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Country Report 2016-2017

Macedonia







## **Monitoring Right to Free Assembly**

# Macedonia Country Report 2016-2017

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#### **Brief Description of the Initiative**

There is an increased number and intensity of protests and violations around them in the Western Balkans and Eastern Partnership region. To ensure that freedom of assembly rights are better understood and advocacy efforts are strengthened, the European Center for Notfor-Profit Law (ECNL) works with local experts from nine countries (Albania, Armenia, Belarus, Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Kosovo, Serbia) on mapping the existing environment for assembly in their respective countries. This assessment is a brief overview of topical issues and recent developments related to freedom of assembly in **Macedonia**.

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#### **SUMMARY**

Since the last report from June 2016, there have been significant political developments in the country, leading to a change in the government that had been in power for more than ten years. While there are no major developments in terms of freedom of assembly to note, announced legislative changes and noted cases of sanctioning of police for conduct during assemblies were identified as positive developments. Even so, many issues of concern noted in the previous report remain, in particular the selective treatment of assemblies. Attacks against media by protesters and the failure of police to protect media coverage of protests is an issue that is elevated in the reporting period.

#### Increased attacks on media representatives by protesters

We note a significant increase of attacks against journalists that report from assemblies. During the last year there have been eleven incidents where journalists are attacked by protesters. This is a rise of attacks against journalists reporting, as in the previous report we have noted only one such case during the analyzed period.

#### Selective policing of assemblies remains a concern

Many of the issues noted in our previous report were confirmed in this reporting period, including selective treatment of assemblies by police and unprovoked use of force. The protests of April 27<sup>th</sup> 2017 that turned violent and ended in multiple injuries due to police inaction were an extreme confirmation of concerns raised over the selective treatment of assemblies on part of the police force.

#### Cases of police officers sanctioned for conduct during assemblies

A notable improvement compared to our previous report, we note two separate examples of police officers being held to account for their actions during assemblies, which is a welcome development that can serve to deter police officers from acting on behalf of political structures in the future. If the new administration remains committed to holding police officers accountable, this could have a transformative effect on freedom of assembly in the country.

## Proposed changes in legislation have potential to improve Freedom of Assembly in the country

Under the new government's initial urgent reform plan, an external and independent oversight mechanism for the police is listed as a priority measure. This was one of the key recommendations in our previous report and if established as planned, it will clear the way for the implementation of many of our other recommendations related to policing and criminalization. The longer term four-year government plan specifically mentions improving freedom of assembly legislation, and proposed changes to the Law on Police specifically adopt recommendations from the Ombudsman to limit police use of rubber bullets and electrical paralyzers. All in all, the new government has set out a number of ambitious goals that, if acted upon, have the potential to significantly improve the environment for freedom of assembly.

#### Important window of opportunity for activists and civil society

Considering that key members of the new government, and at times even the current prime minister, protested alongside activists in the 'Colorful Revolution' and experienced first-hand the limitations of the existing legislation and the shortcomings of its implementation in practice, there is an important window of opportunity for activists and civil society organizations that work on freedom of assembly to push for changes in both legislation and implementation.

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



## Legislation and implementation

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

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

Since the last report from June 2016, there have been significant political developments in the country, leading to a change in the government that had been in power for more than ten years. The new government, a coalition led by the Social Democratic Union of Macedonia with Zoran Zaev as Prime Minister, was officially formed in May 2017, following an almost six-month-long political deadlock after the national elections in December 2016. PM Zaev has put forward an ambitious plan for reforms to get the country back on track in the Euro-Atlantic integrations process, called the 3-6-9 plan (aiming to achieve the objectives in three waves, over three, six and nine months). While the plan does not directly address freedom of assembly, one of the priorities listed in the plan is "[d]efining a model and legal framework for external, independent oversight mechanism for the work of the police in cooperation with the Council of Europe and the Ombudsman." An external and independent oversight mechanism for the police was one of the key recommendations in our previous report and if established as planned, it will clear the way for the implementation of many of our other recommendations related to policing and criminalization.

