

**FREEDOM OF
ASSEMBLY IN
A MAZE
OF LAWS:
AN ANALYSIS
OF BIH
FREEDOM OF
ASSEMBLY
LEGISLATION**

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1 INTRODUCTION

The right to freedom of peaceful assembly is one of the most important means of citizen participation in the political processes of democratic societies. Free exercise of this right also helps various segments of society to articulate demands and complaints about the actions of governing structures, making it crucial especially for those categories of the population whose voice is not heard in the election of legislative or executive bodies and for those citizens who do not have the opportunity to express their views through the media.¹

Freedom of peaceful assembly is the subject of protection in numerous international and regional human rights documents, of which Bosnia and Herzegovina (hereinafter: BiH) is a signatory.² In the national context, freedom of assembly is guaranteed by the Constitution of BiH,³ the constitutions of the entities,⁴ the Statute of the Brčko District BiH⁵ (hereinafter: BD BiH), as well as the laws on public assembly at the entity,⁶ cantonal⁷ and BD BiH⁸ levels. Such a big number of legal acts regulating freedom of assembly on the territory of BiH is a consequence of the multi-layered and complex government system in the state, which includes the division of competencies between the state and entities, but also entities and cantons in the Federation of BiH.⁹

According to available studies,¹⁰ such a regulatory framework results in a number of differences and contradictions in the regulation of freedom of assembly between different levels of government in BiH. The most recent legislative initiative in this area has resulted in the adoption of the new Law on Peaceful Assembly of the Brčko District BiH, which is largely in line with international standards and currently represents the best legal solution for exercising the right to freedom of peaceful assembly in Bosnia and Herzegovina. Finally, the European Commission, in its Opinion on BiH's application for membership in the European Union, calls for harmonisation of national legislation and institutional framework with international and European standards for freedom of assembly.¹¹

2 SUMMARY

SThis analysis is organised in chapters that address the most important thematic areas for the exercise of the right to freedom of peaceful assembly.

First, the paper presents the research implementation method and a summary of documents containing key international recommendations for regulating the freedom of peaceful assembly. As a starting point for the analysis, the definitions of public assembly protected by BiH legislation are discussed, and a special focus is placed on peaceful assembly and public protest as the most important forms of public assembly for the purposes of this research. Significant space is devoted to the notification requirement, an area with probably most contradictions among the provisions of all the laws on public assembly in force in BiH. This aspect of the exercise of the right to freedom of peaceful assembly has been analysed primarily in light of a comparison of the notification system and the authorisation system, which is explicitly criticised by all relevant international recommendations. This is followed by restrictions, as well as privileges that the legislative framework subjects assembly organisers to, depending on their affiliation with certain categories or groups (e.g. restrictions for foreign nationals as opposed to privileges for trade unions). This chapter also reflects on a special type of assembly - unorganised, spontaneous assemblies as an immediate response to an event or an occurrence in the society, making assembly notification unfeasible. National legislation requirements have also been analysed with respect to data requested for assembly notification and the (non-)harmonisation of the deadlines and international standards. The issue of assembly location is also extensively discussed, as there are significant discrepancies between local laws, but also local laws and international standards due to bans on assemblies in many otherwise publicly available locations. The actions of authorities aimed at making it difficult for the organisers to choose a location they consider most appropriate for their peaceful assembly or public protest are visible. Assembly time is discussed in light of restrictive provisions in certain laws that limit the possibilities by imposing specific timing. Legal remedy in case of imposed restrictions on public assemblies is addressed from the perspective of the necessary urgency of the legal protection procedure, i.e., the need to complete the entire procedure in a timely fashion, from the decision on the ban to deciding on the appeal, so that the organisers can continue with assembly planning. The differences in the responsibilities expected of police bodies in providing security at peaceful assemblies and the duties and responsibilities imposed on organisers, leaders and stewards of public assemblies are compared. This chapter addresses a particular concern given that the guiding principle of freedom of peaceful assembly is that the competent authorities have a primary obligation to facilitate the enjoyment of the right to freedom of peaceful assembly. The last part of this paper addresses the provisions governing the reasons why police authorities may ban or interrupt an ongoing assembly and the sanctions provided by law.

Finally, specific recommendations are given from the perspective of international standards that could significantly improve freedom of assembly in BiH through appropriate advocacy activities.

3

RESEARCH GOAL AND METHODOLOGY

This paper brings an analysis of the current legal framework governing freedom of assembly in BiH from the perspective of key international standards. The analysis includes an overview of local laws on public assembly at all levels of government, laws on security agencies, laws on the temporary use of public areas, and their comparison with internationally accepted standards.

The governing international standards are presented in the Guidelines on Freedom of Peaceful Assembly¹² (hereinafter: the Guidelines of the Venice Commission and the OSCE/ODIHR or the Guidelines) developed in 2007 by an independent panel of experts from the Office for Democratic Institutions and Human Rights (hereinafter: ODIHR) of the Organization for Security and Co-operation in Europe (hereinafter: OSCE), together with the European Commission for Democracy through Law (hereinafter: the Venice Commission). The guidelines have been revised twice since their initial adoption, in 2010 and 2019.¹³ This document formulates the minimum standards that states should adhere to when regulating the right to freedom of peaceful assembly. The content of the Guidelines is based on guiding principles that should be kept in mind when regulating public assembly. The text of the Guidelines also presents key problem areas in freedom of assembly, but also possible ways to overcome them, illustrated by good practice examples from the legislation of OSCE participating States and references to the significant case law of the European Court of Human Rights (hereinafter: ECtHR). It is this approach that makes this document an authoritative source when it comes to international standards of freedom of assembly. Therefore, this analysis of the legal framework in BiH is based primarily on this document.

The paper also specifically focuses on the observations and concrete recommendations of the Venice Commission and the OSCE/ODIHR relative to the BiH legal framework context whose compliance with international standards was analysed for the first time in 2010 in relation to the Law on Public Assembly of Sarajevo Canton, resulting in the publication of the Joint Opinion.¹⁴ It was also the first comprehensive analysis of its kind, whose conclusions and recommendations are unfortunately still significant today, given the unchanged text of the law. The entire legal framework of freedom of assembly in BiH (including all cantonal laws, the law in force in the Republika Srpska and the now invalid Law on Public Assembly of BD BiH¹⁵) was the subject of analysis by these same bodies at the end of 2019, and this paper was supplemented by the findings from that document. To the extent appropriate and necessary, the analytical framework was complemented by insights from the relevant reports of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association (hereinafter: Special Rapporteur).¹⁶

4

DEFINITION AND TYPES OF LEGALLY PROTECTED PUBLIC ASSEMBLY

In almost all laws governing the exercise of the right to freedom of assembly in Bosnia and Herzegovina, public assembly is considered to be three types of events - peaceful assemblies and public protests; public events; and other assemblies. Although all laws regulating public assembly on the territory of BiH regulate these three types with the same text,¹⁷ it is necessary to point out the differences in definitions and their nature as they lead to the conclusion that peaceful assemblies and public protests, the purpose of which is to exercise the right to freedom of peaceful assembly (one of the basic human rights and freedoms), should be regulated by a separate law.

