



WESTERN BALKANS ASSEMBLY MONITOR PROJECT



FREEDOM OF ASSEMBLY IN BOSNIA AND HERZEGOVINA



institut alternativa



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EXECUTIVE SUMMARY

The right to freedom of peaceful assembly in Bosnia and Herzegovina (BiH) is a right that is still not being fully exercised. Even though the highest human rights standards apply to the legislation in the country, with the European Convention on Human Rights enshrined in its Constitution (Annex IV of the Dayton Peace Accord), the right is still not fully protected. After the protests that broke out in more than 100 municipalities in the country in 2014, there is a tendency towards more restrictive laws adopted under urgent procedure. The political past and the memories of conflict create an atmosphere of political manipulation, impeding the full exercise of the right.

The fragmented legal regulation of the right to assembly reflects the administrative division of the country. There are 12 laws regulating Freedom of Assembly (FoA) in two entities and one district. Each of these laws is implemented under one of the 12 Ministries of Internal Affairs in charge. There is no controlling or overseeing mechanism that would ensure proper and harmonised implementation of this right. Some of the laws are vague and some provisions are not in line with international standards. Additionally, this division creates space for misinterpretation of the standards concerning this right, as well as poor implementation of existing laws.

The main recommendation for the improvement of the right to freedom of assembly in BiH is to harmonise respective laws and create a unique regulatory body that would enable equal implementation of the right to assembly. These standards should also be harmonised with international standards set out in the European Convention on Human Rights, OSCE/ODIHR and Venice Commission Recommendations, and recommendations provided by the UN Special Rapporteur on the rights to freedom of peaceful assembly. Additionally, the work of the responsible institutions (institution of ombudsman) should be strengthened and staff (police, Ministry of Internal Affairs, and ombudsman) should be trained for improved implementation of these recommendations and regulations.

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 is applied, and how it can be protected. The objective of the project is to design and pilot the 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), Institute Alternative (MNE), and YUCOM - Lawyers’ Committee for Human Rights (SRB), under the overall coordination of ECNL.

For the purpose of this project and research, 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.”*¹ International legal instruments² recognise that only peaceful assemblies are protected and, in this respect, *“an assembly should be deemed peaceful if its organisers 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.”*³ Additionally, it should be noted that *“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”*.⁴ All such types of peaceful assembly were, therefore, targeted for the purpose of 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 national legislation on public assemblies and the exercise of this right. Its main objectives were to assess the level of compliance of 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 legislation and exercise of the right in the country. As a final result, the studies provide a set of recommendations for 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 targeted countries is based on the OSCE/ODIHR & Venice Commission Guidelines on Freedom of Peaceful Assembly, the UN Human Rights Council Resolution 25/38⁵, as well as the UN SR Joint report on

¹OSCE/ODIHR & Venice Commission, Guidelines on Freedom of Peaceful Assembly Second Edition, 2010, available at <http://www.osce.org/odihr/73405?download=true>

²Article 20(1), Universal Declaration of Human Rights and Article 21, International Covenant on Civil and Political Rights.

³ OSCE/ODIHR & Venice Commission, Guidelines on Freedom of Peaceful Assembly Second Edition, 2010.

⁴ Ibid.

⁵ United Nations (2014). Human Rights Council resolution 25/38. Available at <http://www.ohchr.org/Documents/Issues/Executions/A-HRC-RES-25-38.pdf>

the proper management of assemblies.⁶ Based on these guidelines, the data for 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 implementation of this project. 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 providing a description of 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 analyse 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 Bosnia and Herzegovina - policing and politicisation/public shaming. Finally, we provide a summary of the key findings and offer recommendations for improving the implementation of legislation on freedom of assembly in the country.

⁶ 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 rights to freedom of peaceful assembly and freedom of association in Bosnia and Herzegovina are regulated and guaranteed by the legal framework: the Constitution of Bosnia and Herzegovina⁷ and constitutions of both entities, the Federation of Bosnia and Herzegovina (hereinafter, FBiH) and Republika Srpska (hereinafter, RS),⁸ the Statute of Brčko District⁹, and laws on public assemblies, laws on national minorities, and laws on public peace and order. In addition, international instruments adopted in the legal system of Bosnia and Herzegovina guarantee these rights, in particular: the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocols thereto, which have priority over all other laws, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural rights, which are directly applicable in the territory of Bosnia and Herzegovina¹⁰.

According to the constitutional framework in Bosnia and Herzegovina, all persons within BiH enjoy all rights and freedoms guaranteed by the Constitution of Bosnia and Herzegovina, Federal Constitution, Constitution of RS, the Statute of Brčko District, and international agreements in force in Bosnia and Herzegovina, without distinction of any kind, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. In addition, Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights standards and fundamental freedoms.¹¹

Federal Constitution stipulates that the FBiH will ensure the application of the highest level of internationally recognised rights and freedoms enshrined in the international instruments listed in the Annex of the Constitution of FBiH¹², which includes, among others, the freedom of assembly. These international instruments, i.e. agreements, form a part of the federal legislation and are directly applicable in the Federation.¹³ In case of inconsistencies between international agreements in force in BiH and FBiH and its own legislation, international agreements prevail.¹⁴ The Constitution of RS stipulates that citizens have the right to peaceful assembly and public protest. The law may restrict freedom of assembly only in order to protect the safety of people and property. In case of inconsistencies between the provisions on rights and freedoms enshrined in the Constitutions of RS and on the State level, those provisions that are most favourable to the individual will apply.¹⁵ The Constitution of RS is directly referring to the exercise of the right

⁷ Article II/3e of the Constitution of BiH, available at http://www.mpr.gov.ba/biblioteka/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf

⁸ Articles II and VII, and Annex of the Constitution of FBiH, available at http://www.ustavnisudfbih.ba/bs/dokumenti/ustav_precisceni_tekst.pdf; Article 30, Section II of the Constitution of Republika Srpska, available at (<http://ndcsarajevo.org/Dokumenti/Ustav%20Republike%20Srpske.pdf>)

⁹ Article 1(4), Article 13, and Article 14 of the Statute of Brčko District of Bosnia and Herzegovina, available at (<http://skupstinabd.ba/images/dokumenti/hr/statut-brcko-distrikta.pdf>)

¹⁰ Article II/2 and Annex I of the Constitution of BiH, available at http://www.mpr.gov.ba/biblioteka/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf

¹¹ Article II/1 and ((MISSING TEXT)) of the Constitution of BiH, available at http://www.mpr.gov.ba/biblioteka/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf

¹² Article II/2 of the Constitution of FBiH.

¹³ The European Convention on Human Rights and the Additional Protocols thereto, as well as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, listed in the Annex to the Federal Constitution, represent the instruments for the protection of human rights, and they have the same legal force as constitutional provisions.

¹⁴ Article VII/3 of the Constitution of FBiH.

¹⁵ Article 49 of the RS Constitution, available at <http://skupstinabd.ba/images/dokumenti/hr/ustav-republike-srpske.pdf>

to peaceful assembly, protest and freedom of assembly in accordance with the European Convention on Human Rights.¹⁶ The Statute of Brčko District (Article 14) stipulates that all persons have the right to freedom of peaceful assembly.

According to the Laws on Protection of National Minorities (at the BiH and FBiH level), persons belonging to national minorities have the right to freedom of assembly in order to express their cultural, religious, educational, social, economic and political freedoms, rights, interests, needs and identity.¹⁷

For the needs of this research, we will focus on the laws on public assemblies, touching upon laws on public peace and order, and laws regulating the work of the police.

LAWS ON PUBLIC ASSEMBLIES IN BOSNIA AND HERZEGOVINA

While the legislation on freedom of assembly in the FBiH is regulated at the cantonal level, in RS it is being adopted at the entity level. Considering that there are 10 cantons in FBiH, this arrangement results in having 12 laws regulating public assemblies in Bosnia and Herzegovina, including District Brčko. Subsequently, there are additional 12 laws regulating public peace and order in the country.

