



WESTERN BALKANS ASSEMBLY MONITOR PROJECT



FREEDOM OF ASSEMBLY IN MONTENEGRO



institut alternativa



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Authors: Aleksandra Vavić and Ivana Bogojević (Institute Alternative)

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EXECUTIVE SUMMARY

The right to publicly gather and organize an assembly is a constitutional right in Montenegro. Alongside the Constitution of Montenegro, this right is guaranteed by the Law on Public Assembly.¹

Recently, the number of public assemblies in Montenegro has risen from only a few in 2014 to more than 30 in 2015, while some of them gathered several thousands of people. Although Montenegrin legislation is mostly in compliance with international standards, legislators have failed to address certain issues. *Those issues range from overlapping competences of authorities on national and local level, rough fine policy to the organizers of assemblies, to lack of facilitation by the Ministry of Interior, as the state authority in this area, as well as repressive policing.* The law currently in force has been adopted in 2005 and amended three times afterwards, thus, there is an obvious need for improvements and regulation of this area in accordance with best practice of protection of fundamental human rights and freedoms. Draft Law on Public Assemblies and Public Performances, currently in parliamentary procedure provides some improvement, though failing to address key issues properly.

Regarding the aforementioned, the study emphasizes the recommendations that need to be implemented in order to reduce or eliminate shortcomings of legal framework and current practices of the responsible authorities.

¹ Law on Public Assembly, Official Gazette of Montenegro No. 001/15 of 05/01/2015

INTRODUCTION

This study was conducted as part of the regional project ‘The Western Balkans Assembly Monitor’ managed by the European Center for Not-for-Profit Law (ECNL), whose goal was to increase the understanding of how the right to freedom of (peaceful) assembly is applied and how it can be protected. The objective of the project is to design and pilot a research methodology for monitoring the legal developments and practical application of FOA in five countries of the Western Balkans. The Western Balkans Assembly Monitor project is made possible by the International Center for Not-for-Profit Law through the Civic Space Initiative, implemented in partnership with ARTICLE 19, CIVICUS: World Alliance for Citizen Participation, and the World Movement for Democracy.

The qualitative cross-country research was conducted in five countries: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia. The project was implemented in the period between October 2015 and June 2016 by Reactor - Research in Action (MKD), Civil Rights Defenders (BiH), Human Rights House Zagreb (CRO), Institute Alternative (MNE) and YUCOM - Lawyers’ Committee for Human Rights (SRB), under the overall coordination of ECNL.

For the purpose of the project and the studies, the right to FOA is defined as “*the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose*”². International legal instruments³ recognize that only peaceful assemblies are protected and in this respect “*an assembly should be deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent. The term “peaceful” should be interpreted to include conduct that may annoy or give offense, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties*”⁴.

The aim of the research was to establish the main challenges in the implementation of the national legislation on public assemblies and the exercise of this right. Its main objectives were to assess the level of compliance of the national legislation with the relevant international standards in the field, to map the institutions responsible for implementation, to identify the main challenges for the effective exercise of the right and finally, to identify and examine at least two specific issues that arise from the implementation of the legislation and the exercise of the right in the country. As a final result, the studies provide a set of recommendations for the relevant stakeholders on how to advance the protection of the freedom of assembly in each country and how to provide an enabling environment that allows citizens to freely exercise this right.

The research methodology for monitoring and reporting how freedom of peaceful assembly is exercised and implemented in the targeted countries is based on the OSCE/ODIHR & Venice Commission Guidelines on Freedom of Peaceful Assembly, the UN Human Rights Council Resolution 25/38⁵ as well as the UN SR Joint report on the proper management of assemblies. Based on these guidelines, the data for the qualitative analysis was gathered through desk research, Freedom of Information requests and fieldwork, which included semi-structured interviews with relevant stakeholders and observations of protests that happened during the

²OSCE/ODHR & Venice Commission, Guidelines on Freedom of Peaceful Assembly Second Edition, 2010, available at <http://www.osce.org/odhr/73405?download=true>

³ Article 20(1), Universal Declaration of Human Rights and Article 21, International Covenant on Civil and Political Rights.

⁴OSCE/ODIHR & Venice Commission, Guidelines on Freedom of Peaceful Assembly Second Edition, 2010

⁵United Nations (2014). Human Rights Council resolution 25/38. Available at <http://www.ohchr.org/Documents/Issues/Executions/A-HRC-RES-25-38.pdf>

time the project was carried out. The conclusions and recommendations from the study are based on the findings from the data gathering phase and were later validated with selected participants in the research.

This study is structured in three parts, followed by conclusions and recommendations and a detailed annex that provides a description of the methodology. In the first part we present the national legal and institutional framework and their role in protecting and enabling the right to freedom of assembly. The second part provides an overview of the assemblies in 2014 and 2015. In the third part we take a closer look at the three main country specific challenges that were identified for Montenegro - administrative procedures, policing and analysis of the draft law on public assembly which is to be adopted. Finally, we provide a summary of the key findings and offer recommendations for improving the implementation of freedom of assembly legislation in the country.

LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

LEGISLATIVE AND INSTITUTIONAL FRAMEWORK AND INTERNATIONAL STANDARDS

Montenegrin national legislation is mostly in compliance with international standards⁶ which stipulate that state has a constitutional obligation to safeguard the right to public assembly, ensuring proper management of assemblies, simultaneously considering broad range of rights for all parties involved, which means that state respects and ensures rights without discrimination on the basis of any prohibited ground, including race, colour, sex, language, religion, political or any other opinion, national or social origin, property, birth, or other status.⁷

FOA in Montenegro is guaranteed by the **Constitution of Montenegro**. The law that regulates public assemblies, currently in force, was adopted in 2005. Pursuant to article 52 of the Constitution of Montenegro, the freedom of peaceful assembly, without approval, with prior notification to the competent authority shall be guaranteed. The freedom of assembly may be temporarily restricted by the decision of the competent authority in order to prevent disorder or execution of criminal offence, threat to health, morality or security of people and property, in accordance with the law.⁸

The **Law on Public Assembly**⁹ defines public assembly as every organized gathering of more than 20 people, which is being held in a public place for the purpose of expression of political, social and other beliefs and interests. Public events are understood as gatherings organized for the purpose of making profit within the registered economic activity which, considering the expected number of participants or character of the event, requires special security measures.

Comparatively, international standards and guidelines, and moreover, the OSCE guidelines stipulate that, *“[a]n assembly, by definition, requires the presence of at least two persons. Nonetheless, an individual protester exercising his or her right to freedom of expression, where the protester’s physical presence is an integral part of that expression, should also be afforded the same protections as those who gather together as part of an assembly”*, which is not the case in Montenegro.¹⁰

However, in the earlier version of the Law, which was in force until July 2014, articles 10, 11 and 26 of the Law on Public Assembly¹¹ stipulated **absolute** prohibition when it comes to the content, time and place of

⁶Universal Declaration of Human Rights, European Convention on Human Rights, Convention on the Rights of the Child, OSCE/ ODIHR Guidelines on peaceful assembly

⁷Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE), Guidelines on Freedom of Peaceful Assembly (2010), para. 2.5.

⁸Article 52 of the Constitution of Montenegro

⁹ The Law on Public Assembly, Official Gazette of Montenegro No. 001/15 of 05/01/2015

¹⁰Organization for Security and Co-operation in Europe (OSCE) and Council of Europe's Commission for Democracy through Law (Venice Commission): Guidelines on Freedom of Peaceful Assembly (2nd edition), 2010, para. 16

¹¹The Law on Public Assembly, Official Gazette of Republic of Montenegro, No. 31/05 of 18.05.2005

peaceful assemblies,¹² and therefore were abolished, as they were declared as “not in accordance with the Constitution of Montenegro nor with the European Convention of Human Rights”.¹³

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 limits this freedom in terms which are not recognized by the Constitution, introducing permanent prohibition of assemblies in locations listed in the Law**¹⁴. While the Constitution of Montenegro regulates this area in accordance with international democratic practices, the legislator failed to harmonize the law with both Constitution and international standards. We remind that it is recommended by the Venice Commission that no blanket bans regarding places of public assemblies should exist¹⁵, as also noted in the OSCE/ODIHR report on Monitoring of Freedom of Peaceful Assembly.¹⁶

State has a *positive obligation*¹⁷ to facilitate assemblies, which consists of properly planning for the public assemblies, conducting risk assessments while calculating every possible scenario. Although an open dialogue between authorities and organizers, before, during and after the public assembly is preferable on both sides in practice, national legislation in Montenegro currently *does not stipulate* this obligation at all.

A great part of the aforementioned facilitation includes state’s responsibility to provide basic services, including traffic management, medical assistance and clean-up services.¹⁸ Montenegrin legislation does not specify this provision, but simply states which obligations an organizer of public assembly has to fulfill.