In addition to the urgent reforms document, the government has also put out the Government Program 2017-2020, which specifically mentions "legislative changes in guaranteeing the right to free assembly, with clear and precise competencies of the police," although what these specific changes entail is not specified. The Program also announces stricter controls to curb the "arbitrary conduct of the police," as well as promising to "strengthen the independence and capacity of the Internal Controls and Professional Standards Sector at the Ministry of Interior." All in all, the new government Program lists a number of ambitious goals that, if acted upon, have the potential to significantly improve the environment for freedom of assembly.

In terms of specific legislation, a new draft law for amending the Law on Police<sup>v</sup> that was published for public consultations in August 2017 proposes changes in the means for coercion available to the police, essentially overturning changes adopted in March 2015 that expanded the list of means of coercion available to police to include the use of electrical paralyzers and rubber bullets. The amendments from March 2015 were mentioned in our previous report, where we noted that both the broadening of police powers and the timing of the changes during frequent waves of public unrest were problematic – a view espoused

by both the European Commission<sup>vi</sup> and the Ombudsman. In this sense, the proposed legislation, which even cites the Ombudsman's annual reports as the reason for better regulating the means of coercion, is a positive development that, if enacted, will curb police powers against peaceful assemblies.

In terms of the administration of the existing law, we noted two negative developments that confirm concerns raised in our previous report:

• The protests of April 27<sup>th</sup> 2017, in which police failed to protect MPs from a violent mob that entered the Parliament building, were an extreme confirmation of concerns raised over the selective treatment of assemblies on part of the police force

On February 27<sup>th</sup> 2017, the political party that came in second place in the parliamentary election held in December 2016 - the Social Democratic Union of Macedonia (SDSM) provided a document with the signatures of 67 MP (constituting a majority in Parliament) from their coalition and with three majority Albanian parties, as a guarantee that they would be able to obtain a majority in Parliament and thus seek the mandate from the president of Republic of Macedonia to form a government coalition. On the same day, the newly created initiative called "For a Shared/Common Macedonia" started their daily protests against what they dubbed the "Albanian platform". The protests in front of the Parliament building continued daily and were peaceful in conduct, despite xenophobic and Albano-phobic chants, slurs and even sporadic calls for violence should the new majority elect a new president of parliament. The protests escalated on April 27<sup>th</sup> after the MPs voted in a new president of Parliament, ending months of political deadlock following the national elections and clearing the way for a new government to be formed. VII Once the news made it to the protesters outside, the angered crowd managed to pass the police cordon and soon managed to enter the parliament building. Once inside, the crowd now turning into an angry mob attacked the MPs of the new majority while they were giving a press conference inside the Parliament's press room. After hours of police standing by as the standoff between MPs and protesters went on, they finally received orders to disperse the crowd. Around 70 citizens, including media and MPs (of which one with life-threatening injuries) and 20 police officers were injured during the outbreak of violence. viii

Following these events, the Helsinki Committee for Human Rights of the Republic of Macedonia issued a report with all of the criminal acts that can be identified from the multiple audio and video materials. The report identified that 27 different criminal cases can be brought against the protesters that where part of the demonstrations, 17 of which are already provable with considerable evidence and 10 suspected crimes. Additionally, the possible perpetrators can be divided into four groups, 1) organizers, 2) perpetrators, 3) police officers and 4) their superiors. Additionally, the TV show CODE (in Macedonian *Kod*) recreated the events that happened on April 27<sup>th</sup> in a three-part TV documentary, focusing on the failure on part of the police to prevent the protesters from entering the Parliament building. It concluded that the internal police protocol for mass protests was not respected, that the number of police force and riot police present at the protest was far too little compared to practices that the police has when it comes to other protests, and that the chain of command was not in place, noting that as the chief police commander of the task force for these protests was absent from work and ignored phone calls, resulting in the delayed

reaction from the police. Additionally, it was noticed that off duty police officers and army officials in plain clothing participated in the mob that entered the parliament.\* Immediately following these events, the Public Prosecutor's Office issued interrogation orders for 15 protesters, including two of the three main organizers of the protests, including two of the three main organizers of the protesters, including one official investigation resulted in a jail sentence for one of the protesters who attacked an MP. in two protesters await trial in detention for the attempted murder of one MP, and another protester is awaiting trial for being the leader of a mob that attacked MPs in the parliament building. in the parliament building. As of November 28th 2017, an additional 36 persons have been detained with terrorism charges, including the Director of Public Safety and former Minister of Interior who is believed to have ignored calls to give orders for police action, as well as two of the three organizers of the protest. It is worth noting, however, that these charges are not related to freedom of assembly legislation.

