



MONITORING
RIGHT TO

FREE

ASSEMBLY

**Country Report
2016-2017**

Albania



Monitoring Right to Free Assembly

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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 **Albania**.

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SUMMARY

Methodology

The work for the preparation of this paper was carried out between Septembers – October 2017. The overall goal was to gather information on legal framework and practices illustrated with cases on the right of assembly in Albania, by highlighting progress or regress in legislation and in its implementation. Partners Albania employed a set of methodological tools. Partners Albania collected information from desk research, including legislation review and review of reports from national and international organisations and institutions, as well as media articles. Additionally, a semi – structured questionnaire was prepared to assess the practice from CSOs and groups of citizens who have organized and/ or participated in an assembly. Based on their answers, PA carried out in depth interviews in order to get detailed information and clarifications on the issue.

In Albania there is no data or statistics on assemblies published by public institutions involved in various stages of the assemblies. Considering lack of data, Partners Albania sent official requests to General Directory of Police, Ombudsman Office, Municipality of Tirana and Administrative Court to gather information on the role and accountability of these institutions towards organization of assemblies, as well as to have cases that illustrate the role and responsibilities of the respective authorities.

Main Findings

The five key findings identified through the assessment of the right to free assembly in Albania are as follows:

1. The legal framework for the protection of human rights in Albania is broadly in line with European standards. The country has ratified most international human rights conventions. Nevertheless, there are improvements needed in the legal framework and its practice implementation to further ensure freedom of peaceful assembly in Albania.
2. There is confusion in the legal framework on the organization of assemblies in the squares and public walkways. While it is stated in the Law on Assemblies that the organisers should **notify** in written the State Police, in the Penal Code it is stated that the organisations of assemblies without **permission** from the competent body is a penal misdemeanor.
3. Spontaneous assemblies without prior notification to the public authorities and counter-assemblies are not recognised in the law on assemblies. The law on assemblies is very vague on the appeal process of the state authorities' decisions. It does not give any guidance on how the appeal should be done, when and does not indicate which body will deal with it.
4. Despite sporadic cases of violation of human right by state police reported during some assemblies, there are improvements in the administration of assemblies, maintenance of public order during assemblies, and respect to freedom of assemblies.

5. There is limited communication between state authorities and the organisers before assemblies, to create mutual understanding, avoid unnecessary confrontations, and prevent any incidents during assemblies.

LEGAL FRAMEWORK

In Albania, freedom of assembly is a constitutional right, regulated in Art. 46 section 1 of the Albanian Constitution: *"Everyone has the right to be organized for any legitimate purpose"* and Art. 47 sections 1 and 2: *"Freedom of peaceful and unarmed assembly, as well as participation in them is guaranteed. Peaceful gatherings in the squares and in the public places are done according to the procedures provided by law."*

The primary law that regulates the freedom of assembly is the Law no. 8773 dated 23.4.2001 "On Assemblies", based on which the right to organize and participate in peaceful assemblies is granted to everyone¹. The law ensures the freedom of peaceful assembly to everyone without any exclusion², in compliance with the ECHR. Other laws that regulate the organisation of assembly are: Law no. 7895, dated 27.1.1995 "The Penal Code of the Republic of Albania" and the law no.108/2014 "On the State Policy", amended.

The term "assemblies", as per Art 2 section 5 of the law on assemblies, includes peaceful and free of weapons gatherings, manifestations, meetings and marches, through which a group of people express their demands and views on problems for which they are interested and also includes urgent assemblies.

Based on the place, the law on assemblies groups them in three main groups:

- **Assemblies in squares and public walkways** – for which the organisers and the leader are obliged to notify in written the chief of police commissariat no later than 3 days before the date of assembly. In case of **"urgent assemblies"**³, when gatherings are organised due to dire circumstances, notification must be submitted 3 hours before the assembly.
- **Assemblies in places open to the public**⁴ - can be organised even without prior notification to the police, but the organizers may ask the State police to support them during the event, outside of the place where the assembly is being organised.
- **Assemblies in private areas** – where the police cannot enter without permission of the leader of the assembly or the owner of the private area, with the exception of flagrant cases to stop a stake risk for the life and health of the participants in the assembly. There is no provision about a prior notification for such gatherings in the Law.

The law on assemblies in Albania does not recognise **spontaneous assemblies**⁵, as it stipulates that: "When groups of people spontaneously gather and do not infringe public

¹ Article 1, Law on Assemblies

² The Guidelines on Freedom of Assembly, Second edition, OSCE/ODIHR, explanatory note 3, pg 55

³ Article 7, Law on Assemblies

⁴ Article 12, Law on Assemblies

⁵ The Guidelines on Freedom of Assembly, pg 4.3, "An assembly that takes place at the same time and place as another one, but which has no relationship to the other event"- definition in The Guideline

order, their activity is not considered an “assembly”⁶. Should a spontaneous assembly occur, there is no guarantee that the police will allow it to take place, or secure it.

As per the law on assemblies, the organizer/s of an assembly must appoint a “leader” and “steward/s”. The leader is responsible for the planning, development and the termination of an assembly. He/she is responsible for proper conduct during the assembly and collaborates with the State Police⁷. The leader has the right to allow or interrupt the speakers in their speech. He/She and his/her stewards have the authority to give orders to the assembly participants to preserve public order and if they do not respond to his/her orders the leader has the authority to terminate the gathering.