In the laws on public assembly in Bosnia and Herzegovina, peaceful assemblies and public protests usually mean any organised gathering of citizens, which takes place in a suitable location for the purpose of public expression and promotion of political, social or other beliefs or interests.¹⁸

Public events are defined as gatherings for the purpose of generating income within a registered activity which, given the expected number of participants or the nature of the public gathering require additional security measures.¹⁹

Other forms of public assembly include gatherings whose purpose is to pursue state, economic, religious, cultural, humanitarian, sports, entertainment or other interests, which are not aimed at generating income.²⁰

The differences in the regulation of these three types of public assemblies in the BiH legislation generally refer to different deadline for assembly notification and different grounds for assembly bans.²¹

The Guidelines of the Venice Commission and the OSCE/ODIHR define public assembly as the intentional gathering of a number of individuals in a publicly accessible space for a common expressive purpose.²² The laws in BiH formulate the concepts of peaceful assembly and public protest in a similar way. The definition of peaceful assembly of the Law on Peaceful Assembly of the Brčko District of BiH is closest to the definition of the Venice Commission and the OSCE/ODIHR. According to that law, a peaceful assembly is “an intentional and temporary gathering of persons in a public place in the District for the purpose of expressing a common opinion and conveying common messages and views under the conditions prescribed by this Law”.²³ Defining peaceful assembly as intentional and temporary is a commendable solution that follows the definition of international standards and, unlike the definitions in other laws on public assembly, it clearly presupposes the concept of spontaneous assembly.

The Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Legal Framework Governing the Freedom of Peaceful Assembly in Bosnia and Herzegovina

underlines the unjustified differential treatment of state, religious, humanitarian, cultural and other non-profit-making assemblies (defined as “other (public) assemblies in BiH laws”) from political and social assemblies covered by the term “peaceful assembly and public protest”.²⁴ By prescribing different requirements for exercising the right to freedom of assembly, such as exempting organisers of other public assemblies from the obligation to notify the police of the assembly as opposed to organisers of peaceful assemblies and public protests who are required to notify of these assemblies in advance, a different approach is in fact made possible by the competent authorities that depends on the message to be conveyed, which is contrary to international standards which specify that the content of the message can be restricted only in case of an actual risk of violence that cannot be prevented or mitigated in any other way.²⁵

The practical implications of regulating public events, the purpose of which is to generate profit, in the same legal text as public assembly, the purpose of which is to express certain messages or views, were challenged already in the first opinion of the Venice Commission and the OSCE/ODIHR on the compliance of Sarajevo Canton Law on Public Assembly with international standards,²⁶ while their recently published Joint Opinion on the overall legal framework of freedom of assembly in BiH presented specific instructions that public events should be regulated by separate law due to their profit-generating nature.²⁷

International standards further state that protected public assemblies can be static or moving, organised or spontaneous.²⁸ In addition to static assembly, which is generally covered by the legal framework for freedom of assembly in BiH, moving public assemblies are recognised as a form of public assembly in almost all laws in BiH except the laws of Bosnian Podrinje and Central Bosnia Cantons.²⁹ The solution provided by all laws in BiH that recognise moving public assemblies, and according to which they are allowed only in case of continuous movement except at the place of start and finish, is comprehensive and disproportionate, as the Venice Commission and the OSCE/ODIHR have already established for Sarajevo Canton, because it does not allow for weighing all interests in specific situations.³⁰ A positive development is the solution of the law regulating peaceful assembly in the Brčko District BiH, according to which moving assemblies are those that take place by having the participants move in a specified area, and move and stop in specified places between start and finish.³¹

With respect to definitions of public assemblies, we should mention spontaneous assemblies that happen as an immediate response to a social event due to which the organiser (if any) is not able to notify of the assembly within the legally prescribed deadline. Allowing this type of assembly to take place is important precisely because by postponing it for a later date, the message that the assembly wanted to convey could lose its significance.³² Contrary to international standards which stipulate that spontaneous assemblies are a reflection of healthy democratic societies, some laws on public assembly in BiH do not recognise this category at all.³³ On the other hand, the provisions of most laws that recognise spontaneous assemblies³⁴ provide for significant restrictions in terms of the notification requirement, which will be discussed in more detail in the next chapter.

5 ASSEMBLY NOTIFICATION

The obligation to submit advance notification for a public assembly constitutes an interference with the right to freedom of assembly, therefore, it should be prescribed by law, necessary and proportionate. International guidelines stipulate that, depending on the number of participants, the nature of assembly and location, the notification requirement may be justified in order to enable police units to take reasonable and appropriate measures to maintain peace and order during the assembly.³⁵

a) Notification vs. Request for Assembly Authorisation

According to international standards, in light of the principle of proportionality, the system of submitting a report/announcement/notification to competent authorities regarding the assembly is less intrusive into the right to freedom of assembly than the system of assembly authorisations. In this regard, the standards clearly stipulate that the notification system should not in practice be turned into a procedure that enables the competent authorities to (dis)approve the public assembly.³⁶

With respect to this procedural step, the laws on public assembly in force in BiH generally contain the same terminology, prescribing that the organisers of public assemblies are obliged to inform, report, or submit a notification to the competent police station – a step seen by the competent authorities as a simple notice of intent to organise an assembly. There is room for arbitrary interpretation of the laws on public assembly of Bosnian Podrinje, Central Bosnia and Herzegovina-Neretva Cantons, as the introductory provisions pertaining to the notification requirement read that it is the duty of organisers to “report” assemblies to police stations; however, further provisions that refer to issuance of a decision on the notification imply that in these three cantons the right of to freedom of assembly is in fact subject to an authorisation regime.³⁷

The Joint Opinion of the Venice Commission and the ODIHR on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, emphasises the recommendation in relation to all applicable laws on public assembly that the provisions concerning the notification requirement should be formulated with sufficient precision and clarity, in the manner that leaves no doubt that this is solely a notification of “intent” and not a request assembly authorisation.³⁸

The majority of laws on public assembly in BiH require the organiser to obtain prior authorisation from the competent authority if the assembly includes a section of a road due to which traffic needs to be interrupted or disturbed, in accordance with the Law on the Basics of Road Traffic Safety in BiH.³⁹ According to the provisions of this law, the authorisation is issued by the competent Ministry of the Interior and is subject to prior consent of the competent transport authority and the submission of a request for

authorisation within 15 days before the assembly.⁴⁰

This is not in line with international standards for two reasons, as has been emphasised by relevant bodies. First, the participants in public assemblies have as much a claim to use such sites for a reasonable period as anyone else, just as they do for pedestrian or vehicular traffic.⁴¹ Second, as the Venice Commission and the OSCE/ODIHR have already emphasised in the Joint Opinion on the Sarajevo Canton Law on Public Assembly, all decisions regarding assemblies should be made by a single competent body.⁴² Therefore, having in mind the standard according to which the notification regime is preferred to authorisation, and the standard according to which public assembly is under the competence of a single body, it should be enough for the organisers to inform one competent body about the assembly which includes a section of the road and not have actions by two competent authorities: the Ministry of the Interior and the competent transport authority.⁴³

b) Identity of the Organiser as a Precondition for Restrictions or Privileges in Assembly Notification

i. Restrictions Imposed on Foreign Nationals

The exercise of the right to freedom of assembly under international human rights law is not limited to citizens, it must also be guaranteed by legislation to stateless persons, refugees, foreign nationals, asylum seekers and migrants.⁴⁴