<i>Entity/District</i>	<i>Canton</i>	<i>Law on Pubic Assembly</i>	<i>Law on Public Peace and Order</i>
Federation BiH	Una-Sana Canton	2010	2010
	Posavina Canton	New law in procedure	-
	Tuzla Canton	2008, Amendments 2015	2001, Amendments 2007
	Zenica-Doboj Canton	New law in urgent procedure	2016 New law in procedure
	Bosnian-Podrinje Canton	s/a ¹⁸	-
	Central Bosnia Canton	2000	-
	Herzegovina-Neretva Canton	-	2005
	West Herzegovina Canton	2015	2009
	Canton 10 (Herzeg-Bosnian County)	2014	2007
	Sarajevo Canton	2009, Amendments 2011	2007

¹⁶ Ibid.

¹⁷ Article 5 of the Law on Rights of National Minorities BiH, available at <http://bhric.ba/dokumenti/BHS%202%20Zakon%20o%20manjinama.pdf>), and Article 5 of the Law on Protection of Persons Belonging to National Minorities in FBiH, available at http://www.sogfbih.ba/uploaded/pravni_okvir/Relevantni%20zakoni%20za%20JLS/Zakon%20o%20za%20C5%A1titi%20prava%20pripadnika%20nacionalnih.pdf, and Article 4 of the Law on Protection of Persons Belonging to National Minorities in Republika Srpska (RS), available at <http://www.snm.rs.ba/297/snm/Zakon/o/za%20C5%A1titi/prava/pripadnika/nacionalnih/manjina/RS>

¹⁸ Available at <http://www.bpkg.gov.ba/zakoni/Zakona%20o%20javnom%20okupljanju.pdf>

Republika Srpska	-	2008	2015
Brčko District	-	2012 ¹⁹	2009

GENERAL PROVISIONS

All aforementioned laws on public assemblies stipulate that public gathering of citizens is any organised gathering of citizens held in a place designated for that purpose (public meeting), and that these are held in order to publicly express political, social, and other beliefs and interests. The right to peaceful assembly, both in FBiH, District Brčko and RS, can be restricted in order to protect the constitutional order, public health, as well as the freedom and rights of others²⁰, including “public morality”²¹ in RS.

APPROPRIATE SPACE FOR PUBLIC ASSEMBLIES

Consequently, the space for public assemblies can be restricted according to the abovementioned provisions set in Article 3 of the laws in question (Article 4 for Una-Sana Canton).

When it comes to the designated space for the assembly, the most significant discrepancies occur in the Law on Public Assemblies of Una-Sana Canton, Article 10(f)²², Law on Public Assemblies of RS, Article 12(đ)²³, Law on Public Assemblies of the Brčko District, Article 14(f)²⁴, and the Law on Amendments to the Law on Public Assembly of the Tuzla Canton adopted February 2015. These provisions prescribe that the assemblies cannot be held “near facilities that require special security, at a distance judged by the police authority responsible for guarding that facility.”²⁵

The law in RS stipulates that further restrictions concerning the place of the assemblies are set out in the Act at a city level.²⁶

The conditions for restricting the space of assemblies are additionally provided in the law of Canton 10 (Herzeg-Bosnian County). Article 3(3) of this law prescribes that “the local government bodies may specify one location or space in which public assemblies can be held without [previously] notifying the competent authority.”²⁷

The draft laws for the Herzegovina-Neretva Canton and Central Bosnia Canton contain these provisions about the restriction of space of public assemblies. Further on, a decision to restrict the space for assemblies has been brought forth in the city of Mostar, but is not accessible to the public. With this decision, apparently, the city of Mostar limits public assemblies in form of protests to the University Campus which is located at

¹⁹ Available at http://policijabdbih.gov.ba/images/Naslovna/593.70. Zakon_o_javnom_okupljanju_B.pdf

²⁰ Article 3 of the laws on public assemblies of Sarajevo Canton, Posavina Canton, Canton 10, Tuzla Canton, and RS; Article 4 for Una Sana Canton.

²¹ Law on Public Assemblies of RS, Article 3.1; (Official Gazette) Official Gazette RS no. 118/08; available at <http://pravnik.ba/wp-content/uploads/2015/03/ZAKON-O-JAVNOM-OKUPLJANJU-RS.pdf>

²² Law on Public Assemblies of Una-Sana Canton, Article 10(f) 343.

²³ Law on Public Assemblies of the RS, Article 12; Official Gazette of RS no. 118/08; page 3(đ)

²⁴ Law on Public Assemblies of the Brčko District, Article 14 f.

²⁵ Official Gazette of the Tuzla Canton, Number 11, page 1290; Published on: October 7th 2015.

²⁶ Law on Public Assemblies of the RS, Article 12; Official Gazette of RS no. 118/08, page 3; available at <http://pravnik.ba/wp-content/uploads/2015/03/ZAKON-O-JAVNOM-OKUPLJANJU-RS.pdf>

²⁷ Law on Public Assemblies of Canton 10, Article 3(3)

the city's periphery (in a place of former detention camp), denying the people the right to engage in a communication with their potential target groups.²⁸

West Herzegovina Canton and the Brčko District restrict the space of the assembly, saying that assemblies should not be held "on public roads in a way that disturbs regular flow of traffic."²⁹ Sarajevo Canton, Canton 10, and Tuzla Canton³⁰ set that cantonal councils will further restrict spaces for assemblies without a registered organiser.

Tuzla Canton provisions are the most detailed, restricting the time of the assemblies as well, stipulating that assemblies in this Canton can only take place from 8am to 10pm.³¹

These restrictions of space/location of the assemblies are in conflict with *international standards and the Constitution*, having in mind the recommendations regarding the "sight and sound" and the "time, place and manner"³² of the assembly, set in European Charter on Human Rights, enshrined in the Constitution of BiH, and elaborated in the OSCE/ODIHR Recommendations for Peaceful Assembly and the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. The restrictions of time and place are legitimate only if they are in accordance with Article 11(2) of the ECHR.³³ The Venice Commission explicitly stipulates that the burden of proof for restrictions on time and place for holding a particular assembly lies on the state (responsible bodies), and that restrictions need to be proportional to the situation. General restrictions, such as prohibiting specific locations, as a rule, do not allow the application of the principle of proportionality which requires that, in the course of restriction of rights, the competent authorities apply the least restrictive measure to achieve legitimate objectives.

Additionally, prohibition of places of assemblies simply on the basis of potential traffic disruptions, as prescribed in West Herzegovina Canton and the Brčko District laws, are not in line with the proportionality principle. According to the Venice Commission, "*assemblies are an equally legitimate use of public space as commercial activity or the movement of vehicles and pedestrian traffic.*"³⁴

OTHER RESTRICTIONS

Restrictions of freedom of speech in the laws in question are set according to the international recommendations, providing that "[f]reedom of speech and expression during the public assembly is limited by any form of agitation and incitement to armed conflict or use of violence, to national, racial, religious or other hatred or intolerance."³⁵

²⁸ Interview no. 5, journalist from Mostar, May 2016.

²⁹ Law on Public Assemblies of West Herzegovina Canton, Article 14(e), and Law on Public Assemblies of Brčko District, Article 14(c)

³⁰ Laws on Public Assemblies of Canton 10, Article 14, Sarajevo Canton, Article 14, Tuzla Canton, Article 16.

³¹ Ibid.

³² "Time, place and manner" restrictions refer to prior restrictions regarding when, where, and how an assembly may be conducted. Such restrictions should never be used to undermine the message or expressive value of an assembly, or to dissuade the exercise of the right to freedom of assembly. See OSCE/ODIHR Recommendations 3.4 and 3.5, 2010, page 17.

³³ Article 11(2) 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*".

³⁴ See A/HRC/20/27, para. 41, and ODIHR/OSCE *Guidelines*, para. 20. European Court of Human Rights, *Kuznetsov v. Russia*, application No. 10877/04, 23 October 2008, para. 44, and Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, para. 197.

³⁵ Law on Public Assemblies of Sarajevo Canton. Article 5(2)

Most laws prescribe that people or institutions who are banned by court from performing publically cannot attend nor organise public assemblies.

