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MONITORING  
RIGHT TO

**FREE  
ASSEMBLY**

**Country Report  
2016-2017**

**Montenegro**



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# Monitoring Right to Free Assembly

## Montenegro Country Report

### 2016-2017

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**Brief Description of the Initiative**

There is an increased number and intensity of protests and violations around them in the Western Balkans and Eastern Partnership region. To ensure that freedom of assembly rights are better understood and advocacy efforts are strengthened, the European Center for Not-for-Profit Law (ECNL) works with local experts from nine countries (Albania, Armenia, Belarus, Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Kosovo, Serbia) on mapping the existing environment for assembly in their respective countries. This assessment is a brief overview of topical issues and recent developments related to freedom of assembly in **Montenegro**.

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## SUMMARY

This report aims to present the state of play concerning the right to free assembly in Montenegro, within the period from July 2016 till September 2017, except where it is stated otherwise. The assessment aims to show developments in the aforementioned period, mostly focusing on policing of the assemblies as well as the accountability of authorities. At the end of the assessment, the authors have provided the set of recommendations for the improvement of the conditions for exercising the right to free assembly in Montenegro.

The new legal provisions have to some extent contributed to the better facilitation of the assemblies, especially including those non-notified: only one out of 222 non-notified assemblies have been interrupted on the spot.

However, at the same time, systemic problem arose in March 2017, given that the Ministry of Interior announced the amendments to the Law with the intention to ban all assemblies on the roads. Since then, civil society organisations in Montenegro have been urging the Ministry not to persist in those intentions, warning that it would violate human rights and freedoms.

The Ministry of Interior has only formally complied with the Law on public assemblies and public performances which states that the Ministry is obliged to report to the Parliament on the annual implementation of the Law. The report is not available at the Ministry of Interior's website, but it was obtained through Free Access to Information. The report includes only general information, with the list of assemblies recognized as security threats. The Parliament has not deliberated the report yet.

Data obtained for the first half of 2017 shows that the Police has been misinforming the organisers of the assemblies on their rights and obligations, by calling upon the law no longer in force.

Negative trend is also noted with regard to the bans – out of 80 assemblies banned in total, 67 of them were notified by the **same organiser**. This indicates that the Police haven't found the effective manner of communication with all organisers and that the policymakers are not ready nor willing to hear citizens protesting. Therefore, it can be concluded that assemblies have not been recognised as a tool for political change.

Few requests for misdemeanour charges were filed due to the failure of organisers, representatives of opposition parties, to notify the Police on the assembly. Despite the filed charges, the assemblies were held and not interrupted. However, at the same time 221 non-notified assemblies took place, without any legal consequences, so it can be concluded that in some cases, the Police actions are not guided by legality, but on the organisers' political stances.

Following the mass protests in October 2015, where the Special Antiterrorist Unit has brutally beaten a citizen, the perpetrators still remain unknown. Only the Unit Commander has been sentenced. However, he was sentenced to the minimal punishment, which makes him eligible to continue his work within the Police after he is released.

# OVERVIEW OF THE RIGHT TO FREE ASSEMBLY IN 2016-2017



## Legislation and implementation

***Have there been any changes (or proposals for change) to the law relating to freedom of assembly in the timeframe covered by this report?***

***Have there been any positive / negative developments in relation to how the law is administered (including policing of assemblies)?***

In March 2017 the Minister of Interior announced amendments to the Law on public assemblies and public performances.<sup>1</sup> The Law, adopted in August 2016, has introduced three major positive changes in regards to the previous law. Firstly, the Law has introduced more positive obligations for the state in tasks 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. Secondly, public assemblies now could be organised closer to the premises of the Government, Parliament, Constitutional Court and the President. Lastly, the Law has recognized the possibility for spontaneous assemblies.<sup>2</sup>

Since the newly proposed amendments could greatly impose restrictions to locations of the assemblies, Institute Alternative reacted publicly and warned both the public and the Ministry that these changes could impose great risk on human rights and freedoms. In order to justify the need for announced amendments, the Ministry called upon the verdict of European Court of Human Rights in the case of Kudrevičius and Others vs. Lithuania<sup>3</sup>. Nevertheless, CSO representatives warned the Ministry and the public that the

