



WESTERN BALKANS ASSEMBLY MONITOR PROJECT



FREEDOM OF ASSEMBLY IN MACEDONIA



institut alternativa



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EXECUTIVE SUMMARY

The legal framework for freedom of assembly in the Republic of Macedonia is relatively comprehensive and liberal, with the right to FOA without notification and unnecessary restrictions enshrined in the Constitution.

However, in practice there have been significant developments that limit freedom of assembly. In particular, due to burdensome responsibilities of organized assemblies imposed under the Law on Public Assemblies (obligation to provide security, maintain order and disperse the assembly if deemed to jeopardize the safety of people and property, as well liability for any damages that occur), today public assemblies are almost exclusively non-formalized and spontaneous (usually organized through social media). We have also evidenced an increased and stricter sanctioning of protesters, including prison sentences and excessive use of force by the police, a concern highlighted by the UN Human Rights Committee.¹ No police officers have been sanctioned, while detention of protesters has become common. Recent changes in legislation allow use of rubber bullets and prohibit drone imaging. Media scapegoating of protesters is on the rise and disproportionately targets protesters critical of the government.

On the other hand, we have noted an increasing trend of participation in protests: while 13% of citizens participated in a protest, demonstration or public assemblies in 2014, this number increased to 21% in 2015,² making the issue of shrinking space for protest ever more pertinent.

The overall recommendation for ensuring unhindered freedom of assembly is departization of the public service and developing their capacities. The majority of recommendations focus on undertaking actions to develop adequate knowledge, skills and sense on how state authorities should handle public assemblies. We also recommend changes to the legal framework to further align it with international standards.

¹ UN Human Rights Committee (HRC), *Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia*, 17 August 2015, CCPR/C/MKD/CO/3, available at: <http://www.refworld.org/docid/5645a4024.html>

² Macedonians and their communities: Civic engagement, Activism and Volunteer work in Macedonia. (Forthcoming). Reactor-Research in Action.

INTRODUCTION

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

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

For the purpose of the project and the studies, the right to freedom of assembly is defined as *“the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.”*³ International legal instruments⁴ recognize that only peaceful assemblies are protected and in this respect *“an assembly should be deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent. The term “peaceful” should be interpreted to include conduct that may annoy or give offense, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties.”*⁵ Additionally, it should be noted that for the purpose of the research *“all types of peaceful assembly – both static and moving assemblies, as well as those that take place on publicly or privately owned premises or in enclosed structures – deserve protection”*⁶ and were targeted with the research. Finally, the research methodology also covered spontaneous and counter-assemblies.

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

The research methodology for monitoring and reporting how freedom of peaceful assembly is exercised and implemented in the targeted countries is based on the OSCE/ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly, the UN Human Rights Council Resolution 25/38⁷ as well as the UN SR Joint

³ Organization for Security and Co-operation in Europe (OSCE) and Council of Europe's Commission for Democracy through Law (Venice Commission): Guidelines on Freedom of Peaceful Assembly (2nd edition), 2010

⁴ Article 20(1), UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

⁵ Organization for Security and Co-operation in Europe (OSCE) and Council of Europe's Commission for Democracy through Law (Venice Commission): Guidelines on Freedom of Peaceful Assembly (2nd edition), 2010

⁶ *Ibid*

⁷ UN General Assembly, *Human Rights Council Resolution 25/38*, 11 April 2014, A/HRC/RES/25/38

report on the proper management of assemblies.⁸ Based on these guidelines, the data for the qualitative analysis was gathered through desk research, Freedom of Information requests and fieldwork, which included semi-structured interviews with relevant stakeholders and observations of protests that happened during the time the project was carried out. The conclusions and recommendations from the study are based on the findings from the data gathering phase and were later validated with selected participants in the research.

This study is structured in three parts, followed by conclusions and recommendations and a detailed annex that provides a description of the methodology. In the first part we provide an overview of the national legal and institutional framework and consider its role in protecting and enabling the right to freedom of assembly. The second part looks at the assemblies we chose to analyze for this study and presents the main challenges that were identified in the analysis. In the third part we take a closer look at the two main country specific challenges that were identified for Macedonia - policing and criminalization. Finally, we provide a summary of the key findings and offer recommendations for improving the implementation of freedom of assembly legislation in the country.

⁸ United Nations (2016). Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/018/13/PDF/G1601813.pdf?OpenElement>

LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

The basic rights of persons and citizens, as recognized by international law and provided by the Constitution, are one of the fundamental values of the Constitution of the Republic of Macedonia (Art. 8). Freedom of assembly is a basic right guaranteed in Article 21 of the Constitution, which provides that *“Citizens have the right to assemble peacefully and to express public protest without prior announcement or a special license. The exercise of this right may be restricted only during a state of emergency or war.”*

In accordance with the Constitution, ratified international treaties are to be considered as an integral part of the national legal order. In the case of Macedonia, several human rights instruments regulating freedom of assembly are of particular relevance. The Universal Declaration of Human Rights (Article 20(1))⁹ guarantees the right to freedom of assembly and association. The International Covenant on Civil and Political Rights (Article 21)¹⁰ and the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 11)¹¹ recognize the right to FOA, allowing restrictions of the right only if they are prescribed by law and are necessary in a democratic society in the interest of national security and public safety, public order, protection of public health or morals, or the rights and freedoms of others. The European Convention on Human Rights (Article 11(2)) allows states to impose lawful restrictions in the exercise FOA on members of the armed forces, the police or the administration. The Convention on the Rights of the Child (Article 15)¹² requires recognition of the right of children to freedom of assembly and association and allows similar restrictions as the ICCPR and the ECHR. Finally, the OSCE Copenhagen Document 1990 (9.2)¹³ requires all member states to guarantee FOA, further requiring restrictions to be regulated by law and in accordance with international standards.

LEGISLATIVE FRAMEWORK

The specific legal act that regulates freedom of assembly (FOA) in Macedonia is the Law on Public Assemblies (LPA),¹⁴ which was first enacted in 1995 and subsequently amended in 2006, 2007 and 2015. The LPA regulates the exercising of FOA by defining what constitutes a public assembly, when a public assembly can be restricted or stopped, as well as stipulates obligations for organizers and sanctions for noncompliance. While the LPA for the most part enables FOA and is in accordance with international standards, it still contains formulations that are broad and somewhat ambiguous, which in practice may hinder the exercise of this right.

The LPA emphasizes that the right may be exercised in a manner that provides peaceful expression of opinion and public protest related to socio-economic, cultural, political and other interests. In this regard, it should be noted that the LPA used to contain restrictions to FOA, specifying that public assemblies are allowed only when they do not restrict the right to free movement and other rights determined with the Constitution of

⁹ By succession from the former Socialist Federal Republic of Yugoslavia (SFRY). SFRY was an original Member of the United Nations, the Charter having been signed on its behalf on 26 June 1945 and ratified 19 October 1945, until its dissolution following the establishment and subsequent admission as new Members of its constituent entities. By resolution [A/RES/47/225](#) of 8 April 1993, the General Assembly decided to admit Republic of Macedonia as a Member of the United Nations, the State being provisionally referred to for all purposes within the United Nations as "The former Yugoslav Republic of Macedonia" pending settlement of the difference that had arisen over its name.

¹⁰ By succession as of 18.01.1994

¹¹ The European Convention on Human Rights of the Council of Europe was signed on 09.11.1995 and ratified on 10.04.1997.

¹² By succession as of 2.12.1993

¹³ Organization for Security and Co-operation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 29 June 1990. Macedonia is a participating state in the OSCE since 1995.

¹⁴ Law on Public Assemblies ("Official Gazette of the Republic of Macedonia" nos. 55/1995, 19/2006, 66/2007 and 152/2015)

citizens that are not participating in the public gathering. The Constitutional Court of the Republic of Macedonia annulled this restriction the same year when was introduced,¹⁵ concluding that the condition was set too broadly, and therefore was not in accordance with Article 11 (2) of the ECHR which allows only restrictions that “*are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others*”. The Constitutional Court found that limiting FOA for the purpose of protecting the rights and freedoms of others is justified only when necessary, i.e., when the exercise of FOA seriously endangers others’ rights.¹⁶ Therefore, the broad formulation without qualitative criteria was deemed to have left room for interpretation that would allow the authorities to restrict FOA.

LPA defines that assemblies in terms of the law are those of more than 20 citizens, in an open or enclosed space. The threshold of 20 participants for the gathering to be considered a public assembly was added in 2006. Comparatively, international standards and guidelines do not determine a minimum number of people for a gathering to be recognized as a public assembly and thus afforded the protection that comes with the definition. Moreover, the OSCE guidelines stipulate that, “[a]n assembly, by definition, requires the presence of at least two persons. Nonetheless, an individual protester exercising his or her right to freedom of expression, where the protester’s physical presence is an integral part of that expression, should also be afforded the same protections as those who gather together as part of an assembly.”¹⁷ The reasoning of the legislator for introducing the minimal threshold, as well as the specific choice of the number, remains unclear. We find that determining such a threshold may obstruct protection of the right in further instances. Namely, if the number of participants at an assembly falls below 20, the gathering will no longer be considered a public assembly. In such a case, its eventual disruption by others including the authorities will not be considered a crime in terms of Art. 155 of the Criminal Code (as elaborated further in the text).