The legal framework in BiH not only fails to explicitly mention these categories as freedom of assembly right-holders, but some laws have separate chapters which differently regulate the exercise of freedom of assembly for foreign nationals. There are obvious discriminatory provisions in those laws that prescribe an obligation for foreign nationals to submit a request to hold an assembly, which is decided by the competent authorities, thus establishing an authorisation procedure contrary to leading international standards.⁴⁵ The laws on public assembly of Una-Sana and Central Bosnia Cantons also impose additional restrictions on foreign nationals in form of sanctions should they fail to obtain authorisation to organise such assemblies⁴⁶.

This difference in the treatment of BiH citizens and foreign nationals in the exercise of one of the basic human rights has been criticised in the Joint Opinion of the Venice Commission and the OSCE on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, where the authorisation of a police station as a condition for assembly was assessed as a discriminatory and disproportionate practice that should be repealed.⁴⁷

ii. Privileged Position of Certain Categories of Assembly Organisers

Laws on public assembly in BiH generally exempt associations, trade unions, political

parties and other legal entities from the notification requirement when they organise assemblies indoors.⁴⁸ Such privileged position of specific groups in assembly organisation has no basis in international standards, given that the main purpose of the notification is to allow the authorities sufficient time to prepare for the security of the assembly.⁴⁹

c) Spontaneous Assemblies

According to international standards, spontaneous assemblies are a feature of healthy democratic societies and should therefore be protected to the same extent and in the same way as pre-planned assemblies. This type of assembly, as the name suggests, is actually a response to certain occurrence, incident or other assembly that requires immediate response,⁵⁰ as a result of which the organisers cannot, due to time constraints, meet the deadlines for notification or the organisers are unknown or cannot be identified.⁵¹

In some laws in BiH, spontaneous assemblies are not even recognised as a special type of assembly that enjoys equal protection as planned and organised assemblies.⁵² Furthermore, these laws ban unnotified assemblies,⁵³ which in practice can be read as a ban on spontaneous assemblies in these parts of BiH.

On the other hand, even the laws that explicitly mention spontaneous assemblies⁵⁴ do not provide adequate protection. In most of these laws, spontaneous assemblies are not exempted from the notification requirement,⁵⁵ while unnotified assemblies are prohibited⁵⁶ and are subject to sanctions that can be imposed on organisers,⁵⁷ making the right to spontaneous assembly ineffective in practice. In addition to obstacles related to the notification requirement, some laws restrict the possibility of assemblies with unknown organisers/spontaneous/unnotified assemblies only to those locations designated by the competent cantonal or municipal authorities.⁵⁸

The general conclusion is that the legal solutions on spontaneous assemblies in BiH, where envisaged at all, are in conflict with international standards, which is also recognised by the Opinion of the Venice Commission and the OSCE/ODIHR.⁵⁹ The spontaneous nature of assembly, the inevitable consequence of which is its notification failure, should not serve as reason for restricting the right to freedom of peaceful assembly, as is clearly stated in the Guidelines on Freedom of Peaceful Assembly. The laws governing freedom of assembly should therefore prescribe the lawfulness of such assemblies, and explicitly exempt them from the obligation to notify.⁶⁰

d) Content of Assembly Notification

According to international recommendations, the content of the notification should not be unduly burdensome,⁶¹ because it could discourage the organisers in their efforts to organise peaceful assemblies and jeopardise the freedom of assembly.⁶² In this regard, the Special Rapporteur emphasised that the content of the application should

not include any information other than the date, time, duration, location or route of movement, and the name, address and contact details of the organisers,⁶³ whereas the Venice Commission and OSCE/ODIHR add that it is advisable to also briefly indicate the purpose of the assembly.⁶⁴

International recommendations further suggest that the notification procedure should not require identification documents, data on each individual organiser or person participating in the event (e.g. steward or leader) or a precise or approximate number of participants.⁶⁵

According to the majority of laws on public assembly in BiH, the content of assembly notification should include personal data of the organisers, information on the characteristics of the assembly (time, place and purpose, and the expected number of participants), and information on security measures (personal data of the leader and/or stewards, data on ambulance, fire service, etc.).⁶⁶

Particularly disputable part of the notification is the obligation of the organisers to inform the competent police authority about the security measures they intend to undertake to maintain order at the assembly, because it is the obligation of the state or competent police authorities, as is unequivocally underlined in the Guidelines of the Venice Commission and OSCE/ODIHR.⁶⁷

Another problematic element of the notification are the provisions of the Law on Public Assembly of HNC, according to which assembly organisers are obliged to inform the competent police body about items that the participants will carry or use (banners, flags, masks, pyrotechnics, vehicles, musical instruments, bells, etc.).⁶⁸ According to the Venice Commission and the OSCE/ODIHR, these items are usually brought spontaneously by participants and, with the exception of information about vehicles and pyrotechnics that might raise safety concerns, police do not need such information to prepare for an assembly.⁶⁹

The provisions that refer to stewards,⁷⁰ programme or purpose of assembly,⁷¹ as well as information as to the expected number of participants⁷² should be repealed. Such exhaustive lists in assembly notifications are not in line with recommendations of the relevant international bodies.

An additional obligation for the organisers stipulated in those laws on public assembly which contain provisions on supplementing and/or changing the notification content,⁷³ according to which any change in the content (such as location or time) is to be considered a new notification,⁷⁴ is unduly burdensome for assembly organisers and may discourage them from adapting to additional requirements of the competent authorities,⁷⁵ but also from the assembly in general.

e) Deadlines for Assembly Notification

The reports of the Special Rapporteur state that the organisers of the meeting should be able to notify the competent authorities about the assembly in the simplest and fastest way.⁷⁶ The Guidelines of the Venice Commission and the OSCE recommend that the required period of notice before an assembly should not be unnecessarily lengthy, stating an acceptable period of “no more than a few days”. Furthermore, referring to the case law of the European Court of Human Rights, they state that time limits should be long enough to provide the relevant state authorities with adequate time to plan and prepare for the assembly.⁷⁷ On the other hand, the Special Rapporteur expressed the view that a notification time limit of six days before the assembly could be considered lengthy in this context.⁷⁸

The laws on public assembly in BiH provide for two types of deadlines for assembly notification, depending on whether the circumstances are regular or extraordinary. In that sense, the regular deadlines in most laws stipulate assembly notification to the competent police station no later than five days in advance.⁷⁹ The laws on public assembly of Tuzla and Zenica-Doboj Cantons and Canton 10⁸⁰ require the submission of notification seven days in advance. The shortest deadlines are provided by the laws on public assembly of the Central Bosnia Canton (two days before the assembly⁸¹) and Herzegovina-Neretva Canton (three days before the assembly⁸²).