The decision making power on the organisation of an assembly is a State Police matter in Albania. State Police is the agency that guarantees the right to organize and participate in assemblies. It has the authority to give the permission for the organisation of an assembly in squares and public walkway, or to ban it in case there is information for disruptive acts during the event. As per article 5 of the Law on Assemblies, the organisers should submit a written notification to the chief of the police commissariat, while in article 6 it is stated that after receiving “**the request**”, through an arguing **decision** should: a) communicate to the organizer or the leader of the assembly the prohibitions and possible limitations or other conditions, including the number of persons who will assist in the performance of the assembly; or b) give a copy of the official order for the assignment of the police officer responsible for helping and monitoring the development of the gathering. In addition, in the Penal Code, article 261 Organisation and participation in unlawful assemblies, it is used the term “**permission**”⁸. The terminology used in the law and the penal code is ambiguous and creates confusion on whether it is just a notification or an authorization process by the authorities to guarantee the gathering.

The written notification to the State Police for the organisation of an assembly in a square or public walkway should include: a) the identity and address of the leader and organizer, b) the purpose of the assembly c) the date, place, time when it is scheduled to start and end, and its itinerary, d) the approximate number of participants and e) list of speakers. The decision on conducting the assembly of the State Police should be given within 24 hours after the receipt of full information. If the organizers fail to submit all relevant information, they are warned by the authorized body to complete it. Revisions to the complete information may be made at least 24 hours before the gathering starts⁹.

⁶ Article 2, section 5, Law on Assemblies

⁷ Article 11, law on Assemblies

⁸ “Organisation of assemblies and manifestations in squares and public walkways, without prior permission from the competent body, according to special provisions, or when the organisers violate the conditions set forth in the application for granting the permission, is considered penal offence and is sentenced to a fine or up to one year of imprisonment.

⁹ Article 5, section 3 Law on Assemblies

The Chief of the Police Commissariat should communicate the decision to the organizer, including possible restrictions or prohibitions and the number of stewards who will assist the assembly. He is also responsible to assign a police officer responsible for assisting and observing the conduct of the gathering, and to provide to the organisers a copy of the decision for the assignment of the police officer. The Chief of the Police Commissariat shall also notify in written the leader of the local government unit and the Prefect for the organisation of the assembly. As cited in the Office for Democratic Institutions and Human Rights Report on Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, November 2014 *"The requirement of a prompt response by the chief of the commissariat to the notice of a planned demonstration is a good practice in Albania, as it guarantees that the organizers of an assembly face no undue delays in learning about restrictions applicable to their activities"*¹⁰.

Police authorities have the mission to maintain public order and security, guaranteeing the implementation of the law, in accordance with the Constitution and international acts, respecting human rights and freedoms¹¹. The police officers responsible for assisting and observing the assembly may order the organizers and the leader, the stewards and the participants to stop the assembly and immediately leave the venue of the gathering if there is evidence of violation of public order. The responsible police officer may order to disperse the gathering by force after three unsuccessful "clear calls" to the participants to leave. And in any case, the use of force should always be limited to a minimum¹².

Based on article 15 of the Decision of the Council of Ministers No.1096, dated 28.12.2015 "On the approval of the rules, conditions and procedures for the use and management of public space", the municipalities can approve additional rules for the use of public spaces, according to their specific needs. Based on this decision and the legal framework on the functioning of local self-government in Albania, some municipalities have prepared and published their regulations for the occupation of public spaces for the organisation of activities, approved by the respective Mayors. In some cases, such as Tirana municipality, "political manifestations" are included in the type of activities that should be equipped with permission. In this case, the request for permission to conduct "political manifestation" from Tirana municipality that is extended even to other types of manifestations is associated with a set of documents and a deadline of minimum seven days prior to the assembly, in contradiction with the law on assemblies, which sets a minimum of three days for notification. Interviewed civil society organizations which organized assemblies in the last two years in Tirana, stated that didn't submitted all documents required in this procedure. They usually copy the Municipality in the notification submitted to the State Police as per law on assemblies and may include in the request some more information about the gathering and the activities. However, this practice is not in line with the international standards and

¹⁰ <http://www.osce.org/odihr>

¹¹ Article 2 of Law no. 108/2014 "For State Police "

¹² Article 23, section 2 Law On Assemblies

guidelines on the freedom of assemblies, leads to confusion, creates burdensome procedures for the organisers of assemblies, and creates space for restrictions of assemblies.

On the other hand, there is the Case of Shkodra municipality that have not included any type of assemblies (as defined in the law on assemblies) in its regulation on the management of public spaces. The municipalities, as self-government authorities, can and may issue orders or regulations as regard to their functionality. Practice shows that not all municipalities have special regulations on “using the public space” or more specifically on “conducting political manifestations” as in Tirana’s case, meaning that the assemblies organised in other cities may be only based on the Law on Assemblies.

Regarding restrictions, the legal framework limits the right to organize assemblies only if national security, public security, protection of the order, crime prevention, preservation of health or morals, or the protection of the rights and freedoms of others are put at risk¹³. In cases when the State Police, based on evidence, judges that less restrictive measures cannot prevent a real risk to national security, then the assembly is banned¹⁴. Restrictions are also regulated in articles 18, 19 and 20 of the law on assemblies, according to which, participants are prohibited from carrying any means or instruments, which, during their use, may cause harm to the life and health of others. Flags and banners are exempted from this obligation. It is forbidden to participate in a gathering using items or clothing with the purpose of hiding the identity. In assemblies organized in public places, the organizer, managers, support persons, and participants are not permitted to wear uniforms, signs or symbols referring to associations or groups that promote discrimination and violence for racial, ethnic or religious reasons.