¹²Article 10 was stating the prohibition regarding places of assembly that were general and blanket. Article 11 was granting discretion right to the competent authorities to assess and interpret, without prior criteria, the terms such as “place in the vicinity of” and to estimate what represents the “existence of a real threat that the peaceful assembly would jeopardize the safety of people and property or it would lead to the disruption of public order and peace to a greater extent”, while the article 26 stipulated that the authorities shall prohibit the peaceful assemblies that are not in compliance with, inter alia, aforementioned articles

¹³Constitutional court found that, in concerned articles, there are no basis neither in the Constitution nor in the comparative practice for prohibiting peaceful assemblies without previously defined criteria for its prohibition, stating: “The law that allows the uncertainty regarding the final effect of its provisions cannot be considered a law which is based on the rule of law, nor the law that establishes the principle of legal certainty and predictability.”

¹⁴ “(1) At least 50 meters from hospitals; (2) at least 50 meters from kindergartens and elementary schools; (3) in national parks and protected natural parks, except for peaceful assemblies that propagate environmental protection; (4) near monuments, if it should lead to destruction of protected cultural values; (5) in highways, arterial, regional and local roads in a way that could endanger the safety of traffic; (6) in traffic, when it is impossible to, using additional measures, provide temporary change of traffic regime, as well as the protection of safety of health and safety of people and property; (7) at least 50 meters from the building of Parliament of Montenegro, President of Montenegro, Government of Montenegro and Constitutional Court of Montenegro and(8) in other locations if, considering the time, number of participants or the character of assembly, it could seriously jeopardize movement and work of larger number of citizens, rights and freedoms of others, health, safety of people or safety of property or cause disruption of public order and peace”, Law on Public Assembly, Official Gazette of Montenegro, 01/15 of 05.01.2015, article 9a

¹⁵Compilation of Venice Commission opinions concerning Freedom of Assembly, CDL 2012, p.21, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2012\)014rev2-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2012)014rev2-e)

¹⁶OSCE/ODIHR Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States,December 2014, available at: <http://www.osce.org/odihr/132281?download=true>, p. 8

¹⁷Venice Commission Compilation of opinions, Guiding Principle of State’s duty to protect peaceful assemblies, pg. 14, 2014

¹⁸OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, para.32. “The importance of freedom of assembly for democracy was emphasized in paragraph 2. In this light, the costs of providing adequate security and safety measures (including traffic and crowd management, and first-aid services)66 should be fully covered by the public authorities.” pg 36, 2010

This facilitation also refers to the following: authorities should not require organizers to provide stewards¹⁹, which is a principle that national legislation does not recognize. On the contrary, one of the obligatory provisions for the organizers is to provide in their notifications the estimated number of stewards.

Montenegro does not provide regulation on spontaneous assemblies, but the law in force stipulates that unannounced assemblies shall be banned by the police. It is not consistent with the international standards, since it means that all unannounced assemblies shall be banned, disregarding circumstances of each assembly, such as peaceful conduct.²⁰

Furthermore, UN international standards prescribe that organizers should not be liable for unlawful behaviour of other participants in public assembly.²¹ However, this is not the case in Montenegro. Organizers are held responsible as actors on behalf of an assembly, which means that they are obligated to undertake necessary measures so that participants of the public assembly are not harmful in any possible way. Additionally, organizers are obligated to pay fines if they do not respect those dispositions.

When the state invokes national security and protection of public order to restrict an assembly, *it must prove the precise nature of the threat and the specific risks imposed.*²² Therefore, the state should not generally refer to the security situation, but the Law on Public Assembly²³ states that public assembly can be temporarily prohibited or dispersed if there is real threat to public order and peace. In certain cases, the Police have decided that assemblies cannot take place for that very reason.

In 2014 Police Administration banned 29 notifications due to both announced place of the assembly and estimated threat to the public safety, because of the announced number of participants, without going into details regarding the alleged risk that could occur. All of those notifications were submitted by the same organizer, former workers of the bankrupt state owned company "Radoje Dakić"

When it comes to counter-assemblies, the Law on Public Assembly does not address them at all, although this type of public assembly, which is being organized as a counter-reaction to a gathering, is recognized by the international standards²⁴. Consequently, the following principle also remains unaddressed: the general risk of

¹⁹Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, Practical recommendation: "Law enforcement should cooperate with stewards, where organizers choose to arrange them for an assembly. Stewards should be clearly identifiable and should receive appropriate training and briefing. Authorities should not require organizers to provide stewards", pg 11, 2016

²⁰OSCE/ODIHR Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, December 2014, para. 90

²¹Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, para.78, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf

²²Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para 31.

²³Law on Public Assembly, Official Gazette, 01/15 of 05.01.2015, article 9a and 20

²⁴ UN Human Rights Committee's interpretation on International Covenant on Civil and Political Rights article 21: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, International Covenant on Civil and Political Rights

violent counter-demonstrations or the mere possibility where authorities would be unable to prevent or neutralize violence during counter-demonstrations is not sufficient to ban a demonstration.²⁵

Nevertheless, three issues of non-compliance were found challenging, thus far:

- Great obligations put on organizers and liability for unlawful behavior of other participants,
- imprecise definitions of safety risks and real threat, in decisions issued by the Police,
- unrecognized counter-assemblies,
- non-regulation on spontaneous assemblies.

LEGAL REQUIREMENTS FOR ORGANIZING AN ASSEMBLY

According to the Constitution of Montenegro and Law on Public Assembly, organizers of public assembly nominally do not need to obtain an authorization by the competent authority, the announcements of public assemblies are frequently subject of thorough interpretation, which results in de facto authorizations or rejections.²⁶

The notification, which cannot be submitted less than five days before the assembly, has to contain data on the goal of assembly, time, place, and date, information on the organizer or the authorized body, personal data on the manager of peaceful assembly, the number of stewards and estimated number of participants²⁷. The law, however, does not state how the notification should be submitted.

The organizer is obliged to provide the sufficient number of stewards to perform the duties of maintaining peace and order in the peaceful assembly and to take adequate measures of **medical protection and fire protection**, as well as enabling undisturbed passage for the vehicles of police, emergency unit and fire department.²⁸

Stewards, provided by the organizers, are responsible for maintaining law and order of the assembly. However, the Law does not specify the sufficient number of stewards. This vague formulation is open for free interpretation by the Police. Yet, it can result in harsh consequences for the organizers, since the same Law stipulates fines, in range between 500 and 15 000 euro, if sufficient number of stewards is not ensured²⁹. This policy enforces dissuasive approach of organizers to public assemblies, due to possible high fines.

According to Montenegrin normative framework, the Police Administration (competent Security Centers) is responsible for deciding on notifications submitted by the organizers of public assemblies, while the municipalities' secretariats dealing with utility services decide whether an organizer can hold props, where the assembly is taking place.

²⁵Views adopted by the Human Rights Committee at its 109th session on unjustified restrictions to the right of peaceful assembly in: Nikolai Alekseev v. Russian Federation 2009/2013

²⁶ Police Administration's decisions made upon notifications submitted by former workers of bankrupt enterprises, made available through FOI requests.

²⁷ Ibid, article 7

²⁸ Ibid, article 13

²⁹ Ibid, 01/15, of 05.01.2015, article 31

The Ministry of Interior is the second instance which makes decisions upon the appeals to the acts brought by the Police Administration. Finally, the role of Administrative Court consists of deciding on the lawsuit filed against the Decision of the Ministry of Interior.

Additionally, the Protector of Human Rights and Freedoms plays its role as an independent institution, in protecting human rights and freedoms, when violated by any state authority. It is particularly important, as it has investigative powers that include visits to all the facilities and insight into all the documents, without limitation.³⁰

Another supervisory body is the Council for the Civic Control of the Police, which provides assessment of legality of Police actions in the context of respect for human rights.³¹

Besides the Law on Public Assembly, other laws that regulate FOA in Montenegro are:

Law on Public Order and Peace, which foresees lists of behaviors that could be sanctioned if they happen at public places: from reckless behavior, endangering safety of others, physical assault to obstructing officials in performing official duties or use of firearms³²; the Law on Internal Affairs lays down the duties of the Police³³ and their powers³⁴, and also stipulates the mechanisms for the control of Police work - parliamentary oversight, civic control and internal control³⁵; the Law on Obligations, however, stipulates the responsibility for the organizer of an assembly, indoors or outdoors, for the damage caused by death, body injury or damage to things, that anyone suffers as a result of exceptional circumstances that in such occasions may arise, such as the movement of the masses, the general disorder³⁶, etc.

The legal and institutional framework gets even more complicated when looking at bylaws being adopted in local parliaments. Each municipality adopts its own decision on regulating placing, building and removing temporary facilities³⁷. Therefore, the list of facilities differs from one municipality to another, while some decisions do not recognize facilities that the organizers may want to use. Therefore, those differences as legal loopholes can prevent citizens in organizing the assembly using the props they find suitable to express their intentions.

