 52, European Court of Human Rights, 2007, available at: [https://hudoc.echr.coe.int/rus#{"itemid":\["001-83580"\]}](https://hudoc.echr.coe.int/rus#{)

a decision in the short deadline which would allow the organiser to eventually organise the assembly upon the adoption of their lawsuit. The introduction of this legal solution did not bring better outcome for the citizens: not a single lawsuit on the banned assembly was adopted by the Administrative court.²¹

However, there were only two lawsuits filed, both of them by religious communities: The Metropolitanate of Montenegro and Montenegrin Orthodox Church.²² Both of the assemblies had been banned as both churches notified of planned assemblies at the same place and at the same time, near and in the church at Ivanova Korita within Cetinje Municipality, on August 19th and 28th 2017 at 9 AM. The bans show that the police stated that these would be assemblies with high risk, and that additionally, similar assemblies in the past have result in incidents and violent acts.²³ This also shows that the police do not want to police two counter-assemblies, although it should be their obligation to do so, according to international standards.²⁴

²¹ Information obtained through Free Access to Information Request by the Administrative Court, Decision No. 333/18 of May 10th 2018.

²² These two religious communities have an ongoing conflict, originated from the legitimacy of religious representation and recognition, as well as the ownership and management of the property of religious buildings, but over the years the political parties and political leaders have also been involved in the issue supporting one of two sides, which made this conflict more political in its nature.

²³ Information obtained through Free Access to Information Request by the Police Administration, Decision No. 48/1 – 007/18 – UPI 2819, May 29th 2018

²⁴ See more at: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai; OSCE Report on Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (April 2015 – July 2016)

ACCOUNTABILITY

Any state or local authority can be held accountable for their actions by filing the appeal to the Protector of Human Rights and Freedom (Ombudsman). In 2017, none of the appeals against the Police Administration and Ministry of the Interior has been related to the facilitation or policing of an assembly.

The Forgotten Reports

The Law on public assemblies adopted in 2016 added one important stipulation: after each calendar year, the Ministry of Interior should issue a report on the implementation of the law and submit it to the Parliament. When the authors requested the report for 2017 to the Ministry of Interior, we were given documents that simply contain a list of those assemblies that took place in the given year. The documents were composed of basic data and cannot be considered as a report on the implementation of the law.

One of the next steps should be to clarify what necessary data such a report should contain for an effective review of the implementation of the law. Proper and timely reporting would be an additional step in monitoring the freedom of assembly in Montenegro, while it would also facilitate mapping irregularities and issues in the implementation as well as present the basis for future steps in amending the legal framework.

The required reports have not been deliberated by the Government nor sent to Parliament,²⁵ therefore, for two years in a row, the Ministry has not fulfilled its legal obligations, while it

²⁵ Information obtained through Free Access to Information Request by the Parliament of Montenegro, Decision No. 00-41/18-29/3 of May 14th 2018

is not known that the Parliament requested them.



V. POLICING OF ASSEMBLIES

In the past year of 2017, there were 304 assemblies that were notified to the authorities and an additional 87 spontaneous assemblies that took place.²⁶

THE TEMPORARY BANS

In 2017 there were 18 bans on assemblies in total. The following summarises the reasons for the bans:

One ban was issued upon notification that two assemblies would take place on two roundabouts in Podgorica, and would create a traffic blockage.

One decision was issued for five notified assemblies in the center of Podgorica for six hours, from 10am to 4pm. At the same time, the same decision allows five assemblies at the same time and same dates on the sidewalks, so not to block the street. As already stated, international standards do not allow disruption of traffic to be a legitimate ground for bans of the assembly. At the same time, standards stipulate that the organisers of the assemblies have right to choose time and place where it should be organised, while the opposite could be interpreted as the states' interference in

²⁶ Information obtained through Free Access to Information Request by Decision No. 48/1 – UPI – 007- 18-2819, Ministry of Interior, May 14th 2018.

the right to free assembly.

Eight assemblies, one in Nikšić, one in Cetinje, one in Rožaje, one in Berane, one in Danilovgrad and three in Bijelo Polje, were temporarily banned as they had not submitted advance notification five days before the assembly.

Two assemblies notified by The Metropolitanate of Montenegro and two assemblies notified by the Montenegrin Orthodox Church were banned, as there have been planned for the same time at the same places. The police banned all four of them due to safety risks. However, the safety risks were scarcely explained, instead they cited incidents that happened in the past which involved these two groups.