Article 6 of the laws on public assemblies in Cantons Sarajevo, Podrinje, 10, and Tuzla prescribe that the organiser should be held accountable for breaches of these limitations.³⁶

PROHIBITIONS

All of the laws in question have conditions according to which the assembly can be prohibited. FBiH laws mostly prescribe that assemblies will be prohibited or stopped if:

- it is violently directed against constitutional order;
- the assembly is focused on criminal acts or it incites crimes;
- it has not been timely and properly reported, when registration is necessary;
- it has been reported in areas where, according to these laws, assemblies cannot be held;
- the assembly calls for or incites an armed conflict or use of violence, calls for violation of rights and freedoms of others, or spreads national, racial, religious or other hatred;
- there is a realistic threat to security of other people or property on a larger scale;
- the organiser has not undertaken additional measures requested by the supervising authority;
- it is a necessary prevention of risks to the human health;
- it is organised by the association which has a court prohibition to function, or stewards cannot maintain order.³⁷

As mentioned above, restrictions on time and place should adhere to the international standards set through the Venice Guidelines on Freedom of Peaceful Assemblies. Further on, *the stewards* at the assemblies should not be in charge of the peace and order. According to the Venice Commission, stewards should not be expected to conduct the job of law-enforcement officials.³⁸ Further on, paragraph 5.3 of the OSCE/ODIHR Recommendations states that the work of the police would be guided by human rights principles and that “Law-enforcement officials must also protect participants of a peaceful assembly from any person or group (including agents provocateurs and counter-demonstrators) that attempts to disrupt or inhibit the assembly in any way.”

The Law of RS is narrower; prescribing that the assemblies will be prohibited if:

- they are violently directed against constitutional order;
- they are not timely and properly reported;
- they are reported in areas where assemblies cannot be held;
- the assembly calls or incites an armed conflict or use of violence, calls for violation of rights and freedoms of others, or spreads national, racial, religious or other hatred;
- if there is a realistic threat to security of other people or property on a larger scale;

³⁶ Law on Public Assemblies of Sarajevo Canton, Posavina Canton, Canton 10 and Tuzla Canton; Article 6.

³⁷ Law on Public Assemblies of Sarajevo Canton, Article 16 and 23; Law on Public Assemblies of Una-Sana Canton, Article 11 and 16; Law on Public Assemblies of Tuzla Canton, Article 17 and 26; Law on Public Assemblies of Bosnian-Podrinje Canton, Article 7; Law on Public Assemblies of Central Bosnia Canton, Articles 5,6,7 and 16; Law on Public Assemblies of West Herzegovina Canton, 21; Law on Public Assemblies of Posavina Canton, Article 23; Law on Public Assemblies of Canton 10, Article 25.

³⁸ ODIHR/OSCE *Guidelines*, para. 5.8, page 20.

- it is a necessary prevention of risks to human health.³⁹

Brčko District Public Assembly Law prescribes the same situations under which gathering will be prohibited as it is prescribed in The Law of RS.⁴⁰

Aforementioned standards regarding the place of the assembly, the role of stewards, and the role of the police during the assemblies should be applied in these laws as well. Additionally, prohibitions in RS and Brčko District leave space for interpretation that all assemblies in these areas must be reported to the police, meaning that the law does not recognise the institution of spontaneous assemblies, recognised in the international standards. All of the international documents recognise spontaneous assemblies, and the Venice Commission states: *“Indeed, in an open society, many types of assembly do not warrant any form of official regulation.”*⁴¹ The recommendation further elaborates that a notification (not a request) is only necessary when security measures are needed for the right to peaceful assembly to be accomplished. When notification is needed, the Venice Commission recommends that space for exceptions should be stated in the law.⁴² In this sense, the assembly cannot be stopped or prohibited under the explanation that the request was not submitted or approved. This principle should be enshrined in all laws in review.

Laws in Posavina Canton, Canton 10, Una-Sana Canton, Tuzla Canton, and Bosnian-Podrinje Canton do not recognise the institution of appeal to the aforementioned decisions. This is in collision with international standards enshrined in Article 11 and Article 47 of the ECHR, prescribing the right to effective remedy and fair trial. In this context, according to the OSCE/ODIHR, *“the right to an effective remedy entails the right to appeal the substance of any restrictions or prohibitions on an assembly.”*⁴³

LIABILITY

Breaches of the laws on public assemblies in Bosnia and Herzegovina are considered a burden of the organiser. All of the laws prescribe financial fines and other penalties under the respective laws on public order against the participants and organisers.

However, such obligations of the organisers to protect the citizens' rights and public order do not correspond with international standards. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association states: *“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”*.⁴⁴

³⁹ Law on Public Assemblies of RS; Article 13.

⁴⁰ Brčko District PA Law Article 15.

⁴¹ OSCE/ODIHR Venice Commission Recommendations 2010, recommendation 4.1, page 17/18.

⁴² Ibid. 4.2, page 18.

⁴³ OSCE/ODIHR Venice Commission Recommendations 2010, recommendation 4.6, page 19.

⁴⁴ United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. (2012). Best practices related to the rights to freedom of peaceful assembly and of association, para. 31. A/HRC/20/27. See more in the OSCE/ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly Second Edition 2010; recommendation 5.7.

FINES

According to the public assembly law of Central Bosnia Canton, two types of penalty are prescribed, financial and prison sentence. While Article 20⁴⁵ defines 11 situations in which the financial fine will be prescribed, Article 21⁴⁶ states five situations under which higher financial fine will be prescribed. It is interesting to mention how four out of five situations in Article 21 are repeated from article 20 but it is not clearly defined what makes a situation fall into which range of financial fines. This is the only law on a cantonal level that prescribes a prison sentence along with financial fines. All other eight existing laws on public assembly on a cantonal level are prescribing only financial fines for participants and organisers.⁴⁷ The Law on Public Assembly of Brčko District and the Law of RS prescribe the same financial fines and divide them into four categories: for legal entities, for individuals, for organisers, and for assembly monitors.⁴⁸

Based on the application for public assembly, respective police station will make an assessment regarding the safety of public gathering. If there are indications that additional measures are necessary, the police will give an order to organisers to ensure those additional measures.⁴⁹

TERMINATION OF AN ASSEMBLY

When it comes to the *termination of peaceful assemblies*, laws prescribe that the institution in charge (the police, in most cases) will notify the gathered participants that the assembly is terminated. If the participants do not abide by this decision, the laws prescribe that “the police officers have a duty to undertake all required and necessary measures to disperse the participants of a peaceful assembly.”⁵⁰

Laws of the Bosnian-Podrinje Canton, Posavina Canton, and Central Bosnia Canton⁵¹ stipulate that if the assembly is not registered or is being held against the registration the police authority can terminate public gathering by informing the organisers and asking the present to leave. If participants of public gathering disobey this order, the police authority is obliged to use the necessary measures to disperse a public gathering. However, it is not clearly defined what those measures are.

As UN Special Rapporteur for Freedom of Assembly emphasises, the assembly cannot be unlawful only because the organisers fail to notify authorities, and this argument should, consequently, not be used as a basis for dispersing the assembly. Additionally, failure to properly notify does not justify criminal or administrative sanctions resulting in fines or imprisonment of organisers, community, or political leaders (see A/HRC/20/27, para. 29). This equally applies in the case of spontaneous assemblies, where prior notice is impracticable or where no identifiable organiser exists.⁵²

⁴⁵ Law on Public Assemblies of Central Bosnia Canton; Article 20.

⁴⁶ Law on Public Assemblies of Central Bosnia Canton, article 21.

⁴⁷ Law on Public Assemblies of Bosnian-Podrinje Canton, Article 16 – 17; Law on Public Assemblies of Tuzla Canton, Article 38 – 41; Law on Public Assemblies of Una – Sana Canton, Article 27 – 30; Law on Public Assemblies of Sarajevo Canton, 35 – 38; Law on Public Assemblies of Canton 10, Article 27 – 30; Law on Public Assemblies of Posavina Canton PA Law Article.