The Law also provides that a public assembly may be held on any place adequate for the purpose, with minor exceptions, such as near public healthcare institutions (and even then only when the assembly prevents access to them or disturbs the peace of the hospitalized), kindergartens and schools while children are there, as well on highways and motorways in a manner that endangers the traffic.

Following the provision in the Constitution that allows for unannounced assemblies and in accordance with international standards, notification in advance is not a legal requirement. While spontaneous assemblies are not specifically regulated, they are allowed because both the Constitution and the Law provide that an assembly can be held without prior announcement.

However, the LPA does include notification as an option and states that “[i]n the interest of security, the organizer may inform the Ministry of Interior about holding a public assembly and the measures that are undertaken for its purposes”. The notification should be submitted in the regional unit of the MOI where the assembly will take place, no later than 48 hours before the expected start of the assembly. While the UN Special Rapporteur on the rights to freedom of assembly and of association, in the 2013 report states that the notification should merely contain information regarding the date, time, duration and location or itinerary of the assembly as well as the name, address and contact details of the organizer,¹⁸ the Macedonian LPA requires

¹⁵ Decision of the Constitutional Court of the Republic of Macedonia U. no 31-2006 of 1st of November 2006 (“Official Gazette of the Republic of Macedonia” no. 119/2006)

¹⁶ Decision of the Constitutional Court of the Republic of Macedonia U. no 31-2006 of 1st of November 2006 (“Official Gazette of the Republic of Macedonia” no. 119/2006)

¹⁷ Organization for Security and Co-operation in Europe (OSCE) and Council of Europe’s Commission for Democracy through Law (Venice Commission): Guidelines on Freedom of Peaceful Assembly (2nd edition), 2010. para. 16

¹⁸ UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, 24 April 2013, A/HRC/23/39, available at: <http://www.refworld.org/docid/51b5c8494.html> . para 53

the organizer to provide additional information. Namely, Article 3, Paragraph 3 of the LPA stipulates that besides the time and place of the assembly and name of the organizer, the notification should include the purpose of the assembly, as well as measures undertaken to ensure unobstructed organizing and course of the assembly, as well as information on organizing a security (stewardship) service.¹⁹ However, as stated, the notification is not mandatory.

One of the most problematic aspects of the LPA stems from this last provision - the formulation of the obligations of the organizers for maintaining security and order during the assemblies and for their liability. The main obligation of the organizer is to ensure safety and order by organizing a security service during the assembly, in order *“to protect citizens rights, normal flow of traffic, the supply of population with medicine, food, fuel and similar urgent goods, as well as to observe the obligations under international agreements.”*²⁰ Furthermore, the organizer is obligated to end the public assembly and immediately inform the MOI if the life, health, security and personal safety of people and property are jeopardized.²¹ Noncompliance with these provisions will result in misdemeanor charges and fines of 3.000 and 1.000 EURO for organizers (legal entities and persons respectively).²² The organizer is also obligated to cover the costs related to possible damages that occur during the assembly.²³

These obligations are broad and require extensive capacities and expertise from organizers to ensure they are safe from prosecution. The role of the security service the organizer is expected to provide is not defined and it is unclear where their competencies and responsibilities start and where they end. While it is clear that the legislator’s intention was to protect safety, public order and property, this is formulated in such a way that allows the authorities to arbitrarily determine, for example, when safety and property is jeopardized and use it as grounds to either stop the assembly or fine the organizers. Interviewed representatives of CSOs and protest organizers, as it will be further elaborated, recognize a tendency among law enforcement and the judiciary to be less tolerant towards protests directed towards the authorities. Such legal insecurity and mistrust in the institutions creates fear from arbitrary penalization and acts as a deterrent to organizing protests in an official capacity.

Further to this, the obligations of the organizers to protect the citizens’ rights and public order do not correspond with international standards. Namely, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association states that *“assembly organizers and participants should not be considered responsible (or held liable) for the unlawful conduct of others... [and, together with] assembly stewards, should not be made responsible for the maintenance of public order.”*²⁴

Non-nationals are also allowed to organize and hold public assemblies, but the conditions for them are significantly stricter than those for nationals. Unlike Macedonian citizens, who can hold a public assembly without prior announcement, Article 8 of the LPA requires non-nationals to report the assembly and obtain approval from the MOI. In addition to misdemeanour fines, non-compliance can result in deportation from the country and a ban on re-entry that can last from from one to ten years or a permanent ban. These strict provisions are not in accordance with international standards. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association stresses that States should make particular efforts to ensure

¹⁹ Article 3 of Law on Public Assemblies ("Official Gazette of the Republic of Macedonia" nos. 55/1995, 19/2006, 66/2007 and 152/2015)

²⁰ Article 4, para 1 of Law on Public Assemblies.

²¹ Article 4, para 4 of Law on Public Assemblies.

²² Article 9 of Law on Public Assemblies .

²³ Article 7, Law on Public Assemblies

²⁴ UN Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, 21 May 2012, A/HRC/20/27, available at: <http://www.refworld.org/docid/525fad894.html> [accessed 16 June 2016]para. 31.

equal and effective protection of the rights of groups or individuals who have historically experienced discrimination, including non-nationals and that this duty may require that authorities take additional measures to protect and facilitate the exercise of the right to freedom of assembly by such groups.²⁵

Besides the primary legal act that regulates FOA, there is secondary legislation that is pertinent for the exercise of this right. The Criminal Code of the Republic of Macedonia, in the sections dealing with crimes against freedoms and rights²⁶ and crimes against the public order²⁷ includes provisions directly or indirectly related to FOA. The Criminal Code sanctions restriction and abuse of the right, providing a maximum of one year imprisonment for whosoever by force, serious threat, fraud or in any other manner prevents or disturbs calling for or organizing a peaceful public gathering. A stricter punishment of three months to three years is foreseen if the crime is committed by an official person that misuses their official position or authorization.²⁸ In April 2016, the MOI charged two leaders from the political party “GROM” for organizing counter protests and thereby preventing an announced peaceful assembly. There is no official data that an official has been charged under this article.²⁹

Although not directly related to FOA, two additional articles of the Criminal Code became relevant because they have been extensively used in practice for bringing charges and subsequently sentencing protesters. Participating in a crowd that prevents an official from performing an official duty is punishable with imprisonment of three months to up to three years.³⁰ Similarly, a person participating in a crowd that commits a crime through a joint action can be fined or sentenced to imprisonment of up to three years.³¹ On the bases of these two articles, criminal charges have been brought against participants in the protests in the research period.

Another act relevant for the free exercise of the right to freedom of assembly is the Law on Police³² which regulates police matter, organization of the police, police authorities, as well as rights and obligations of police officers. Chapter 19 is of particular interest, as it regulates the use of force by the police, as well as means of coercion which include batons, electrical paralyzers, chemical and pyrotechnic explosive ordinances, rubber bullets, dogs and specialized vehicles for public order and peace.³³ The timing of the amendments to the Law on Police that expanded this list to include the use of electrical paralyzers, pyrotechnic explosive ordinances and rubber bullets is of particular interest. The changes were introduced at the beginning of March 2015 - a time of significantly increased social unrest, including prolonged students protests that entailed occupations

²⁵ UN Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, 4 February 2016, A/HRC/31/66, available at: <http://www.refworld.org/docid/575135464.html>. para 16

²⁶ Chapter 15, Criminal Code (“Official Gazette of the Republic of Macedonia” nos. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015 and 226/2015)

²⁷ Chapter 33, Criminal Code.

²⁸ Article 155, Criminal Code.

²⁹ Namely, the civic platform “AJDE” announced a protest in front of the Constitutional Court and duly notified the MOI. Shortly after this protest was publicly announced, the political party “GROM” on a press conference announced a protest at the same time and location. They also notified the MOI about their protest but the notification did not contain all the relevant information. Additionally, on the day of the protest, members and supporters of the party gathered at the location several hours earlier, erected a stage and tents thus occupied the space. In order to avoid a meeting between the two groups with opposing views, the police did not allow the civic platform to arrive at the location. According to the MOI, in this way the organizers of the political party protest forcefully usurped the location and prevented a public assembly.

³⁰ Article 384, para 1. Criminal Code.

³¹ Article 385, para 1. Criminal Code.

³² Law on Police (“Official Gazette of the Republic of Macedonia” nos. 114/2006, 6/2009, 145/2012, 41/2014 and 33/2015)

³³ Article 91. Law on Police.

of campuses, as well as civic protests against the authorities following the publication of illegal wiretapping materials.³⁴ Following the changes to the Law, the European Commission stated that “[t]hese broad powers need to be balanced by accompanying provisions to safeguard human rights and there is a need for clear operational standards.”³⁵

INSTITUTIONAL FRAMEWORK

The institutional set up for the exercise of the FOA include various institutions with different authorizations and powers.