*Kudrevičius and other vs. Lithuania (2015) is the case in which the European Court of Human Rights decided in favour of the Government of Lithuania and stated that there has not been violation of Art. 11 of the ECHR. Firstly, the organisers have blocked country's three major highways which connect the biggest cities in the country, while two others are used as transitional roads used to enter and leave the country. The Court also determined that the blockage was deliberate and not necessarily relevant to the protest. Additionally, the Court determined that the blockage and disruption of traffic caused great material loss which was proved by the companies carrying heavy goods.*

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<sup>1</sup> Minister's answer to the MP's question during the Parliamentary session on March 24th 2017, available at: <https://goo.gl/B2TH8a>

<sup>2</sup> Vavić, Aleksandra, Bogojević Ivana, Freedom of Assembly in Montenegro, Institute Alternative, 2016, available at: <https://goo.gl/7qYWcP>

<sup>3</sup> Kudrevičius and Others v. Lithuania, application no. 37553/05, October 2015

forementioned case is not analogous to Montenegrin context, since the assemblies which held place in Lithuania were organised on the three main highways in the country and caused great damage to the small businesses, which was never the case in Montenegro.<sup>4</sup>

Additionally, CSOs have been pointing out that each amendment to the legal regulation, especially those which would reduce the scope of human rights, should be initiated only after thorough analysis of the impact of the regulation in force. Even though the Ministry of Interior justified the need for changes by stating that right to free movement of goods and free movement of people has been jeopardized by closing the main street in town, it did not provide any arguments which could prove the need for this particular amendment.<sup>5</sup> Except from CSOs, none of the authorities, in whose mandates is to promote human rights, nor the political parties, have reacted to announced amendments. However, no formal steps towards the amendments have been made by the Ministry yet.

The Ministry has issued one report on the implementation of the Law on public assemblies and public performances in 2016, to which IA gained access through free access to information.<sup>6</sup>

*The Ministry of Interior has not published the 2016 Report on the implementation of the Law on its website nor has it submitted it to the Parliament.*

Even though reporting on these issues is a legal obligation to the Ministry<sup>7</sup>, it is not known when this report was produced, since it is not available to the public and has not been adopted by the Parliament yet. Additionally, the report does not provide detailed information on the actions taken by the Ministry, but mere listing of the assemblies which took place in 2016, without detailed information on number of participants or the dynamics of the assembly.

**Two positive developments can be noted in the reporting period.** The first entails overcoming administrative obstacles, since the Ministry has developed a form<sup>8</sup> for the organisers to fulfil as a notification to the Police Administration for organising a public assembly. The second improvement is the facilitation of non-notified assemblies in the reporting period. According to the Ministry of Interior, 222 non-notified assemblies took place, while only one was interrupted on the spot<sup>9</sup>.

*In the period of June 2016 – August 2017, 222 non-notified assemblies took place, while only one of them was interrupted on the spot.*

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<sup>4</sup> Announced amendments to the Law on public assemblies would be a setback of civil liberties, Institute Alternative, March 2017, available at: <https://goo.gl/9ExxdT>

<sup>5</sup> NGOs against the ban of protest at the boulevard in front of the Parliament – Defending the Constitutional right to peaceful assembly, Institute Alternative, available at: <https://goo.gl/mZ7TDe>

<sup>6</sup> By decision of the Ministry of Interior, No: UPI-007/17-2674/3, 21.06.2017.

<sup>7</sup> Article 32 of the Law on Public Assemblies and Public Performances, ("Official Gazette", No. 52/2016)

<sup>8</sup> The form is available at the Ministry of Interior website <http://www.mup.gov.me/ministarstvo>

<sup>9</sup> Information provided by the Ministry of Interior via free access to information request, UPI-007-17-4654-3, October 2nd 2017

**Negative developments have been present mostly in regards to the location of the assemblies.** After analysing almost 400 official documents<sup>10</sup> of the conversation between the Police and the organisers of the assemblies, in the first six months of 2017, Institute Alternative has concluded that the Police has been misinforming organisers on their rights, referring to the law no longer in force, which regulates this area much more restrictively than the Law currently in force, which is why Institute Alternative has filed an initiative to the Council for Civic Control of Police to further investigate this behaviour.<sup>11</sup> The Police confirmed this omission and stated that their actions are now fully in compliance with the provisions of the current Law.<sup>12</sup>

*During the communication before the assemblies, the Police has been misinforming organisers on their rights, referring to the law no longer in force, which regulates this area much more restrictively than the Law currently in force.*

Namely, the Police has been informing organisers that they need to provide certain number of stewards, which would suffice for maintaining public order and peace, even though this obligation has been excluded from the Law in force.<sup>13</sup> Additionally, the Police informed organisers that public assemblies could not be held near hospitals, cultural monuments and on main roads, which is not an existing legal provision either.