The deadline for assembly notification that applies in case of extraordinary circumstances is 48 hours or, in the case of the Law on Public Assembly of Bosnian Podrinje Canton, 72 hours.⁸³ Exceptional circumstances, i.e., particularly justified reasons, which are a precondition for the application of these shorter deadlines, are not specifically defined in the legal framework for freedom of assembly in BiH.⁸⁴

According to the expert assessment of the Venice Commission and the OSCE, the deadlines for assembly notification in BiH are mostly in line with international standards, with the exception of the laws on public assembly in Tuzla and Zenica-Doboj Cantons and Canton 10.⁸⁵ It would be advisable to harmonise the deadlines in the laws on public assembly, so that citizens who intend to organise peaceful assembly or public protest have equal time available for necessary preparations. In this regard, the optimal solution would probably be to notify the competent authorities about the assembly five (5) days in advance, which is prescribed in most laws in force in BiH.

6

LOCATION OF AN ASSEMBLY

The ability for the organisers to choose the place where their message will resonate the most is at the core of freedom of assembly, so the purpose of the assembly is very often associated with a specific location. International standards emphasise that organisers have the right to choose the location or route of an assembly in publicly accessible places – including public parks, squares, streets, roads, avenues, sidewalks, and open areas near public buildings etc.⁸⁶ In addition, the freedom of assembly includes the right to hold the assembly in sight of the target audience and any change of assembly location could seriously jeopardise this freedom.

The legal framework in BiH is generally too restrictive in terms of assembly locations and does not assess the importance of the location that the organisers had in mind when organising a public assembly.⁸⁷

The provisions of the laws on public assembly in BiH define assembly location as a place that is accessible and suitable and where the assembly does not endanger the rights and freedoms of others, public morals, health and safety of people, property, nor does it obstruct public traffic.⁸⁸ As early as 2010, the Venice Commission and the OSCE/ODIHR, in their Joint Opinion on the Sarajevo Canton Law on Public Assembly, stated that the definition of assembly location which stipulates an “accessible” and “suitable” place is not precisely defined nor should it be based on the possible effects of the assembly on other simultaneous activities,⁸⁹ because such formulations provide space for potentially arbitrary decisions of the competent authorities to ban the assembly.⁹⁰ As the reason for such criticism in 2010 has not changed to date, in the recently published Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH (including other cantonal laws on public assembly, and the laws of the Republika Srpska and of the Brčko District BiH), they urged again for the repeal of all disputed provisions that refer to “accessible” and “suitable” places as locations for assemblies. In addition, this Joint Opinion emphasises that it is inevitable that assemblies disrupt public activities in some way, but that this should not result in a ban even when there is real or potential danger of disrupting public traffic and the inability of police authorities to ensure normal traffic flow.⁹¹

From the perspective of international standards, the provisions authorising municipal/city councils,⁹² i.e. local self-government bodies⁹³ or the mayor, on proposal of the chief of police,⁹⁴ to define a list of locations where assemblies can be held are also unacceptable.⁹⁵ Such regulation necessarily leads to extremely restrictive solutions. For example, the Decision on Designating Spaces for Public Assemblies in the Territory of Banja Luka Municipality⁹⁶ designates only two locations that are “accessible” and “suitable” for assemblies in this municipality.⁹⁷

Practice has also shown that local self-government bodies, as well as legal entities owners of certain public areas, use the “grey zones” in other laws and bylaws to arbitrarily restrict the freedom of assembly of certain groups.

In this respect, it is crucial to reflect on provisions of the Law on Temporary Use of Public Spaces in the Territory of Sarajevo Canton⁹⁸ that had implications in practice regarding assembly locations. This law, *inter alia*, defines public spaces that can be used temporarily, as well as their purpose, and conditions and manner of their use. When the Law on Temporary Use of Public Spaces in the Territory of Sarajevo Canton was adopted, there was no law on public assembly in force, therefore, public assemblies and protests were not explicitly listed among the grounds for temporary use of public spaces. However, this gap could have been overcome by subsequent amendments to the Law on Temporary Use of Public Spaces. Namely, according to the current text, the law stipulates the possibility of temporary use of public spaces for cultural, entertainment, sports, humanitarian or other events.⁹⁹ Such events (both for-profit and not-for-profit), as well as public assemblies and protests, are at present regulated by the same law on public assembly.

The Law on Temporary Use of Public Spaces in the Territory of Sarajevo Canton stipulates that the temporary use of public spaces requires a relevant consent of the competent municipal body.

In addition to the grey zone made possible by the absence of reference of the the Law on Temporary Use of Public Spaces to peaceful assemblies and protests, there may be room for arbitrariness due to specific arrangements established by the competent municipal body with the owners regarding temporary use of public space, according to which, for example in the case Children of Sarajevo Square, it is required from the organiser to obtain a consent of the owner of the property – BBI Real Estate d.o.o. The owner of the property is thus given the possibility to refuse to give consent for the reason that their belief is not in line with the belief intended to be promoted at the public assembly. This action was also supported by the Human Rights Ombudsman Institution of BiH, in considering the appeal of the Sarajevo Open Centre, where they underlined that in the specific case the legal entity that owns the property (BBI Real Estate d.o.o.) did not exceed the powers granted on the basis of ownership of the property that is to be considered privately owned space.¹⁰⁰ However, the location, although privately owned, is otherwise a publicly accessible area – a square – and not a separate space difficult to access. Also, this practice involves several bodies involved in deciding on the exercise of the right to freedom of assembly: in addition to the Ministry of the Interior to which the assembly must be notified, the decision involves the competent municipal body and the owner of the property.

A number of laws that regulate public assembly in BiH also stipulate exhaustive lists of locations where assemblies cannot be held,¹⁰¹ e.g. near hospitals in such a way that the assembly interferes with ambulance access or disturbs the patients, near kindergartens, primary and secondary schools, while occupied by children and students.¹⁰² Such

legal solutions are problematic from the perspective of international standards because they imply an absolute ban on assemblies in locations otherwise accessible and fail to ensure case-by-case assessment.¹⁰³ Therefore, there may be legitimate reasons for concern that assemblies at particular locations will potentially lead to some disruption, but this needs to be assessed on a case-by-case basis. The competent authorities should always consider steps to providing security at assemblies, while minimising potential risks and not simply banning all assemblies at specific locations.¹⁰⁴

Numerous laws in BiH also ban assemblies in national parks and protected nature parks, unless their cause is protection of nature and human environment or marking important historical dates.¹⁰⁵ It seems that even such solutions do not comply with the standards and recommendations related to the bans on the messages that assemblies intend to convey.¹⁰⁶