The primary institution with regard to FOA is the Ministry of Interior (MOI). The Bureau for Public Security (BPS), as a body within the MOI, is responsible for conducting all police affairs and coordinates the police force. Under the BPS, there are regional Departments for Internal Affairs responsible for planning and policing public assemblies on the territory under their jurisdiction. The Unit for Public Assemblies and Sports Events, as well as the Rapid Deployment Unit are also often used during public assemblies. Policing of assemblies is a separate issue of interest that is more extensively elaborated further in the study.

The Ombudsperson is a special, specific, professional and independent body with special status for the protection of citizens’ rights.³⁶ The Ombudsperson can undertake activities against violations of the constitutional and legal rights of the citizens in various fields,³⁷ including police abuse of authority and violation of police procedures. As an institution it can act ex officio and upon complaint³⁸ and in the course of actions may request necessary information and evidence, including via visits to specific institutions. When the Ombudsperson ascertains that there has been a violation of constitutional and legal rights or other irregularities, the office provides opinions and recommendations, proposes undertaking procedures including for liability and may file a motion with the competent public prosecutor for initiation of a procedure in order to determine criminal liability.³⁹ In 2014 and 2015, the Ombudsperson acted within its mandate upon complaints for infringement of rights related to FOA.

³⁴ In early February 2015, the largest opposition party published phone conversations from illegal wiretapping that exposed mass illegal surveillance and gross abuse of power by the authorities. Selected extracts available in English, see, “Interactive Overview of Macedonia’s Largest Wire-tapping Scandal”, <http://interactive.aljazeera.com/ajb/2015/makedonija-bombe/eng/index.html>

³⁵ European Commission, The Former Yugoslav Republic of Macedonia Progress Report 2014, COM(2014)700 final of 8.10.2014. p. 58

³⁶ Law on the Ombudsperson (“Official Gazette of the Republic of Macedonia” nos. 60/2003 and 114/2009)

³⁷ Relevant for this study, they include: police procedures (abuse and overstepping of official authorities by the police and withholding of the right to defence in police proceedings; violations in the procedures for temporary seizures; not handling of criminal charges filed by citizens; violations of the rights of the convicted and detained persons in the correctional and penitentiary institutions and other institutions with the restricted freedom of movement), non-discrimination and adequate and equitable representation (protection of citizens’ rights and monitoring of implementation of the principles of non-discrimination); judiciary (violations of rights resulting from unjustified delay of proceedings, not making of court decisions and their non-delivery to the parties, untimely delivery of regular legal remedies of jurisdiction, non execution of enforceable orders, the abuse of the court police of their authorities, unjustified delay of administrative-court proceedings (issuing of various certificates, work with parties in the court’s intake office, archive, etc.), delay of proceedings or not handling of the claims of citizens due to prosecuting and bringing of charges, violation of the rights of the persons in the institutions with the restricted freedom of movement (prisons, penitentiaries), etc. penitentiary correctional institutions- protection of rights of persons who are serving a sentence of imprisonment and persons against whom detention is carried out by taking actions and measures for realization of rights guaranteed by domestic and international norms and standards; and other rights - acting on complaints submitted by legal entities or citizens when their right is violated by a private entity and because of non-competence of the Ombudsperson the complainants are given legal advice how to protect their rights.

³⁸ Article 13 in relation to Article 24, Law on Ombudsperson

³⁹ Article 32, Law on Ombudsperson

The Standing Inquiry Committee for Protection of Civil Freedoms and Rights, a Working Body of the Assembly of the Republic of Macedonia, considers issues regarding the exercise of basic civil freedoms and rights from various perspectives.⁴⁰ The Committee considers general questions on the implementation of the constitutional provisions on basic civil freedoms and rights, points to the need for adoption of legislation for more comprehensive protection of civil freedoms and rights, as well as reviews communications from citizens and provides opinions. While it cannot carry out investigative and other judicial functions, its findings are the basis for starting a procedure for accountability of public office holders. In the period between 10.05.2014 and 31.12.2015 the Committee did not hold any sessions,⁴¹ even though the situation regarding freedom of assembly in the country had deteriorated in that time frame.⁴²

Finally, the use of public spaces is managed by local self-government units that enact decisions on the use of the public spaces. Every local self-government unit individually regulates use of public spaces.⁴³ They allow the use of the public spaces for organizations of events based on a permit issued by the local officials and with remuneration to be paid by the organiser for use of the space and placement of equipment. The use of the space for public assemblies in terms of the LPA is not regulated and only legal entities can submit requests for permits. In few reported cases for events that could be classified as public assemblies, the City of Skopje insisted that a permit needed to be issued for the placement of a promotional stand by activists for a local referendum.⁴⁴

⁴⁰ The establishment of the Committee is foreseen in Article 76 para. 2 of the Constitution. The Committee was originally established with the Decision on the Establishment of Standing Inquiry Committee For Protection Of Civil Freedoms And Rights of 10th of April 1992 ("Official Gazette of the Republic of Macedonia" no. 25/1992) with rather limited competencies. On 26th of January 1995, a Decision on establishment of Permanent Working Bodies of the Assembly ("Official Gazette of the Republic of Macedonia" no. 6/1995) was made, giving the committee the current scope of competencies which include: 1) [The Committee] considers general questions, proposals and opinions regarding the implementation of the provisions of the Constitution of the Republic of Macedonia, concerning the basic civil freedoms and rights; 2) points to the need of adoption of laws, regulations and acts with a view to a more comprehensive protection of civil freedoms and rights; 3) follows, reviews and analyses the implementation of the ratified international acts which regulate protection of civil freedoms and rights; 3) reviews communications from citizens and takes a position upon them; 4) cooperates with scientific and professional organizations in the field of protection of civil freedoms and rights; 6) cooperates with relevant foreign and international bodies in the field of the protection of the civil freedoms and rights and carries out other activities within its competence. The Committee cannot exercise investigative and other judicial functions. The Committee's findings are the basis for starting a procedure for accountability of public office-holders.

⁴¹ Assembly of the Republic of Macedonia, Report on the Work of the Assembly of the Republic of Macedonia in the period 10.05.2014 – 31.12.2014, available at <http://www.sobranie.mk/content/izvestaj/2011-2014/IZVESTAJ%202014%2010.05%20-%2031.12.2014.pdf>

Assembly of the Republic of Macedonia, Report on the Work of the Assembly of the Republic of Macedonia in the period 1.1.2015 – 31.12.2015, available at <http://www.sobranie.mk/content/izvestaj/2011-2014/IZVESTAJ%20ZA%202015%20godina.pdf> [24.05.2016]

⁴² European Commission, The former Yugoslav Republic of Macedonia Report 2015, SWD(2015) 212 final of 10.11.2015, p. 58

⁴³ For the purpose of this research the Decision on use of public spaces of City of Skopje was analysed due to the fact that most of the assemblies are organised in Skopje. See further Decision on use of public spaces of the City of Skopje, no. 5/2008 Official Gazette of City of Skopje

<http://ipserver.skopje.gov.mk/e-skopje/sluzben%20glasnik%20so%20konverzija.nsf/82aa49069edfbb780256a22004ba9e0/bfc683447e5ac309c1257447004ca77b?OpenDocument>. In addition the City of Skopje established which on which places events may be organised and which municipality within the city is responsible for issuing the permit

<http://skopje.gov.mk/images/Image/Lokacii%20na%20teritorijata%20na%20grad%20Skopje.pdf>

⁴⁴ Interview with organiser of the event

OVERVIEW OF ASSEMBLIES AND IDENTIFIED CHALLENGES

An analysis of media reports was conducted in order to identify trends and types of protests, as well as main challenges in exercising FOA in 2014 and 2015. While the media reported on over three hundred protests over the course of two years, we selected a total of 59 protests for further analysis, 23 in 2014 and 36 in 2015. The selection of protests for further analysis was based on two main criteria. The first criteria was attracted media attention, which we defined as the protest having been covered/reported on by at least three major media outlets. The reasoning for this criterion is that sufficient media coverage gives protests relevance, as well as contributes to the public discourse. The second criteria was expressed grievances of the organizers and participants regarding infringements of the right to freedom of assembly either publicly or to institutions and organizations that work on the protection of human rights.

According to official data obtained from the Ministry of Interior (MOI), there were no public assemblies in both 2014 and 2015 that were prohibited, relocated or stopped. However, our analysis showed that at least three public assemblies (two⁴⁵ in 2014 and one⁴⁶ in 2015) were forcefully dispersed by the police, officially due to significant disturbance of the public order. The Human Rights Committee expressed concerns about reports that the protests that took place in Skopje on May 5th 2015 was dispersed by police resorting to excessive violence against demonstrators and journalists.⁴⁷

Our analysis identified the most significant protests as well as the key challenges organizers and participants face when exercising the right to freedom of assembly. While the focus of this study are the protests in 2014 and 2015, the protests that started in early spring 2016 and are ongoing as the report is being drafted, are also taken into consideration. This provided the opportunity to make on-site observations.