Additionally, this issue has bigger scale having in mind that the Police is not the only one that has been misinforming citizens and depriving them of their rights to free assembly. In 2016, the Administrative Court has rejected 53 complaints of the workers of Aluminium Plant Podgorica, after the Police has not permitted assemblies on certain locations. The Administrative Court decided 53 times by calling upon the case of "Kudrečius and Other vs. Lithuania", which cannot be perceived as analogous to the Montenegrin context.

*In 2016, the Administrative court has rejected 53 complaints of the same organizer after they filed lawsuits against the Ministry, following temporary ban of assemblies.*

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<sup>10</sup> IA has gained access to these official notes via free access to information request

<sup>11</sup> Police misinform citizens on their rights, Institute Alternative, October 2017, available at: <https://goo.gl/fkmgcK>

<sup>12</sup> Council for the Civic control of Police, Conclusion No.44/-17, November 1st 2017, available at: <https://goo.gl/n6e4ep>

<sup>13</sup> According to the Law, only organisers of public performances, gatherings organised for the purpose of generating income within the registered economic activity, are obligated to this provision.



## Policing of Assemblies

***Do the police usually engage in forms of dialogue/communication with organisers before, or during an assembly?***

***Do the police generally facilitate and enable spontaneous / non-notified assemblies; simultaneous assemblies; counter protests; peaceful assemblies that block roads / traffic; sit-ins or occupations of buildings?***

***Do the police ever use force at assemblies? What is the range of weapons and the types of other equipment used? Is there generally medical assistance available to people who might need it?***

***Are undercover police ever used at assemblies?***

***What types of surveillance & imagery collection do the police use at assemblies? Do the police permit participants in assemblies to video / film / photograph police actions?***

The dialogue between organisers and the Police mostly happens before or during an assembly. If the assembly, by its nature, poses any risk to the participants, or public safety and peace, the

*Meetings between the Police and the organisers, which should be used for the sake of better policing in the future are being held very rarely: out of 2188 assemblies and performances in total, only 12 such meetings have been held.*

Police will communicate any issue with the organisers before an assembly. This mostly refers to determining alternative routes for the organisers or any additional safety precautions. During an assembly and before using force, the Police communicates with the organisers in order to issue a verbal warning.<sup>14</sup>

The Law on public assemblies and public performances does not specifically regulate meetings between organisers and the Police after the assembly is finished. However, in practice, whether these meetings will be organised depends on the assessments of the organisers and the Police. These meetings are being held in order to analyse eventual shortcomings in policing of the assemblies, for the sake of future policing. From June 2016 till the end of the August 2017 there have been 12 such meetings.<sup>15</sup>

According to the Law on Internal Affairs, the Police are able to use wide range of weapons, from physical strength to tear gas, water cannons, baton, binders, special vehicles, police dogs and horses, means for prevention, firearms, chemicals, etc. There is no specific legal provision

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<sup>14</sup> Information provided by the Ministry of Interior, Police Administration, September 20<sup>th</sup> 2017

<sup>15</sup> Information provided by the Ministry of Interior, June 10<sup>th</sup> 2017



defining the range of weapons that can be used during a public assembly.<sup>16</sup> Police will issue verbal warnings before they use force, "if possible in the given situation".<sup>17</sup>

According to the Article 10 of the Law on public assemblies and public performances, Police has the obligation to inform other public services, such as medical service, fire-fighting and other necessary services on a certain public assembly. If Police uses force during an assembly, medical help will be provided to those in need, by the medical team of the Ministry of Interior and the closest hospital.<sup>18</sup>

From July 2016 till September 2017 there has not been any simultaneous or counter assembly. In the same period, the Police enabled 192 assemblies on roads. Out of 2188 assemblies held in total, there were 1115 public assemblies and 1073 public performances.<sup>19</sup>

Out of 1115 assemblies, there were 222 non-notified assemblies, or almost 20%.<sup>20</sup> In those cases, none of the citizens present at the assemblies<sup>21</sup> wanted to accept the role of the organizer, but almost all of them were held without any interruptions since the assemblies were peaceful.<sup>22</sup> Only one of them has been interrupted on spot.