⁴⁸ Law on Public Assemblies of RS, Article 31 – 35; Law on Public Assemblies of Brčko District, Article 32 – 35.

⁴⁹ Law on Public Assemblies of Sarajevo Canton , Article 22.

⁵⁰ Laws on Public assemblies of RS Article 22; West Herzegovina Canton, Article 22; Posavina Canton, Article 25; Canton 10, Article 16; Sarajevo Canton, Article 24; Una-Sana Canton, Article 17; Tuzla Canton, Article 27; Central Bosnia, Article 17. Law on Public Assemblies of Brčko District, Article 23.

⁵¹ Law on Public Assemblies of Central Bosnia Canton, Article 17; Law on Public Assemblies of Bosnian-Podrinje Canton, Article 13; Law on Public Assemblies of Posavina Canton, Article 3.

⁵² European Court of Human Rights, *Bukta v. Hungary*, application No. 25691/04, 17 July 2007.

LAWS ON POLICE OFFICERS

These laws were reviewed in order to assess the necessary measures and proportional action for termination of an assembly. The laws regulate the basis for police work, organisation of the police, police authorities, as well as the rights and obligations of police officers. The laws regulate conditions for the use of force by the police officer, as well as the conditions for the use of weapons. A police officer may use force only when necessary/required, and only to the extent necessary to achieve a legitimate objective. Instruments of restraint, such as physical force including martial arts, baton, handcuffs, devices for emergency holding of people or vehicles, chemicals, firearms, police dogs, water cannons, special vehicles, special types of weapons and explosive devices may be used when necessary for the protection of human life, for hindering attacks, overcoming resistance, and to prevent escape. The Law on Police Officials of Zenica-Doboj Canton and RS allow the use of electrical devices. Before using any means of force, the police officer will issue a warning, unless doing so would jeopardise the safety of the officer or another person, or would be clearly inappropriate or pointless in the circumstances. The Minister makes more detailed regulations on the use of force per the proposal of the head of police forces.⁵³

The Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of Council of Europe underline in their report from 2015 that any use of weapon in peaceful assembly should be proportionate to the needs, bearing in mind that there are certain weapons (such as tear gas) that can inflict serious injuries to people.⁵⁴ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) elaborate in their CPT standards: *“The CPT considers that the use of electric discharge weapons should be subject to the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution. These principles entail, inter alia, that public officials to whom such weapons are issued must receive adequate training in their use. As regards more specifically EDW capable of discharging projectiles, the criteria governing their use should be directly inspired by those applicable to firearms.”*⁵⁵

INSTITUTIONS

According to the public assembly laws in BiH, Ministries of Internal Affairs are in charge of reviewing the registrations of assemblies, while the police is obliged to review the security situation, decide upon and notify the organisers about the necessary security procedures, and, if necessary, terminate assemblies. The police is in charge of public peace and order during the assemblies at all administrative units in BiH.

53 Articles 27 of the Law on Police Officers FBiH; Law on Police Officers of Sarajevo Canton, Una-Sana Canton, Tuzla Canton, Zenica-Doboj Canton, Central Bosnia Canton, West Herzegovina Canton; Article 33 of the Law on Police Officers of Brčko District; Article 29 of the Law on Police Officers of RS.

54 Council of Europe, Committee on Legal Affairs and Human Rights: „Urgent need to prevent human rights violations during peaceful Protests“, 2015; Para 6.4, page 16, available at <http://website-pace.net/documents/19838/2192213/20160307-ProtestViolationsHR-EN.pdf/9681e75d-725b-440f-b3a8-faf2a36884e4>

55 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): CPT standards. “Substantive” sections of CPT’s General Reports; CPT/Inf/E (2002) 1 - Rev. 2015; <http://www.cpt.coe.int/en/documents/eng-standards.pdf>

In the cantons of Central Bosnia and West Herzegovina, the Ministry of Health is issuing the recommendations for bans of assemblies that represent a threat to the health of people.⁵⁶

For RS (Article 3) and Cantons 10 (Article 15(g) and 14) and West Herzegovina (Article 3), municipalities/city councils determine the area where assemblies can take place within the respective municipality/city.

The Institution of Ombudsman (three ombudspersons in case of BiH) is an independent institution established to promote good governance and the rule of law, protection of the rights and freedoms of natural and legal persons, as guaranteed in particular by the Constitution of Bosnia and Herzegovina and international agreements. The institution has the authority to oversee the activities of the institutions of Bosnia and Herzegovina, its entities and the Brčko District.⁵⁷ The Ombudsperson can undertake activities against violations of constitutional and legal rights of citizens in various areas, including police abuse of authority and violation of police procedures.⁵⁸ In 2015, the report of this institution included the freedom of assembly for the first time, but issued no recommendations.⁵⁹ Previously, the right to assembly was touched upon through discrimination against LGBT persons.⁶⁰

⁵⁶ The Law on Public Assemblies of Central Bosnia Canton, Article 16; the Law on Public Assemblies of West Herzegovina Canton, Article 15.

⁵⁷ The Law on Ombudsman for Human Rights in Bosnia and Herzegovina; no. 32/00, 35/04 & 32/06; Article 1.

⁵⁸ Ibid. Articles 2-4.

⁵⁹ Annual report on the results of activity of the institution of Ombudsman for Human Rights in Bosnia and Herzegovina in 2015; page 28.

⁶⁰ Annual Report on The Effects of Discrimination in Bosnia and Herzegovina for 2014; page 12
[http://www.ombudsmen.gov.ba/documents/obudsmen_doc2015052909224950bos.pdf]

MAIN FINDINGS, PART I: OVERVIEW OF ASSEMBLIES AND IDENTIFIED CHALLENGES

In order to assess the implementation of the law, as well as the application of the international standards regarding peaceful assemblies in Bosnia and Herzegovina, we have requested information on the number of organised, registered, and approved assemblies, have monitored assemblies during May/June 2016 in BiH, and conducted interviews with the participants of assemblies and representatives of the government.

We requested information about the number of assemblies organised, approved, and denied during the year 2015 from the Ministry of Internal Affairs of FBiH, Cantonal Ministries of Internal Affairs, and Ministry of Internal Affairs of RS and Brčko District. We received:

- no information from the Ministry of Internal Affairs of RS⁶¹ nor of Brčko District;
- some information about the number of protests announced, approved, and denied from the Cantonal Ministries of Internal Affairs;
- detailed information about the total number of protests organised under the jurisdiction of the Ministry of Internal Affairs of FBiH, including the name of the organisations/institutions organising these assemblies. Out of a total of 32 protests reported to the Federal Ministry of Internal Affairs, 30 were workers protests, while two were war-veterans' protests.

List of organised assemblies received by the cantonal ministries:

Canton	Recorded	Registered	Approved	Denied	Held
Tuzla	183	178	-	-	2.548
Bosnian-Podrinje	1	1	-	-	1
Herzegovina-Neretva	1	1	1	-	1
Canton 10	0	0	-	-	-
Sarajevo	116	116	115	1*	112
Una-Sana	18	18	-	-	18
West Herzegovina	1			1	-
Zenica-Doboj	31	23	15	8*	31
Posavina	0	0	-	-	-

**Numbers deduced from the responses*

From the data received, it is possible to conclude that on the territory of FBiH, throughout 2015, a total number of nine protests⁶² were not approved by the administrative bodies in charge. The reasons why these protests were denied were not provided. Additionally, one protest was denied in West-Herzegovina Canton with an explanation that it was not properly announced.⁶³

⁶¹ The request was sent three times, while the Freedom of Information Act stipulates the obligation to reply within 30 days.

⁶² There were 116 announced protests in Sarajevo Canton, out of which 115 were approved. In Zenica–Doboj Canton, 31 protests were held, out of which 23 were announced but only 15 were approved.

⁶³ The answer provided in the Annex.

Based on the information provided, Tuzla Canton had the highest number of protests in 2015 (2.548).