In general it can be assessed that in the research period the assemblies were organized with two main yet diverged purposes - to challenge the government's' policies and practices and to support them. In the first case the protests were either spontaneous gatherings of citizens or organized by the CSOs. The organizers were not formally recognized as such by the law enforcement bodies, as in most cases there were no notifications provided for the organized protests. In some of those protests, the opposition parties joined as co-organizers. The protests organized this way were under heavier scrutiny by the authorities, smeared by most of the media outlets and protesters, as reported in interviews, were under pressure not to participate in them. In the second case, the assemblies were organized by the ruling party or its supporters, including participants from the state administration and state institutions. In most cases they followed after anti-government protests, so they fall in the category of counter-protests. What is specific to these protests is that, according to our interviewees, participants are believed to have been pressured to take part in them. A description and overview of the main protests is provided in Annex 1 to this study.

The policing of assemblies and criminalization of protests are identified as specific recurring challenges related to free exercise freedom of assembly in 2014 and 2015 and they are analyzed in detail in the following section of the report, while this section looks at the environment for freedom of assemblies, as well as practical implications for freedom of assembly that derive from the LPA.

⁴⁵ Slobodna Evropa, Gjroche Petrov – clashes, flash bombs and 27 arrested, <http://www.slobodnaevropa.mk/a/25392280.html>; Slobodna Evropa, Clashes between the police and the protesters, dozens injured <http://www.slobodnaevropa.mk/a/25445985.html>

⁴⁶ Slobodna Evropa, Anti- government protests violently disbursed, <http://www.slobodnaevropa.mk/a/26997110.html>

⁴⁷ UN Human Rights Committee (HRC), *Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia*, 17 August 2015, CCPR/C/MKD/CO/3, available at: <http://www.refworld.org/docid/5645a4024.html>

The environment for free exercise of freedom of assembly is not enabling

“There is pressure on anti-government protesters not to protest and at the same time there is pressure on government supporters to protest” (interviewed representative of CSO, April 2016)

One of the main challenges regarding free exercise of freedom of assembly identified with the research was the pressure on citizens related to participation in protests exerted by the authorities in various ways. Our analysis showed that this is the case in particular when participants in the protests are public servants who were threatened with sanctions for protesting against the authorities. The threats they received included disciplinary sanctions, but also salary cuts, while transport companies refused to transport them to the capital or in some cases police identified them as they were boarding the buses.⁴⁸ The vast majority of the interviewees emphasized that exerting pressure creates fear from repercussions, discourages organization and participation in protests and inhibits free exercise of FOA. Pressure is exerted in different forms, but dominantly through intimidation of the public administration and smearing media campaigns, but also through demonstration of power by deploying heavily armed police forces. There are statements of high ranking officials and political figures that label protesters as hooligans, vandals and mercenaries.⁴⁹ Similarly, in attempts to discourage citizens to participate in protests against the government, state controlled media negatively depicts participants in assemblies. The Ombudsperson also noted “pressures and threats of high school students that protested against changes of the state exam and the external testing.”⁵⁰

Another specificity lies in the fact that in some instances public employees were pressured to participate in assemblies organised to support the Government. As reported by the interviewees, lists for compulsory participation in assemblies were made in schools, public healthcare institutions, public enterprises and police.⁵¹ While recognizing that no official complaints have been filed, the OSCE/ODIHR Election Observation Mission also reports to have “*received credible allegations of pressure on public sector employees to attend the counter-demonstrations, including threats of loss of employment.*”⁵²

These practices are contrary to international standards which stress that the right to freedom of assembly obliges States to take positive measures to establish and maintain an enabling environment. The Human Rights Council (HRC) repeatedly stresses that “*peaceful protests should not be viewed as a threat, and therefore encourage[s] all States to engage in an open, inclusive and meaningful dialogue when dealing with peaceful protests and their causes.*”⁵³

Excessive obligations for organizers and legal insecurity as an obstacle in exercising FOA

In the analysis of the legal framework it was noted that the provisions of LPA regarding the obligations of the organizers and the role of the security service they are obligated to provide are extensive and somewhat ambiguous. The majority of interviewees emphasized that organizing a security service and ensuring all

⁴⁸ A1ON, Video: Statements from SESC members regarding the pressures, <https://www.youtube.com/watch?v=9rpWKAJGYbQ>

⁴⁹ Balkan Insight, Macedonia PM Mocked for Calling Foes 'Brainwashed Sect' <http://www.balkaninsight.com/en/article/macedonia-s-gruevski-ridiculed-for-sectism-remarks-05-26-2016>

⁵⁰ Ombudsperson of Republic of Macedonia, Annual Report on the level of respect, promotion and protection of human rights for 2015, Skopje, March 2016, p. 14

⁵¹ Civil: Condemnation of the pressures for participation in counter-protests, various media reports form 18.05.2015

⁵² OSCE Office for Democratic Institutions and Human Rights Election Observation Mission, *The former Yugoslav Republic of Macedonia, Early Parliamentary Elections, 5 June 2016; INTERIM REPORT 2: 20 April - 11 May 2016*, 13 May 2016, available at <http://www.osce.org/odihr/elections/fyrom/240061?download=true>, p. 2

⁵³ UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, 24 April 2013, A/HRC/23/39, available at: <http://www.refworld.org/docid/51b5c8494.html> p. 14. para 45.

responsibilities are met puts a heavy burden on the organizers. It particularly discourages organizers to publicly identify themselves as such. In order to avoid possible liability and fines, citizens choose not to notify the authorities and organize protests without stating specific organizers. This reflects negatively on the exercise of FOA in practice. Namely, as pointed out by the interviewed formal and informal organizers of protests, the lack of coordination with the authorities prior to the protest usually results with the police restricting certain locations and routes.

COUNTRY SPECIFIC ISSUES: POLICING AND CRIMINALIZATION

Our research showed that the main obstacles in the exercise of the freedom of assembly in the country are the manner in which the police manages protests and the criminalization of protests.

POLICING

The state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence.⁵⁴ The analysis of the protests and the police actions related to them reveals that policing of assemblies has become an issue that hinders free exercise of FOA in various ways. Media widely reported of assemblies which were forcefully dispersed by the police and discussions on this topic dominate the public discourse. Police actions in several protest organized in the research period resulted with mass arrests and widespread reports of excessive use of force.

Location restrictions of FOA

Restriction of locations by the authorities is one of the most common infringements of FOA identified with the analysis of assemblies, but also highlighted by a large majority of the interviewees. The police limits the locations that protesters can access beyond what is provided as restricted locations under the LPA. Following the “May 5th” protests in 2015, as pointed out in an interview with one of the protest's organizers, the street in front of the government building was practically sealed off and inaccessible for 11 consecutive days, without any kind of explanation by the police. Similarly, following the violence during the protests regarding the “Monster Case”, protesters were continuously contained in one neighborhood without access to the courts or government buildings, even though the majority of protests were small, peaceful and announced to the authorities. Furthermore, during the protests in 2016, the headquarters of the ruling party VMRO-DPMNE is continuously inaccessible for protesters. This practice of restricting locations is also contrary to international standards which posit that “*in situations where restrictions are imposed, these should strictly adhere to the principle of proportionality and should always aim to facilitate the assembly within “sight and sound” of its object or target audience*”⁵⁵

Politicization of law enforcement and selective treatment of protests

According to interviewed CSO representatives, legal experts and protest organizers, the MOI and the police are under significant political influence. There is general agreement that there is mass politicization of the police force, especially in higher ranking positions. As a result, the police is selective, i.e., stricter when dealing with anti-government protests. On the other hand, the police is passive when dealing with pro-government assemblies. When protests are directed towards the opposition, the police fails to act appropriately, as has been the case with the protest against the opposition-led Centre Municipality. This specific case was singled

⁵⁴ *Plattform ‘Ärzte für das Leben’ v. Austria* (1988), para.32. as cited by OSCE/ODIHR and Venice Commission (2010) Guidelines on Freedom of Peaceful Assembly, Second edition, p. 75

⁵⁵ Organization for Security and Co-operation in Europe (OSCE) and Council of Europe's Commission for Democracy through Law (Venice Commission): Guidelines on Freedom of Peaceful Assembly (2nd edition), 2010 para 101

out as an example for selective policing of protests by a large majority of the interviewees.⁵⁶ As indicated, the favorable treatment of the anti-opposition protests believed to be due to the fact that they receive some form of support by high ranking government officials. These claims were corroborated in 2015 when the opposition published wiretapping materials of a phone conversation where the Prime Minister instigates the protests and the violence in front of the Municipality of Centre.⁵⁷ For this case the European Commission noted in its 2014 Progress Report that “*there has been insufficient follow-up by the authorities to the attacks and vandalism on the buildings of the municipality of Centar.*”⁵⁸ To this date, although there is video footage of the incident that clearly shows the faces of the protestors that were destroying property, neither the police nor the Public Prosecutor has identified, apprehended or charged the perpetrators.⁵⁹

Excessive use of force

Disproportionate and indiscriminate use of force by the police is one of the main challenges for free exercise of FOA according to our analysis and singled out by almost all of the interviewees. This finding is confirmed by human rights organizations and relevant national and international institutions. More specifically, disproportional use of force by the police was registered during the 5th of May protests, the protests in Gjorce Petrov, as well as during the current Colorful Revolution.