The law on Assemblies stipulates sanctions for four types of penal misdemeanours. For the participation in banned assemblies and failure to respond to the orders of the police to disperse an assembly are sanctions with fines from 7.5 to 75 EUR. Regarding usage of clothing and other items aiming to hide the identity of the participants in an assembly and usage of discriminative and racist symbols and signs are sanctioned with fines (the amount is undefined in the law) or imprisonment up to six months. On the other hand, the penal code foresees other types of sanctions for: the organisation of assemblies without **permission** from the authorised bodies is sanctions with fine (undefined the amount) or up to one year of imprisonment; participation in illegal assemblies is sanctioned with fine (undefined the amount) or up to three months of imprisonment; if the misdemeanour is repeated the sanctions varies from fines up to two years of imprisonment¹⁵. The above sections provisioned in the legal framework are not in line with the international standards¹⁶¹⁷. In the

¹³ Article 1, section 2 Law On Assemblies

¹⁴ Article 8, Law On Assemblies

¹⁵ Article 262 of the Penal Code

¹⁶ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 51

¹⁷ The Guidelines pg 109-112

Report on Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, pg. 58, it is recommended to all states "to ensure that laws do not contain vague and broadly defined offences that confer excessive discretion upon law-enforcement officials or that enable the imposition of excessive and disproportionate sanctions on protesters".

The decisions of the State Police could be appealed by the organizers¹⁸. However, the law is very broad regarding the appeal, stating only that the appeal should be done according to the legal provisions in force. It does not indicate or give any instructions on how the appeal should be done, when, which is the authority where the complaint is filed, and when the decision should be made to enable the organisation of the assembly.

Media usually covers assemblies in Albania. Media representatives have the right to be present during the assembly and should be equipped with a media membership card¹⁹. There is no evidence of journalists being kept from following events closely during assembly organizations in the last two years. Other institutions in Albania and international bodies have been monitoring the gatherings without any encountered problem²⁰.

Regarding the monitoring process related to the assemblies, the ombudsman in Albania plays an important role. The authority has the right to closely supervise the processes and procedures, receive complaints and make recommendations to the responsible state authorities.²¹ The Ombudsman rights to make recommendations when cases of violation of human rights are identified, are stipulated in: a) Paragraph 3 of Article 63 of the Albanian Constitution, which states that: "*The People's Advocate has the right to make recommendations and propose measures when he observes violations of human rights and freedoms by public administration*"; b) Article 21 / c, of law no. 8454 dated 04.02.1999 "On the People's Advocate", "*...the People's Advocate presents recommendations to put in place the violated right to the authority that has caused the violation*".

For the period 2016-2017 the ombudsman has monitored and submitted recommendations for several assemblies:

- A massive citizen protest was organized in 2016 against the construction of a playground within the green wooded area in Tirana Grand Park. During the protests three civilians were accompanied to the police station. This is the only case for which the ombudsman has initiated an investigation on the illegal actions and inactions of the police. At the end of the investigation, the ombudsman concluded that there were illegal and arbitrary acts and violence against the participants in the assembly by the police officers. The ombudsman recommended to the State Authorities the need to respect the legal provisions in cases of escorting individuals to the police. State Police took disciplinary measures for two officers. Also, the ombudsman recommended to

¹⁸ Article 25, Law On Assemblies

¹⁹ Article 4, Law On Assemblies

²⁰ <https://www.lgbtqnation.com/2017/05/albania-pride-held-without-protests-violence/>

²¹ <http://gazeta-shqip.com/lajme/2017/04/24/eksperte-te-avokatit-te-popullit-do-monitorojne-protesten-e-opozites/>

the Prosecution of the Tirana District Court to start an investigation for the penal act "conduction of arbitrary acts" against the police officers, the Prosecution Office rejected the request of the Ombudsman to start an investigation for them.

- In 2017, the Ombudsman closely monitored for several months the opposition protest in the main boulevard in front of Prime Minister's office. A recommendation to the ministry of health to provide an adequate health service for protesters, through an ambulance and medical staff, as needed was issued by the institution. The recommendations were accepted and medical support was provided till the end of the rally by authorities.

Assemblies of the last years were usually led by dissatisfaction towards government and performance of public institutions, addressed lack of transparency and accountability of these public authorities to perform and deliver public services, perceiving their work vulnerable towards corruptive practices²². Among the most frequent assemblies, especially those organized by civil society organizations are linked with their areas of work and their advocacy efforts²³. The prevalent concerns addressed through these assemblies are usually related with the protection of environment and green areas, social issues and protection of human rights. Also, having a specific nature, in 2016 – 2017, an informal group named the Group Of Citizens Pro Justice Reform advocated and lobbied for the approval by the Albanian Parliament of the legal package with detailed rules for the re-evaluation of judges, prosecutors and legal advisors, otherwise known as the 'vetting' process, in the frame of the justice reform in the country. In addition, due to political affiliation and mechanism in place to mobilize supporters, the opposition parties during the last two years have organized public assemblies, where the most visible and long public rally was the one organized in March 2017, when the opposition parties protests resulted with boycott of the parliament and pitching of a tent on the boulevard between the Prime Minister Offices and the Parliament Offices.