• Less than 20 protestors (which under the existing legislation does not pass the minimum threshold to be considered an assembly under the Law) were mistreated by police under the pretext that it cannot be considered a protest. This example further confirmed the need to amend the existing legislation to remove the minimum requirement, in line with OSCE quidelines

On the July 29<sup>th</sup> 2017, a small group of less than 20 people from the political party Levica protested the public display of the joint army session of the Macedonian and US Army on the main public square in Skopje. The protesters held a banner that read "Against the Wars for Profit", which the police asked to be taken down. When the protesters did not comply with the police officers' demands, four of the protesters were handcuffed and held for 15 minutes. Following these actions, the minister of interior announced that the internal control of the ministry will follow up with an investigation for the police officers who used force and detained the activists. The investigation concluded that 4 police officers used force, illegally detained the activists and had no order from a superior to conduct these actions. This resulted in a disciplinary action against the police officers. While the sanctioning of police conduct is a positive development, and perhaps indicative of an important shift in how police deal with protesters under the new government, it is nevertheless worth noting that the initial response to the police misconduct was that these protesters do not enjoy protection under freedom of assembly legislation as they failed to meet the minimum threshold of 20 people to be considered a protest.



## Policing of Assemblies

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

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

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

Are undercover police ever used at assemblies?

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

Based on interviews with protest organizers, the police chief responsible for the protest usually approaches organizers before a protest as a formality and then keeps a distance. To our knowledge, there is no debriefing after protests and in the reporting period there were no examples of police engaging in communication during assemblies.

In general police will at the very least tolerate spontaneous, simultaneous assemblies, counter protests, peaceful assemblies that block the traffic or sit ins. In the reporting period, the mass protests in front of the Parliament building that were described above succeeded in blocking traffic daily for two months, without police intervening, which has been the case in the past with all protests in front of Parliament.

There have not been examples of changing the time, place and manner of assemblies in the reporting period. In the past, protesters have noted that they were prevented by police to access certain locations (such as the Ministry of Interior), which is covered in our previous report.

Use of disproportionate and indiscriminate force at assemblies and using force for no obvious reason was noted in our previous report as one of the main challenges for the free exercise of FOA and remains a concern, even if there are no cases to report since the last report. In the reporting period, the two examples mentioned at the beginning of the report are both cases of police using force at assemblies. In the case of April 27<sup>th</sup>, even though it was a delayed reaction, the police responded to the violence from participants to disperse the assembly from inside the parliament building, by using force, stun grenades and tear gas. In the small protest by the political party *Levica*, the police's internal investigation concluded that the police used force for no apparent reason.

Chapter 19 of the Law on Police regulates the use of force by the police and the types of weapons police can use for coercion in assemblies. The weapons listed include batons, electrical paralyzers, chemical and pyrotechnic explosive ordinances, rubber bullets, dogs and

specialized vehicles for public order and peace.\*\*vii As noted earlier, proposed changes to the law would remove the contested rubber bullets and electrical paralyzers from this list.

To our knowledge the police do not generally issue verbal warnings before they use force. From the rare video footage that is available and that depicts the precise moment when police charge on or otherwise use force on protesters, no discernible verbal warnings from the police can be heard.

Barriers are always used for protests on government buildings – so much so, that the barriers in front of Parliament have not been removed in years and are practically a permanent fixture. Riot gear and shields are used regularly, even, as we noted in our previous report, in cases where they are not necessarily warranted. Police dogs are not usually used in protests even though they are listed as an option in the Law on Police.

There is usually no medical assistance available.

While there have been allegations in the past that undercover police infiltrate assemblies, we were unable to independently verify these claims.

The police usually use hand-held cameras in protests and more recently have access to drones. The use of video recordings was raised as a concern in previous report, as these were used to intimidate and threaten protesters. However, we did not note similar cases in the reporting period, nor did we find evidence that video recordings made by police specifically were used in prosecutions (even though there are a number of active investigations related to the April 27<sup>th</sup> protests).