Next to 2188 assemblies and performances that were held, there were additional 80 assemblies that were not held due to the ban. More precisely, 19 of them were *temporarily banned*, while 61 were *not allowed*. However, these 19 Police decisions to temporary ban assemblies are neither significantly different than those 61 that *have not been allowed* nor they have been brought due to different notifications. For example, the same organizer has filed several notifications with the same route, while the Police decisions were different. Therefore, Police seems to use terms "temporarily banned" and "not allowed" interchangeably while de facto these terms mean the same. It is important to note that in majority of cases the location of the

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<sup>16</sup> According to the Law on internal affairs, "Official Gazette of Montenegro" No. 01/15, January 5<sup>th</sup> 2015, and Rulebook on the manner of performance of police activities and use of powers, "Official Gazette of Montenegro ", No 21/2014

<sup>17</sup> Obligation according to the article 57 and 58 of Law on internal affairs. Information has been provided by the Department for public order and peace of Ministry of Interior, September 22, 2017

<sup>18</sup> Information provided by the Police, Department for public order and safety, October 2<sup>nd</sup> 2017

<sup>19</sup> Information provided by the Ministry of Interior via free request to information request, from October 3<sup>rd</sup> 2017

<sup>20</sup> Information provided by the Ministry of Interior, via free access to information request from September 19<sup>th</sup> 2017

<sup>21</sup> Those were the assemblies of the residents of the local community Zagorič Park Forest in Podgorica, protesting upon the requests to return the land on which they built their houses to former owners or to pay compensation. The Capital City, who owned the land in the past after the property nationalisation, allowed those citizens to build houses there, but years after, the previous owners have succeeded to prove in the judicial proceeding that the land should be they returned to them. Citizens protested blaming the leadership of the Capital City to have falsely convinced them, in the election period, that the problem with the land will be solved. The other group were the retired workers of Aluminium Plant Podgorica and Radoje Dakić Factory, due to failure to implement the Law failure to pay off the severance payments stipulated by the Law and claims for unpaid 77 monthly salaries, respectively.

<sup>22</sup> Information provided by the Police, Department for public order and safety, November 1<sup>st</sup> 2017

assembly has been problematic since citizens requested to organize the assemblies in the Podgorica city center, in front of the Parliament, while blocking main roads for a longer period of time.<sup>23</sup> The majority of them were supposed to be organised by the same actor, retired workers of Aluminium Plant Podgorica due to Government's failure to pay off the severance payments stipulated by the Law.

Police elaborated 10 of the bans stating that the number of traffic accidents was on the rise in the period when the traffic was stopped for the sake of the protests. These bans refer to the notifications of the former workers of the Aluminium Plant Podgorica. However, the data is neither proven nor reliable. Other bans were explained by non-proportionality of the time and place of the assembly to the purpose for which it was organised.

Two assemblies, planned at the same place and at the same time, one by Montenegrin Orthodox Church and one by Metropolitanate of Montenegro were temporarily banned as well, with the rationale that even one of them would be posing a safety risk due to the existing conflict between two churches.

The data shows us few things. Firstly, Police sometimes elaborates the decisions by stating data whose accuracy cannot be confirmed nor it is complete. Also, it shows that the Police has not become able to manage simultaneous and counter-assemblies. Additionally, 67 banned assemblies planned by the same organisers show us that the Police haven't found the effective manner of communication with the organisers in order to discuss alternatives, which should be a proactive role of the Police and legal obligation as well. That proactive role consists of consultations with organisers of public assemblies, in order to clarify any ambiguity regarding time, place and safety during public assembly, or any other issue. According to organisers of the Pride Parade in Montenegro, the Police has always been proactive in discussing alternative routes and undertaking necessary safety measures.<sup>24</sup>

Finally, these numbers show that the policymakers are neither ready, nor willing to hear citizens protesting nor that their assemblies have been recognised as a tool for political change.