Assemblies are mostly organized in the capital, near the premises of public institutions responsible for the issue addressed by the assembly. To be noted is the fact that assemblies organized from initiatives of citizens and civil society organizations during the past two years have resulted in increased support for the causes, with varying degrees of successes²⁴.

According to media articles, enforcement authorities in general respect assemblies and restrictions are only linked with security of the event. The protest organized by the Alliance against Import of Waste (AKIP) is one of the good examples of the implementation of assemblies. The assembly was organized in October 2016, in front of the Prime Minister Office and in front of Presidency. The organizers, joined by citizens demanded the repeal of the law for importing waste materials from other countries. They also appealed to the

²² D. Adonov, T. Cvjetičanin, B. Georgievski, I. Trajkoska, I. Londo, Z. TRAJKOSKA, *Communicating Citizens' Protests, Requiring Public Accountability: Case studies from Albania, Bosnia and Herzegovina and Macedonia*, pg. 64

²³ USAID 2017, *CSOs Sustainability Index 2016 for Central and Eastern Europe and Eurasia*, pg. 32

²⁴ Ibid

President to not decree the law. The protest was organized peacefully and it was respected by the police forces that were high in numbers (around 500 police officers supervised the protest and surrounded the Prime Minister Office). As a result, the Albanian President refused to decree the law stating that the new law on waste management violated Article 59 of the constitution of Albania, as well as the EU waste framework directive.

Another positive development saw civil society groups become more engaged and organized in expressing their concerns with different socio-political issues. The protests against hydro plants on the rivers of Valbona and Vjosa, or opposition to waste imports, stand out as good examples. They applied pressure on institutions through meetings, court cases and peaceful protests. Even though only a few initiatives produced substantial results, they showed the government that citizens are aware and gave voice to people's concerns²⁵.

²⁵ Freedom House 2017

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)?

The overall monitoring assessments of the right to freely organize and participate in assemblies during the last years are generally positive²⁶.

In the recent years, there has been no changes in the primary law regulating freedom of assembly in Albania, namely Law no. 8773 dated 23.4.2001 "On Assemblies". The last amendments to the law have been in 2001. With the approval of the Decision of the Council of Ministers "On the approval of the rules, conditions and procedures for the use and management of public space", additional requirements for the organisers of the assemblies are presented by Municipality of Tirana, discouraging the process of free and peaceful assembly.

In terms of positive administration and implementation in practice, significant improvements have been encountered comparing to the assemblies (mainly political antigovernment protests) a few years ago. A positive example of free assembly is the manifestation of the opposition parties organised on February 2017. Members of Albanian Opposition Parties pitched a tent between Prime Minister Office and Parliament Offices to demand a technocrat government and free elections. Many Albanian citizens peacefully demonstrated and police did not intervene to disperse the protesters or remove the tent, which blocked traffic on a main street, after a deadline for the protest to end passed²⁷ (Reuters, 2017). Compared to the rally of 2011 organized at that time by Opposition Party (the ruling party in 2017), during which four people were shot dead, numerous were injured and more than 113 arrested, this represents a significant improvement in the management of the assemblies by the state authorities.

²⁶ Freedom of Peaceful Assembly and Association ALBANIA 13 Country Reports on Human Rights Practices for 2016 United States Department of State • Bureau of Democracy, Human Rights and Labor <https://www.state.gov/documents/organization/265600.pdf>. "The constitution and law provide for the freedoms of assembly and association, and the government generally respected these rights".

²⁷ <https://www.reuters.com/article/us-albania-opposition-protests/albanian-protesters-rally-pitch-tent-to-demand-free-elections-idUSKBN15X00I>

Two officers of the Albanian Guard were prosecuted and charged guilty for shooting the protesters on 21 January 2011 opposition protests in Tirana²⁸. The Court decision was issued after 3 years of trial. The prosecution requested their sentence with 23 and 25 years in prison, while the Court of Appeals in Tirana sentenced them with 1 and 3 years in prison. The High Court refused the appealing of the case by the Prosecution office and the case is closed.

Another improvement during two past years in organizing protests in Albania is that they are lead by different interest groups, (such as environmentalists and other professionals) who are determined not to be linked to any political party. Protests with no connection to politics have been increasing in Albania, mainly in the city of Tirana. This is in contrast to several years ago when most rallies were organised and led by political parties. Good examples are the rallies organized for environmental issues and the student protests against the new law on higher education²⁹.

Sporadic cases of negative examples of the administration of the protests in the last two years have occurred, asking for further improvements and increased accountability of authorities responsible for the administration of assemblies in the country. In February 2016, civic activists in Albania protested against municipality plan to build a children's play area in the last public park in the capital Tirana. [The citizen-led challenge to the construction project](#) was met with hostility from local government officials, who [labelled protesters](#) as instruments of the opposition Democratic Party and "vandals". The issue received scant media coverage, despite the fact that police used force to disperse demonstrations and arrested 12 participants on February 21, 2016³⁰.



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?

²⁸ Special report ECHR February 2011 CommDH (2011)9

²⁹ <http://www.balkaninsight.com/en/article/protests-thrive-in-albania-02-23-2016>

³⁰ <https://globalvoices.org/2016/03/24/albanian-activists-rally-against-a-concrete-end-for-tiranas-last-public-park/>

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?