Some laws on public assembly in BiH also contain provisions that ban assemblies in the vicinity of special security buildings¹⁰⁷ and enhance this restriction by stipulating that assemblies may be held only at a distance estimated by the police agency responsible for the building security.¹⁰⁸ Such provisions are problematic not only because of the overarching nature of such restrictions, which neglects the communicative purpose of freedom of assembly and does not take into account the circumstances of each case, but also because of the potential discretionary action of police authorities in estimating the allowed distance. Also, as emphasised in one of the analyses of the problems with public assemblies in BiH, additional concern is the fact that the laws in BiH, except for the Law on Public Assembly of Canton 10,¹⁰⁹ do not specify which buildings have special security (state institutions, public institutions or companies, banks, post offices, etc.).¹¹⁰

In addition, according to the legal framework on freedom of assembly in BiH, public roads, but also other places where movement or activity of a large number of citizens could be seriously disrupted, are not considered suitable places for assembly. Such provisions do not take into account international guidelines according to which temporary traffic disruptions are not in themselves a sufficient reason to impose restrictions on assembly.¹¹¹

Laws on public assembly in BiH generally stipulate that processions or moving assemblies may take place only in uninterrupted motion, except at the place of start and finish.¹¹² This requirement is too restrictive according to international guidelines, as it may be reasonable for a moving assembly to pause to listen to a speaker somewhere along the route that is neither a starting nor a finishing point.¹¹³ This recommendation of the Venice Commission and the OSCE/ODIHR was integrated into the Law on Peaceful Assembly of the Brčko District BiH, according to which moving assemblies are those that take place by having the participants move in a specified area, and move and stop in specified places between start and finish.¹¹⁴

7 TIME OF AN ASSEMBLY

The ability of organisers to choose when to organise an assembly is another crucial feature of the right to freedom of peaceful assembly, as timing is often essential to the message participants want to convey in their protest as a direct response to an event.¹¹⁵ In this sense, the provisions of the laws on public assembly of Tuzla and Zenica-Doboj Cantons are concerning, as they limit public assemblies in these cantons to exclusively the period between 08:00 and 22:00h.¹¹⁶ As with the restrictions imposed on the location of an assembly, international standards stipulate that an assessment of the individual circumstances of each case should be made instead of imposing blanket bans.¹¹⁷ Therefore, such a blanket ban on public assemblies, except at a specific time of day, is not in line with the recommendation.

8

THE RIGHT TO AN EFFECTIVE REMEDY/LEGAL PROTECTION

In order for assembly organisers to enjoy prompt and effective legal protection in the event of disproportionate, arbitrary or unlawful restrictions on the exercise of the right to freedom of assembly, it is necessary that legal provisions clearly state all relevant procedural aspects, such as deadlines for assembly notification, the grounds for restrictions, as well as the possibility, manner and conditions of filing an appeal against these restrictions, including reference to the bodies that decide on the restrictions and possible complaints of organisers.¹¹⁸ In the context of the legal framework in BiH, it is important to emphasise that the Law on Public Assembly of Herzegovina-Neretva Canton does not contain provisions on the procedure for appealing against decisions of the competent body, which is contrary to the Guidelines of the Venice Commission and the OSCE/ODIHR.

Often the date of the assembly is crucial for the message to be conveyed. Therefore, the most important guarantee of the effectiveness of legal remedy is the clearly prescribed obligation of the competent authorities to decide on the appeal of the organisers before the date of the planned assembly.¹¹⁹ International standards also stipulate that it is necessary to allow appeals to an independent court against decisions of the competent administrative body or administrative silence,¹²⁰ and this procedure should also be completed before the scheduled assembly takes place.¹²¹

The request for handling the appeal procedure before the assembly implies the necessity to call for urgency of the procedure and priority resolution of these appeals within the legal framework.¹²²

If the competent authorities fail to respond in a timely manner to the submitted assembly notification, even if there is a legitimate need to impose restrictions on the assembly, the organisers should be able to proceed with their planned activities and should not be adversely affected by the negligence of the competent authorities.¹²³

Provisions on legal protection and procedure in case of restriction of freedom of assembly refer to the deadline within which the competent authorities are obliged to issue a decision on possible restriction, to the possibility of the organisers to appeal against the decision and the deadline within which they can do so, and finally the deadline within which the competent authorities must decide on the appeal of the organisers. In order to ensure prompt action by the competent authorities, those deadlines should be set taking into account the date and time of the assembly. Namely, the entire procedure from the decision on the ban to deciding on the appeal should be carried out in time so that the organisers can continue planning the assembly, or so that they have enough time to inform the public about possible postponement or cancellation of the assembly. According to the current legislation in Bosnia and Herzegovina, the police author-

ities are obliged to issue a decision on assembly ban no later than 48 hours¹²⁴ or, exceptionally, 24 hours prior to the assembly.¹²⁵ The exception is the Law on Public Assembly of Bosnian Podrinje Canton as it does not provide a deadline for the decision, which is not in line with international recommendations that clearly stipulate that the legal framework should set deadlines within which, following assembly notification, the competent authorities may impose possible restrictions.¹²⁶ The Venice Commission and the OSCE/ODIHR also assessed as contentious the provisions of all other laws on public assembly, which set a 48-hour and 24-hour deadline for deciding on an assembly ban, as their wording does not presuppose a prompt reaction by the authorities if they notice the existence of the grounds on which assembly may be prohibited.¹²⁷

The organisers are generally able to appeal against the decision within 24 hours of its receipt¹²⁸ or, in the case of the Law on Peaceful Assembly of BD BiH, within 24 hours before the assembly.¹²⁹ In exceptional cases, appeals against the decision may be filed within 12 hours,¹³⁰ while in the Republika Srpska the deadline for filing an appeal has not been set.¹³¹ According to the Law on Public Assembly of Central Bosnia Canton, the organisers can file an appeal within eight days of receiving the decision.¹³² The issue with shorter appeal deadlines is, according to the Venice Commission and the OSCE/ODIHR, that they also apply even when a decision on a ban is made weeks before the announced assembly. In this way the organisers, who most often organise assemblies on a voluntary basis, face a demanding task of writing appeals in such a short time. It is therefore recommended that deadlines for filing appeals are not specified in the laws.¹³³

The competent authorities are obliged to decide on the appeal against the decision and deliver it to the applicant within at least 24 hours after receiving the appeal,¹³⁴ or exceptionally within 12 hours after receiving the appeal,¹³⁵ or within 12 hours before the assembly takes place.¹³⁶ The deadline for deciding on an appeal is not set only in the Law on Public Assembly of Central Bosnia Canton, which is not in line with international standards.¹³⁷

The legal provisions on the appeal procedure do not fully follow the principle of presumption in favour of holding an assembly. Namely, all laws on public assembly prescribe that an appeal against a decision does not delay its execution,¹³⁸ which implies the impossibility of adopting a temporary measure that could allow the assembly to take place, and thus the potential ineffectiveness of this legal remedy.¹³⁹ Only the laws on public assembly of Tuzla Canton, Zenica-Doboj Canton and the Republika Srpska state that an assembly can be held if the body deciding on the appeal does not make a decision within the set deadline,¹⁴⁰ which is in accordance with internationally accepted standards.¹⁴¹