In 2017 the Police Administration has policed almost all assemblies without any major issues arising. However, it can be concluded that there were no politically sensitive assemblies, nor assemblies of any kind that would significantly endanger the political positions of the establishments, such as those in 2015.²⁷

"I think that the attitude of the Police is even better if there is an

²⁷ See more: Vavić, Aleksandra, Bogojević, Ivana, Freedom of Assembly in Montenegro, Institute Alternative, Podgorica, 2016, available at: <http://institut-alternativa.org/en/freedom-of-assembly-in-montenegro-2/>

official Government's policy to put the rights of certain vulnerable group as a priority. They can be very professional if they want to – I remember the first Pride when the participants were brought to the secure location due to violence on the streets. If there are messages of support from the highest level, there are usually no problems.”²⁸

In year 2017, there were 87 spontaneous assemblies organised by citizens mainly due to problems with legalisation of housing and assemblies organised after sport matches held in Podgorica.²⁹ All of them were able to take place, even though the Police Administration had warned participants that the assemblies were not organised in line with the law. However, no violence occurred, no means of force were used, and there were no misdemeanour charges filed against the citizens.

Under the previous law, all non-notified assemblies had been deemed illegal, but spontaneous assemblies were recognised by the Law on Public Assemblies and Public Performances adopted in 2016. However, the article regulating these assemblies is vague and leaves space for different interpretations. Namely, as the law states, if it happens that more than 20 persons gather on a public space as the “reaction to certain events that could not be predicted or organised in accordance

with the Law”, the police officer will inform the participants in the assembly that it is not organised in accordance with the law and warn them that they are obligated to comply with the law.

This could mean that the police officers could warn the participants to disperse all assemblies which are spontaneous and, thus, were not notified since the notification is required by the law. That is the interpretation of the police officer from the Security Center in Podgorica:

“In the case of spontaneous assemblies, we invite citizens to peacefully leave the assembly and notify it as required by law.”³⁰

Additionally, the police officer believes that the article is vague, but it could be improved in a manner to specify which assemblies could be spontaneous, for example sport gatherings or cultural activities, since the current vagueness of the articles allows its abuse.

Nevertheless, introducing spontaneous assemblies just for the sake of having them in the law and not policing them does not, in any way, improve the right to free assembly. The spirit of introducing spontaneous assemblies is **to allow and police them as long as they are peaceful**, given that the key condition from this article is also fulfilled: that the assembly could not be notified as the reason for organising it on short notice could not be predicted.

This is also confirmed by the international standards as the “failure to notify authorities of an assembly does not render an assembly unlawful, and consequently should not be

³⁰ Interview with Ivan Stamatović, Deputy Commander of the Department of the Public Peace and Order, October 25th 2018

used as a basis for dispersing the assembly Spontaneous assemblies should be exempt from notification requirements, and law enforcement authorities should, as far as possible, protect and facilitate spontaneous assemblies as they would any other assembly.”³¹

Similarly, the ECHR case law in Éva Molnár v. Hungary also states that the right to hold spontaneous demonstrations may override the obligation to give prior notification to public assemblies only in special circumstances, namely if an immediate response to a current event is warranted in the form of a demonstration. In particular, such derogation from the general rule may be justified if a delay would have rendered that response obsolete.³²

Nevertheless, different interpretations of the article can have consequences for exercising the right to free assembly in the future, and this part should be subjected to the future amendments.

TRAININGS ON POLICING ASSEMBLIES

The Police Academy has an annual curriculum of trainings which includes a course on public assemblies, but according to the representatives of Police Administration, additional attention is paid to these issues, during regular workshops and trainings:

“Our officers have regular trainings during the police education. In our annual work plans, there are also different trainings on the stress

³¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai

³² Éva Molnár v. Hungary, Application no. 10346/05, European Court of Human Rights, January 7th 2009, available at: [https://hudoc.echr.coe.int/rus - {“itemid”: \[“001-88775”\]}](https://hudoc.echr.coe.int/rus - {“itemid”: [“001-88775”]})

control during the assemblies.”³³

According to the Ministry official, police officers will also have better education in the future in line with the law:

“We have a special chapter dedicated to the education and trainings of the police officers in the Draft Law on internal affairs, as we saw that there is a lot of space for improvement.”³⁴

Various police departments are involved in policing assemblies:

“Primarily, it is the Department of Public Peace and Order, but we also include Traffic Police, Personnel and Object Security, Criminalistics Unit. We involve Special Police Force for assemblies with high security risks.”³⁵

Furthermore, the Police Administration also deploys police officers in civilian clothes.