Freedom of assembly, as stated in the constitution and in international documents is a right, not a privilege. Thus, the Policing of any kind of assembly by protecting participants, allowing them to express their views freely is the main challenge for the government. The police demonstrate a state's commitment to upholding the rule of law and protecting fundamental human rights and freedoms³¹.

Based on the information from the General Directory of State police, over the past two years, 1,369 requests for organizing assemblies were filed to the local police structures in Albania, and only 5 of them were banned. The main reasons for refusal were referred to Articles 8 and 9 of Law no. 8773, "...when national and public security are put in risk...". Nevertheless, despite the refusal, the assemblies are organised anyway.

Albanian legal framework does not stipulate for any engagement of police to have meeting, negotiations or communication with the organizers within the whole process of organising an assembly. This is reflected in practice, as the communication is considered very bureaucratic and no meetings are conducted between the organisers and police. A positive feedback is given by the organisers on communication with the police *during* the assemblies. The responsible police officers have been cooperative and participants felt protected.

An example of a good administration of two assemblies organised at the same time at the same place, is the yearly national LGBTQ parade organized in March 2017 that coincided to take place on the same day and place as the opposition protest in the main boulevard in the capital city, Tirana. As per information gathered in this case, the LGBTQ parade organizers met with Democratic Party to make sure each assembly to be conducted peacefully without incidents by taking decisions for the appropriate time and itinerary keeping in consideration the massive number of participants in both assemblies. The ombudsman, institutions and diplomatic corps in Albania monitored the parade. State police demonstrated full capacity in enabling both assemblies to be conducted peacefully without any incident.

Albania has experienced several significant protests that lasted more than one day over the last year. The opposition Democratic Party protested from mid-February till June when thousands of people gathered to protest at a tent in front of the PM office³². In February 2017, local residents marched approximately 100 kilometres from Zharrez village to Tirana in a silent protest over the government's refusal to find a solution to the negative impact of oil extraction operations close to their homes³³. The Zharrez residents remained in front of the Ministry of Energy with their demands, and finally, on 1 March 2017, the government

³¹ Human Rights Handbook on Policing Assemblies

³² 2017_Albanian_opposition_protest

³³ <http://www.tiranatimes.com/?p=131318> "Zharrez hunger strikers start 100 km protest march to Tirana"

promised to compensate the villagers for the damage to their homes from the nearby oil drilling.

In the above-mentioned situations, reports show that there were no cases of an assembly being denied, or time and place of a protest being restricted by authorities. The opposition Democratic Party did have a permit to demonstrate for only four hours, yet they continued protesting for months with no interference from the authorities. While no arbitrary arrests were recorded, the police charged the Democratic Party (DP) leader, Lulzim Basha, for inciting violence³⁴. Also, the Municipality of Tirana issued a fine to the DP for the damages caused during the protest.³⁵ Municipality of Tirana documented with videos and photos, all the material damages caused to the public and calculated the damage to public property of Lek 163,729,000 (Euro 1.2 million). Expressing its respect for the democratic and civic protests, but at the same time condemning the vandalism, the Municipality of Tirana charged the abovementioned amount as fines to Democratic Party (DP), as the main responsible for the organization of the protest. The DP filed a lawsuit against the Municipality, asking for the ascertainment of illegality and invalidity and the repeal of administrative acts issued by the municipality. The Administrative Court of the First Instance in Tirana issued a decision on the partial admission of the lawsuit.

There have been reports of "use of force" by the police in six³⁶ assemblies during 2016-2017. Police justified these actions as a response to violence³⁷ initiated by the protesters, or because the participants did not respond to the police order to disperse³⁸. As per the law on assemblies, the responsible police officer and his stewards have to make at least three verbal calls to the organizers and participants before starting the dispersal, and the force should be minimal. At any case, evidence of the assembly events should be available and secured by the police. Gathering evidence during a rally is of high importance in order to have proof of what happened during an assembly. The facts should help the authorities and also to provide a psychological inhibitor that can discourage potential criminals and troublemakers from breaking the law³⁹.

Regarding the use of weapons, based on the decision no. 839, of the Council of Ministers enacted on October 2015: "On the use of firearms", police officers **cannot** use firearms in any circumstances in the case of peaceful assemblies, being those legal or illegal. The use of firearms to avoid a public risk is allowed only against armed persons who carry out visible acts of violence, when the use of other restrictive means has failed. Batons, handcuffs,

³⁴ <http://www.dw.com/en/albania-police-charge-democrat-boss-after-rama-protests/a-37719790>

³⁵ <http://infoalbania.al/bashkia-e-tiranes-gjobit-partine-demokratike-per-demet-e-shkaktuara/>

³⁶ <https://rm.coe.int/16806db80b>

³⁷ <https://www.reuters.com/article/us-albania-opposition-protests/albanian-protesters-vent-anger-at-pms-office-torch-bunker-idUSKBN0TR20D20151208>

³⁸ <https://www.asp.gov.al/index.php/component/content/article/17-shqip/lajmet-e-fundit/11597-informacion-mbi-ngjarjet-arrestimet-ndalimet-dhe-procedimet-ne-24-oret-e-fundit-25-04-2017>

³⁹ Human Rights Handbook on Policing Assemblies, pg 70

cameras and telecameras are the typical equipment of police officers in peaceful assemblies. Other range of equipment as bibs, tear wire sprays, water vehicles, multisensory vehicles, megaphones, scaffolds, plastic shields, plastic body shields, tear gas dispensers, and other may be used in cases when the protesters develop violent acts.