³⁰ Law on Protector of Human Rights and Freedoms, Official Gazette of Montenegro No. 032/14 of 30.07.2014, article 24

³¹ Law on Internal Affairs, Official Gazette of Montenegro, No. 001/15 of 05.01.2015, article 112

³² Law on Public order and peace, Official Gazette of Montenegro, No. 064/11 of 29.12.2011, articles 5-13

³³ Law on Internal Affairs, Official Gazette of Montenegro, No. 001/15 of 05.01.2015, article 10

³⁴ Ibid, article 23

³⁵ For more information on normative framework of the Police work see: Bajramspahić, D, Đurnić A, Vavić, A, *Police administration in Montenegro*, Institute alternative, 2015, available at: http://pointpulse.net/magazine/police-administration-in-montenegro/#_ftnref3

³⁶ Law on Obligations, Official Gazette of Montenegro No. 004/11 of 18.01.2011.

³⁷ Decision on placing, building and removing temporary facilities in Capital City, Official Gazette of Montenegro - Municipal Regulations, 001/16 od 13.01.2016

MAIN FINDINGS, PART I: OVERVIEW OF ASSEMBLIES AND IDENTIFIED CHALLENGES

During 2014, there were six public assemblies³⁸ which occupied the attention of various media, different by their nature; from LGBT Pride Parade, over protests of former workers of bankrupt companies, to political and students' assemblies, aiming to express dissatisfaction with Montenegro's accession to NATO. (See Annex 1)

One of the most interesting assemblies in 2014 is the one organized by the Facebook group "Revolution in Montenegro - Everybody on the streets!". The assembly was not notified in advance because the organizers considered the Police to be influenced by corruption and crime and have asked the Police not to beat their citizens but to stay with them. The protest became violent, after the protesters tried to break the security fence in front of the Government, which was stopped by the Police.³⁹

In 2015, there were 32 public assemblies⁴⁰. Two of them were organized with the aim of raising awareness on environmental issues, while the same number of assemblies was dedicated to promoting LGBT rights. Furthermore, six times throughout 2015, citizens gathered to draw attention to workers' rights, demanding better conditions, severance pay or to protest against bad privatizations of state owned companies. Finally, almost half of the protests were political, mainly organized by political parties, demanding resignation of Prime Minister, Milo Đukanović, free elections, protesting against allegedly biased editorial policy of public broadcasting service and afterwards, protesting against excessive use of force and inadequate policing of the assemblies. (See Annex 2)

³⁸ Public assemblies that at least three different media outlets have reported on, see details at Methodological Annex at the end of the report

³⁹ "20 protesters arrested, 9 police officers hurt" in Daily Vijesti, available at <http://www.vijesti.me/vijesti/uhapseno-20-demonstranata-povrijedjeno-9-polica-jaca-179207>

⁴⁰ Public assemblies that at least three different media outlets have reported on, see details at Methodological Annex at the end of the report

MAIN FINDINGS, PART II: COUNTRY SPECIFIC ISSUES

While researching relevant national legislation, and conducting interviews with relevant stakeholders in this area, two issues have risen as the most important. Interviewees shared experiences and obstacles they encountered in the process before the assembly itself, thus, one of the issues we want to research in depth are **administrative procedures**. Furthermore, considering **policing** as one of the most complex and sensitive areas of public assemblies, having in mind both negative and positive obligations of the states intertwined, and having witnessed disputable police actions in 2015, it became the second important issue of our research. Since the **Draft Law on Public Assemblies and Public Performances** entered the parliamentary procedure on February 10th 2016, one part will be dedicated to the analysis of the draft and its envisaged changes.

ADMINISTRATIVE PROCEDURES

The procedure of notifying, the response of the authorities, and the legal remedies are not regulated in accordance with good governance practices. Due to overlapping competences of authorities and lack of facilitation by the Police, organizers are in doubt to whom they should address their additional inquiries.

In one of the decisions⁴¹, the Police prohibited an assembly using the Law on Public Assembly as a legal ground, but they used additional internal act as well, the Rulebook on Internal Order in the Building of the Government. Research team of Institute Alternative gained access to this Rulebook through the FOI request⁴², as it is not publicly available. This is problematic because no legal act which restricts human rights in any way should be unavailable, but accessible to citizens.

- Overlapping competences of different authorities

According to the Law on Public Assembly, Ministry of Interior is the key institution deciding on the notifications by the organizers. Nevertheless, whether an organizer can use certain prop or temporary facility depends on a local municipality, i.e. municipality's secretariat for utilities. Each municipality will decide on this matter according to the decision, which regulates placing, building and removing temporary facilities. Since these national and local authorities decide separately on different criteria of an assembly, their overlapping competences seem to cause problems for organizers of public assemblies.

Organizers must communicate with different authorities in order to gain permission to set a needed prop (which could be for example a booth or a kiosk), and many of them, especially those inexperienced in organizing public assemblies are not familiar to whom their notifications may concern.⁴³

According to inputs provided by the interviewees, the Police do not give inputs whom the organizers should turn to for additional permits and notifications, while the Police state that every input of importance for the organizers is being given while submitting notifications.

⁴¹Decision No. 01-224/14-23863/2 from 31.10. 2014, issued by Ministry of Interior - Police Administration

⁴²Decision by the Secretariat General, available at:

<http://www.gsv.gov.me/ResourceManager/FileDownload.aspx?rId=238150&rType=2>

⁴³Interview with representative of Union of Free Trade Union of Montenegro, conducted in April 2016

Nevertheless, this is not the only concern; the jurisdiction in this area depends on the location of the prop, so if it is being located on a main road, the final say would have the Police, and in other cases the local municipality.

The latest example which clearly shows the ambiguities regarding competences happened at the protest organized in October 2015. The organizer, the coalition of opposition parties, Democratic front, has started anti-Government demonstrations, setting up dozens of tents on the Boulevard in front of the Parliament. Previously, they have submitted the request to the Secretariat for the Utility and Traffic of the Capital City Podgorica to place the tents, but the Secretariat has rejected the request declaring itself incompetent for this issue⁴⁴, although some other props were allowed. A week after, the Communal Inspection of the Capital tried to remove the props because the deadline for holding them at the Boulevard has expired. That was obstructed by the protesters, since allegedly, they were granted permission from MoI to hold the assembly without any deadline.

- Lack of good governance practices in facilitating notification on public assemblies

The Police in most of the cases⁴⁵ state the legal grounds on which their decision was made on temporarily prohibited notifications, but without further information. This means that organizers do not have the possibility to add the information they failed to provide to the competent authority. Instead, they need to submit a new application.

This area is not regulated in accordance with the Law on Administrative Procedures' principle of proactive assistance to the parties⁴⁶, neither with the Law on General Administrative Procedures⁴⁷, which proscribes a timeframe for the authority in which it is obliged to call upon the submitter to remove formal deficiencies. Therefore, the lack of a proactive role of the Police prolongs the procedure due to which the citizens are deprived of exercising their rights.

Based on the information from the interviews with organizers⁴⁸, good relationship with the Police and long experience in organizing public assemblies can be of help in facilitating the gathering. Although in general it is welcomed that the Police establish good cooperation with the citizens, their action is not unified in this matter.

Organizers also had some positive experiences when they were offered by the Police to jointly decide on alternative place or route, considering the risk factors. Shortly after, the same organizers had a completely

⁴⁴As stated in the Conclusion that we got through FOI request, the Secretariat reasoned its decision on basis of article 4 of the *Decision on placing, building and removing temporary facilities in Capital City*, which does not list tents as one of those facilities.

⁴⁵Recording to the FOI data

⁴⁶"Public authority is obliged to allow parties and other participants in the administrative procedure to more easily and efficiently exercise and protect their rights and legal interests", Law on Administrative Procedures, Official Gazette of Montenegro 20/15 of 24.04.2015, art. 8, para 1

⁴⁷ "If the request contains some formal deficiency that impedes the acting upon the petition request, or if it is unintelligible or incomplete, the authority having received such a petition request shall, not later than three days from the day of receipt thereof, call upon the submitter to eliminate the deficiencies and determine a deadline for the submitter to do so." Law on General Administrative Procedures, Official Gazette of Montenegro, 032/11 of 01.07.2011, art. 57, para. 1

⁴⁸Interview with representative of LGBT Forum Progress, representative of Union of free trade unions of Montenegro, and representative the Council for the Civic control of the Police, all conducted in March/April 2016

opposite experience, when the assemblies were prohibited more than once by decisions stating only high safety risks for the protesters, but failing to offer any additional information, such as follow-up activities on reducing the risks.⁴⁹ It is clear that the lack of legal obligation creates space for the Police to be passive in eliminating alleged security risks due to which the assembly has been prohibited, as well as not to inform organizers about what has been done in that regard.