By inspecting the legal framework of freedom of assembly in BiH, it can be concluded that assembly organisers are not fully guaranteed the right to an effective legal remedy. In addition to the above inconsistencies with international standards and good practice

in this area, it is important to draw attention to the fact that some laws lack provisions that provide as a last legal protection resort the right to appeal to an independent court, or the possibility of initiating an administrative dispute before competent courts.¹⁴² According to the opinion of international bodies, such a solution does not guarantee a completely independent appeal procedure, because in these laws the second-instance decision-making body is in fact only a higher instance in the same competent body (Ministry of the Interior).¹⁴³

9

POSITIVE OBLIGATION OF THE STATE TO ENSURE PEACEFUL ASSEMBLY AND DUTIES OF THE ORGANISERS

Even with a cursory review of the legal framework for freedom of assembly in BiH, it can be concluded that assembly organisers (but also stewards and other participants in the organisation) hold the essentially imposed responsibility for segments that, according to important national regulations and international standards, fall within the competence of police bodies.¹⁴⁴

The positive obligation of the state, i.e. the competent police bodies, to protect and ensure public assemblies is envisaged in the legal texts only in general, while the obligations and responsibilities of organisers, leaders and stewards of assemblies are emphasised to a disproportionately greater extent.

Most laws explicitly envisage the duty of the competent police bodies to prevent interruption or obstruction of peaceful assembly in accordance with the law,¹⁴⁵ and to ensure public order and peace in the area immediately adjacent to the peaceful assembly venue.¹⁴⁶ The Law on Peaceful Assembly of the Brčko District of BiH stipulates that the Police of the Brčko District of BiH, in cooperation with other public administration bodies, carry out the tasks regarding protection of security of persons and property, protection of human rights and freedoms, special minority rights and freedoms of others, health care and other tasks related to ensuring a peaceful assembly.¹⁴⁷

Law on Public Assembly of Herzegovina-Neretva Canton sees the positive obligation of the competent authorities to secure the holding of the assembly only as an exception, in case of inadequacy of security measures proposed by the organiser or in case of special importance of the public assembly for Herzegovina-Neretva Canton or local self-government unit.¹⁴⁸ Such a distinction between assemblies relevant and irrelevant to the administrative unit in whose territory the assemblies are held represents the possibility for police authorities to restrict the right to freedom of peaceful assembly, for instance, in the event of a government disagreement with the message protesters want to convey, which is absolutely unacceptable from the perspective of international standards.¹⁴⁹

On the other hand, the responsibilities of organisers, leaders and stewards are far more numerous, and they, in addition to the mandatory assembly notification discussed in Chapter 5 of this report, include liability for damage caused by others,¹⁵⁰ duty to maintain public order and peace,¹⁵¹ and the obligation to ensure appropriate medical and fire protection measures.¹⁵² Some laws prescribe the obligation of the organisers to ensure that the assembly participants are not armed and do no harm,¹⁵³ and the duty to clean the venue where the assembly took place.¹⁵⁴

Laws on public assembly that contain provisions on liability for damage stipulate

that assembly organisers are responsible for damage caused by other persons at the assembly according to the rules of strict liability,¹⁵⁵ i.e. the very fact of damage entails the responsibility of the organisers, even if they did not cause the damage. The Law on Public Assembly of Posavina Canton refers to the Law on Obligations¹⁵⁶ regarding the liability of the assembly organisers for occurred damage, which stipulates that the socio-political community whose bodies were obliged to prevent such damage¹⁵⁷ under the applicable regulations is responsible for the damage caused at, among other things, public demonstrations, i.e., in this case the organisers, who are obliged by the Law on Public Assembly to ensure order and peace at the assembly and to take measures so that the participants of the assembly do no harm.¹⁵⁸

Such forms of liability for damage to the detriment of others are not in line with international recommendations.¹⁵⁹ They may result in a threat to the freedom of peaceful assembly expressed through the discouragement of organisers to engage in the process of organising public assemblies and protests at all, all because of the risk of liability for damage they could not exert influence on. The damage should be the responsibility of those who commit the damage, not the organisers of the assembly, who, according to international guidelines, are usually only required to make reasonable efforts to ensure the peaceful character of the assembly.¹⁶⁰

The provisions of the laws on public assembly in BiH also require that the organisers appoint an assembly leader, stewards and security companies to maintain order at assemblies.¹⁶¹ Although it cannot be denied that the presence of stewards could be useful at assemblies in the context of providing assistance in the logistical aspects of preparation and throughout the course of the assembly, organisers should have the right not to opt for a formal structure in organising and holding assembly. Therefore, the appointment of stewards and assembly leaders should not be a statutory obligation of the organisers, but their discretion,¹⁶² similar to the decision provided in the text of the new Law on Peaceful Assembly of the Brčko District of BiH. This law leaves the organisers the opportunity to, depending on the need, i.e., the complexity of the assembly and the estimated number of participants, appoint a leader of the public assembly and hire a security company.¹⁶³

Nevertheless, if the organisers decide to hire stewards at the assembly, they should not be a substitute for police officers, who are responsible for maintaining public order and peace.

Current legal solutions impose on stewards the duty to protect participants and property located at the assembly venue,¹⁶⁴ the obligation to control and inspect persons entering the assembly venue,¹⁶⁵ the obligation to immediately report potentially suspicious or dangerous assembly participants or hand them over to a police officer,¹⁶⁶ obligation to prohibit a person who they see as capable of disturbing public order and peace¹⁶⁷ from entering the assembly venue, the obligation to direct the movement of assembly participants¹⁶⁸ and the obligation to remove a person who disturbs public order and peace during the assembly¹⁶⁹. The emphasis on organisers and stewards in this domain is further underlined by the fact that most laws contain a provision according to which a

steward is obliged to provide a police officer with information about a person who has disturbed order and peace.¹⁷⁰

The duties of stewards under the Law on Peaceful Assembly of the Brčko District of BiH are largely in line with international recommendations in this area and they include directing the movement of participants, providing necessary information to assembly participants, establishing and maintaining contact and cooperation with police representatives on all matters of interest for the unhindered peaceful assembly and the safety of participants and, where appropriate, the communication of orders by police officers to participants in peaceful assembly.¹⁷¹

The Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH emphasised that assembly organisers and stewards are not police officers and should not be forced by law to perform these tasks.¹⁷² The maintenance of public order and peace and the holding of the assembly itself are the responsibility of the police authorities¹⁷³ who cannot shift responsibility for these tasks (including, for example, taking medical and fire protection measures¹⁷⁴) to the organisers of the assembly.¹⁷⁵

The laws on public assembly in BiH also envisage the possibility for the organisers to entrust the tasks of maintaining order and peace at the assembly to the agencies for the protection of persons and property.¹⁷⁶ The laws on agencies and internal services for the protection of persons and property of the Federation of BiH and Republika Srpska stipulate that these agencies may not have police powers nor may they perform activities for the protection of persons and property that are under the jurisdiction of the Ministry of the Interior in the territory of the Republika Srpska and cantons in the Federation of BiH.¹⁷⁷