During rallies in public squares and public places or open to the public, the police can record voices, film or photograph only if there is reason to believe there is an immediate danger to public order and security⁴⁰. Records, footage and photographs must be destroyed immediately after the rally, if not needed:

- a. to initiate the criminal proceedings of the participants;
- b. for risk prevention, when it is believed that the person filmed may perform in the future criminal offenses related to rallies.

Police allow participants to record police actions generally without any restriction.



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?

The role of media in providing information on the assemblies is very important. The Constitution of Albania guarantees the freedom of speech and the legal framework does not restrict the use of information or news, inside or outside the country. But, while the legal framework enables the exercise of this right, better implementation is needed in practice.⁴¹ Moreover, news outlets that are critical to the performance of public authorities are often subjects of intimidation, lawsuits and job security threats for journalists⁴².

Media coverage of the protests has generally been considered neutral, but superficial. Media reports rarely employ in-depth formats, leaning more towards preserving political correctness, rather than reports that would provide a complete picture of the protests' dynamics and reasons, and address fundamental problems of the protests.⁴³

In the last two years, many of the assemblies organized by civil society organizations (CSOs) have enjoyed some media coverage, mainly those organized for women's and children's

⁴⁰ Article 21 Law on Assemblies

⁴¹ Albania EU Progress Report 2016

⁴² Freedom House 2017

⁴³ http://www.media.ba/sites/default/files/policy_brief_albania.pdf

rights, and environmental protection⁴⁴. In a survey conducted with the representatives of civil society organizations (CSOs)⁴⁵, 90% of the CSOs (out of 96) declared that media has participated freely in the assemblies organized by organization. During the assembly organized by inhabitants of Shkoza borough, in Tirana against the Government and Municipality of Tirana to demolish 153 houses for the reconstruction of Tirana Grand's Ring, reporters from Balkan Investigative Reporter's Network Albania Organization⁴⁶, were not allowed by police forces to follow the assembly⁴⁷ closely.

In the report on the communication of citizens protest, one of the problems faced during the communications on an assembly from both protesters and journalists is that not always the message delivered from the protesters gets through the media, not only due to the lack of capacities of organizers, but also due to the lack of media interests in the protest` cause⁴⁸.

In general there are no restrictions for human rights defenders and other monitoring institutions to participate and observe freedom of assembly in Albania.



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?

66.4% of population in Albania are users of Internet,⁴⁹ and according to the Europe Internet Statistics⁵⁰ over 1,4 million of Albanians are Facebook users. From the research and observations of the assemblies organized in the last two years, the social media, in particular Facebook has been one of the communication channels most utilized by organizers and

⁴⁴ USAID 2017, CSOs Sustainability Index For Central and Eastern Europe and Eurasia, Pg. 30

⁴⁵ The survey is conducted by Partners Albania in frame of preparation of Monitoring Matrix for Enabling Environment for Civil Society Organization, Country Report Albania 2016.

⁴⁶ BIRN Albania is a non-profit organization whose main goal is to promote free and independent media aimed at informing the public on issues related to corruption, impunity, the human rights situation, the activity of civil society in Albania and region, etc.

⁴⁷ Information gathered from the interview with Birn Albania organization

⁴⁸ D. Adonov, T. Cvjetičanin, B. Georgievski, I. Trajkoska, I. Londo, Z. TRAJKOSKA, Communicating Citizens` Protests, Requiring Public Accountability: Case studies from Albania, Bosnia and Herzegovina and Macedonia, pg. 122

⁴⁹ CIA World Factbook (est. July 2016)

⁵⁰ <http://www.internetworldstats.com/europa2.htm> (est. June 2016)

participants of assemblies to spread information, and increase the number of supporters. The most used social media platform for the organizers of the assembly is Facebook. In general, the organizers of assemblies create a Facebook page, identifying the name and issue that is being protested and shape their own content of the assembly with notes, photos, discussions with followers, different post with articles, videos and declaration from and for the issue of the assembly. Nevertheless, even though social networks are widely used and preferred in organising protests and mobilising protesters, when it comes to public sensibility, mass media is considered the most effective form of information⁵¹.

The government does not impose any restriction for the use of the social media, and organizers/ participations can use it before, during and after the organization of the assembly, Often, the use of social media has fed with information even the mass media providing information for the journalists⁵². From the survey carries out with 96 surveyed CSOs, none of them have experienced any blocking of the access to online communication⁵³.



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?

Organisers must normally notify the police in advance, although in certain circumstances groups can gather in public spaces without prior notification. The Albanian constitution demands that any limitation of the right must be proportionate and in line with standards set down in the European Convention on Human Rights.

In the last Monitoring Matrix for Enabling Environment for Civil Society Organizations, Country Report Albania, 2016, 52% of the surveyed CSOs have participated in at least one assembly organized in 2016, and 18% of them have also been the organizer of an assembly. The majority of the CSOs that have organized or participated in an assembly (86%) assessed that there are no challenges faced during the organisation or participation in a peaceful assembly.

Based on the legal framework, organizers of the assemblies in Albania have the main responsibility for the development and continuation of the assembly, supporting the police in maintaining the order; deciding on the termination, resumption or closing the assembly.