- Complete prohibition of assemblies

Complete prohibition of an assembly is the formulation that **does not exist** in the Law on Public Assembly.⁵⁰

Total number of notifications submitted to authorities in 2014 was 136, out of which 29 assemblies were prohibited (21%).

In 2015, the Ministry of Interior received a total number of 141 notifications, while there were 26 prohibitions (18%).

Although this is the case, the MoI issued decisions where it **prohibited** 23 notifications in 2014. On the other hand, notifications by the organizers of the three protests that were “prohibited temporarily” in 2015, gave to the competent authority **far less information**, that is requested by the Law, than those whose notifications were prohibited.⁵¹

*In one of the decisions⁵² MoI **prohibits** the public assembly due to two facts: (1) announced place is listed in the Law on Public Assembly as one of many where the assembly cannot be held and (2) existing safety risk if the assembly were to happen, with rationale that the estimated number of citizens, considering the announced place, represents real risk for safety of people or property.*

*Another decision⁵³ by MoI **temporarily prohibits** the public assembly, with rationale stating that the notification was incomplete: organizers failed to give information related to the time of the assembly and number of stewards.*

⁴⁹Interview with representative of LGBT Forum Progress

⁵⁰The Law only states the possibility to the competent authority to temporarily ban the peaceful assembly.

⁵¹Based on data gathered via FOI requests from Ministry of Interior

⁵²Decision No. 01-224/15-22300/2 of 25.08.2015, accessed through FOI request

⁵³Decision No. 01-222/15-22515/2 of 14.09.2015. Accessed through FOI request

Statistical review of prohibited public assemblies in 2014 and 2015 can be seen in the following table:

Year	No. of prohibited assemblies	Organizers	Reason for gathering
2014	29	Mostly former workers of state companies in bankruptcy, LGBTQ organizations	Request of severances, difficult financial state of the workers, LGBT pride
2015	23	Mostly former workers of state companies in bankruptcy, Sport organizations, LGBTQ organizations	Unfulfilled legal obligations towards workers regarding years of service, watching matches on public places, LGBT pride

- Ineffective legal remedy

As stated in the Law⁵⁴, the Ministry shall decide on appeals to the acts brought by the competent unit of the Ministry. Thus, Ministry decides on appeals to the acts issued by the Security Centers of Police Administration, which is the body within the Ministry. Only after the Ministry decides on the appeal, which has to be done within 24 hours, organizer can file a lawsuit to the Administrative Court. The law fails to regulate the deadline for the Administrative Court to act upon the lawsuit, which is needed having in mind the nature of public assemblies. Thus, this completely makes the legal protection ineffective in cases of prohibition of assembly. In the only case upon which the Court has been deciding from 2014-2015, according to the Administrative Court website, the lawsuit was filed in May, while the Decision was brought in December.

The only case upon which the Court made a decision in 2015 regarding freedom of assembly, was the lawsuit by S.M. i K.R. against the Decision of the Police Administration - Security Center Nikšić, by which the public peaceful assembly "Academic pride walk", planned by NGO "LGBT Forum Progress" and NGO "Hiperion" in the courtyard of the Students' dorm and the Faculty of Philosophy in Nikšić, was temporarily prohibited. The plaintiffs filed a lawsuit which the Administrative Court rejected⁵⁵ as unfounded.⁵⁶

POLICING

The role of the Police during public assemblies is to enable protection of public order and peace. Each action of the Police must be guided by the human rights principles of legality, necessity, proportionality and non-discrimination. Through gathered data via desk research, as well as field research, couple of issues raised as

⁵⁴ Law on Public Assembly, Official Gazette of Montenegro No. 001/15 from 05.01.2015, article 35

⁵⁵ Verdict 1532/2015, available at Administrative court website: http://sudovi.me/odluka_prikaz.php?id=148490

⁵⁶ The plaintiffs have challenged the legality of the ruling of the first instance body due to the misapplication of substantive law, pinpointing that the Security Center has argued that security assessment showed that the security of protesters would be endangered by certain groups, but failing to address who are members of those group or why didn't the police undertake measures to prevent violence. Pursuant to article 4 of the Law on Public Gatherings, Administrative court rules that the first instance authority - Security Center has decided properly when it temporarily prohibited the event, especially in the fact, that the freedom of assembly suffers from certain limitations as are prescribed by the Constitution of Montenegro and the Law on Public Assemblies, in situations where there is an increased security risk and the risk of violence and other forms of disturbance of public peace and order on a large scale, as in the present in the case.

the ones that need further analyses: **passivity of the police** in eliminating safety risk, **police repression** during public assemblies, inadequate response to stewards' requests and dispersing of the assemblies. Police in Montenegro are still facing a number of issues, such as strong political influence, overstepping legal competences and excessive use of force.⁵⁷ The consequences of these problems burdening the Police can also be seen in policing of public assemblies.

- Police not being active in eliminating the risks before certain public assembly

In 2014, 29 notifications on public assemblies were prohibited on the ground of possible "safety risks". Among these notifications, there were also the ones submitted by the same organizer over and over again⁵⁸, where the Police are passive in reducing and eliminating safety risks, prohibiting same assemblies repeatedly, which is, as said earlier, a formulation unknown to the Law on Public Assembly.

Reducing "safety risks" before, during, and after public assembly can only be described as good practice by the Police. Nevertheless, even though the Police conducts "safety risks" checks before a certain assembly, some organizers claim that they are not informed by the Police on these efforts.

LGBT Forum Progress was prohibited to organize a Pride in Nikšić, in September 2015. The Police stated that safety risks were too high due to conservative local population, and the fact that the Pride was about to be organized on a holiday, the Nikšić's Liberation day. What is interesting is that about 10 days before the planned Pride, a protest walk was held by the supporters of the Communist Party of Yugoslavia. They have also expressed negative opinion of the Pride, stating that red five angle star could not be used as the symbol of the Pride. The Police additionally stated that due to disruption of public order and peace that would likely be caused by the supporters of sports clubs, it is best to postpone the Pride. The Police prohibited the assembly three times, without offering alternative routes to organizers. Protector of the Human Rights and Freedom gave opinion on this case, issuing set of recommendations. His conclusion was that the right to public assembly was violated for LGBT Forum Progress, since the Police had enough time to successfully reduce and eliminate all the predicted safety risks. Just recently, in June, Administrative court rejected the lawsuit of three organizations Forum Progress, Hiperion and Human Rights Action, on prohibition of public gathering in Nikšić.

- Policing public assemblies tends to be repressive

The Law on Internal Affairs states that police officers should conduct their duty on principles of legality, cooperation, proportionality in the use of powers, effectiveness, impartiality, non-discrimination and timeliness. The use of force must have an outcome with least possible consequences. Unfortunately, this was not the case in 2015.

⁵⁷See more in Bajramspahić, Dina and Sošić, Marko, *Assessment of police integrity in Montenegro*, Institute alternative, November 2015, available at: <http://media.institut-alternativa.org/2015/12/assessment-of-police-integrity-in-montenegro.pdf>

⁵⁸ Former workers of bankrupt state owned company "Radoje Dakić"

During the protest from 24th October 2015 in Montenegro, organized by parliamentary coalition Democratic front (DF) that gathered between 4.500-5.000⁵⁹ people who called upon the immediate resignation of Montenegrin Prime Minister, there were documented cases of excessive use of force by police officers.⁶⁰

After some time, one of the organizers of the protests publicly stated that he “will not be held responsible for any further act if they [Speaker of the Parliament and leaders of other coalition partners] do not show up in the next ten minutes”, the group of protesters rushed to the Parliament, threw so-called Molotov cocktails, flares and stones at the Police and after they tried to move the fence, the police started using tear gas unselectively. Criminal charges were raised⁶¹ against two MPs after the protests, but the bills of indictments were rejected in May 2016.⁶²

Numerous citizens were hurt, and among them, many journalists,⁶³ thus being prevented to report from the scenery. During the same night, and in days that followed, many citizens submitted complaints to the Council of the Civic Control of the Police about mistreatment by police officers. Additionally, footage of police officers, members of Special Anti-Terrorist Unit (SAU), brutally beating one citizen and destroying his car appeared on social media.