“It's impossible to send the officer in the uniform to obtain operational information. They are gathering information on threats that could endanger citizens at the assembly... Some say that officers are there to provoke someone, but that's malicious.”³⁶

According to the police, officers in civilian

³³ Interview with Duško Koprivica, Head of Department of Public Order and Peace, Police Administration, October 5th 2018

³⁴ Interview with Danilo Ćupić, Director General at the Ministry of Interior, October 16th 2018

³⁵ Interview with Duško Koprivica, Head of Department of Public Order and Peace, Police Administration, October 5th 2018

³⁶ Ibid

clothes are deployed in order to obtain information on potential threats within the group – whether someone is acting strange, has any kind of weapon, whether there are people who have already been convicted and can pose a threat, etc.

The Police Administration representatives say that everything is being done in order to check that the police officers are ready for the service, not only prior to the assemblies, but every day, as the leader of the department has to sign paperwork in order to confirm that every officer is able to work and perform his police duties.

Identification to be Improved

In parallel with the drafting the new Law on Internal Affairs, the Ministry will also adopt a new bylaw regulating the identification of police officers. In future, after the adoption of the Rulebook, all police officers will have a form of personal identification comprising a combination of letter and numbers.³⁷ That was also confirmed by the Director General for Oversight within the Ministry:

“The police officers who preform police duties which require special protective uniform will also have that identification on vests and helmet.”³⁸

The identification problem had arisen in October 2015 when the commander and members of the Special Anti-terrorist Unit allegedly failed to recognize and report their colleagues who have beaten citizens during the protests (see below).

³⁷ Ibid

³⁸ Interview with Danilo Ćupić, Director General at the Ministry of Interior, October 16th 2018

ACCOUNTABILITY OF THE POLICE

A complex system of external and internal oversight mechanisms is in place in Montenegro.³⁹ In 2017, none of the case brought before the internal police bodies, the Ethics Board and the Disciplinary Commission, were related to the behaviour of police officers during the assemblies.⁴⁰

However, in March 2017, an official vehicle ran through the assembly taking place on a boulevard in the center of Podgorica. The Women’s Rights Center filed a letter to the Internal Control of the Police requesting information on whether the vehicle was used by a police officer. In the reply to the Center, the Internal Control stated that the organiser of the assembly in question has already filed a charge to the Basic Prosecutor’s Office regarding the same event and that the Police Administration was already cooperating with the Prosecutor’s Office. However, they added that there was no basis for initiating a procedure against the police officers who policed the assembly, stating that there could be basis for the disciplinary proceeding if the Prosecutor’s Office determines that the elements for the criminal responsibility.⁴¹

Landmark decision for the right to free assembly

In October 2018, the Constitutional Court of Montenegro found that by upholding the ban on a gay pride march in Nikšić, the second

³⁹ See more: Muk, Stevo (ed.), Assessment of Police Integrity in Montenegro, Institute Alternative, Podgorica, 2016, available at: <http://media.institut-alternativa.org/2017/06/assessment-of-police-integrity-in-montenegro-2016.pdf>

⁴⁰ Review of the website of the Ministry of Interior

⁴¹ Internal Police Control Response to the Women’s Rights Center

largest city in Montenegro, the Montenegrin Supreme Court violated freedom of peaceful assembly, as guaranteed by the Article 52 of the Constitution of Montenegro, Article 11 of the European Convention on Human Rights and Article 21 of the International Covenant on Civil and Political Rights.

The Constitutional Court found that the ban was not necessary in a democratic society and that groups threatening with violence must not be allowed to suppress freedom of peaceful assembly.⁴²

Torture after 2015 Protests still under the Veil of Secrecy

During and after the political protests in late 2015, the Montenegrin system revealed serious flaws in the investigation of torture. Members of the Special Anti-terrorist Unit had brutally beaten one citizen and demolished his car, but the majority of perpetrators remained unknown due to alleged inability of the Unit Commander to identify them. Only two members of the Special Anti-terrorist Unit admitted their involvement and were put on trial. However, their defence attorney has requested the expert opinion by a psychologist as they had been “under pressure and exposed to physical attacks by participants during the night of protests”⁴³ The Basic Court in Podgorica has sentenced them to 17 months of prison, but both their defence attorney and the basic prosecutor’s office have lodged a

⁴² See more at: http://www.hracion.org/wp-content/uploads/2018/10/Odluka-Ustavnog-suda_LGBT-Forum-Progres.pdf

⁴³ Suđenje za prebijanje Martinovića: Vještak da utvrdi uračunljivost optuženih (Trial for the beating of Martinovic: Expert to determine whether the accused have been in sound mind)Vijesti, available at: <http://www.vijesti.me/vijesti/sudenje-za-prebijanje-martinovica-vjestak-da-utvrdi-uracunljivost-optuzenih-962347>

complaint to this decision in April this year.