In the 2015 Report, the Ombudsperson found “increased police brutality compared to 2014, where one of the more characteristic examples is the public protest of the citizens in front of the Government in May 2015.”⁶⁰ Following the protests, a team of the Ombudsperson visited the detained in the police stations and visually noted injuries among the arrested. The arrested persons complained of police brutality during the arrests, but had no complaints regarding the treatment in the police stations.⁶¹

The Macedonian Helsinki Committee also noted excessive use of force by the police when dispersing the May 5th protest. The committee stressed that “the police officers did not limit use of force only towards aggressive protesters but kicked and trampled all protesters, some of whom were sitting calmly on the ground with their hands in the air.” These actions by the police constitute a violation of international human rights standards. According to the European Court of Human Rights, “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behavior”.⁶²

It should be noted that that a third of the interviewed stressed that excessive use of force by the police does not occur at every protest, but when it does it is highly disproportional. These cases are widely reported and

⁵⁶ Even though this protest occurred in 2013, it is widely remembered as an example of selective treatment by the authorities and often mentioned in the interviews. In the case, the civic initiative “Veritas”, allegedly supported by the ruling party, organized a protests in front of the municipality building. A large group of protesters forcefully entered the yard by breaking the fence, started breaking windows, threatened the Counselors and tried to enter the building. Only at this point the police, which was in small numbers, unequipped and unprepared, intervened and prevented a larger incident. See Tensions in front of the Municipality of Center - two persons injured <http://24vesti.mk/tenzii-pred-opshtina-centar-povtorno-iskrsheni-stakla>

⁵⁷ DW (in Macedonian), Mol searches for the persons who were demolishing in Municipality of Centre <http://goo.gl/bw8MRr>

⁵⁸ European Commission, The Former Yugoslav Republic of Macedonia Progress Report 2014, COM(2014)700 final of 8.10.2014, p.7

⁵⁹ A1ON, VIDEO: Protesters forcefully tried to enter the municipality, <http://a1on.mk/wordpress/archives/161383>

⁶⁰ Ombudsperson of Republic of Macedonia, Annual Report on the level of respect, promotion and protection of human rights for 2015, Skopje, March 2016, p. 22

⁶¹ Ibid.

⁶² European Court of Human Rights, *Ziliberberg v. Moldova*, application No. 61821/00 (2004) as cited in Human Rights Council (2012). Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. Maina Kiai. A/HRC/20/27. p.8

attract a lot of attention, thus negatively influence the perception regarding the possibility for free exercise of FOA.

“The police use armored vehicles with mounted machine guns and that is very intimidating. Instead of regular police, there’s always special units heavily equipped and that in a way is an act of aggression and intimidation” (interviewed representative of CSO, April 2016)

Accountability

Although it was confirmed that in some cases there was an evident disproportional use of force against protesters, this has not been adequately sanctioned and law enforcement officials who abused their authorizations are not held accountable. The Human Rights Committee, expressing concerns over the reports that on May 5th 2015 police resorted to excessive violence against demonstrators and journalists, recommended that the State party should effectively investigate all allegations of police violence.⁶³ According to the Ombudsperson’s annual report, “for this event, the Department for Internal Control and Professional Standards (DICPS) responded that the summoning, detaining and arresting persons was in accordance with the Law on Police and the Law on Criminal Procedure, without addressing/making any reference the brutality of the members of the Unit for Rapid Response and Public Order.”⁶⁴ Additionally,, none of the interviewees were able to point to a specific case where a law enforcement official was disciplined or sanctioned criminally for excessive use of force during public assemblies or other infringements of FOA.

According to interviewed legal experts, human rights activists and members of academia, there is a substantive lack of efficient control of the police and the mechanisms for accountability are not functional. The DICPS is not independent and effective, particularly when it comes to excessive use of force. The majority of the legal experts interviewed stated that the legal framework related to police accountability is mostly appropriate, but the implementation has flaws due to political interference and influence on the work of the DICPS. It was also noted that the police’s failure to uphold human rights during protests is result of insufficient sensitization of the police and lack of continuous training and education.

The inefficiency of internal controls was also exposed when journalists complained of police misconduct. When the police seized recordings of police actions from media crews during protests in Gjorce Petrov, the journalists submitted complaints. Within 24 hours they received a response that there was no evidence that such an incident occurred and that all 34 police officers were interviewed and denied the allegations.⁶⁵ Similarly, in the police intervention during the protests in April 2016, one journalist was hit by a law enforcement officer.⁶⁶ Even though there is a video recording of the event, no official actions have been undertaken yet.

Citizens do not believe that their rights would be protected even if they submit complaints, thus they refrain from using this mechanism. After the May 5th protests, 8 persons reported excessive use of force by the

⁶³ UN Human Rights Committee (HRC), *Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia*, 17 August 2015, CCPR/C/MKD/CO/3, available at: <http://www.refworld.org/docid/5645a4024.html> para. 19, p.6.

⁶⁴ Ombudsperson of Republic of Macedonia, Annual Report on the level of respect, promotion and protection of human rights for 2015, Skopje, March 2016, p. 22

⁶⁵ Fokus, The Mol rejected the complaint of the journalists, <http://fokus.mk/mvr-ja-otfrli-pretstavkata-na-novinarite-na-koi-im-bea-brisheni-snimkite/>

⁶⁶ Plusinfo, The Journalist Goran Naumovski hit by the police, <http://plusinfo.mk/vest/66342/kako-podmolno-e-udren-novinarot-na-plusinfo-goran-naumovski-video->

police to the Macedonian Helsinki Committee but did not want to file official complaints because of mistrust in the institutions and fear that such proceedings may harm them or their families.⁶⁷

Additionally, it was pointed out that the external oversight of the police is also not functional. Relevant institutions such as Parliament and the Public Prosecutor do not initiate investigations or other appropriate proceedings. The Public Prosecutor has not responded for over one year regarding the motion for criminal charges against the police officers that entered a public library and mistreated the students during the May 5th protest.⁶⁸

Video recording

Video recording of public assemblies is regulated and is permissible by law. Assemblies can be recorded if there is a threat to life, health and property⁶⁹ or for the purpose of securing recorded materials on the manner in which the actions of the police are conducted.⁷⁰ In the first instance, the Law does not oblige the police to announce the recording, and the recorded materials are kept by the police for six months and then destroyed unless they are used as evidence in misdemeanor or criminal proceedings. In the second instance, the police officer should announce the recording unless the announcement prevents or hinders the police action. In addition, it is also important to note that with the last amendments of the Law from May 2016, the time of keeping the recorded materials has been reduced from six months to forty five days.

In the Macedonian context, video recording of public assemblies has become a contentious issue. A large majority of the interviewed agreed that the recording of the assemblies is not a problem on its own but expressed serious concerns regarding the storage of the recorded materials and how they are used by the police. One former member of the MOI stated that it is a normal practice to record police actions but that in the case of Macedonia it is exaggerated. The media representative as well as protest organizers we interviewed emphasized that recordings are sometimes given to media and then abused for labeling and discrediting protesters, but most importantly, recordings are abused for threatening and intimidating participants in protests, especially those that work in the public administration. In this regard, the HRC clearly states that “[r]ecording peaceful assembly participants in a context and manner that intimidates or harasses is an impermissible interference to these rights.”⁷¹

An additional point regarding the recordings and their usage in the Macedonian context was raised by one of the legal experts interviewed. While discussing that video footage is used to document the usually minor offences of the protesters, there is apparent disbalance in the resources allocated for investigating more severe offences. As she pointed out, this is problematic because it leads to unreasonable fines.

⁶⁷ Macedonian Helsinki Committee, Two-month report on human rights in Macedonia, April - May 2015, Skopje, June 2015

⁶⁸ A1ON, VIDEO: Chadieva: Why Zvrlevski does not act upon the criminal report on the forcefull entry of the URR in the library “Brakja Miladinovi”? http://a1on.mk/wordpress/archives/611158?utm_source=dlvr.it&utm_medium=facebook

⁶⁹ Article 65. Law on Police (“Official Gazette of the Republic of Macedonia” nos. 114/2006, 6/2009, 145/2012, 41/2014, 33/2015 and 31/2016)

⁷⁰ Article 93a. Law on Police

⁷¹ UN Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, 4 February 2016, A/HRC/31/66, available at: <http://www.refworld.org/docid/575135464.html>, para 76

“A legal system and a policy of punishment have to be reasonable and consistent. It creates a disbalance in the legal system and the distribution of justice because on the one hand severe crimes are not punished, while on the other protesters are rigorously punished on the bases of these recordings.”

CRIMINALIZATION

The trend of criminalization of protests is relatively new in the Macedonian context. It has become particularly relevant in the past two years as we have witnessed an increase in social protests targeting the authorities followed by an increase in misdemeanor and criminal charges and sentences against participants in protests.