MAIN CHALLENGES REGARDING FREEDOM OF ASSEMBLY IN BOSNIA AND HERZEGOVINA

The main challenges mapped by the interviewees regarding the protests and the application of the right to assembly relate to procedural aspects. The interviewees point out the questions of vague legal provisions, vague legal processes, information "blackout" about what happens in detention when protesters have been arrested/detained, and a high potential for political manipulation by the executive institutions in general.

- The main challenge emphasised by interviewees regarding legal provisions was their lack of clarity, which allows for different interpretation in practice⁶⁴. In addition, the practice of adopting laws that tend to restrict the freedom of assembly, often under urgent procedures,⁶⁵ is problematic.⁶⁶
- Limited space for assemblies⁶⁷: legal changes mostly refer to decreasing/limiting the number of areas where peaceful assembly is allowed.⁶⁸ In this way, interviewees feel, the assemblies are being deprived of the political message they may bring about.⁶⁹
- Besides the limitations, and attempts of limitations, of places of assembly prescribed by respective laws and regulations, the issue expands to the question of ownership of public space. This understanding of public space tackles two main challenges: public/private ownership,⁷⁰ and the requests for assemblies in accordance with the laws and regulations on the use of public space. The first refers to the fact that certain squares are under private ownership, entailing that the permission for the use of space during the assemblies needs to be obtained from private entrepreneurs (e.g. the square in front of the BBI centre, Sarajevo).⁷¹ The latter refers to the fact that, in some cases, organisations and individuals need to gain the permission for the use of public space for gatherings.
- The issue of registration of the assemblies has been brought up as a challenge due to its long procedures, as well as the fact it requires disclosing the identity of organisers, which can be risky, according to the interviews.⁷²
- Communication with the police: The sole idea that protests need to be announced is limiting the space for reactions to some urgent situation, according to the interviews.⁷³ There are no clear criteria for risk-assessment. The police does not follow-up a registration with a response, and risks are not being communicated with the organisers beforehand, or during the event.⁷⁴ While some interviewees (mostly female) had no problems when communicating with the police, most of them point out that the police officers tend to be haughty, threatening, and even insulting during assemblies.⁷⁵
- Information blackout in regards to detention: the interviewees have pointed out that, in cases when protesters/organisers have been arrested or detained, there is no information provided to the public

⁶⁴ Interview no. 5, journalist, Mostar, May 2016.

⁶⁵ Tuzla Canton 2015, Zenica Dobož Canton drafted a law, put in the urgent procedure on 26th of February 2016.

⁶⁶ Law on Amendments of Tuzla Canton, Draft Laws of Central Bosnia Canton and Posavina Canton

⁶⁷ In Mostar, protests can be held only at the location of a former detention camp, on the periphery of the city; Interview no. 5; journalist, Mostar, May 2016.

⁶⁸ Interviews no. 3, 6, 7, 9, and 15.

⁶⁹ Interview no. 6, activist from the organisation Velika djeca, Tuzla, May 2016.

⁷⁰ Interview no. 2, lawyer at an LGBT rights organisation, May 2016.

⁷¹ Interview no. 11, international human rights lawyer, Sarajevo, April 2016.

⁷² Interview no. 3, independent researcher, Tuzla, May 2016.

⁷³ Interview no. 7, political asylee, May 2016.

⁷⁴ Interview no. 2, lawyer at an LGBT rights organisation, May 2016.

⁷⁵ Interview no. 8, representative of a human rights organisation in Prijedor, May 2016.

or relatives about the details of the 24h-long detention.⁷⁶ An interviewee who was in a 48h-long detention reported severe abuses.⁷⁷

- Information blackout in regard to judiciary procedures: there is no knowledge on how charges have been defined, or on what grounds⁷⁸, and there is no access to reparations in case the organiser suffered damages. Procedures are complicated and there is a lack of access to information under justification related to the Law on protection of private data.⁷⁹
- Political influences: almost all interviewees pointed out political interference with the work of the judiciary and police systems as an important obstacle to implementation of the right to assembly. This is connected to the misuse of positions,⁸⁰ as well as misuse of the message of certain assemblies for political purpose.⁸¹

The legal framework regarding peaceful assembly was rated as somewhat restrictive by most interviewees. The main challenges regarding legal framework are: it is not harmonised;⁸² the law (in RS) is more restrictive;⁸³ access to information about the procedures regarding the assemblies is very poor as “in order to inform yourself you need an entire working day”⁸⁴; there are indications that derogation in application of human rights standards regarding the freedom of assembly will continue in future;⁸⁵ the right to spontaneous assembly has been denied.⁸⁶

In his interview, the representative of the director of the Ministry of Internal Affairs of RS confirms that the assemblies cannot take place nearby kindergartens and schools, due to public safety concerns. He also confirms that, in Banja Luka, peaceful assemblies cannot take place in front of the National Assembly, since “this is not appropriate”. According to him, public assemblies in Banja Luka are held in the Mladen Stojanović Park and the Krajina Square.

ADDITIONAL CHALLENGES REGARDING PARTICIPANTS

Another set of challenges pointed out by the interviewees is “citizen’s fatigue”.⁸⁷ According to them, citizens do not trust the political success of assemblies and doubt its effectiveness as a political tool. They believe that there is a lack of culture of protesting; that people are unaware of their rights and mostly that there is a lot of ambient fear. Additionally, the challenge facing them is to maintain the continuity in situations where protests do not have clear results.

The fear mentioned above is twofold:

- fear from the authorities, mostly reported in relation to Banja Luka. This is due to the fact that people in the administrative bodies have reported threats to their job positions if they do not participate/or

⁷⁶ Interview no. 11, international human rights lawyer, Sarajevo, April 2016.

⁷⁷ Interview no. 7, political asylee, May 2016.

⁷⁸ Orientation interview with an activist, March 2016, and Interview no. 13, independent journalist Sarajevo, April 2016.

⁷⁹ Interview no. 8, representative of a human rights organisation in Prijedor, May 2016.

⁸⁰ “The public space is being treated as a private ownership of state service[s]”; Interview no. 4, independent researcher, Tuzla, May 2016.

⁸¹ February 2014 protests and the media spin related to it; The White Armband Day in 2013, etc.

⁸² Interviews no. 2 and 12.

⁸³ “The law in RS should be more liberal”, Interviews no.2, 4, 7, and 8.

⁸⁴ Interview no. 3, independent researcher, Tuzla, May 2016.

⁸⁵ Interview no. 5, journalist, Mostar, May 2016.

⁸⁶ Interview no. 11, international human rights lawyer, Sarajevo, April 2016.

⁸⁷ Interviews no. 15 and 14.

if seen participating in certain assemblies.⁸⁸ Also, the fear reflects the behaviour of police officers during assemblies, when no security is provided to the participants.

- fear from a new conflict (mostly reported during interviews in Sarajevo).⁸⁹ The fact that the 1992-95 war in Bosnia and Herzegovina officially started with the killing of two women during an anti-war peaceful assembly is strongly embedded in the political memory of the society. Some of the interviewees have said that one of the main challenges is that protests are being closely connected with this conflict.

This fear is in a close connection to the poor or politically coloured media reporting (propaganda). Due to high levels of self-censorship and political influence on the media, the reporting on protests is rarely objective. Instead, the media are used as a tool of intimidation and creation of fear. The most obvious method is recreation of the feeling of conflict in Bosnia and Herzegovina (playing anti-war songs during reportages or showing only violent images from public assemblies), as interviews confirm.⁹⁰

Some interviewees mention the presence of “political spies” during the assemblies, whose role is to disperse the assembly and create animosity among protestors, with an aim to decrease the popularity of protests. Several of them state that the violence in 2014 was staged by the use of such agents.⁹¹

⁸⁸ Demonstrations and counterdemonstrations of political parties in Banja Luka, May 2016 (SNSD and SDS).

⁸⁹ Interview no. 13, independent journalist, Sarajevo.

⁹⁰ Ibid.

⁹¹ Interview no. 7, political asylee, May 2016.