In the same period, the Police has used force in two cases during public assemblies. Two times the Police used physical strength and binding.<sup>25</sup>

Police records public assemblies which are assessed as assemblies with high safety risks. Audio and video recording are being published on Ministry's website and in media, a day before the

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<sup>23</sup> The organisers usually requested to organize the assembly since 9 am-17 am

<sup>24</sup> "Organisers 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 organisers had a completely all 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. " See more in Freedom of Assembly in Montenegro: [http://media.institut-alternativa.org/2016/07/Montenegro\\_WBA-Project-Report1.pdf](http://media.institut-alternativa.org/2016/07/Montenegro_WBA-Project-Report1.pdf)

<sup>25</sup> Ibid.

assembly takes place. Montenegrin Police uses hand-held video and audio cameras and it can retain the imagery 60 days since its creation.<sup>26</sup>

Security Centre Podgorica has been recording all non-notified public assemblies and in cases with legal basis, those recordings have been used for further processes. Other Security Centres are also recording the assemblies, but in the reporting period, none of the recordings has been used for the criminal proceeding afterwards. Lately, there have not been any cases where citizens were banned to film or take a photo at the assemblies.



## Media and Assemblies

***Is the mass media able to report freely at assemblies?***

***Are citizen journalists or non-accredited journalists able to report freely at assemblies?***

***Are human rights defenders and or monitors able to observe freely at assemblies?***

During the last year, there have not been numerous cases of restrictions. One happened prior to the Pride Parade on September 2017, when a journalist was stopped and prevented to go to the editorial office despite the fact that she showed her annual accreditation issued by the Government of Montenegro, with name and photo.<sup>27</sup> There have not been any cases of arrests of journalists.

Human rights defenders and civil society monitors are not treated differently than others present at the assembly. As we were told, citizens, including mentioned categories can attend and observe any assembly, provided they do not endanger the security and do not violate public order and peace.<sup>28</sup>

The Government's Commission monitoring the conduct of competent authorities in investigating cases of threats to violence against journalists, murder of journalists and attacks on media assets has undertaken a couple of steps with regard to the attacks on journalists that have happened during the October 2015 protests. The Commission has formed a working group dealing with police attacks on journalists during the protests that happened on 17th and 24th October 2015, as well as the case of throwing stones at the premises of TV station PINK. While in 2017, the Commission has issued a set of recommendations in the latter case

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<sup>26</sup> Law on internal affairs, "Official Gazette of Montenegro", No 44/12, 8/9/2012, Art. 56f

<sup>27</sup> Information obtained from the journalist, October 2017

<sup>28</sup> Information provided by the Ministry of Interior, Police Administration, September 27<sup>th</sup> 2017

for the Police, Ministry of Interior and the Prosecution, no further progress has been made in resolving these attacks.<sup>29</sup>



## Social Media and Assemblies

***Do organisers of, and participants in, assemblies use social media before, during or after assemblies?***

***Has the government or other authorities imposed any restrictions on use of social media in relation to assemblies?***

Organisers of the assemblies have been using social media beforehand in order to invite people to participate. However, one of the citizens' groups has been more active on social media in the last six months, having their activists using "Live video" option on Facebook during the assemblies. Other social media channels have not been used during the assemblies.

There has not been any case of censorship in relation to assemblies. However, on the day of parliamentary elections in October 2016, the Agency for Electronic Communications and Postal Services shut down the applications "Viber" and "WhatsApp" because a number of users of these applications received a message that the ruling political party was allegedly buying votes. Although the reason for this act wasn't an assembly, the censorship prevented Montenegrin citizens to communicate and eventually organize in such sensitive political moment.