This is the most recent example that showed a number of flaws in treating police misconduct and lack of institutional capacities to deal with such issues. Consequently, this recklessness of the Police, costs citizens of Montenegro 130 000 EUR, which was paid as a damage fee to a citizen⁶⁴, who suffered due to overstepping authority and excessive use of force by number of police officers.⁶⁵

Even the Special Prosecutor stated that it seemed to him that the SAU was inadequately used and that their acts were somewhat irrational, which was followed by the promise that all excessive use of force will be prosecuted.⁶⁶The Commander of the SAU witnessed before the Basic Prosecutor’s Office in Podgorica, stating that he cannot identify who were the members of the unit that have beaten the citizen, since they wore

⁵⁹ Estimation of the Police, Report of the Commission for determining circumstances that led to the use of force, available at: http://www.kontrolapolicije.me/index.php?option=com_content&view=article&id=123:izvje%C5%A1taj-komisije-uprave-policije-zatvrdjivanje-okolnosti-upotrebe-sredstava-prinude&catid=2:uncategorised&lang=sr, page 2

⁶⁰ Ibid

⁶¹ Charges were raised on bases of provisions of Criminal Code of Montenegro, Official Gazette of Montenegro 058/15 of 09.10.2015, which stipulates that “whoever, with the intent of endangering the constitutional order or security of Montenegro, calls for or incites to forcibly change its constitutional order, overthrowing the highest state authorities or the representatives of these bodies, shall be punished with imprisonment of three months to five years”.

⁶² Decision by the High Court in Podgorica, available at <http://sudovi.me/vsrg/aktuelnosti/odluka-u-predmetu-okrivljenih-radunovic-slavena-i-mandic-andrije-3896>

⁶³ Many journalists were hurt by the teargas although they have had special vests with the “PRESS” emblem prepared by the MoI for the purpose of the protests. After the Council of Europe posed an alarm on their platform for promotion of journalists’ safety, the MoI answered, that teargas was not used in toward media representatives, but towards hooligans who were heading the same direction after they had attacked the police earlier. Available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048ba30>

⁶⁴ Information available at http://www.gsv.gov.me/spi/informacije_odobren_pristup, under “Podatak kojem je dozvoljen pristup Rješenjem br UP 27 3-16 od 31 03 2016.”

⁶⁵ For more information on financial management of the Ministry of Interior and Police Administration, see Bogojević, I, *Through the maze of interior affairs in Montenegro*, Institute alternative, 2015, available at: <http://pointpulse.net/magazine/through-the-maze-of-interior-affairs-in-montenegro/>

⁶⁶ “We know who is the boss of the organized criminal group” Daily Dan, <http://www.dan.co.me/?nivo=3&rubrika=Drustvo&datum=2015-11-20&clanak=520138>

helmets and masks protecting them against chemicals. Eight members of the SAU also witnessed but only two of them remained in custody for 72 hours.⁶⁷ Just recently, on May 31st 2016, Protector of Human Rights and Freedoms has filed a criminal charge against the Commander of SAU and the trial is expected to be held on June 30th.⁶⁸

Even six months after the protests, it is still not known who were the members of SAU, due to alleged inability to recognize them. Not a single official from the Police Administration, nor from the Ministry of Interior has been held responsible for the acts of the Police. Additionally, the decision of the Police Administration to have SAU at the public assembly is still unclear since the Rulebook on Internal Organization and Systematization⁶⁹ of the Ministry of Interior does not recognize the role of this unit in securing public assemblies.

On the occasion of excessive use of force during protests, international actors such as the European Commission, the OSCE and the Amnesty International have issued appeals for investigations into incidents that happened during the protests.⁷⁰

Nevertheless, this is not the first time that the same organizer confronted the Police. Before the previously mentioned happenings, the Communal Police informed the organizer that illegally set tents must be removed, acting upon the decision issued by the Secretariat for Municipal Utilities of the Capital. The organizer did not act upon this, making a decision to keep on protesting. Following, the Police Administration intervened, and assisted the Communal Police in removing all the props, after DF refused to step out. During this confrontation, 11 people got arrested, among which two MPs. The Police used physical force and tear gas.⁷¹

Another questionable police action occurred in September 2015. Montenegrin media kept reporting about informative conversations conducted by the Police with certain number of citizens, including professional journalists, who were called in for information on announced protests. Motivated by the media reports that such actions may be illegal, the Council called for answers from security centres in Podgorica, Nikšić, Berane, and Bar but is still awaiting response.⁷² The Council also issued a number of conclusions⁷³ regarding the protests, calling upon the competent authorities to determine the responsibility for excessive use of force.

⁶⁷ Official website of Prosecutor's Office, <http://www.tuzilastvocg.me>

⁶⁸ Criminal charge against the Commander of SAU, filed by Protector of Human Rights and Freedoms, available at: <http://www.ombudsman.co.me/opsirnije.php?id=491>

⁶⁹ Rulebook on Internal Organization and Systematization of Ministry of Interior, December 2015, p.30

⁷⁰ Amnesty International press release from December 2015, available at: <https://www.amnesty.org/en/documents/eur66/2984/2015/en/>; European Commission Montenegro 2015 report, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_montenegro.pdf p. 7; OSCE Mission to Montenegro statement, available at: <http://www.osce.org/montenegro/194361>

⁷¹ Podgorica: Police and opposition supporters clash, Aljazeera Balkans, <http://balkans.aljazeera.net/vijesti/podgorica-sukobi-policije-i-pristalica-opozicije>

⁷² Conclusion of the Council for civic control of police, 28. December 2015, available at: http://www.kontrolapolicije.me/images/biblioteka/dokumenti/Ocjene%20i%20preporuke/Dokument-2015-28-Dec-opozicioni_protesti.PDF

⁷³ Ibid, 26. October 2015, available at: <http://www.kontrolapolicije.me/images/biblioteka/dokumenti/Ocjene%20i%20preporuke/Zakljucak%20Savjeta%20o%20postupanju%20policije%20prema%20demonstrantima%2024.20.2015.pdf>

- Stewards: Who guards the guardians?

Organizer is obliged to ensure sufficient number of stewards at the public assembly who should protect the participants and the state property at the very place of the event. Nevertheless, the Law stipulations are once again vague: while the stewards have to exclude the person causing *disruption* of order and peace, they are obliged to detain them and hand them over to the police if they cause *severe disruption*.⁷⁴

One of the cases in Montenegro shows that police officers were not cooperative while asked from organizers to exclude a person, carrying a flag and that is potentially harmful for other participants. Police officer disregarded the request from the organizer to warn that person and eventually exclude him from the assembly, insisting that this issue is responsibility of the stewards.

However, there is no clear distinction between *disruption* and *severe disruption*, neither in the Law on Public Assemblies nor in the Law on Public Peace and Order⁷⁵, which means that the Police estimate when they should act. The example given above shows that the Police did not act *even when steward asked them to*. Given that the Law foresees liability for stewards in a way that prescribes fines for those who do not hand over the person to the Police, from 250 up to 550 EUR, the Police should act immediately upon the notification by the stewards, since they have no competences in use of force. We remind that it is the international standard that stewards should not be held liable for failure to perform their responsibilities if they do not personally violate existing laws governing all participants in an assembly.

- Dispersing an assembly

Police has the possibility to disperse the assembly, inter alia, if the stewards are not able to maintain public order and peace and if there is an actual or direct danger of violence or other types of severe disruption of public order and peace.⁷⁶ We emphasize that maintaining public order and peace should be under full responsibility of the state, not of stewards. Additionally, as stated earlier, law fails to stipulate what is severe disruption of public peace and order, thus, giving police officers wide discretionary rights to disperse an assembly.

- Communication during an assembly

International standards set the recommendations to establish and maintain effective communication between organizers and police officers⁷⁷. This practice is necessary in order to create mutual understanding and prevent violence. As we were told by organizers, representatives of MoI and representatives of Police Administration⁷⁸, this is the case in Montenegro. Nevertheless, it should be noted that during the protest in October 2015, Police has not communicated well with the organizers the exit strategies for the citizens

⁷⁴ Law on Public Assembly, Official Gazette of Montenegro, 001/15 of 05.01.2015.

⁷⁵ Law on Public peace and order, Official Gazette, 064/11, of 29.12.2011.

⁷⁶ Law on public assembly, Official Gazette of Montenegro No. 001/15 from 05/01/2015, article 20

⁷⁷ OSCE/ODIHR Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, December 2014, para. 230

⁷⁸ Interview with representatives of LGBT Forum Progress, Union of free trade unions of Montenegro, Queer Montenegro, Police Administration, Ministry of Interior

present after dispersing an assembly and using tear gas; thus preventing the citizens in exercising their right to peacefully leave the assembly.

DRAFT LAW ON PUBLIC ASSEMBLIES AND PUBLIC PERFORMANCES PLENTY OF ROOM FOR IMPROVEMENTS

In early February 2016, the Ministry of Interior presented the Draft Law on Public Assemblies and Public Performances. Although it is far more detailed in terms of stipulating criteria, responsibilities for organizers and competent authorities, it still fails to address certain issues such as counter-assemblies and simultaneous assemblies. When it comes to country specific issues, positive changes have been made in regard to administrative procedures and obligations of organizers.