In a context of intensive protests, where the free exercise of FOA is tested on daily basis, the judiciary has a significant role in protecting citizens' rights in a manner that is fair and unbiased. However, one of our main findings in the area of criminalization of protests is that the public prosecutor and the judiciary are selective in the cases they choose to pursue and rule against. According to our interviewees, in prosecuting and punishing anti-government protesters they demonstrate an efficiency and effectiveness that is suspiciously lacking when it comes to pro-government protests, but also alleged crimes by high political figures. The unequal administration of justice, as stressed by the interviewees, is rooted in the politicization of the judiciary - a claim that is confirmed by international experts and bodies.⁷² As was the case with policing, a large majority of the interviewees pointed out that the public prosecutor and judiciary are pressured by the authorities to bring charges against and severely punish protest participants. The HRC stresses that “[n]o one may be subject to arbitrary arrest or detention. In the context of assemblies this has particular import for the criminalization of assemblies and dissent.”⁷³

The basis for criminal charges against protesters, as stated in the first part of this report, are “participating in a crowd that prevents an official person in performing an official action”⁷⁴ and “participation in a crowd that commits a crime.”⁷⁵ *In this regard, the European Commission’s 2015 Country Report on Macedonia states that “there appears to be an increasing reliance on the criminal offence of ‘participating in a crowd which commits a crime’. This broad provision is open to interpretations which infringe the freedom of assembly, since the state has an obligation to protect the majority of peaceful demonstrators rather than incriminate them.”*⁷⁶

In all of the cases where the public prosecutor’s office pursued criminal charges against protesters, they requested pretrial detention. And in the 2014 and 2015 protests that were subject to analysis, the Courts, without exception, approved all of the requests. During the interviews it was emphasised that this measure is too easily handed out by the courts, even when alternatives are available and more appropriate. The legal experts we interviewed pointed out that the criminal offences for which the protesters are charged are

⁷² The political influences in the judiciary and public prosecution was noted by international experts in the *The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015 (Priebe report)*, available at http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf. UN Human Rights Committee (HRC), *Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia*, 17 August 2015, CCPR/C/MKD/CO/3, available at: <http://www.refworld.org/docid/5645a4024.html>

⁷³ UN Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, 4 February 2016, A/HRC/31/66, available at: <http://www.refworld.org/docid/575135464.html>

⁷⁴ Article 384, Criminal Code

⁷⁵ Article 385, Criminal Code

⁷⁶ European Commission, *The former Yugoslav Republic of Macedonia Report 2015*, SWD(2015) 212 final of 10.11.2015

considered minor, meaning that other measures such as house arrest and restriction of movement are more appropriate and can and should be determined by the courts instead of pretrial detention. In this regard, the Human Rights Committee “recommended that the State party should always attempt to resort to alternatives to detention in cases involving individuals who do not present a risk to public safety and should consider the impact of implementing its criminal laws against demonstrators on its duty to facilitate the right of peaceful assembly.”⁷⁷ More importantly, most of the interviewees believe that criminal charges, including pretrial detention, are used for the intimidation of protesters. Some added that these are intended not only to sanction the alleged perpetrators, but also to intentionally create a negative image in the public about the protests and the participants.

The majority of the interviewees believe that during the pretrial detention, the detained persons did not have their rights infringed upon, in accordance with national legislation and international standards. However, they also believe that pretrial detention is used to pressure defendants to plead guilty. While it cannot be determined with certainty whether and to what extent the detainment and the severe conditions in the detention facilities influence suspects to accept guilt, it is indicative that in most of the cases the suspects pleaded guilty even though the majority initially denied any wrongdoing.

While most of the prosecuted in 2014 and 2015 were held in pretrial detention, for those prosecuted in 2016 the Court declined the motions of the Public Prosecutor for pretrial detention and instead determined house arrest.⁷⁸ This can be considered as an improvement of the practice of the court; however, suspicions of selective treatment of protesters persist. For example, while three persons accepted a guilty plea and were given probation sentences, the house arrest of the other two is continuously being extended due to procedural issues raised by the Prosecutor.⁷⁹

We also found that participants in protests are not aware of their rights during assemblies and in criminal proceedings. One of the interviewees even claimed that the judiciary lacks adequate knowledge of the FOA in the national legislation and especially the international instruments for its protection.

The overall assessment is that the criminalization of protests negatively influences the free exercise of the FOA. Most of the interviewees stressed that the charges brought against protesters create an atmosphere of suppression and retaliation, which results in citizens feeling discouraged to participate in protests, particularly in smaller urban and rural communities. On the other hand, some of the interviewees believe that the mistreatment of protesters in the criminal justice system can also be very motivating for the continuation of protests against undemocratic practices in the country in general.

⁷⁷ UN Human Rights Committee (HRC), *Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia*, 17 August 2015, CCPR/C/MKD/CO/3, available at: <http://www.refworld.org/docid/5645a4024.html> para. 19, p.6

⁷⁸ VESTI.MK: House arrest for Savevski and Kunovski, <http://vesti.mk/read/news/8878020/3193245/kukjen-pritvor-i-odzemanje-pasosh-za-slavevski-i-kunovski>

⁷⁹ Independent.mk, Criminal Court Extends Levica Party Members' House Arrest, <http://www.independent.mk/articles/32404/Criminal+Court+Extends+Levica+Party+Members'+House+Arrest>

KEY FINDINGS

The legal framework for freedom of assembly in the Republic of Macedonia is relatively comprehensive and liberal. The Constitution guarantees the right to peaceful assembly, without notification or special license, and allows for restrictions only in states of emergency and war. The specific legislation that provides the legal framework for the exercise of the right was enacted in 1995 and subsequently amended several times over the years. The general assessment is that the obstacles to exercising the right to freedom of assembly are not necessarily rooted in the legislative framework, but rather in how that legislation is implemented in practice. Furthermore, the overall tendencies of decline of the democratic processes in the country and politicization of the institutions hinder the exercise of freedom of assembly.

According to the OSCE/ODIHR and Venice Commission guidelines, the state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence. Based on our findings, it cannot be said that Macedonia has fulfilled this duty.

LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

Even though the Constitution is liberal in its definition of the right to FOA, the specific legislation imposes certain restrictions and includes broad formulations that may lead to arbitrary implementation of the rules and selective treatment.

The Law on Public Assemblies recognizes as public assemblies only gatherings attended by more than 20 participants. In a context where the authorities interpret the law restrictively, this can limit the further protection of the right. Furthermore, under the LPA, the notification of a planned assembly, although not obligatory, should contain information on the purpose of the assembly and the measures undertaken for organizing security for the assembly, which goes beyond the information requirements set by international standards. The law imposes numerous obligations on the organizers of protests for ensuring safety and security. They are required not only to create and maintain conditions for the protection of citizens' rights, normal flow of traffic, the supply of population with medicine, food, fuel and similar urgent goods, but also to observe the obligations under international agreements. Organizers are to be held accountable for the failure to comply with these rules and are liable for any damage that may occur, which again is contrary to international standards. These provisions lead to situations where even when a protest has an organizer, they are not identified in public and to the police in order to avoid liability.

The powers vested in the police force that allow the use of various means of coercion are broadly defined in the Law on Police. Although the Law on Police stipulates that they should be used as a last resort while respecting human rights, there is a lack of more detailed regulation, including bylaws, of the conditions and the procedures for use of force.

The major deficiency identified in the institutional framework is the limited internal and external oversight of law enforcement agencies and the criminal justice system. With the exception of the Ombudsperson's efforts, there is a serious lack of action by other institutions when it comes to accountability for limiting the exercise of the right to FOA.

POLICING OF PROTESTS AND CRIMINALIZATION

The main obstacles that we identified for freedom of assembly in the country are law enforcement's management of the protests and the criminalization of protests. Our research found that the state has failed in fulfilling its positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence.

The policing of protests was identified as an issue that hinders free exercise of FOA in various ways. Further restriction of the right, forceful dispersal of protests, mass arrests and excessive use of force by the police are seen as the key reasons that cast doubt on whether the state respects the right to the full extent and fulfils its international duties to enable peaceful assemblies. This is in particular due to the fact that there is a lack of adequate measures for accountability of law enforcement overstepping their authorizations.

Restriction of locations by the police is one of the most common infringements of FOA identified with our analysis of assemblies. The higher echelons of the police are in particular perceived as politicized, which is seen to result in police being biased and more lenient towards pro-government assemblies. It was noted that when police use force, it is disproportionate and indiscriminate and this is considered as one of the main challenge for free exercise of FOA. Such actions of the police are perceived as acts of aggression and intimidation that negatively influence the perception regarding the possibility for free exercise of FOA. The cases of disproportionate use of force against protesters have not been adequately sanctioned and law enforcement officials who abuse their authorizations are not held accountable. This additionally contributes to the creation of atmosphere of disrespect of the human rights of the protesters, including the right to FOA itself. The recordings of the protests are seen as a means to slander the protesters in the media, but also for intimidating them with retaliations, especially employees in public institutions and enterprises.

