



Montenegro

Deputy Prime Minister and Minister of Foreign Affairs and European Integration

Podgorica, 29 April 2015

Your Excellencies,

With reference to your letter addressed to the Government of Montenegro on 2 March 2015 whereby you expressed concern regarding the fast-tracked procedure for adoption of the Law on Amendments to the Law on Public Assemblies, adopted by the Parliament of Montenegro in December 2014, and which allegedly excessively and disproportionately limits the right to freedom of public assemblies and of expression, I would like to convey precise and detailed information on the assertions you mentioned.

The Law on Amendments to the Law on Public Assemblies of Montenegro was adopted by fast-tracked procedure in December 2014 aimed to address the issue of legal gap caused by the adoption of the Decision of the Constitutional Court of Montenegro (the Decision entered into force in November 2014), as well as to prevent problems that may come in practice if this law was not to be adopted in a short time period.

The mentioned Decision does not question the distance norm (prescribed by previous Law on Public Assemblies) from the public institutions hosting the President, the Government, the Parliament and the Constitutional Court for holding of public assemblies. However it states that the norm is generalized and that it is necessary to specify it for security reasons. In this regard, the Law on Amendments to the Law on Public Assemblies does not prohibit holding of public assemblies in the city center. It specifies that they are allowed at a distance of 50 meters from the above mentioned institutions for security reasons of protected buildings and persons staying in them. In establishing this norm, Montenegro was guided by comparative practice in relevant laws of the European Union member states with similar security standards for determining distance for prohibiting public gatherings. Moreover, we would like to indicate that the additional security concern is the fact that above mentioned buildings (the President,

the Government, the Parliament, and the Constitutional Court) do not have security fences, and they are situated in the city center where the distance between these institutions, streets and surrounding buildings is less than 20 meters. The holding of public assemblies in this area would deprive the freedom of movement of citizens. Therefore this was an additional reason for adopting this legal provision.

Provisions of the Law on Amendments to the Law on Public Assemblies do not prescribe placement of additional fences in order to hold public assemblies. We would like to emphasize that on the basis of Police Directorate assessment in exceptional circumstances, additional fences could be placed around certain institutions (the President, the Government, the Parliament, the Constitutional Court), since these buildings do not have their own security fence, and exclusively for the reason of security of protected buildings and persons staying in them.

We would like to use this opportunity to refer to the Addendum of Montenegro to the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, regarding his mission to Montenegro in June 2013. As was stated in the Addendum, the allegations obtained by the Special Rapporteur, from the sources without any arguments for such claims, stating that the provision of the Law relating to the need to notify the Police Directorate of organization of public assembly is misused by being interpreted as a request for approval, are incorrect.

In relation to passing acts to temporarily prohibit certain public assemblies (public demonstrations), we would like to emphasize that every request/application is individually considered in a legal and professional manner. In addition to considering compliance with the prescribed legal provisions which define the content of an application for a public assembly, a competent organizational unit invites and interviews (often on several occasions) the applicant for the purpose of complete and objective proceedings. Reasons for prohibiting a public assembly relate in most cases to safety of persons (organizers and persons who intend to participate in the public assembly), safety of traffic, movement and work of other citizens.

Prior to passing an act prohibiting a certain public assembly, the police gathers all the relevant information relating to the public assembly and prepares security assessment on the basis of such information. If the police assesses that there is a real risk or possibility that assembly, in a specific place at a specific time, by certain type of movements (walking along vital town roads,

motorway, regional and local roads, etc.) could endanger lives and health of participants of the public assembly, of other citizens or traffic safety and if it is not possible to reach any kind of a "compromise" with the organizer in terms of alternation of the route, identifying another location for the assembly, etc., the competent organizational unit of the police prohibits such public assembly. Efforts are made in every specific case to approve all applications for organizing public assemblies, even when minimum requirements for such assemblies are met. The public assemblies are temporarily prohibited only in cases when the interest for protection of life and security of citizens are bigger than the interest of holding of assembly in accordance with the International Covenant on Civil and Political Rights.

As regards the concern of Special Rapporteurs that organizers and participants of peaceful assemblies should not be responsible, or held liable, for unlawful conduct of others, the Law prescribes the penalty for non-fulfilment of conditions for organization of assembly stipulated in the Law. The participants are held liable individually only in cases of unlawful conduct and in such cases the sanctions prescribed by other laws are imposed (eg. the Criminal Code, the Law on Offences, the Law on Public Order and Peace).

The Law prescribes that peaceful assembly could not be held if „it incites to commit criminal act“. First of all, this prohibition refers to prevention of criminal acts, as well as to the duty of every citizen, legal entity and competent state authority, and especially to the obligation of relevant authorities for the implementation of law (in this case the police) to prevent any kind of unlawful conduct. In this connection, the emphasis is put on the prevention of criminal offences.

In order to further improve legislation in this area, the Working Group for drafting new Law on Public Assemblies has been established, which includes one representative of civil society (Non-Governmental organization that has initiated the issue of constitutionality of the Law on Public Assemblies). In addition, the representative of the Delegation of European Union in its capacity as observer, participates in the work of this Group.

The Draft Law has been prepared. Public invitation to all relevant subjects to take part in the procedure of drafting new Law on Public Assemblies was sent on 22 April. The novelty in proposed draft law is that peaceful assemblies may be held at the distance of 10 meters from the building of the Government of Montenegro, as well as at the sidewalks and green areas in front of the buildings of the President, the Parliament and the Constitutional Court. The

proposed Draft Law on Public Assemblies anticipates the scope of the restrictions of public assemblies to the extent necessary for democratic society to protect the public safety, human rights and freedoms and health of other persons.

After internal coordination with relevant subjects, text of the Draft Law will be sent to the European Commission for opinion. According to the Programme of the work of the Government of Montenegro for 2015, the Draft Law is planned to be adopted in the third quarter. We expect that the Draft Law would be in Parliament procedure by the end of this year.

I hope that above provided information answers your queries and I would like to highlight that Montenegro remains open for cooperation with Special Rapporteurs of the United Nations for any possible additional questions.

Please accept, Your Excellencies, the assurances of my highest consideration.

Prof. Dr. Igor Lukšić

Mr. David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mr. Maina Kiai

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