- Transfer of responsibility

The greatest breakthrough in the Draft is the shift of responsibility for maintaining public law and order, from the organizers to the Police Administration. That can be seen from the proposed stipulations, where all the tasks related to the safety of people, property, protection of human rights and freedoms, health, would be performed by the Police in cooperation with other competent bodies and services.⁷⁹ Accordingly, the Police would have the obligation to inform the emergency service, fire services and others.⁸⁰ If this solution were to be adopted, only then the state would truly fulfill its positive obligation to facilitate and protect public assemblies, by providing appropriate policing. Organizer would be relieved of the financial burden, which now also represents a restraint or hesitation when deciding on organizing an assembly.

The police would also have a more proactive role according to the Draft law. That proactive role consists of consultations with organizers of public assemblies, in order to clarify any ambiguity regarding time, place and safety during public assembly, or any other issue. These consultations would help in overcoming administrative difficulties put upon the organizers, who would not waste time on submitting new notifications, if incomplete. However, organizers are not obliged to consult with the police.

- Place of the assemblies

The Draft law allows for public assemblies to be organized closer to the premises of key institutions than it is the case now. Public assembly shall not be organized less than 10 meters from the building of the Government and 15 meters from the buildings of the Parliament, the President and the Constitutional Court, compared to current law in force which prescribes minimum distance of 50 meters from each. Representative of MoI, with whom we conducted an interview⁸¹, told us that the distance from institutions is optimal, considering the fact that there are not any security fences around those buildings and that the Police are obliged to protect facilities and individuals⁸², while the distance is still sufficient for the protesters to convey their message to the competent authorities. As well as in the current law in force, the draft law would also stipulate blanket bans regarding places, which is not in compliance with the Constitution of Montenegro.

⁷⁹ Draft Law on public assemblies and public performances, article 16

⁸⁰ Ibid, article 10

⁸¹ Interview with Director General of the MoI Directorate for Security and Protection Affairs and Supervision and member of the Working Group for Draft Law on Public Assemblies, conducted in March 2016

⁸² Decision on determining persons and facilities to be secured by the Police, Official Gazette of Montenegro 037/13 of 31.07.2013

- Spontaneous assemblies

Another important change is that the Draft recognizes the possibility of *spontaneous assemblies*. If more than 20 persons gather to peacefully express their political, social and other beliefs and goals as a reaction to certain happenings, which was impossible to predict or announce complying to the law, a police officer will notify them that the gathering was not announced in accordance to the law and warn them that they are obliged to respect the law. Although the recognition of spontaneous assemblies would undoubtedly be an improvement with regards to the current legal solution, it needs to be further amended. The proposed norm is vague and gives wide possibilities to officers, as it is not clear to which law would the police officer be referring to, which is not in compliance with the principle of predictability and legal certainty.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

This research has shown that normative framework regulating freedom of public assemblies ought to be further improved. The Law on Public Assembly limits the FOA introducing permanent prohibitions of assemblies in certain location, which is not in compliance with the Constitution of Montenegro, which foresees the possibility of limiting FOA only in exceptional cases.

The Law on Public Assemblies provides vague legal solutions, especially concerning spontaneous assemblies. These solutions lack in compliance with the international standards, so the need for incorporating them into Montenegrin legislation is necessary in fulfilling the gaps in normative framework.

During our research we discovered that there is also big space for the improvement in the implementation. The administrative procedure of notifying, the response of the authorities, and the legal remedies are not regulated in accordance with good governance practices, while the overlapping of competences often causes problems for the organizers. Public assemblies are being prohibited on different legal grounds, e.g. on different acts, while some of those acts are internal acts of state institutions. Additionally, Administrative Court does not act in a timely manner in its procedures. Communication between Police and organizers is recognized as good by both organizers and Police, but there is still room for improvement.

Regarding policing of public assemblies, the excessive use of force and overstepping legal competences are still happening and are being tolerated. When the Police prohibit an assembly due to safety risks, they usually neither act upon gathered information nor do they notify the organizers on any follow-up activities regarding reducing threats. Although it would represent a far better legal solution than the law in force, the Draft law, currently in parliamentary procedure, should be further amended. The current version fails to address counter-assemblies and simultaneous assemblies and it vaguely regulates spontaneous assemblies. Most importantly, it does not resolve the dilemma over overlapping competencies.

RECOMMENDATIONS

In order to overcome identified challenges and country issues, we recognized a set of practices that could be a successful means to our main goal - free exercise of right to public assembly. This would be achieved through greater control of policing of public assemblies, reducing the obligations put on organizers, as well as better coordination between state authorities while managing this area.

Strengthening legislation and institutions

- **The Parliament** should amend the law by:
 - A. discarding the provisions referring to blanket bans regarding places of public assemblies in order to comply the Law with international standards;
 - B. introducing the obligation for Police Administration to specify and thoroughly elaborate the decision if certain public assembly is prohibited due to the risk of endangering safety of people and property or endangering human rights.

- C. introducing the obligation of the Police to act upon any safety risk, due to which the assembly has been prohibited, as well as to regularly notify the organizers on the state of play regarding the issue;
- D. setting the deadline of 24 hours after receiving the decision in which the organizer can file a lawsuit directly to the Administrative Court;
- E. setting the deadline of 48 hours upon receiving all the documents related to the case for Administrative Court to issue a decision in the order to provide effective legal remedy;
- F. proscribing that the protection of people and property and protection of human rights and freedoms during public assembly is in solely the jurisdiction of the Police and that organizer cannot be held liable for any damage or endangering safety of others.
- G. changing the provision in the law which stipulates fines for stewards if they are not able to exclude a person from the assembly or hand them over to the police officers, due to the fact that they have no competences in use of force or use any additional means of coercion.
- H. stipulating the obligation to the Police to treat spontaneous assemblies as all other peaceful assemblies without foreseeing any sanctions for organizers and citizens due to the fact that it was not announced in the stipulated legal deadline, having in mind the nature of the assembly, ie. the need of citizens to react promptly on happenings in society.
- I. introducing the possibility of organizing simultaneous assemblies. If it happens that notifications are submitted for two or more assemblies for the same place and time, the Police Administration should conduct a thorough assessment of any risks and consequently develop strategies for their mitigation. Where it becomes necessary to impose restrictions on one or more simultaneous assemblies, those restrictions should be determined through mutual agreement or through a process that does not discriminate any of peaceful assemblies.
- J. addressing the possibility of counter-assembly as a form of simultaneous assembly, in which the participants wish to express their disagreement with the views expressed by another group at an assembly. It is important to emphasize that the right to counter-assembly does not extend to inhibiting the right of others to demonstrate. In that scenario, the state should make available adequate policing resources to facilitate such related simultaneous assemblies.
- K. Precisely stating how the notification should be submitted. The law should foresee possibilities of submitting notifications both online and in person.

Overcoming administrative barriers

- **The Government** should establish the so called “**one-stop-shop**” for submitting notifications by the organizers. Thus, Police Administration, to whom the notification is submitted, would be responsible to contact and notify all the relevant institutions, both national and local, about the assembly.
- **The Police** must establish good cooperation with the citizens, and facilitate all assemblies equally, which refers to often help and consultations with the organizers, before the assembly.

Good policing

- **The Police** should further work on maintaining effective communication with organizers during an assembly, especially when policing assemblies with bigger number of citizens gathered, for example - for each assembly nominate a contact person in charge of constant and organized communication with the organizers

- **All Police sectors** should respect the provision of the Law on Internal Affairs regarding official identification of all police officers. Otherwise, members of the unit using special uniforms, masks and helmets should wear different recognizable marks known to their superiors, such as number or symbols that would enable citizens to identify officers.

CSOs fostering the right to free assembly

- CSOs should monitor the implementation of the law in a more systematic way than it was the case so far - with emphasis on the most problematic issues thus far, such as: consultation between the Police and organizers, excessive use of force by the Police, respecting the right to peacefully abandon the assembly, fine policy for the organizers.

METHODOLOGICAL ANNEX

This cross-country pilot research was conducted in five Western Balkans countries: Macedonia, Bosnia and Herzegovina, Croatia, Montenegro and Serbia. The main research objectives were to assess the level of compliance of national FOA legislation with relevant international standards, to map the institutions responsible for implementation of FOA and to identify the main challenges for the effective exercise of FOA. The research methodology is based on qualitative methods and instruments which were used by all of the research teams. The study was conducted in three phases.

In the first phase, all of the countries conducted desk research that included an overview and analysis of assemblies. National legislation, international treaties and national reports to international bodies as well as reports of relevant organizations were consulted in order to analyze the legal framework for FOA and its compliance with international standards. This data was additionally used to assess the overall implementation of the legislation related to the right to FOA and the main challenges citizens face when they exercise the right in practice. In this phase, research teams also conducted an overview of assemblies organized in 2014 and 2015 through analysis of media reports on public assemblies and through FOI requests. The goal was to identify the most common problems related to the implementation of the legislation, as well as to determine and further examine specific issues (at least two in each country) that most significantly influence FOA in practice.