Chapter 20 of the Law on Police regulates the "Use of technical equipment for audio and video surveillance", as well as how long these recordings can be held, so this is not additionally covered in data protection legislation. As noted in our previous report, changes to the law in 2016 in article 93-a, which regulates the length of time a video or audio material can be kept by police was reduced from 6 months to 45 days.\*

There is no law regulating whether the police permit participants in assemblies to video police actions specifically. Recording assemblies is regularly tolerated and there are no reports to suggest otherwise. One exceptional case that we have previously noted was a camera attached to a drone. In December 2015, a protestor filmed a protest march through Skopje with his drone. After the assembly, he was brought into a police station for questioning, as the law forbids filming via drone close to public institutions, such as the government building or the parliament building. The detained person was allowed to leave after he could verify that he is a trained pilot of drones and that he filmed the march, not the government buildings. In the reporting period, media outlets have been able to get special piloting permits in order to film protests via drones.



## Media and Assemblies

Is the mass media able to report freely at assemblies?

Are citizen journalists or non-accredited journalists able to report freely at assemblies? Are human rights defenders and or monitors able to observe freely at assemblies?

Although media is generally able to report freely from assemblies and incidents are more sporadic than standard, in the reporting period we noted a negative trend when it comes to reporting from assemblies. In the past year there have been eight incidences were journalists are attacked by protesters, \*\* constituting an increase in attacks against journalists reporting, as in the previous report we noted only one such case during the analysed period.

We have no knowledge that citizen journalists or non-accredited journalists they are treated differently from regular/accredited journalists.

There are no reports of human rights defenders and monitors being prevented or otherwise restricted from observing assemblies.



## Social Media and Assemblies

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

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

Social media is used before, during and after assemblies. The primary reason for social media use is to organize and mobilize protesters, but also increasingly more frequently to provide immediate citizen reporting from protests through updates, photos and videos, especially in cases of police brutality. Facebook and Twitter are the most commonly used social media platforms.

In general, there are no restrictions on the use of social media in relation to assemblies. In the past there have been instances where protestors claim that Facebook events disappeared, or that mobile network coverage has been suspended in the area where a protest is taking place in order to prevent protesters from accessing social media, but these claims cannot be independently verified.



# Responsibility of Organisers

# Are the organisers of an assembly held liable for behaviour of others? If there is no identifiable organiser, how do the police respond?

Organizers of assemblies are still held liable for the behaviour of others, as outlined in the previous report, and there have been no legislative changes to address this problem in the reporting period. As noted in the previous report, this is one of the most contentious provisions in the LPA, as the organizer is obligated to ensure safety and cover costs of potential damages.

There is no standard practice of how the police responds if there is no identifiable organiser and no examples to draw from in the reporting period.



### **Detention and Prosecution**

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

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

Are the courts generally seen as neutral and impartial?

People are not arrested or detained in advance of an assembly to our knowledge.

The basis for criminal charges against protesters, as reported in the first country report, are "participating in a crowd that prevents an official person in performing an official action" and "participation in a crowd that commits a crime." This issue is covered in detail in our previous report.

In general, protesters detained or arrested can have access to legal support and the Helsinki Committee for Human Rights of the Republic of Macedonia has a roster of lawyers available to assist protesters. In the past there have been reports that detainees are being transferred between police stations after their initial arrest, and even though at the time this was considered to be a tactic to prevent access to legal support, this has never been officially verified.

One of the cases where protesters were transferred between different police stations in Skopje is the case of a young woman during the protests of the "Colourful revolution" on the 13<sup>th</sup> of April 2016. During her interview she explains that for the first legal proceedings, she was held in the BEKO police station, but later was transferred to a different police station to spend the night in police custody.<sup>xxii</sup> She was one of 13 people detained for a day during the

Colourful revolution as suspects for participating in a crowd that prevents an official person in performing an official action.<sup>xxiii</sup> Yet most of the detained were released after there was no evidence for their participation in such actions.