In January 2017, following the Ombudsman filing a criminal charge to the Prosecution⁴⁴, the Commander of the Special Anti-Terrorist Unit has been sentenced to five months in prison by the Basic Court in Podgorica for helping perpetrators after committing the crime. By doing so, the Court has sentenced him to a minimal punishment, given that the range of sentence for this offence is from 3 months to five years. The Law on Internal Affairs states that the employment of a police officer will be terminated if, inter alia, the officer is convicted by a final judgment to unconditional punishment of imprisonment of at least six months, which meaning that the Unit Commander will be eligible to continue to work in the police after his prison sentence.

In the second case, two other men were also brutally beaten by police officers still not known to the public. The legal representative of the three citizens in these two cases lodged constitutional complaints, citing both torture and ineffective investigation.

In all cases, the Constitutional Court has found that the investigations were not effective, and that the prosecution has not been doing enough to investigate torture in these cases. However, in one case, the Prosecutor’s Office in Podgorica submitted the additional report although no new information have been offered: the Police Administration did not provide the data they requested, some additional witnesses have been giving statements, but no new fact have been established.

⁴⁴ See details of the criminal charge filed at the website of the Ombudsman: <http://www.ombudsman.co.me/article.php?id=48>

Media and Observers

There have not been any issues lately regarding the treatment of journalists or other third parties at assemblies. Observers and media are free to report and they are not required to have any special IDs for that matter. Back in October 2015, the Ministry of Interior implemented good practice when they issued fluorescent vests for journalists. However, that is not the practice for every assembly, but only those with high risk.

"Our goal then was to protect the media especially, because we had operational information that riots could happen."⁴⁵

⁴⁵ Interview with Nikola Janjušević, Director Deputy, Assistant Director of the Police Administration of Montenegro, October 5th 2018



VI. CRIMINALIZATION OF PROTESTS

During 2017, the Misdemeanour Courts have been deciding upon 26 misdemeanour charges filed by the police in earlier years. The organisers are most frequently charged due to a failure to notify an assembly.

Out of the total number, 18 of those charges were filed against the coalition of opposition parties which organised the series of protests during 2015. However, the majority of those charged (13 out of 18) were found not guilty, three were dismissed due to the statute of limitations, and in just two cases those charged were obliged to pay the fines.

In other cases, there were two public sport gatherings, both organised by natural persons, and both failed to notify on the assemblies, although there were more than 500 people present. Both organisers had to pay the fines amounting to 100 euros.⁴⁶

One of the organisers of an assembly told us about three misdemeanours she was charged with. One was due to the fact that she has not controlled the participants of the assembly when they wanted to enter the building of the

⁴⁶ Data gathered through FOI requests from the three Misdemeanour courts: in Podgorica, Bijelo Polje and Budva, for three regions of Montenegro, respectively

Constitutional Court.⁴⁷ She was not arrested at the assembly, but she was charged with the misdemeanour couple of days later.

The responsibilities imposed on the leader of an assembly can also create a chilling effect for citizens when deciding on organising an assembly. Although the fines that leaders of the assembly should pay if charged by the Misdemeanour Court have been reduced with the introduction of the law in 2016, it is also not reasonable to expect an organiser to control participants and, especially, other persons who might be in the crowd.

According to the international standards, organizers of gatherings should not be held liable for failure to perform their duties, if they are put reasonable efforts to carry them out. Instead, individual responsibility of each person who personally committed the violation or has not complied with a legal order of the police should exist.⁴⁸

⁴⁷ Interview with Željka Savković, organiser of the assemblies, November 9th 2018

⁴⁸ European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) joint opinion on the Law on Mass Events of the Republic of Belarus, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012), available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)006-e)

In general, citizens of Montenegro do not have great trust in the judiciary. From 2016 onwards, the trust in the judicial system has remained low without major changes: just 48% of citizens of Montenegro trust this institution, while at the same time, more than the half of population believes that the corruption in judiciary exists.⁴⁹

OBSERVATION OF ASSEMBLIES – MONTENEGRO, 2018

All assemblies observed by the authors were peaceful and none resulted in violence.