Unlike stewards who are natural persons, and most often voluntarily engaged in providing assistance for the unhindered holding of the public assembly, persons who professionally perform physical security activities, employees of agencies for the protection of persons and property, have the legal authority to identify persons entering the assembly venue, order persons to move away from the aforementioned facility or deny them access, detain suspicious persons until the arrival of police bodies, inspect the venue where the assembly is held.¹⁷⁸ However, even the engagement of law enforcement agencies at the assembly cannot deprive the police bodies of their obligation to secure the holding of the assembly.¹⁷⁹

An additional duty of the organisers is prescribed by the provision of the Law on Public Assembly of Central Bosnia Canton which stipulates an obligation to clean the venue and repair all damage within 24 hours after the assembly and remove all displayed promotional material within three days.¹⁸⁰ Such a decision is contrary to the international standard according to which the responsibility of public authorities for certain services cannot be imposed on the organisers of the assembly, such as securing the peaceful assembly, providing medical assistance, sanitary and security services, e.g. cleaning the streets.¹⁸¹

10 ASSEMBLY BAN OR SUSPENSION

Like almost all other rights protected by the catalogue provided in the European Convention on the Protection of Human Rights and Fundamental Freedoms, the right to the freedom of peaceful assembly is not absolute, and is subject to restrictions. In accordance with the principle of legality, it can be restricted only based on the law, for the purposes of achieving one of these legitimate aims: “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.”¹⁸² Also, the restriction on the right to freedom of peaceful assembly must be proportionate to its aim.¹⁸³ This is why it would be advisable to avoid legal definitions, provisions or procedures directly or indirectly preventing or obstructing peaceful assemblies. The United Nations High Commissioner for Human Rights supported such approach, emphasising that the very respect of the right to peaceful assembly offers the opportunity to defuse tensions and violence in the society.¹⁸⁴

Against this background, the prohibition of holding, and dispersal of assemblies should be measures of last resort, only if a less restrictive measure would fail to achieve the aim of the police bodies related to the protection of other substantial interests.¹⁸⁵ According to international standards, comprehensive legal restrictions that, for example, prohibit holding of any assemblies at the specific time or at the specific place can be deemed proportionate, because they do not consider all circumstances of the case.¹⁸⁶ As the UN’s Special Rapporteur emphasised: “Blanket bans are intrinsically disproportionate and discriminatory measures affecting all citizens wanting to exercise their right to freedom of peaceful assembly.”¹⁸⁷

A common feature across almost all the laws on public assembly in BiH is that they foresee numerous possibilities of police authorities to suspend, intervene in, and prohibit assemblies (including peaceful assemblies), which in many cases allow officers in charge to discretionally decide to stop these assemblies according to vague and uncertain criteria.¹⁸⁸ Many laws, through separate provisions, regulate the prohibition of holding, and suspension of assemblies, and mostly lay down identical reasons for both of these measures of interfering with the freedom of peaceful assembly.¹⁸⁹

The legal framework in BiH lays down numerous reasons for the prohibition and suspension of assemblies, including the following situations: organisers submit incomplete notifications of assemblies or fail to do so in a timely manner;¹⁹⁰ organisers fail to undertake additional security measures in a timely manner;¹⁹¹ stewards fail to ensure public order;¹⁹² an assembly is taking place at a location which is not appropriate for a public assembly, or at a location prohibited for assemblies;¹⁹³ there is an actual risk that the assembly may pose a threat on public morals;¹⁹⁴ an assembly poses a threat on constitutional setup;¹⁹⁵ an assembly jeopardises the independence of territorial

integrity;¹⁹⁶ an assembly is organised by a political party, a citizens' association or an organisation whose activities were have been prohibited by a court decision;¹⁹⁷ an assembly is organised by a person banned by court from visiting the assembly location or from participating in the assembly while the measure is in force, or by a person banned from public speaking;¹⁹⁸ an assembly poses a serious threat on human health and environment.¹⁹⁹

Considering the crucial importance of the message the assembly seeks to communicate, according to international standards, the visual or audible content of the message can only be restricted if it constitutes incitement to imminent violence.²⁰⁰ Restrictions can also be imposed on public assemblies in case of hate speech and incitement to violence, national, racial or religious hatred.²⁰¹ Some laws on public assembly in BiH actually provide the reasons for prohibition of a public assembly that include "violent" undermining or jeopardising of the constitutional setup²⁰² or focus of the assembly to calls for, and incitement to an "armed" conflict or the use of "violence", violation of guaranteed human rights and freedoms, and to national, racial, religious or other "hatred or intolerance".²⁰³ Hate speech, incitement to war, violence and hatred constitute a justified restriction based on the message content, if the prohibition of the assembly is proportionate and necessary in the specific circumstances of each case.²⁰⁴

On the other hand, certain laws lay down the possibility for police authorities to prohibit an assembly although there is no incitement to violence or hatred, for example: if assemblies are focused only on undermining of the constitutional setup²⁰⁵ and of the foundations of the democratic setup regulated by the constitution, or on other illegal change of the social and political or social and economic structure,²⁰⁶ or jeopardising of the independence, sovereignty and territorial integrity,²⁰⁷ peace or equal international cooperation.²⁰⁸ The Venice Commission and the OSCE/ODIHR expressed the view that these specific formulations that are not based on the recourse to violence are in breach of the right to freedom of speech and assembly because the prohibition is not limited to advocacy that incites serious unlawful conduct.²⁰⁹

Another ground for the prohibition of an assembly, which is laid down in almost all laws on public assembly in BiH, is the existence of an actual threat on safety of people and property or serious violation of public peace and order during the public assembly.²¹⁰ This formulation is not limited to actual incitement of unlawful conduct either, and as such, it does not meet the requirement to take less restrictive measures when restricting the freedom of assembly that can mitigate or prevent potential damage, and do not immediately imply the assembly prohibition.²¹¹

Another widely represented ground for the prohibition of an assembly is the need to prevent endangering of public health, upon request of ministries of health.²¹² Thus formulated ground for prohibition of the exercise of the right to freedom of peaceful assembly is too broad, based on a hypothetical health treat and, as such, it is not aligned with international standards.²¹³

Also, public assemblies in BiH can be banned or suspended when they were not notified in time,²¹⁴ or they take place in a location which was not specified in the assembly notification, or where assemblies cannot take place according to the law.²¹⁵ Such provision was found to be disproportionate on several occasions, if the assembly is peaceful, and it was emphasised that it should be eliminated from legal texts.²¹⁶ Incompatibility with international standards is evident in this field, considering the duty of the authorities to take reasonable and appropriate measures to facilitate assemblies that are convened at short notice or non-notified spontaneous assemblies convened in response to a situation of importance for the community.²¹⁷

According to international standards, the fact that the organiser failed to take additional security measures²¹⁸ or that stewards are unable to maintain public peace and order at the assembly²¹⁹ does not constitute the reason for prohibition or suspension of an assembly because the maintenance of public order during the assembly is the duty of police authorities.²²⁰