The criminalization of the protest is seen as one of the major obstacles in the organization of and participation in public assemblies. Criminal charges are brought against anti-government protesters and the courts too often determine pretrial detention. There is selective administration of justice that is attributed to political influences in the criminal justice system. All of this in its totality is perceived as a measure to intimidate the protestors and to discourage protests. However, recently there seems to be a reversal in how protesters and citizens respond to these intimidations, where these are observed to be increasing the motivation of the protesters.

OTHER IDENTIFIED CHALLENGES

Based on the findings of this study, we concluded that the environment for freedom of assembly is not enabling and that the practical implications of the LPA create obstacles in the exercise of the right.

There are reports that employees in public institutions and companies are threatened with sanctions for participation in anti-government protests or for not participating in the pro-government rallies. Service providers are also discouraged to provide services to participants in anti-government protests. Large sections of the media negatively depict the anti-government protests and protesters in the public. All of this creates an atmosphere of suppression where the exercise of the right becomes difficult for citizens.

The LPA imposes obligations on organizers that are defined too broadly and are to a certain extent unreasonable, leaving room for arbitrary decisions on determining breach of duties by the organizer. This creates legal uncertainty and is a further obstacle to the free exercise of FOA.

RECOMMENDATIONS

LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

The legislator should reassess the set quota of 20 participants for a gathering to be reconsidered a public assembly and to enjoy the rights and protection provided with the designation.

The LPA should be amended to reduce the required information for a notification of an assembly and only include basic information about the assembly such as date, time, location and expected duration. The obligations imposed on the organizers should be reduced to the essentials. The provisions on liability in LPA should also be amended in accordance with the international standards.

More detailed provisions are necessary in the Law on Police, including bylaws, to regulate the conditions and procedures for use of force. They should also provide clear guidelines on respecting human rights in the use of force. Further it should be reassessed if all means of coercions available to the police under the current legislation are adequate for democratic society.

The mechanisms for internal and external oversight of the institutions involved in protecting the right of FOA should be used to their full potential.

OVERCOMING CHALLENGES IN PROTECTING THE RIGHT TO FOA

The creation of atmosphere of legal certainty, unbiased institutions and media and free citizens at this point is a long term goal for the democratic development of the country. These are the conditions that have to be met in order to ensure an enabling environment for FOA. The measures to be undertaken in this direction include raising awareness and development of capacities of the media and the institutions.

At the same time, citizens should be educated on their rights, how these can best be exercised and how to demand accountability when their rights are limited. This role in raising awareness of citizens' rights should be embraced by the State, as well as by CSOs and human rights defenders.

The recommended legislative changes should create the basis for an adequate role for the organizers of assemblies in maintaining the peace and order and encourage them to identify themselves as such.

SETTING BOUNDARIES TO POLICING AND CRIMINALIZATION

Although the legislative framework related to the policing of protests and criminalization is relatively adequate, challenges arise from the way it is implemented in practice. Therefore activities should be directed towards capacity development in law enforcement agencies and the institutions of the criminal justice system for adequate and nondiscriminatory application of the legislation.

The security assessments conducted by the police should be balanced with the right of the citizens to assemble and express their opinion on a place where they find adequate.

The police should be well educated on the legislative framework and the restrictions it allows. The education and training of the police, especially the sensitization to the specific mechanisms for the protection of human rights during large gatherings should be continuous and open to participation of the CSOs. The police force should also develop skills for non-violent conflict resolution.

The MOI should strengthen its capacities for internal control of the actions of police officers, especially in cases of (excessive) use of force.

An external independent mechanism for police oversight, which would include non-state actors should be established in order to ensure that law enforcement authorities that violate the right to freedom of assembly are held personally and fully accountable for such violations. In this regard, command responsibility must be upheld.

Strict guidelines should be established on the recording and use of recordings of the assemblies which would ensure recorded materials are not misused.

In regard to the criminalization of protests it is recommended that activities are undertaken in order to ensure that detention is used only as a last resort and for individuals who are determined as a danger to public safety.

Mechanisms should be introduced to ensure balance between the implementation of the criminal legislation and imposition of criminal liability against protesters and the exercise of the right to freedom of peaceful assembly. These activities and mechanisms may include development of specific guidelines for the implementation of detention measures with regard to accused protesters, increasing the knowledge and the awareness of the judges on the right to freedom of assembly. The development of this system should be part of the overall efforts to increase the trust in the criminal justice system.

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ANNEX 1 - DESCRIPTION OF ASSEMBLIES

Students' protests

In late 2014 students started a protest movement against the controversial amendments of the Law on Higher Education and continued until early 2015. The assemblies were organized by students who later formed a non-formal students' organization "Students' Plenum". The protest entailed marches targeting the Government, the Ministry of Education and the Parliament and gathered up to 10.000 people per protest. Static assemblies in the form of occupation of three campuses of the State University in Skopje for 17 days were also organized. It was the first occupation where students boycotted classes, stayed in the University premises and organized the life on the campus. During the occupation there was no interference from the police but students were directly or indirectly pressured by different stakeholders. Members of the Student Plenum which we interviewed reported complaints from colleagues that received threats that they will lose their places in student dorms if they participate in the protests. It is also worth noting that one of the main strategies for discrediting these protests were employed by large sections of the media, but also by government representatives including the Prime Minister, who were continuously claiming that the protests are organized by opposition parties.

High school students are also a group that was very active in exercising the right for freedom of assembly. Similarly as the students, they were protesting against education policies on state exams and external testing. There were over 20 assemblies including marches in six different cities as well as a one month boycott of classes during their camp in front of the Ministry of Education. Different types of pressure on students not to participate in protests were also registered. Principals and professors threatened students with disciplinary measures, while the more severe cases included locking school doors and not allowing students to leave. Students submitted complaints to the Ombudsman office regarding these kinds of pressures. Within its authority, the Ombudsman acted upon the complaints and asked schools to respect the rights of the students, pointing out that any kind of limitations, threats and pressures are unacceptable. Additionally he added this infringement of rights is contrary to laws as well as internationally ratified treaties.

Workers' protests

Students were not the only group that was pressured not to organize or participate in protests. The Independent Syndicate for Education, Science and Culture that gathers and represents education workers from all over the country, organized a protest in Skopje on August 1, 2014. They reported that during the preparations of the protest many of them were pressured by their superiors directly or through their family members not to participate. The threats they received included disciplinary sanctions but also salary cuts, transport companies refused to transport them to the capital while in some cases police identified them when embarking the buses.

The redundant workers from public enterprises have faced different challenges while exercising their right for freedom of assembly. This socially vulnerable group organized at least eight protests over 2014 and their public assemblies included marches and protests mainly targeting the executive and legislative institutions. The workers as well as civil society organizations reported mistreatment by the police.

Protests against the payment of bills

Hundreds of people regularly exercise their right to freedom of assembly in front of the regulatory commission for energy and heating. More than sixty times during the last two years, they have assembled to protest the decision of the regulatory commission that people who do not use the heating system still have to pay for the services. With the new law for energy in 2011, people who don't use the central heating system and have requested to be cut of the grid still are requested to pay for the services. People who are off the grid are requested to pay for the general use of the whole apartment building, although they do not use it in their own homes. There have been no problems during the assemblies and police is present in small numbers. The demands of the protestors have been sent to the government and regulatory commission, but were ignored by both. The protests continue every Saturday in front of the regulatory commission for energy during the writing of this report.

During 2014 and 2015 there were several protests that resulted with disturbance of public order and peace to a large extent. Groups of participants in these protests were violent and the police reacted by using force, means of coercion and making arrests which were followed by prosecution and sentences. These protests, as particularly relevant for the research, are briefly described here and referenced in the report.

Inter-ethnic tensions

On May 19, 2014 in the municipality of Gjorce Petrov in Skopje a large group of locals gathered and staged a protest as a reaction to the killing of a young ethnic Macedonian male from the neighborhood, by young ethnic Albanian. The protests turned violent, with destruction of property followed by clashes between the police and the protesters. Twenty seven people were arrested, five of whom were criminally charged for participation in a crowd that will prevent an official in conducting official duty and were detained. They were also sentenced to repay the damages during that accrued during the protest. The Macedonian Helsinki Committee had observers of the protest and noted excessive use of force by the police. An additional problem was reported by three journalists who were forced by the police to delete their video recordings. Additionally one newspaper alleged the beating of one of their journalists by police, but these claims were not confirmed.

The "Monster" case

In the summer months of 2014, family members of a group of ethnic Albanians were prosecuted in the so called "Monster" case for the killing of five ethnic Macedonians and later organized a series of protests. The protests were an expression of discontent how the judiciary, and especially the Public Prosecutor is handling the case. While the first two protests that took place in late June were calm and included mostly family members and friends of the prosecuted, on July 4, 2014 after the court sentenced the group to lifetime imprisonment, a large protest involving around 1.500 participants was organized. Although in the beginning the protest was peaceful, clashes between protesters and the police erupted. Twenty two people were arrested and eight were criminally charged for participating in a crowd that prevented an official person in conducting official duty. Six persons from the group were sentenced to three years imprisonment and two was acquitted. The group was also sentenced to repay the damages that accrued during the violent protest. In the following two months, at least four more protests were organized. Even though the protests were smaller, peaceful and duly announced to the authorities, the police did not allow participants to protest on the desired location.