## Responsibility of Organisers

***Are the organisers of an assembly held liable for behaviour of others?***

***If there is no identifiable organiser, how do the police respond?***

The law in force stipulates that the organizer is obliged to undertake necessary measures in helping the Police maintain public order and peace and to warn other participants to respect the law. According to the Law, organisers can be fined if they do not ensure the safe passage of police vehicles, emergency/medical aid, fire engines and vehicles of other services necessary to maintain order and peace at the assembly. They can also be fined if they do not immediately notify the participants that the assembly is interrupted or if they fail to notify the participants

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<sup>29</sup> Report on the work of the Government's Commission monitoring the conduct of competent authorities in investigating cases of threats to violence against journalists, murder of journalists and attacks on media assets 23 January - 23 May 2017, issued in May 2017

to leave the assembly peacefully. Therefore, the organisers can be held responsible for some of the actions of the participants during the public assembly.<sup>30</sup>

Organisers have legal obligation to notify the Police (in written) on a certain public assembly, which ought to be held in open public space. However, there were 222 non-notified assemblies in the period from July 2016 till September 2017 during which no wanted to accept the role of the organizer. Although there were not identifiable organised, there were held without any interruptions since the assemblies were peaceful.

So far, there has not been any damage caused in cases of non-notified assemblies.



## Detention and Prosecution

***Are people ever arrested or detained in advance of an assembly? If so, are they given easy access to legal advice or medical assistance?***

***Has there been an increase in the scale of punishments imposed on people arrested at assemblies in recent years?***

***Are the courts generally seen as neutral and impartial?***

If people are detained at an assembly, they are usually charged and prosecuted. In the period July 2016 - August 2017, during 2.188 assemblies, there were in total 49 cases of criminal or misdemeanour charges filed. Three criminal charges were filed for assaulting an officer, while there were five misdemeanour charges for failures to obey a police officer. Fourteen persons were detained because they were involved in violent actions.<sup>31</sup>

In October 2016, one activist has been detained in Podgorica Security Centre, because of her Facebook status in which she was inviting citizens of Montenegro to protest on the streets due to the alleged "coup" on the day of parliamentary election. She called the opposition parties to go out in the streets and protest against the government. She has been released after the interrogation.<sup>32</sup>

In August 2017, one case gained media attention when one of the activists was brought in by the Police after the Security Centre Podgorica tried to hold "informative conversation" with him a couple of times, but failed to do so due to impossibility to hand him the official Police

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<sup>30</sup> Law on public assemblies and public performances, "Official Gazette of Montenegro", No. 52/2016", August 9<sup>th</sup> 2016, Articles 16, 33 and 34

<sup>31</sup> Additionally, two persons are detained after the sport matches due to usage of the pyrotechnical supplies, thus violating the Law on the Prevention of Violence and Misbehaviour at Sports Events. In the same period, during public performances, 33 persons were deprived of liberty due to criminal offences related to abuse of narcotics

<sup>32</sup> Dan online, "Patriciju privodili zbog statusa na fejsbuku" ("Patricia arrested because of her Facebook status") <https://goo.gl/MLqG8s>

invitation. According to the activist, the reason why Police brought him in was his presence at numerous protests in Podgorica.

According to the Police Administration, all citizens charged with a misdemeanour are being acquainted with their rights and legal obligations, as well as with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The latest report of National Preventive Mechanism also states that all detainees are provided with informative lists on their rights.<sup>33</sup>

Citizens who are detained are provided with the medical assistance by the Ministry of Interior medical team. Also, the Law on public assembly states that the Police Administration should notify medical and fire services on each public assembly organised.

In 2017, the Misdemeanour Court in Podgorica<sup>34</sup> was deciding upon four requests for initiating a misdemeanour procedure filed by the Police.<sup>35</sup> Two of those originate back in 2015, when the coalition of parties organised assemblies despite the Police decisions to temporarily ban the assemblies. In both cases, six organisers were charged with fines totalling 4500 EUR<sup>36</sup>. One of these two cases was overturned by a High Misdemeanour court due to procedural errors.

Third and fourth charges were filed due to failure of organisers to report the assembly. However, having in mind that in the reporting period 221 non-notified assembly took place, without any legal consequences, while majority of misdemeanour charges were filed against citizens representing political opposition, it can be concluded that in some cases, the Police brings the decisions which are not only always based on legality, but also on the organisers' political stances.