MAIN FINDINGS, PART II: COUNTRY SPECIFIC ISSUES

The country specific issues have been chosen based on the findings from the orientation interview and through follow-up interviews, as issues with the highest number of challenges. The overall impact of these issues on the implementation of the right to peaceful assembly is the highest. During the preparatory phase, it was detected that there are two main specific issues when dealing with the right to peaceful assembly in Bosnia and Herzegovina: the legal and other administrative procedures by the executive branch of government (police and judicial bodies), and the politicisation (in the sense of political parties and ethnic division) of public gatherings by politicians through media and public discourse (public shaming).

POLICING

When asked about the main challenges related to policing, all interviewed participants of the protests pointed out that they did not perceive the police to be securing the assemblies, but rather to “act like stewards.”⁹² Challenges range from: intimidation,⁹³ hostile attitude (negative commenting during the assembly, insulting),⁹⁴ lack of consultation with organisers when assessing security risks, negative reception when submitting complaints,⁹⁵ lack of sense of responsibility,⁹⁶ lack of feeling that they are working in the service of citizens,⁹⁷ erroneous and untimely records of events,⁹⁸ lack of coordination,⁹⁹ lack of competence and disproportionate use of force (brutality),¹⁰⁰ perception that the police are being either uninterested or overprotective.¹⁰¹ The use of force has been pointed out as a challenge in several interviews, and interviewees mostly refer to the disproportionate use of force when dealing with protests in February 2014.

“The police is not securing the protests, but the essence is in breaking [them] down, [in] the diversion”, as the independent researcher from Tuzla points out (May 2016).

Several interviewees agree¹⁰² that one of the main challenges of police presence during peaceful assemblies is their unpredictable response to different situations. This relates to the observation that sometimes events are not secured with enough police officers,¹⁰³ while sometimes there are too many police officers.¹⁰⁴

⁹² Interview no. 9, representative of a civil society organisation from Banja Luka.

⁹³ Interviews no. 5 and 7.

⁹⁴ Interview no. 8, representative of a human rights organisation in Prijedor, May 2016.

⁹⁵ Interview no. 2, legal officer at an LGBT rights organisation.

⁹⁶ Ibid.

⁹⁷ Interview no. 5, journalist, Mostar, May 2016.

⁹⁸ Interview no. 4, activist in Sarajevo and Tuzla, May 2016.

⁹⁹ Ibid.

¹⁰⁰ Interviews no. 6 and 7.

¹⁰¹ Interviews no. 2, 9, and 10.

¹⁰² Interviews no. 11 and 9.

¹⁰³ Assembly observation of the White Armband Day from 31st of May 2016 states that a thousand participants gathered in Prijedor. Eight police officers in uniform and two members of special unit were securing the event. When a local activist speaker took the floor, he heard threats to his life, such as „we [local hooligans] know where you live.“ The police did not react to this, nor did they file a case for an attempt of breaking and entering the organisation's premises after the event ended. Instead, the activists reported that the police officers were complaining about having to work all day because of them. The reaction to the threats came later, after the complaints were filed, while the breaking and entering remains unprosecuted.

¹⁰⁴ The case of the „Walk for human rights“ in Sarajevo when the police outnumbered the participants three to one, as the rainbow flag was present during the march. Interview no. 2; legal officer at a LGBT rights organisation [<http://www.slobodnaevropa.org/a/sarajevo-protestna-setnja-dan-ljudskih-prava/25195731.html>],

COMMUNICATION WITH THE POLICE

Most interviewees state that communication between the police and the organisers exists; one stated that she did not know,¹⁰⁵ while one stated that it did not exist.¹⁰⁶ Participants of the protests (12 out of 16) agreed that communication happens mainly when registering the assembly. While two representatives of Ministries of Internal Affairs in Banja Luka and Sarajevo believe that communication is good,¹⁰⁷ three participants of the protests have stated that it is “passive aggressive”,¹⁰⁸ inciting (aggressive), or limiting in terms of limiting space and the assembly route.¹⁰⁹ This represents an issue when charges against organisers are being filed subsequently or when there is a violent individual at the protests. The LGBT human rights defenders have stated that the communication after registering the event exists, and it focuses on security assessment. However, after the attack against Merlinka festival in 2014,¹¹⁰ the communication revolved around police requirements to the organisers to pay expenses for additional emergency protection.¹¹¹

POLICE RESTRICTION OF ASSEMBLIES

Police restriction of assemblies varies, according to the interviewees. Most interviewees state that the police curtail the application of the right to assembly by limiting the space and the route of the assemblies.¹¹² Other limitations are the fact that the deadlines for registering the assemblies are too stretched out (2-7 days ahead) and they often change,¹¹³ which can result in banning of protests,¹¹⁴ considering that the police has the authority to forbid assemblies that are not reported according to legal deadlines.¹¹⁵ One interviewee stated that the police does not have the capacity or knowledge to control the mob, and that the violence can easily escalate if there are agents provocateurs present at the assemblies.¹¹⁶ Other participants emphasised that the presence of the police can affect the protesters by creating a feeling of threat rather than safety.¹¹⁷

and the case of march for the 8th of March 2012 in Banja Luka, when 50 police officers were securing 11 activists – Interview no. 9; representative of a civil society organisation from Banja Luka, May 2016.

¹⁰⁵ Interview no. 11, international human rights lawyer, Sarajevo, April 2016.

¹⁰⁶ Interview no. 15, unemployed activist from Tuzla, May 2016.

¹⁰⁷ Interviews no. 1 and 16.

¹⁰⁸ Interview no. 9, representative of a civil society organisation from Banja Luka, May 2016.

¹⁰⁹ Interviews no. 5 and 6.

¹¹⁰ Bosnia and Herzegovina “Attack on LGBT Activists”; Human Rights Watch; February 4th 2014 [<https://www.hrw.org/news/2014/02/04/bosnia-and-herzegovina-attack-lgbt-activists>], and “Hate Attack against Queer Festival in Sarajevo Left Three People Injured”; Civil Rights Defenders; February 4th 2014 [<https://www.civilrightsdefenders.org/news/hate-attacks-against-queer-film-festival-in-sarajevo-left-three-persons-injured/>].

¹¹¹ Ambulance cars, private security agencies – Interview no. 2.

¹¹² Interviews no. 15, 10, 8, 7, 6, 5, 4, 3, and 2.

¹¹³ Interviews no. 1 and 7.

¹¹⁴ Interview no. 12, war-veteran from Tuzla, May 2016.

¹¹⁵ See above, legal.

¹¹⁶ Interview no. 11, international human rights lawyer, Sarajevo, April 2016.

¹¹⁷ Interview no. 13, independent journalist, Sarajevo, April 2016.

SECURITY DURING ASSEMBLIES

When it comes to the question whether there is a difference in dealing with different types of assemblies, a Police Commissioner underlines the difference between peaceful and so-called hooligan assemblies.¹¹⁸ However, other interviewees underline that there is a difference in securing and treating religious/ethnic events, such as “Swimming

“I am not sure to what extent the police is familiar with the terms of “public assembly and to what extent do they distinguish it from terrorism. They have the capacity, there are exercises, through which the police is being trained what [to do] in case of violent assemblies. Here with us, everything is under the prefix “violent”, [they act] like peaceful assemblies don’t exist.” Representative of the organisation from Banja Luka in her interview from May 2016

for the Holy Cross” (Plivanje za Krst Časni) and other (civic) gatherings such as The White Ribbon Day. The latter (civic) type receives much less police interest than the former (religious/ethnic), having in mind that police officers also take part in these religious/ethnic gatherings. Additionally, the rules for these two types are not the same, having in mind the decision that the White Ribbon Day could only use limited space¹¹⁹ (decisions for limiting space are most often used under security reasons), while similar limitations were not set for the events such as “Swimming for the Holy Cross”.