“5th of May protests”

The protests on May 5, 2015 were a spontaneous assembly of citizens in front of the Government and may be considered as the landmark case of protests in the country in the recent years. It was a protest that gathered over 10.000 people which demanded accountability from government officials regarding their “complicity in an attempt to cover up the criminal responsibility of a police officer and member of the Prime Minister’s guard, for the death of Martin Neshkovski.” While a large majority of protesters were peaceful, a violent group provoked a severe police intervention which stopped the protest and dispersed the participants. When dispersing the protest and pursuing alleged suspects, the police chased protesters up to a kilometer, at the same time entering public buildings and a public library where students reported police brutality. Forty two people were arrested and on the bases of “participation in a crowd that will commit a crime”, eighteen of whom were criminally charged. Fourteen were given pretrial detention and later sentenced to probation sentences after acknowledging the guilt, while three were sentenced with prison sentences because of previous criminal records. The Independent Trade Union of Journalists and Media Workers (SSNM) reacted that journalists were also victims of police brutality on this protest and one journalist reported that he was attacked by the police and not allowed to record even though he identified himself as a journalist on duty. In the following eleven days the initiative “PROTESTIRAM” organized peaceful protests. However, the police set up a wide perimeter and cordoned the government building not allowing protesters in the vicinity of the building.

The Campsites

The string of protests following May 5th, culminated by protests organized by a coalition of CSOs and opposition political parties on May 17th, 2015. It was assessed that the protests gathered more than 40.000 participants from all over the country. There was no police interference during this protest. After the protest, the protesters organized a campsite in front of the government, blocking the boulevard in front of the government building for 60 days. The next day, the 18th of May the main governing party organized a protest that later occupied the park across from the parliament assembly in order to “protect the democratic system in Macedonia”. This camp ended after 59 days. Both camps ended after the signing of the Przino agreement which foresaw the end of the political crisis in Macedonia. No police intervention was reported during both campsites. Each of the campsites organized debates and lectures by either members of CSOs, members of the party or intellectual supporters during the duration of the campsites.

“Colorful revolution”

Although the focus of this report is on public assemblies in 2014 and 2015, protests that took place during the research were also analyzed.

Protests started on April 12 2016 after a decision of the President to grant pardon to fifty six persons, including high ranking government officials which were under investigation by the Special Prosecutor regarding corruption and election fraud. These protests evolved and developed in what is now known as the “Colorful Revolution” - civic movement that demands rule of law, accountability and free and fair elections. The protests have been ongoing for more than fifty days almost on daily basis. The most significant incident on these protests occurred on April 13 when a group of protesters vandalized the public office of the President and the police reacted by dispersing the entire protest. Thirteen people were arrested that night, of whom eleven were detained for twenty four hours and released with misdemeanor charges. A total of five people were charged for participating in a crowd which will commit a crime and detained in house arrest. On 26th of May, two days before the planned event, protesters of the “Colorful revolution” announced to the police that

a peaceful assembly will take place in front of the police station “Beko” as a sign of protest for the invitation for informational talks that the police send out to protesters. The planned assembly did not take place, as police blocked the way and stopped people from entering the selected and announced venue, thus hindering the right for an announced public assembly.

The assemblies of the “colorful revolution” have spread around all mayor cities in Macedonia. Reports of police harassment have been received as many participants of the assemblies received invitation from the authorities for informative talks. After the informative talks, participants received misdemeanor charges for throwing paint towards public offices. This has become a police practice in the cities where the colorful revolution held assemblies, especially in Skopje and Bitola. Media also played a role in pressuring participants as some media outlets published the tax declarations and accusing participants and supporters of the colorful revolution as foreign mercenaries.

After the first day of protest by the group now known as the “Colorful revolution”, another group opposed the grand pardons, but only for the opposition politicians. The public assembly was organized by the GDOM organization on April 13 2016. A large number of people from different cities gathered in front of the parliament building, thus blocking the the space for the other protesters who wanted to use the same route as the previous day. Police cordons of 150 meters separated both groups. Following the first protest in the capital, GDOM organized assemblies in different cities across the country. The assemblies ended on the 18th of May and during this period there were more than 30 public assemblies on different locations. During the assemblies the demands were upgraded with the requirement that the planned election on the 5th of June should be held. During the assemblies there was no interference by police noted.

ANNEX 2 – METHODOLOGICAL ANNEX

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

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

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

Additionally, in countries where public assemblies took place during the course of the research, research teams conducted observations of assemblies. In this way, researchers gathered first hand data regarding the practical implementation of the legislation and challenges organizers and participants face when exercising their right to freedom of assembly.

In the third and final phase, validation of the findings was also completed in all of the countries where the research was conducted. Research teams conducted validation meetings with relevant stakeholders where they presented the main findings and the conclusions, discussed their relevance and consulted on recommendations for the improvement of FOA legislation and practice.

DESKTOP RESEARCH

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

In the second stage of desktop research we carried out, an overview of the assemblies organized in the past 2 years (2014 and 2015). The aim of this overview was to identify most common types of assemblies and their general characteristics in terms of organizers, size, location, any good practices or violations that may have occurred, etc. For this purpose, we conducted content analysis of media and journalist reports, official statements from participants and rulings of relevant authorities. Assemblies included in the overview and then further analyzed were selected on the basis of three main criteria. The first criteria was attracted media attention, which we defined as the protest having been covered/reported on by at least three major media outlets. The reasoning for this criterion is that sufficient media coverage gives protests relevance, as well as contributes to the public discourse. The second criteria was expressed grievances of the organizers and participants in assemblies either publicly or to institutions and organizations that work on the protection of human rights and the third criteria was capacity for mobilization. This overview enabled us to determine the most common problems related to freedom of assembly and to identify particular assemblies with specific features and issues of concern.

DEVELOPMENT OF QUESTIONNAIRES

After the literature review, desktop research and exploratory interviews with assembly monitors and protest organizers, a questionnaire was drafted. The questionnaire was used for conducting formal face to face interviews and it consisted of thirty five mostly open ended questions divided into three main sections. The first section included general questions on the main challenges related to FOA, assessment of the legal framework and its implementation, the institutions relevant for FOA and their capacities. The second section was dedicated to the first specific issue - Policing. It was identified as a specific issue in four countries and researchers used the same questions. It examined the role and the capacities of the police related to FOA, the legislation that regulates policing of assemblies, the manner of policing public assemblies and the accountability of the police. The third section included questions on criminalization of freedom of assembly as a second specific issue relevant for Macedonia. The questions addressed criminal procedures related to FOA, the role of the criminal justice system and the effects on the exercise of the right. Additionally, a small section on socio demographic questions was also included in the questionnaire.

FACE-TO-FACE INTERVIEWS

In the second stage of the research, we conducted face-to-face semi structured formal interviews for the purpose of gathering qualitative data, The interviews lasted approximately 50 minutes and were conducted by three researchers. Interviews were recorded, transcribed and coded, while the analyzed data was used to draft findings and develop recommendations..

A total of fifteen interviews were conducted. Six of the interviewed were women and eight were men. The relevance of the sample was determined based on educational background, professional affiliation and experiences in exercising the right of freedom of assembly. More specifically, we interviewed: seven protest organizers from civil society including two that have been criminally charged in cases related to protests and spent time in pretrial detention and house arrest; two representatives of organizations that monitor freedom of assembly: three legal experts - one professor of criminal procedure and two legal experts from civil society organizations that work on protection of human rights; a representative of a national institution for protection of human rights; a former high ranking official of the MoI and a professor of police studies; and an editor in chief of a media outlet that regularly reports on protests.

OBSERVATIONS

In order to gain first hand data on organizing, conducting, possible restrictions and challenges related to public assemblies, structured observations of assemblies were conducted. A total of five observations were conducted by two researchers in the period March – April 2016. The observations were conducted in the city of Skopje and involved observing civic protests against the President’s decision to pardon politicians from prosecution and counter protests organized in support of the authorities. Researchers recorded information from the observations in a separate form that included questions on: the legal status of the assembly and possible legal restrictions of the assembly; the organizer, participants, purpose, location/ route, visual and audio displays as well as attitude to the police. Additionally, questions in the observation form are related to the policing of assemblies, including: type and number of units, location and size, gear and equipment, interaction with participants, types of actions of the police and the results of the actions.

VALIDATION OF FINDINGS

Validation of findings was organized after the data were gathered and analyzed and preliminary findings drafted, . The validation meetings were used to generate proposals and recommendations for improving different aspects of freedom of assembly included in the report. The preliminary report was sent to three participants in the research including a protest organizer, a legal expert from civil society and a representative from academia. Additionally, the report was also communicated with two legal experts with experience in the field which were not interviewed during the research.