Both Misdemeanour Court in Bijelo Polje and Misdemeanour Court in Budva have been deciding upon 13 requests in total for initiating misdemeanour procedures.<sup>37</sup> All of them were filed due to failure of organisers to comply with the decision of the Police stipulating that the notified assemblies have been temporarily banned, while the organisers have organised them

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<sup>33</sup> National Preventive Mechanism (Mechanism working within the institution of the Protector of Human Rights and Freedoms) report for 2016: <https://goo.gl/r4jntB> (MNE)

<sup>34</sup> Law on Courts, Official Gazette of Montenegro, No.11/2015 established three misdemeanour courts: Misdemeanour Courts in Bijelo Polje, competent for the municipalities of Bijelo Polje, Andrijevica, Berane, Gusinje, Žabljak, Kolašin, Mojkovac, Petnjica, Plav, Pljevlja i Rožaje; Misdemeanour Court in Podgorica competent for the municipalities of Capital City Podgorica, Old Royal Capital Cetinje i opština: Danilovgrad, Nikšić, Plužine i Šavnik and Misdemeanour Court in Budva, competent for the municipalities of: Budva, Bar, Kotor, Tivat, Herceg Novi i Ulcinj)

<sup>35</sup> Information provided by the Misdemeanour Court in Podgorica, via free access to information request from 1/10/2017

<sup>36</sup> 6 representatives of the parties were charged as natural persons with the fines of 250 each, while each of 6 parties, as legal entities, were charged with 500 euro fines.

<sup>37</sup> Information provided by the Misdemeanour Court in Budva and Misdemeanour Court in Bijelo Polje, via free access to information request from 1/10/2017

nonetheless. However, the Courts have rejected all of them, since the Police could not prove that the decisions on temporary bans have been properly delivered to the organisers.

### ***Neutrality and impartiality of the Courts***

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A public opinion poll published in 2017 shows that the trust in the Montenegro's judicial system has been rising until this year (in 2013, trust was 38 %, in 2014, 47.8 %, and 52.6% in 2016), when it fell to 44.6 % of citizens, which means that more than half of population does not trust the judiciary.<sup>38</sup>

Despite the ongoing legislative and institutional changes in Montenegrin judiciary aiming to professionalize the courts and contribute to their independence, the goal is far from being met. Last year's case of appointment of the candidate as a judge at the Administrative court, who was not top ranked with regard to the references (test scores, language knowledge, computer skills) proves that discretionary right still presents a problem in the recruitment process.<sup>39</sup>



## Accountability

### ***Is it possible to hold any state authorities (ministry, municipality) or the police to account for their behaviour and actions relating to assemblies?***

Any state or local authority can be held accountable for their actions by filing the appeal to the Protector of Human Rights and Freedom. However, in the 2016 and first six months of 2017, none of the appeals against the Police Administration and Ministry of the Interior has been related to the facilitation of the assembly.

The new Law on public assemblies and public performances, adopted in 2016 has improved the efficiency of the legal remedy by introducing the 48-hour deadline for the Administrative court to decide upon the organizer's lawsuit. However, more efficient legal remedy did not come hand in hand with good prospect for organisers: none of the decisions was brought in favour of organisers. None of the disciplinary measures in the Ministry of Interior, nor the complaints received by the Ethical board were related to the behaviour of police officers during or related to assemblies.

*Neither Disciplinary Committee nor the Ethical Board have been dealing with the behaviour of Police officers related to the assemblies.*

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<sup>38</sup> Public opinion poll conducted by NGOs CeMI and HRA, available at: <https://goo.gl/VTaJS6>

<sup>39</sup> Muk, Stevo (ed.), Monitoring and Evaluation of the Rule of Law in Montenegro, Institute Alternative, 2016

*Commander of Special Antiterrorist unit, which has beaten one citizen and demolished his car, was sentenced to 5 months in prison, which is almost the minimal punishment and allows him to continue his work as police officer after he is released from prison.*

Following the protests in October 2015, where the Special Antiterrorist Unit has brutally beaten a citizen and demolished his car, the perpetrators still remain unknown due to alleged inability of Unit Commander to identify them.<sup>40</sup> In January 2017, the Commander has been sentenced to 5 months in prison by the Basic Court in Podgorica for helping perpetrators after committing the crime.<sup>41</sup> By doing so, the Court has almost sentenced him to the minimal punishment, given that the prison sentence for this criminal offence<sup>42</sup> is from 3 months up to five years. Taking into consideration the Law on Internal Affairs<sup>43</sup>, stating that the employment for the police officer will be terminated by the force of law if, inter alia, the officer is convicted by a final judgment to unconditional punishment of imprisonment of at least six months, meaning that the Commander is eligible to work in the Police after his prison sentence.