The second phase of the research included three steps. Firstly, exploratory interviews were conducted with civil society representatives in order to increase the understanding and the scope of the main problems related to FOA and their specifics, as well as to further explore the identified country specific issues. The second step was development of a questionnaire for semi structured interviews which was based on the findings from the exploratory interviews and the desk research. One part of the questionnaire which was used by all countries included questions on main challenges, legal framework and the institutional set up and capacity for enabling FOA, while the second part of the questionnaire examined country specific issues. In the cases where specific issues overlapped in several countries, research teams used the same questions. The last step included administering the questionnaire in all countries through face-to-face interviews with relevant stakeholders such as organizers, leaders and participants of assemblies, members of civil society organizations that monitor assemblies, representatives of municipalities and law enforcement agencies.

In the third and final phase, validation of the findings was also completed in all of the countries where the research was conducted.

DESK RESEARCH

The desk research was organized in two stages. In the first stage we gathered relevant documents such as national legislation including laws and bylaws pertinent for FOA and court decisions related to the exercise of the right. After the materials were collected, we conducted a comparative analysis of the national legal framework against the international standards. Analysis of reports from relevant state authorities, national and international organizations and the EU was also carried out. In the assessment of the national legislation and the court practice, where suitable, relevant international jurisprudence was taken into account as well.

In the second stage of desk research we carried out an overview of the assemblies organized in the past 2 years (2014 and 2015). The aim of this overview was to identify most common types of assemblies and their general characteristics in terms of organizers, size, location, any good practices or violations that may have

occurred, etc. For this purpose, we conducted content analysis of media and journalist reports, official statements from participants and rulings of relevant authorities. This overview enabled us to determine the most common problems related to freedom of assembly and to identify particular assemblies with specific features and issues of concern.

DEVELOPMENT OF QUESTIONNAIRES

After the literature review, desktop research and exploratory interviews with assembly monitors and protest organizers, a questionnaire was drafted. The questionnaire was used for conducting formal face to face interviews and it consisted of thirty five mostly open ended questions divided into three main sections. The first section included general questions on the main challenges related to FOA, assessment of the legal framework and its implementation, the institutions relevant for FOA and their capacities. The second section was dedicated to one specific issue - policing. It was identified as a specific issue in four countries and researchers used the same questions. It examined the role and the capacities of the police related to FOA, the legislation that regulates policing of assemblies, the manner of policing public assemblies and the accountability of the police. The third section included questions on administrative procedures and obstacles that organizers face while organizing an assembly, as well as the efficiency of legal remedies, as a second specific issue for Montenegro.

FACE-TO-FACE INTERVIEWS

In the second stage of the research, we conducted face-to-face semi structured formal interviews for the purpose of gathering qualitative data. The interviews lasted 60-90 minutes and were conducted by two researchers. The data were used to draft findings and develop recommendations.

A total of twelve interviews were conducted. The relevance of the sample was determined based on educational background, professional affiliation and experiences in exercising the right of FOA. More specifically, we interviewed:

1. Miloš Vukčević, Director General of the MOI Directorate for Security and Protection Affairs and Supervision and member of the Working Group for Draft Law on Public Assemblies, March 2016
2. Goran Janković, Chief of Podgorica Municipal Police, March 2016
3. Stevan Milivojević, Executive Director of LGBT Forum Progress, March 2016
4. Aleksandar Zeković, President of the Council for the Civic control of the Police, April 2016
5. Srđa Keković, Secretary-General of the Union of Free Trade Union of Montenegro, April 2016
6. Danijel Kalezić, President of Managing Board of NGO Queer Montenegro, May 2016
7. Šučko Baković, Protector of Human Right and Freedoms, May 2016
8. Desanka Lopičić, President of the Constitutional Court, May 2016
9. Dragica Davidović, Deputy Secretary General of the Constitutional Court, May 2016
10. Nikola Janjušević, Deputy Director of General Authority Police Sector, Police Administration, May 2016
11. Duško Koprivica, Head of Department of Public Order and Peace, Police Administration, May 2016
12. Dragana Babović, Department of oversight of Police work and second-instance administrative procedures

VALIDATION OF FINDINGS

Researchers have used internal peer technical review of the preliminary report and its findings. Additionally, the preliminary report was communicated with legal expert with experience in the field who was not interviewed during the research.

LITERATURE

International standards

- Compilation of Venice Commission opinions concerning Freedom of Assembly, CDL 2012
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- Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies
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National legislation

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ANNEX: PUBLIC ASSEMBLIES IN MONTENEGRO IN 2014-2015

Overview of public assemblies in 2014

	Who was protesting	Cause	Date	Form of assembly	Location	Media reports	Specific Issues?
1	NGO Queer Montenegro	battling for rights of gay people in MNE	2nd November 2014	rally from hotel Hilton, Parliament to the old Government's building and back again to hotel Hilton	Podgorica	http://goo.gl/c5CDm3 http://goo.gl/HRUPFI http://goo.gl/twPSXN http://goo.gl/RlaF4j	
2	Student Association Peace Movement No in NATO-No in WAR!	protest against Montenegro's accession to NATO	April 4th 2014	Peaceful protest of 150 people on the square of Saint Peter, where student protested with banners	Podgorica	http://goo.gl/TuDI4c http://bit.ly/292hm8m http://bit.ly/29aeWll	
3	Facebook group "Revolution in Montenegro- Everybody on the streets!"	conduct demonstrations against Government, main objective: change of Government	15th February 2014	Demonstrations gathered 300 people across the Parliament's building, who later on blocked the traffic at the main boulevard. The group then came in front of the Government's building, and responded violently towards police officers guarding the building. Police officers reacted and used force	Podgorica	http://bit.ly/28ZUqGh http://bit.ly/292ubUQ http://bit.ly/297nX4P	The organizers did not submit notification to the police.
4	More than 100 supporters of sport clubs Red Star and Partisan	giving respect to the member of Red Star supporters who was	26th November 2014	Supporters gathered in front of the Turkish Embassy in Podgorica, where 20 police officers	Podgorica	http://bit.ly/292ihFZ http://bit.ly/2940u3c	

		murdered in Istanbul during a match		guarded the Embassy. The protest ended peacefully.		http://bit.ly/293GRca	
5	Activists of the movement "UDAR"	protest against campaign "Informer" and vile writings of the tabloid Informer about NGO activist, and director of the NGO MANS, Vanja Čalović	22nd June 2014	100 people gathered in front of the State Prosecution's building, among who were media, NGO representatives and political parties	Podgorica	http://bit.ly/29eDoXQ http://bit.ly/298FwmK http://bit.ly/292uSxn	
6	Workers of the company "Metalac" from Nikšić	demand of severances	15th September 2014	70 workers protested day and night, for 15 days in front of the Government	Podgorica	http://bit.ly/1qRf8ho http://bit.ly/292uRte http://bit.ly/292nD4m	

Overview of public assemblies in 2015

	Who was protesting	Cause	Date	Form of assembly	Location	Media reports	Specific Issues?
1	The Association of Displaced Persons, Refugees and Exiled Persons, Association of Montenegrins in Metohija, Association of Families of Kidnapped and Missing Persons in Kosovo and Metohija	Protest against the visit of Hashim Tachi	16th January	protest in front of villa with banners	Podgorica	http://bit.ly/293jAFo http://bit.ly/1lQdKB2 http://bit.ly/292tczA http://bit.ly/293kcLi	
2	NGO Vatan and NGO Moje Rožaje	protest against publishing the cartoons in Charlie Hebdo offensive to Muslim community	30th January	protest on the city square	Rožaje	http://bit.ly/2957VGI http://bit.ly/298T813 http://bit.ly/293Wr7Q http://bit.ly/294O66r	
3	NGO Green Home	Adriatic summit on oil and gas, held on the same day in Budva which aimed to examine the current opportunities and challenges in exploitation of oil and gas in the Adriatic region	10th March	protest in front of hotel Splendid in Budva with banners	Budva	http://bit.ly/292tl5P http://bit.ly/293qbQ5 http://bit.ly/292ymvu	