Podgorica, May 9th 2018 – The assembly was spontaneous, and was announced in the media night before it took place. It was organised after the shooting at the journalist of Daily Vijesti after she published the investigative story on cigarette smuggling. The assembly gathered around two hundred citizens in front of the Government building. There were more officers in uniform: some of them were policing the assembly, while some of them were there guarding the Government building.

Herceg-Novi, July 29th 2018 – The assembly was announced and held on the city square. It was a civic protest aiming at voicing concerns after an announcement that the local hospital would be shut down. Only two officers were present and remained a long distance from the participants.

Bar, October 20th/21st 2018 – The assembly was primarily used to gather signatures for a petition for blocking the action of local government and Ministry of Education, who wanted to cut dozens of old trees in

the park in order to clear the space for a new kindergarten. As the citizens gathered, workers from the private company wanted to start work and turned on the saws. Citizens then entered the fenced space around the trees, following the police officers identifying the citizens and warning them that they will be arrested if they continue to obstruct the work. In the afternoon, after a lot of citizens were leaving the assembly, the workers turned on the machines again, but the citizens again ran toward the trees, protecting them with their bodies. The workers left, but the citizens remained vigilant because they were worried that the trees could be cut down during the night. Then, the citizens contacted the police and said that they will be at that place on the following day as well due to circumstances that happened on that day. Although the police stated that they are required to announce the assembly five days ahead, the organisers have stated that they have the legal possibility of organising spontaneous assemblies in case such as these. The police agreed and the assembly was held regularly.

⁴⁹ Public opinion survey, IPSOS Strategic Marketing for the purposes of Institute Alternative, in 2016, 2017 and 2018





VII. KEY SUGGESTIONS FOR IMPROVEMENT

The draft report suggests four main areas where the right to freedom of peaceful assembly is not upheld in line with international standards and best practices:

1. Spontaneous Assemblies: The ability to organise spontaneous assemblies or peaceful assemblies without prior notification may be subject to undue interpretation by police officers and the right to assemble at short notice may be limited.
2. Simultaneous Assemblies: The authorities should always aim to facilitate multiple assemblies in adjacent locations rather than use the risk of disorder as grounds for banning all such assemblies.
3. Assemblies and Traffic: Assemblies may cause some disruption to traffic and other activities and it is the responsibility of the authorities to manage and reroute traffic to ensure that assemblies may take place.
4. Responsibilities of the Organisers: Imposing excessive responsibilities on the organiser of an assembly may have a chilling effect on others. While the organisers should take reasonable steps to ensure and assembly remains peaceful, they cannot and should not be held liable for criminal

acts committed by others at an assembly.

VIII. RECOMMENDATIONS



- **The Parliament and the MPs** should:
 - request an annual report on the implementation of the Law on Public Assemblies and Public Performances according to the legal obligation.
- **The Ministry of Interior** should:
 - conduct a wide ranging consultation on any potential amendments to the Law on Public Assemblies and Public Performances, which should include all key stakeholders including within civil society;
 - publish an annual report on the implementation of the Law on Public Assemblies and Public Performances, which would include all relevant information in this area and submit it to Parliament;
 - adopt the Rulebook on obligatory identification of police officers made of combination of letters and numbers, especially in cases of police officers required to wear special equipment.
- **The Police Directorate** should:
 - review practice in relation to spontaneous assemblies to ensure that

peaceful assemblies are facilitated, in accordance with international standards and best practice, whether they have been notified or not;

- continue with the practice of organising consultations with organisers of public assemblies before the assembly has taken place;
- organize meetings with organizers of public assemblies after the assembly finishes in order to analyse potential shortcomings in policing;
- comply with the Law on Internal Affairs and display personal identification at all times;
- ensure that all police officers have full understanding of the 2016 law and the changes that were introduced under that law;
- establish an online platform with exact and reliable data on public assemblies to allow for better insight and analysis.



- **The Ombudsman** and the Council for the Civic Control of the Police should:
 - monitor the policing of assemblies, and in particular spontaneous or non-notified assemblies;
 - have a physical presence to observe at all major public assemblies.

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- Interview with Ivan Stamatović, Deputy Commander of the Department of the Public Peace and Order, October 25th 2018
- Interview with Maja Raičević, Executive Director of Women's Rights Center, September 21st 2018
- Interview with Bojana Jokić, Executive Director of LGBT Forum Progress, July 31st 2018
- Interview with Duško Koprivica, Head of Department of Public Order and Peace, Police Administration, October 5th 2018
- Interview with Danilo Ćupić, Director General at the Ministry of Interior, October 16th 2018
- Interview with Željka Savković, organiser of the assemblies, November 9th 2018



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.



 **#right2freeassembly**