According to the Law on internal affairs, all police officers ought to have identification while performing official duties. However, the same Law stipulates that police officers may perform certain duties undercover or in regular civilian clothes. Montenegrin Police Administration stated that those officers are being engaged according to security assessment and plan before each assembly, but failing to provide exact information on number of police in civilian clothes present on assemblies.

The problem regarding the identification has risen two years ago in the case when commander and members of Special Antiterrorist Unit allegedly failed to recognize and report their colleagues who have beaten citizens during the protests.



## Overall Assessment

### ***Is the right broadly respected, facilitated and protected by the state?***

The right to free assembly is facilitated by the law. Nowadays, the organisers can enjoy this right more than ever before. Even though the organisers are legally obliged to notify assemblies to the Police, in practice they have been permitted to hold un-notified assemblies without any consequences. Nevertheless, the right to free assembly is not broadly and sufficiently respected. There have been numerous cases where organisers were stopped in their

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<sup>40</sup> See more in: Freedom of Assembly in Montenegro, 2016, <https://goo.gl/RjoCrk>

<sup>41</sup> Basic Court in Podgorica, Verdict K 347/2016, January 24th 2017, available at: <http://sudovi.me/ospg/odluke/>

<sup>42</sup> Criminal Code of Montenegro, "Official Gazette of Montenegro" No. 44/17, July 6<sup>th</sup> 2017, Article 387, p2

<sup>43</sup> Law on internal affairs, "Official Gazette of Montenegro" No. 01/15, January 5<sup>th</sup> 2015, Article 109



cause and practising of their right because of the requested location of the assembly. Ministry of Interior has started to deteriorate the positive changes within this area, by insisting on amendments in relation to absolute ban of assemblies on roads, which would be unconstitutional and contrary to international standards. The most worrisome is the fact that state authorities have not been successful in resolving all the attacks on media and citizens that have happened by the Police during the protests. Only limited number of CSOs monitor this specific area of human rights. None of the authorities, nor the political parties have reacted to the announced amendments whose adoption would represent violation of Constitution, which leaves this field somewhat unprotected and insufficiently treated.

# RECOMMENDATIONS

The **Ministry of Interior** should:

- not insist on announced amendments to the law which would be unconstitutional and contrary to international standards in relation to the prior and absolute ban of assemblies on roads;
- regularly publish the annual report on the implementation of the law which would include all relevant information in this area and submit it to the Parliament
- comply with the recommendations given by the Government's Commission monitoring the conduct of competent authorities in investigating cases of threats to violence against journalists, murder of journalists and attacks on media assets, to fully investigate cases of attacks on media and media assets, and to inform the public on the resolution of those recommendations.

The **Police Administration** should:

- correctly inform citizens on their rights and obligations before the assembly, calling upon the law in force;
- organize meetings with organisers of public assemblies after the assembly finishes in order to analyse potential shortcomings in policing;
- comply with the Law on internal affairs and carry the identification at all times.
- comply with the recommendations given by the Government's Commission monitoring the conduct of competent authorities in investigating cases of threats to violence against journalists, murder of journalists and attacks on media assets, to fully investigate cases of attacks on media and media assets, and to inform the public on the resolution of those recommendations.

The **Prosecution** should:

- comply with the recommendations given by the Government's Commission monitoring the conduct of competent authorities in investigating cases of threats to violence against journalists, murder of journalists and attacks on media assets, to fully investigate cases of attacks on media and media assets, and to inform the public on the resolution of those recommendations.

The **Parliament and the MPs** should:

- initiate the amendments to the Law stipulating the obligation to the Police to treat spontaneous assemblies as all the other peaceful assemblies without foreseeing any sanctions for organisers and citizens due to the fact that it was not announced in the stipulated legal deadline;
- request the annual report on the implementation of the Law on public assemblies according to the legal obligation.

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- Ministry of Interior, <http://www.mup.gov.me>
- Parliament of Montenegro <http://www.skupstina.me/index.php/me/>