The equipment used by the police mentioned in interviews mostly consists of protective fences. The interviewees also mentioned the use of the nightstick¹²⁰ and tear gas.¹²¹ The use of rubber bullets has been reported in Tuzla.¹²² The interviewees disagree on the consequences: some believe

*On the question “Did snipers secure workers protests last year”, the police commissioner from Banja Luka said in his interview from May 2016:
“Yes, high points need to be covered [...] This is being speculated about only by those who do not understand the issues of maintaining security.”*

that the use of such equipment is one of the reasons for the low number of (mass) assemblies, while others believe that this has no impact whatsoever. Interviewees indicated that the police could sometimes respond to verbal offences in an inappropriate way, while there were also cases of more positive responses and use of pacifying techniques as response to verbal offenses. Video recording of assemblies has been reported by all of the interviewees. Most see it as problematic and intimidating.

POLICE VIOLENCE

The use of force against protesters has been reported during the protests in February 2014 in Tuzla, Sarajevo,

The most severe case of violence recorded during the research is against a formal organiser of protests in Tuzla. The organiser claims that the police in Tuzla had used violence against him before and during the detention, and that they have threatened to “slaughter” him with a state flag. He was left for 32h in detention with no medical assistance, food, or water. After his release, he claims he was listed as a potential terrorist.

¹¹⁸ Interview no. 1, head of police in Banja Luka, May 2016.

¹¹⁹ Interview no. 8, representative of a human rights organisation in Prijedor, May 2016.

¹²⁰ Interviews no. 3, 5, and 6.

¹²¹ Interviews no. 12 and 14.

¹²² Interviews no. 4, 7, and 12.

and Mostar.¹²³ Violence occurred during the 24/32h-long detentions of protesters. There are medical records of two persons detained during the protests in Sarajevo 2014, showing signs of beating, as well as a photo of an activist detained during the peaceful assembly in Sarajevo 2013 (JMBG protests).¹²⁴ One of the protesters reported police violence during protests in Tuzla, when the police isolated a minor in a bus and beat him severely, preventing the ambulance to approach the isolated vehicle.¹²⁵ The interviews with activists from Tuzla confirmed use of violence against protesters,¹²⁶ elderly people, chasing of protesters, and demolition of a shopping mall by the police, among others.¹²⁷ The use of violence during the dispersal of the JMBG protests from 2013 is also reported. This was a use of force against peaceful protesters, after the majority of the crowd went home.¹²⁸

A representative of an organisation from Sarajevo said during the interview that about 200 persons stayed during the night. Around 2am, police officers said they should go home, in a rather agitated manner. He was arrested after he stood on the sidewalk, and refused to go. The officers took him to the car, hitting his head on the edge of the car while pushing him inside (causing a small concussion). Later, during the interrogation, they allegedly slapped him several times, for no reason. After he left the detention, he filed an appeal against these police officers. The station found them not guilty and they initiated charges against him for insulting police officers.

PUBLIC SHAMING

One of the main issues in exercising the right to peaceful assembly is the public discourse that stigmatises assemblies and protesters. In this context, public discourse encompasses the media, but also the community life. It stretches from public shaming, detecting the “usual suspects”, to creating an atmosphere of fear, pressure, intimidation, and threats, but also taking over the credit and political message of certain assemblies. The problem of media reporting is portrayed as a form of bias: “Media position themselves according to the message brought forth by certain assemblies, and not to defend the right as such.”¹²⁹ This issue takes another form, having in mind that most of the media in BiH are affiliated with some political party,¹³⁰ and that political parties tend to take over the credit for organising mass protests.¹³¹ Certain political parties tend to use civic uprising to advance their election campaigns, presenting their attendance at the event as a direct link to the organisation of the event.¹³² The role of media and political parties goes as far as stigmatising the protesters and organisers of protests, and creating specific shaming campaigns against engaged civil society

¹²³ Bosnia and Herzegovina: Investigate Police Violence Against Protesters. Human Rights Watch; February 21st 2014 <https://www.hrw.org/news/2014/02/21/bosnia-and-herzegovina-investigate-police-violence-against-protesters>; Interviews no. 18 and 19 – obvious police violence during peaceful protests in Mostar.

¹²⁴ CRD Archive.

¹²⁵ Interview no. 7, political asylum-seeker, May 2016.

¹²⁶ <http://tuzlanski.ba/izvojevo/nusret-hodi-rtva-policijske-brutalnosti-tokom-protesta-pretukli-su-me-i-krvavog-zakljuali-u-autobus/>

¹²⁷ Interviews no. 7, 14, 15 and “Sijah: Keep Parliamentarians as Hostages is not a Sin” Klix.ba; 7th of June 2013; available at <http://www.klix.ba/vijesti/bih/sijah-drzati-parlamentarce-kao-taoce-nije-neki-grijeh/130607130>

¹²⁸ Interview no. 20, representative of CSO from Sarajevo, June 2016.

¹²⁹ Interview no. 8, representative of the Association for Youth in Prijedor, May 2016.

¹³⁰ BH Media Under the Attack from the Government; Al-Jazeera 25th July, 2013; available at <http://balkans.aljazeera.net/vijesti/bh-mediji-na-udaru-bahate-vlasti>; Media In-between the Government and Latent Public, kameleon.ba May 2016, available at <http://radiokameleon.ba/2016/05/mediji-bih-razapeti-izmedu-vlasti-latentne-javnosti-foto/>

¹³¹ February 2014, SBB campaign in Dnevni Avaz, http://www.slobodna-bosna.ba/vijest/23007/radnichki_ili_stranachki_protesti_medju_ogorchenim_radnicima_suljagic_pudaric_ajanovic_video.html

¹³² “Naša stranka” political party publicly claimed that they participated in organising a protest march (White Armbands Day) in Prijedor 2013; Interview no. 8, representative of the Association for Youth in Prijedor, May 2016.

organisations.¹³³ Additionally, politically oriented media create pressures through reporting that evokes conflict and violence.

All of this affects the general perception of assemblies (peaceful and non-peaceful ones) as a threat to peace and stability of the state.¹³⁴ Assemblies become reserved only for political parties and they are mostly viewed in the context of inter-ethnic relations. In this way, protesters suffer from pressure and animosity not only from the institutions and media, but are also being shamed in the society and their private lives.¹³⁵

All of this is used for targeting protesters based on stigma revolving around certain people (investigative journalists, human rights defenders, political activists, and similar). The public handling of assemblies is not set in the frame of freedom of assembly, but of the abuse of the Law on Public Order, leading to charging and sanctioning people participating in peaceful assemblies.¹³⁶ Lawsuits that came about after the protests of February 2014 for breaches of public order show that such a restrictive vision and repressive practice are a significant problem in BiH.¹³⁷ Considering that these protests were the biggest in the last 20 years, the reaction to them and the political manipulation of the media discourse can be observed as the most representative reactions in the whole territory of BiH.

In my case, the trial was a farce. When I asked, "Why didn't you, if you already knew that I am breaking the law, warn me with your presence at the protests? Not once did you approach me, nor did you ask for my ID; therefore - where did you get my name?", and the main witness stated, "I've seen you at the #JMBG protests, I know you're from Prijedor, and that your last name is Hodžić."

Use of social networks to target the organisers and participants in assemblies was reported in Sarajevo and Tuzla, according to the Human Rights Watch. The most illustrative case is that of a 15-year-old, who posted a selfie of himself on Facebook. The police officers tracked his photo, and came to detain him during the night. The boy spent 50 hours in detention without having any contact with his parents. He also reported minor beatings.¹³⁸ Additionally, Civil Rights Defenders archive of cases from the 2014 protests in Sarajevo shows that the police was questioning arrested persons regarding their Facebook activities connected to protests.

¹³³ The case of Prijedor: in 2013 the Mayor and the media in this entity stigmatised the White Ribbon Day, a commemoration of the victims of ethnic cleansing, as a "faggot parade".

¹³⁴ "Who Needs a Civil War in Sarajevo?" Bošnjaci.net; January 2015 <http://www.bosnjaci.net/prilog.php?pid=54769>

¹³⁵ Smear campaigns against protesters: interviews no. 7 and 12.

¹³⁶ Interview no. 12, independent journalist from Sarajevo, April 2016.