To our knowledge, there is only one publically available report of an arrested protester with injuries, therefore it is difficult to answer the question of whether people detained or arrested are given easy access to medical assistance. In this case, a protester detained during the "Colourful revolution" had an open wound on his face from the violent arrest by police officers. According to an interview he gave for an internet portal, he explained that although the police noticed the severe bleeding from his face, it took two hours for police to call an ambulance, and even then it was only after a volunteer from the Red Cross demanded that the wound needs to be looked at by a professional.\*\*

The most common scenario is that if detained, protesters are released soon thereafter with an administrative fine. However, as noted in the previous report, in recent years there is an increased tendency to charge protesters and drag out their trials. Some of the cases we mention in the previous report are still not resolved more than a year after charges were originally brought against protesters that participated in the "Colourful Revolution."

Since the last report there has not been an increase in the scale of punishments imposed on people arrested at assemblies. It is worth noting, however, that the criminalization of protests, including increased and stricter sanctioning of protesters, and even prison sentences, were one of the main concerns raised in the last report.



## Accountability

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

There have been no major developments in terms of accountability of state institutions and specifically, the police. State institutions, and specifically the Ministry of Interior, remain largely immune from having to account for their actions. Monitoring bodies such as the

Ombudsperson have no authority beyond noting violations, whereas oversight bodies such as Parliament and the Public Prosecutor, which have the authority to initiate investigations, remained subject to political interference and influence, and therefore ineffective, for most of the reporting period.

When it comes to the police specifically, there are various mechanisms that are available for holding police to account for actions against protesters during assemblies, but these continue to be inefficient in practice. Internally, the Ministry of Interior deals with these cases through the Department for Internal Controls and Professional Standards: however, the department does not make public the information on active investigations.. Furthermore, there are no active or resolved cases in the courts regarding police actions during protests.

Overall, our assessment of police accountability remains unchanged for the reporting period – the legal framework is mostly appropriate, with severely flawed implementation. As noted earlier in this report, the number of announced legislative changes would improve upon the existing legislation, but it remains to be seen how the new government will go about implementing both new and existing legislation, in particular considering the noted history of political interference and influence on the work of both the police and Department for Internal Controls and Professional Standards.

The events of April 27<sup>th</sup> 2017, during which protests outside the Parliament building culminated with the crowd entering the building and seriously injuring MPs, are considered to have been the results of ineffective policing and inaction. This is evident from videos of the night in question, where police officers are doing very little to prevent protesters from storming the building and are even seen to be shaking hands and greeting protesters. Once the new government was formed, the Minister of Interior formed a special commission to investigate police misconduct. As a result, 23 police officers were suspended, with an additional 45 disciplined,\*\*xxvii\*\* which is a positive development that can serve to deter police officers from acting on behalf of political structures in the future.

In addition, as described earlier in the report, the four police officers who used force against the small group of protesters from the political party *Levica* were also disciplined for their actions. Police officers in regular uniform have a visible unique number by which they can be identified, but police officers in riot gear are not individually identifiable during protests.



## **Overall Assessment**

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

Generally speaking, in the reporting period the right to freedom of assembly can be said to have been broadly respected, facilitated and protected by the state. It must be noted, however, that compared to our assessment in the previous report, there were less protests overall and therefore less cases of citizens exercising their right to free assembly. In other words, the fact that there are no notable violations of this right in the reporting period should not be mistaken as an indicator that the concerns noted in our previous report are no longer valid.

#### **RECOMMENDATIONS**

With some exceptions resulting from select positive developments noted in this report, our recommendations remain largely unchanged since the last report:

#### 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 international standards.

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

#### **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 non-discriminatory 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. While we have seen some positive developments in this area in the reporting period, it will take more to recognize this as established practice.

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.

With 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.

Finally, considering that key members of the new government, and at times even the current prime minister, protested alongside activists in the 'Colourful Revolution' and experienced first-hand the limitations of the existing legislation and the shortcomings of its implementation in practice, there is an important window of opportunity for activists and civil society organizations that work on freedom of assembly to push for changes in both legislation and implementation.

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- xxi Criminal code of Macedonia, Articles 384 and 385
- <sup>xxii</sup> "A desire for justice behind the green steel door!" Faktor.MK April 18<sup>th</sup> 2016, http://faktor.mk/zhelba-za-pravda-zad-zelenata-chelichna-vrata/

<sup>&</sup>lt;sup>1</sup> Plan 3-6-9, Government of the Republic of Macedonia, July 2017

ii Government Program 2017-2020, Government of the Republic of Macedonia, March 2017

iii Ibid

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