⁵¹ http://www.media.ba/sites/default/files/policy_brief_albania.pdf

⁵² D. Adonov, T. Cvjetćanin, B. Georgievski, I. Trajkoska, I. Londo, Z. TRAJKOSKA, Communicating Citizens' Protests, Requiring Public Accountability: Case studies from Albania, Bosnia and Herzegovina and Macedonia, pg. 125

⁵³ Partners Albania, *Monitoring Matrix on Enabling Environment for Civil Society Development, Country Report for Albania 2016*, Tirana, pg. 28

Based on the law they are also responsible to maintain public order. In cases when there is risk of disruptive events, the organizer must terminate the assembly⁵⁴. In cases when the organizers fail to comply with the legal requirements, administrative and other criminal liabilities are imposed on the organizers.

State Police reports about 83 cases when the organizers of the assemblies did not cooperate with the responsible police officers by disrespecting the announced schedule for the conduct of the assembly or not taking measures for the disperse of the participants and terminate the rally after several requests by the police.

Organizers of assemblies should not be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so. They should not be liable for the actions of individual participants or for the actions of non-participants or agents provocateurs. Article 262 of the Criminal Code in Albania⁵⁵ stipulates that the organization of the assembly in squares and places of public passage, without prior permission by the competent authority according to the specific provisions or when organizers breach the conditions provided in the request for permission, constitutes criminal contravention and is punishable by a fine or up to one year of imprisonment. Participation in these assemblies, even after warnings for disperses, is a penal misdemeanour and is punishable with fine or imprisonment up to three months. This practically creates burdens on organizing assemblies by individuals who may be punished even in cases when participant's acts may be out of their control⁵⁶.

On 24 April 2017, in the city of Lushnja, the Democratic Party organized a protest that was accompanied by the blocking of the national road in south of Albania. The State Police declared the assembly illegal because it did not issue permission to the Democratic Party. The protest was held anyway and Police charged 7 individuals, mainly organizers of the event, for the criminal offense "Organization and participation in illegal gatherings and manifestations", "Obstruction of the means of transport" provided by Articles 262 and 293 of the Criminal Code⁵⁷. According to information published in the Lushnja court website, only one individual was found guilty and sentenced by fine (75,000 Albanian Lek or 560 EUR).

⁵⁴ Article 11, Law on Assemblies

⁵⁵ <http://www.qbz.gov.al/botime/Kodi%20Penal-2017.pdf>

⁵⁶ Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States/ OSCE December 2014: *"Importantly, the amount of fines imposed on organizers of assemblies should also be in line with the proportionality principle. Possible punishment that includes imprisonment and a fine for organizers failing to provide sufficient notification for an assembly in Albania, fall short of these standards"*

⁵⁷ <https://www.asp.gov.al/index.php/component/content/article/17-shqip/lajmet-e-fundit/11597-informacion-mbi-ngjarjet-arrestimet-ndalimet-dhe-procedimet-ne-24-oret-e-fundit-25-04-2017>



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?

Regarding detention and prosecution, the State Police, Ombudsman Office, Prosecution Office and District Courts are the main public authorities responsible for the respective issues in varying level of degree of the assembly. Related to the organization and development of an assembly the first public authority dealing with the security of assemblies is the state police. The law⁵⁸ entitles them to maintain order and security, respecting human rights and freedoms of citizens. In general this is respected even in practice. There is only one example identified in this period where a foreign citizen was detained prior to the organization of the rally of the opposition parties in 2017. Media reported that on 13th of May 2017⁵⁹, the day that the Democratic Party organized the national rally in Tirana against the government, one American citizen was detained and held in the police station for several hours from the Anti-Terror Task Force in the State Police. Police said they had information that this individual entered Albania several days before the rally and had collaborated with Albanians opposition protesters. He was detained for several hours and then after the assessment was released.

There are also examples when people have been detained by police officers due to the clashing among them. One case to illustrate this is the protest organized by civil society against the construction of a children's playground by Tirana Municipality. After the protestors removed the fencing in the area when the playground was planned to be constructed, police officers have used physical violence while clashing with citizens. As a result, some of the protestors were detained even though, actions carried out by the police officers were considered arbitrary and illegal by the Ombudsman⁶⁰ with the relevant legal provisions on State Police and regulation.

The Ombudsman is the main public authority that gives support to the people who are detained or arrested. He has the right to make recommendation and propose actions when observing violations of human rights by the public administrations. Moreover, the Ombudsman after the completion of the inquiry has the right to recommend to the Prosecution Office to start an inquiry if it finds that a criminal offence has been committed, or

⁵⁸ Article 2. Law "On the state Police"

⁵⁹ <http://gazeta-shqip.com/lajme/2017/05/13/ndalohet-marinsi-amerikan-thirrur-nga-pd-per-organizimin-e-protestes/>

⁶⁰ <http://www.avokatipopullit.gov.al/sites/default/files/REKOMANDIME/VITI2016/16.04.2016%20REKOMANDIM.pdf>

to resume inquiries that have been dismissed or suspended. In the illustration cited above, the Ombudsman recommended to start the inquiry of the criminal offence of carrying actions against the police officers of Tirana Police Commissariat no. 1 for the physical violence exercised with accomplices against citizens who were protesting at the hills of Tirana artificial lake. The State Police decided afterwards to take disciplinary measures for two officers, while the Prosecution Office rejected the request of the Ombudsman to start an investigation for them. Tirana Prosecution Office opened a penal process requesting the punishment of the protestors due to opposing police officers requesting two months prison sentence converted to 60 hours educational working days. After one and a half years from the organization of the protest, in 19 October 2017, the Court of Tirana District, Appeal Room gave the sentence against the protestors with one month of Probation Service⁶¹.