¹³⁷ Activist Emir Hodžić was indicted five months after the protests, for breaching public order by participating in a protest. The breach allegedly happened on a day when this activist was out of the country.

¹³⁸ Bosnia and Herzegovina: Investigate Police Violence Against Protesters. Human Rights Watch; February 21st 2014 <https://www.hrw.org/news/2014/02/21/bosnia-and-herzegovina-investigate-police-violence-against-protesters>

RECOMMENDATIONS

When assessing the legal provisions in regards to the assemblies in Bosnia and Herzegovina, the main observation refers to a tendency to derogate the right to freedom of assembly through the adoption of more restrictive laws. These provisions are being proposed on a cantonal (entity or district) level, most often under urgent procedures, in form of drafts of new laws (draft of law in Zenica-Doboj Canton) or amendments to laws (Tuzla Canton). However, restrictions in regards to space/time of the assemblies are most often prescribed on municipal/city level, through different acts or decisions (Banja Luka, Mostar, etc.). In case of Mostar, where assemblies are allowed outside of the city, as concluded from the interviews, this act is not accessible to public. The limitations extend to the prohibition of spontaneous assemblies (West Herzegovina, Tuzla), to high liability of organisers and stewards, and disproportional fines.

The institutions crucial for the implementation of this right detected through this research are: Ministry of Internal Affairs/police, cantonal/entity/district governments, city and/or municipal governments, and the institution of ombudsman.

When it comes to the implementation of the freedom of assembly standards, several challenges have been detected through interviews, monitoring of assemblies, and media information about the assemblies. They range from the police behaviour during the assemblies, to political influence on the public discourse about the assemblies. In regards to policing, the main challenges are: unpredictable reactions/security provided during the assemblies, disproportionate communication, lack of proportionate actions when securing the assemblies, lack of knowledge about the human rights approach to securing the assemblies, late charges and lack of evidence for them, violence during detention of the protesters, lack of information about the internal procedures regulating the work of the police, and others. The following recommendations have been set out in order to address basic issues and improve the implementation of the right to freedom of assembly. The recommendations are based on the international standards, namely Article 11 of the ECHR, the OSCE/ODIHR and Venice Commission Recommendations, and the recommendations of the UN Special Rapporteur on the Freedom of Assembly.

RECOMMENDATIONS REGARDING LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

- The comprehensive legal framework regulating the freedom of assembly should be adopted on a state level (or, at least, at the entity/district levels). This law should set standards complementary to the Constitution and international human rights standards, as well as delegate authority to the respective entities/district and/or cantons, cities, and municipalities. Alternatively, the existing laws should be harmonised and amended to comply with the international standards and BiH constitution.
- Adoption of laws regarding this right should not be considered in urgent procedure without a relevant explanation and public consultations.
- The state and delegated authorities should not further restrict the right but enable it; the respective laws should include the principles of legality, proportionality, and necessity, and explicitly state that any possible inconsistencies between laws or ambiguous provisions shall be interpreted in favour of the right to exercise freedom of assembly.
- Spontaneous assemblies should be recognised in all applicable laws regarding freedom of assembly in BiH. The treatment of spontaneous assemblies should be defined in accordance with the provided standards.

- The space and time of assemblies should not be restricted in a way that does not comply with “time, place, and manner” recommendations.
- The liability of the organisers and participants, as well as the role of stewards, should be reassessed and relaxed in accordance to the international standards. Stewards should undergo trainings that would enable them to use tools necessary for their roles.
- Respective laws and regulations guiding the freedom of assembly should be accessible to public.

RECOMMENDATIONS REGARDING INSTITUTIONS

- The role of the Institution of Ombudsman should be enhanced and strengthened in regards to the FoA; the ombudspersons should be empowered to monitor public assemblies and mediate between the law enforcement authorities and the assembly organisers. The Institution should be included in the development of the Standard Operating Protocols for policing the assemblies.
- Internal control mechanisms of the police should be strengthened. External, objective monitoring body should be established.
- The police at all levels should undergo trainings for the use of human rights methods for pacifying assemblies. The use of firearms to secure peaceful assemblies should at all times be justified in line with the international standards, and communicated with the protesters and public.
- Communication with the police regarding the risk-management during the assemblies should be enhanced.
- Security procedures implemented by the police should always be implemented under the principles of proportionality, without exceptions.
- The Ministry of Internal Affairs should increase the access to information about police procedures when dealing with public assemblies.

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 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 organisations were consulted in order to analyse the legal framework for freedom of assembly and its compliance with international standards. This data was additionally used to assess the overall implementation of 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 the assemblies organised 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 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 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 organisers, leaders, and participants of assemblies, members of civil society organisations that monitor assemblies, media, representatives of municipalities, law enforcement agencies, and persons that have been administratively prosecuted (in misdemeanour 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 organisers and participants face when exercising their right to freedom of assembly.

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

DESKTOP RESEARCH

Desktop research was organised 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 in regards to their similarities and differences, as well as a comparison with the international standards. Analysis of reports from relevant state authorities, national and international organisations, and the EU was also carried out. In the assessment of the national legislation and court practice, where suitable, relevant international jurisprudence was taken into account as well.

In the second stage of desktop research, we provided an overview of the assemblies organised in the past two years (2014 and 2015). The aim of this overview was to identify the most common types of assemblies and their general characteristics in terms of organisers, size, location, any good practices or violations that may have occurred, etc. For this purpose, we conducted a content analysis of media and journalist reports, official statements from participants, and rulings by relevant authorities. Assemblies included in the overview and analysed further were selected on the basis of three main criteria. The first criteria was the 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 relevance to the protests, as well as contributes to the public discourse. The second criteria were the expressed grievances of the organisers and participants in assemblies, either publicly, or to institutions and organisations that work on the protection of human rights. The third criteria was the capacity for mobilisation. 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 organisers, a questionnaire was drafted. The questionnaire was used for conducting formal face-to-face interviews, and it consisted of 36 mostly open-ended questions divided into four 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 the judiciary procedures and public discourse regarding assemblies, as a second specific issue relevant for Bosnia and Herzegovina. The questions regarding the judiciary were mostly about the conduct of officials and the use of evidence. The questions regarding public discourse were focused on the way people perceive assemblies, as well as the ways media portrays them, and the manner in which the media reporting influences the public perception of assemblies. 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 50-60 minutes on average, and were conducted

by three researchers. Interviews were recorded, transcribed, and coded, while the analysed data was used to draft findings and develop recommendations.

A total of twenty-one interviews were conducted. Ten interviewees were women and 11 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, as well as the geographic location of the interviewee. The geographic distribution was conducted, having in mind complicated state structure and varieties of the problems faced by the protesters. More specifically, we interviewed: seven protest organisers from civil society, including two that have been criminally or otherwise charged in cases related to protests and spent time in pre-trial detention; two legal experts - one expert in international human rights law, and one legal expert from civil society organisations that work on protection of human rights; three representatives of Ministries of Internal Affairs/police; an independent researcher who monitored assemblies; three media representatives: one independent journalists, and one journalists and an editor of a media outlet that regularly reports on protests; one school teacher representative of unions, and five regular participants in protests.

OBSERVATIONS

In order to gain first-hand data on organising, conducting, possible restrictions, and challenges related to public assemblies, structured observations of assemblies were conducted. Two researchers conducted a total of two observations in the period of April – May 2016. The observations were conducted in the cities of Banja Luka and Prijedor, and involved observing protests of political opposition in RS and the counter-protests by the ruling party, as well as protest march in commemoration of 1992-95 war crimes committed in Prijedor. The 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 organiser, participants, purpose, location/route, visual and audio displays, as well as the attitude towards 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 these actions.

VALIDATION OF FINDINGS

Validation of findings was organised after the data were gathered and analysed, and preliminary findings drafted. 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 two participants in the research, including a protest organiser, and a legal expert from civil society. Additionally, the findings of the report were also communicated with one legal expert with experience in the field, and one researcher from IGO, who were not interviewed during the research.