4	Workers Party	protest due to situation of work force in Montenegro and workers deprived of their rights	1st May	protest with banners on city square in Nikšić	Nikšić	http://bit.ly/292yOKa http://bit.ly/1bJNgre http://bit.ly/29cbjmS	
5	Former workers of "Košuta" factory	protesters demanded better treatment from state authorities and payment of claims	27th May	gathering in front of the building of Košuta factory	Cetinje	http://bit.ly/292zdwf http://bit.ly/294PeXM http://bit.ly/2907gnT	
6	Citizens of Kotor	protests against the decision of Veterinary inspection to close the city market	8th June	protest in front of City hall	Kotor	http://bit.ly/293YxEM http://bit.ly/29oPGMd http://bit.ly/295MWq3	
7	Workers of "Rudnici Boksita" AD	protest against the decision of the board of trustees to reject the offer to purchase the property of the Mine	18th-25th June	Trying to get from Nikšić to Podgorica with dredges	Nikšić-Podgorica	http://bit.ly/297EEwN http://bit.ly/293r7UD http://bit.ly/295MUy4	
8	Workers of "Adriatic Shipyard"	protest of workers of "Adriatic Shipyard" demanding severance pay after the factory bankruptcy	1st July - 28th August	protest of workers in front of gate of "Shipyard" in Herceg Novi	Herceg Novi	http://bit.ly/295ax7w http://bit.ly/297EOEp	After almost two months, the workers have succeeded to reach an agreement with bankruptcy trustee. From the beginning of the protest, the workers have had declarative support by

						http://bit.ly/29aw2Gp http://bit.ly/294eNow	the parliamentary committee for Commission for Monitoring and Control of the Privatisation Procedure, mayor of Herceg Novi, while minister Brajovic has joined the workers once, promising severance pays if they remain patient
9	Citizens, fishermen from Budva	protest against high prices of berth renting in the marine	12th July	occupying city marine, not allowing any boats to enter	City marine, Budva	http://bit.ly/297F6ve http://bit.ly/29awfJs http://bit.ly/292IUUpj	
10	Local committee of citizens movement "URA" Budva	protest due to high prices of water supply, accusing local leadership for corruption in many projects due to which the citizens would pay millions of euros	15th July	gathering in front of building of "Vodovod", water supplier	Budva	http://bit.ly/297Feef http://bit.ly/29eQBjv http://bit.ly/293ZIJM	
11	Local committee of citizens movement URA in Cetinje	gathering due to irregular water supply during the summer season in Cetinje	7th August	gathering with banners in front of building of "Vodovod", water supplier	Cetinje	http://bit.ly/295cP6l http://bit.ly/29cfcglr http://goo.gl/yEdMdd	
12	LGBT activists	protest of LGBT activists aimed to advocate the enforcement of	31st August	protest with banners in front of Government building	Podgorica	http://bit.ly/292Bs2C http://bit.ly/294RhLM	

		Strategy for Improving Quality of life of LGBT Persons				http://bit.ly/295OAI8	
13	Yugoslav Communistic Party of Montenegro	protest due to usage of communist symbol five-pointed red star by the LGBT activists	5th September	walk with communist and Yugoslavian flag and banners from the party hadquarters to the city hall	Nikšić	http://bit.ly/29ayOuU	
						http://bit.ly/298YcT0	
						http://bit.ly/292vtuu	
14	Women of Democratic Front	annocement of the protest in September	15th September 2015	blocking the traffic	Podgorica	http://bit.ly/29cg6F6	
						http://bit.ly/297HphS	
						http://bit.ly/294h5ni	
15	Women of Democratic Front	Anti-Government performance	25th September 2015	gathering in front of the Government	Podgorica	http://bit.ly/295P552	
						http://bit.ly/29oU8Lf	
						http://goo.gl/JwtJWu	
16	Democratic front	protesters demanding the resignation of PM and the formation of an interim government	27th September - 17th October	anti-government protestors set up dozens of tents in a park opposite the parliament building	Podgorica	http://bit.ly/295QecR	
						http://bit.ly/298ZPQG	
						http://bit.ly/297Jevd	
17	Local committee of citizens movement URA in Cetinje	protest due to financial mismanagement, impoverishment of workers and devastation of economy in Cetinje	10th October	protest in front of the buidling of Košuta factory	Cetinje	http://bit.ly/29ci2gX	The protest was originally intended to be held in the factory and the organizers have submitted the request for the gathering to the authorities, citizens were not able to enter the
						http://bit.ly/29eTQra	

						http://bit.ly/29eTQra	factory due to private security forbidding them to enter
18	"No to war - no to NATO" organisation	Protest against the visit of Jans Stoltenberg	14th October	Allegedly hundreds of citizens joined protest nearby Villa "Gorica", where the meeting between Stoltenberg and Montenegrin officials, carrying banners with anti-NATO, pro-Russian slogans and Serbian iconography	Podgorica	http://bit.ly/294Tmay	
						http://bit.ly/1LcNYuz	
						http://bit.ly/293uFGm	
19	Democratic Front	Protest demanding the resignation of PM and free elections	24th October	protest in the center of the city with flags, banners	Podgorica	http://bit.ly/292Mucd	The protest was organised by Democratic front, strongest opposition coalition, while it was also attended by non-partisan activists - NGO representatives, free intellectuals, academics etc. Although originally intended to be peaceful, few hours after the start, the organisers stated that they haven't been able to control the masses anymore, which was followed by the escalation of force on streets, by both protesters and police
						http://bit.ly/29aAHaZ	

						http://bit.ly/297JvhE	forces. Until today, not all circumstances have been explained, nor there have been any announcement coming from the Police Administration about disciplinary proceeding against officers who overstepped their competences.
20	NGO Anima	performance against the excessive use of force during the protest on 24th October	27th October	performance on the square with banners	Kotor	http://bit.ly/290bQCP http://bit.ly/293uTNQ http://bit.ly/292MGrU	
21	"Freedom to People" Movement	protest against excessive force used by police and the dispersing the protest on October 24th	28th October	walk through the city, passing the institutions such as old Government building, RTCG - public broadcasting service, NSA leaving notes calling to resistance	Podgorica	http://bit.ly/297JN7Z http://bit.ly/293v8bj http://bit.ly/29aAODA	
22	Group of citizens	protest walk in support to citizen Mijo Martinović, who was brutally beaten by the Special Anti-terrorist unit during previous protest	31st October	protest in front of the hospital	Podgorica	http://bit.ly/293vfUD http://bit.ly/297JZEj http://bit.ly/294jmPE	
23	Democratic front	Anti-government protest	31st October	meeting in the city hall	Herceg Novi	http://bit.ly/297JZEm	

						http://bit.ly/29cj6Be http://bit.ly/294j7nB	
24	Democratic front and non-partisan activists	protest against editorial policy of public broadcasting service RTCG (Radio and Television of Montenegro)	6th November	protest in front of the building of RTCG	Podgorica	http://bit.ly/290c8tv http://bit.ly/295QZCz http://bit.ly/290bWuj	protesters have gathered using whistles and other equipment to make noise during the central daily news, expressing dissatisfaction with biased editorial policy
25	Group of citizens	hunger strike over inefficiency of state authorities to dismiss medical doctors who were allegedly responsible for death of babies in the Medical Centre in Bijelo Polje	10th - 17th November	strike on the streets of Bijelo Polje	Bijelo Polje	http://bit.ly/295gCkk http://bit.ly/292Ebs http://bit.ly/29eUsNH	Father of dead babies have been striking for 7 days in a row. After the pressures of local authorities, not allowing them to use chairs nor sleeping bag and final decision of Municipal police to remove blankets from strikers, citizens have joined them in a peaceful gathering in the streets of Bijelo Polje.
26	Democratic front	Anti-government protest, demanding resignation of PM and free elections	28th November	protest with banners	Nikšić	http://bit.ly/295goKm http://bit.ly/294TSoD http://bit.ly/295gWzH	
27	New Serb Democracy	Anti-NATO protest	12th December	protest in front of the Parliament building	Podgorica	http://bit.ly/295RdcO	One of the most outspoken NGOs when it comes to advocating neutrality of Montenegro,

						http://bit.ly/292Nfll http://bit.ly/2944TnE	"Movement for neutrality" has decided not to join the protest after their demands not to use any flags, religious and political symbols at the protest in order to preserve its multiethnic, secular and nonpartisan habit of the gathering, was rejected.
28	NGO Queer Montenegro	Gay pride	13th December	rally from the Parliament building to Republic Square	Podgorica	http://bit.ly/29aBxFO http://bit.ly/295Raxy http://bit.ly/295Rlt5	
29	Democratic front	protest against the corrupted system, demanding fair and free elections	15th November	protest of citizens who formed the chain surrounding institutions throughout the centre	Podgorica	http://bit.ly/294U6w1 http://bit.ly/2944Hog http://bit.ly/1X2ZP1z	
30	Coordination Committee of Board of Trustees of "Radoje Dakić" factory	protest against the decision of judge of Basic Court in Podgorica to allocate the money from the sale of factory's goods	16th December	protest in front of the Basic Court in Podgorica	Podgorica	http://bit.ly/29453eu http://bit.ly/294jUoy http://bit.ly/2944P77	
31	NGO Green Home	protest against attitude of state authorities toward the environmental problems in Pljevlja	22nd December	performance at city square	Pljevlja	http://bit.ly/292Ns8y http://bit.ly/290dxQs	

						http://bit.ly/290cyzX	
32	Democratic front	protest against editorial policy of public broadcasting service RTCG (Radio and Television of Montenegro)	23rd December	rally from the Parliament building to the building of RTCG	Podgorica	http://bit.ly/29oZdTu http://bit.ly/292Ewfn http://bit.ly/292N7Tm	