There is no information available on the scale of punishments imposed on people arrested at assemblies. Based on the media articles observation and recommendations by the Ombudsman Office, generally people arrested at assemblies are released soon after the assembly is finished.

The Juridical system, especially courts are seen and perceived as partial in judging the cases. According to the Opinion Poll of 1670 citizens, the juridical system is the least trusted institutions in Albania, confirmed by 79% of the interviewed⁶². During 2016-2017 it is reported only one case deposited at the Administrative Court of First Instance, Tirana by the Democratic Party against Tirana Municipality (the case cited above).



Accountability

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

Research findings indicate that protests in general fail to receive a satisfactory response from government and state officials in terms of accountability. However, rather than attributable to the specific nature of the communication process during a particular protest, the lack of accountability can be explained both by the nature of reaction of officials to protesters and the way media conveys protests and the angles they employ to cover these protests affect the perception and outcome of the protests, too.⁶³

⁶¹ The information is extracted from Panorama Journal, a well know journal in Albania. The date of the article is 19 October 2017.

⁶² IDM 2016, Opinion Poll, Trust in Governance 2016", Tirana, 2016, pg. 4

⁶³ http://www.media.ba/sites/default/files/policy_brief_albania.pdf

Based on regulation procedures, the State Police is account to act with the highest professional standards in fair, impartial manners and in respect with human dignity, human rights and fundamentals freedoms.⁶⁴ Moreover, the police officer shall be liable for the unlawful and unjustified of force, if the used force is intense and disproportionate to the measure that is necessary to achieve a legitimate and lawful objective⁶⁵. The Police officers have badges in their uniform, containing names, surnames, number of identification, their position and the structure (local or Central) where the police officer exercise his/her duty⁶⁶.

In cases where the police officials break the legal provision, the organizers may bring the case to the court. The practice when such violation of laws has occurred shows that organizers have complained the cases to the Ombudsman Office, and after assessing the situation the ombudsman has recommended the Prosecution Office to start an inquiry. One case to illustrate this is the example of the protests of citizens for the children playground in Tirana Lake. After the assessment by the Ombudsman Office, it was observed that the police officers have committed "arbitrary acts with accomplices", using physical violence against citizens protesting in excess of powers conferred by the law, thus affecting the freedom of citizens⁶⁷.

There is no available information on the accountability of other agencies/ institutions, but in general, public officials have a tendency to avoid communicating to organizers of protesters, or pretend to consider the protest in cases when the protesters are persistent⁶⁸.



Overall Assessment

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

In general, the right to free assembly is guaranteed by the Albanian constitution and legal framework and exercised in practice from everyone, without exclusion. The legal framework amended in 2001, stipulates form and information that the organizers should submit to the State Police. Improvements are needed at the legislation level in terms of recognition of spontaneous assemblies and counter-assemblies, communication with responsible authorities that are involved in various stages of the process of enabling an assembly, and

⁶⁴ Decision of the Council of Ministers no. 750, dated 16/09/2015 "On the Approval of the Regulation of State Police", Article 105

⁶⁵ Ibid, article 211

⁶⁶ Ibid, article 11, point c.

⁶⁷ https://www.unece.org/fileadmin/DAM/env/pp/compliance/S2016-03_Albania/frParty_22.09.2016/3.Ombudsman_3.pdf

⁶⁸ Albanian Media Institute 2015, *Policy Brief Social protests and institutions: practices of communication and accountability*, pg. 7 http://www.media.ba/sites/default/files/policy_brief_albania.pdf

clarification of appeal procedures to be followed in cases where the organizers feel violated to exercise their rights.

State Police in general respect the human rights and the right to free Assembly, with spontaneous cases when they have violated such rights. In general they are perceived professional in terms of communicating with them *during* the assemblies, and participants felt protected and secured by their presence.

Media and social media are important in providing information on the assemblies and increase the level of supporters and in recent years many assemblies organized in Albania have enjoyed media coverage. News outlets that are critical to the performance of public authorities are often the subjects of intimidation, lawsuits and job security threats for journalists.

Government does not impose any restriction for the use of social media and organizers/participations can use it before, during and after the organization of the assembly.

With regards on detention, prosecution and accountability of agencies/ institutions that are involved in assemblies, more available public information is needed with cases that would enable a clear understanding of their role.

RECOMMENDATIONS

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

1. Further clarifications in the legal framework (Law on Assemblies and the Penal Code) on the role and authority of the State Police with regards to notification on the organisation of an assembly on squares and public walkways.
2. The legal framework should ensure protection to all citizens organising and/or participating in peaceful assemblies, including spontaneous assemblies, counter assemblies and assemblies that do not have an identified organiser, in line with international guidelines on freedom of assemblies.
3. Notification requirements should be simple and the requested information should be reduced and relevant to ensure peaceful assemblies, and not to introduce unduly burdensome for the organisers.
4. All laws, regulations, policies, decisions and other related information to exercise the freedom of peaceful assembly should be publicly available and easily accessible for the public.
5. Law of Assemblies should provide clearness and guidance on the appealing process to the state authorities' decisions regarding restriction on assemblies
6. Communication process between institutions/agencies responsible that are involved in various stages of the process of enabling an assembly and organizers of an assembly should be regulated through legal procedures that are publicly accessible.
7. Unification of the sanctions to organisers and participants in assemblies in the Penal Code and the Law on assemblies, in line with the international standards.