Some laws on public assembly in BiH define public morals as grounds for restricting the freedom of peaceful assembly.²²¹ According to the Guidelines of the Venice Commission and OSCE/ODIHR, the protection of morals should rarely, if ever, be regarded as an appropriate basis for imposing restrictions on freedom of peaceful assembly.²²² In principle, this ground must be viewed in a very limited way – with a guarantee that it is not used with a discriminating intent, and that it does not rely on conceptions of morality of a political power holder.²²³

Some laws in BiH also contain provisions that foresee the duty of police authorities to suspend an assembly if only one participant is armed.²²⁴ However, according to the Guidelines of the Venice Commission and OSCE/ODIHR, isolated incidents of sporadic violence are by themselves insufficient to justify restrictions on the freedom of assembly of peaceful participants, which the police authorities must keep in mind.²²⁵ In that regard, using the example of the Law on Public Assembly in Sarajevo Canton, the Venice Commission and OSCE/ODIHR found that such provision constitutes disproportionate interference with the freedom of peaceful assembly, and that the solution must be to disarm the person and – depending on the specific case – to ban him or her from the assembly.²²⁶



SANCTIONS

The main principles articulated in the Guidelines of the Venice Commission and the OSCE/ODIHR that should be followed when considering sanctions that can be imposed against organisers and other participants of a peaceful assembly after the assembly include lawfulness of the sanction (sanctions and penalties are only permissible if they were already prescribed by law at the time the assembly took place), and clarity and foreseeability of the legal text.²²⁷ Also, any penalties imposed must be proportionate to the severity of perpetrated offence, which also implies that penalties for minor offences should be low.²²⁸ Specifically, no sanctions should be imposed on organisers for non-compliance with a notification, unless there is evidence to prove that they have done so intentionally. The burden of proof in such cases rests with the public authorities. If there are reasonable grounds for non-compliance with a notification, then no liability arises, and no sanctions should be imposed.²²⁹ The UN's Special Rapporteur on the rights to freedom of peaceful assembly and of association also warns in his reports about the need to avoid criminal sanctions (fines and prison sentences) – more specifically, for organiser's non-compliance with the notification requirement,²³⁰ in order not to discourage organisers of future assemblies from expressing their right to the freedom of peaceful assembly.²³¹

In the opinion of the Venice Commission and OSCE/ODIHR, provisions in the laws on public assembly in BiH aimed at punishing organisers, leaders, stewards and other participants are disproportionate, and in many cases unnecessary.²³² Non-compliance with legal requirements regarding organisation and participation in public assemblies, such as non-compliance with the notification requirement,²³³ is mostly punishable with fines in BiH, whereas laws on public assembly of Central-Bosnian Canton and Herzegovina-Neretva Canton also foresee prison sentences of up to 30, and 60 days respectively.²³⁴ In view of substantial international standards of the Venice Commission and the OSCE/ODIHR, but also the Special Rapporteur's position, such sanctions are disproportionate.²³⁵

Due to non-existence of a precise international standard regarding the acceptable fines for offences by assembly organisers, leaders and stewards, it is worth noting the OSCE's opinion about the Law on Public Assemblies of Montenegro, which lays down excessive and disproportionate fines ranging from EUR 500 to 15,000 on assembly organisers - legal persons who fail to comply with notification requirement or hold the assembly at prohibited locations.²³⁶ In that regard, provisions of some laws in BiH that foresee possible fines amounting up to BAM 9000²³⁷ on assembly organisers for the same omissions can be evaluated as disproportionate.

12 CONCLUSION

Freedom of assembly in BiH is characterised by numerous differences and contradictions in as many as twelve (12) laws on public assembly and to a large extent inconsistency with international and European standards.

The legal framework gives the impression that the right to freedom of peaceful assembly is regulated through obligations and restrictions for organisers and participants, and the sparing of police bodies from a multitude of duties that according to international standards undoubtedly fall under the positive obligation of the state. Numerous administrative and procedural obstacles are imposed on the organisers, the purpose of which is to aggravate rather than facilitate the exercise of the right to freedom of peaceful assembly as effectively as possible.

The assembly notification procedure is demanding, includes comprehensive documentation, the need for coordination with several competent authorities, and does not guarantee effective legal protection in the event of restrictions imposed by the competent authorities.

In summary, the legal framework in BiH does not reflect the most important principles of the right to freedom of peaceful assembly – the presumption in favour of holding an assembly, the positive obligation of the state to facilitate assemblies and the proportionality of measures interfering with freedom of peaceful assembly.

13

RECOMMENDATIONS

Based on the analysis of the laws on public assembly in BiH and for the purpose of improving the legal framework, the following recommendations have been formulated regarding various substantive and procedural aspects of freedom of peaceful assembly. For the Parliament of the Federation BiH

It is necessary to harmonise the laws primarily at the level of the Federation of BiH – by submitting into the parliamentary procedure and enacting, for example, a Federation law on public assembly, which would be based on best practices and which would harmonise the exercise of the right to freedom of peaceful assembly in the territory of the Federation of BiH.

For cantonal assemblies, the National Assembly of the Republika Srpska and the Assembly of the Brčko District BiH

It is recommended that “public events” are exempted from laws governing peaceful assemblies and protests, due to their for-profit nature which is irreconcilable with the purpose of peaceful assemblies and protests.

In all laws on public assembly, introduce the definition of “other public assemblies” as a separate category under “peaceful assemblies and protests”, with the aim of ensuring a uniform way of exercising the right to freedom of peaceful assembly.

Incorporate into all laws on public assembly in BiH the provisions that explicitly recognise spontaneous assemblies and ensure their exemption from the advance notification requirement, as well as eliminate restrictions relating to pre-designated locations.

In the laws on public assembly of Bosnian Podrinje, Central Bosnia and Herzegovina-Neretva Cantons repeal the provisions²³⁸ on decisions on approvals of assemblies issued by police bodies, because they constitute an authorisation rather than a notification regime in those parts of BiH.

Repeal the provisions of laws on public assembly and Law on the Basics of Road Traffic Safety in BiH requiring assembly organisers to obtain additional approvals (consents) from the competent transport authorities when the assembly includes a section of a road, and specify only one competent (police) body that may consider assembly notification.

Amend the provisions of laws on public assembly of Una-Sana, Bosnian Podrinje, Central Bosnia, Herzegovina-Neretva, Posavina Cantons and Canton 10 to grant foreign nationals the right to freedom of peaceful assembly under the same conditions as citizens, especially with regard to assembly notification.

Delete the provisions from laws on public assembly which exempt trade unions, political parties and other legal entities from the obligation to notify indoor assemblies, because they are based exclusively on the identity of the organiser.²³⁹

Taking into account the importance of a timely and simple procedure for assembly organising, it is necessary to:

- limit the requirements pertaining to notification content in the provisions of all laws on public assembly to the minimum necessary information on the purpose, date, time, duration and location of the assembly, the route of movement and contact information of the organisers,
- delete the provision from the Law on Public Assembly of the HNC according to which the organiser is obliged to inform the police body about any items (banners, pyrotechnics, etc.) that the participants of the assembly will carry or use,
- harmonise the deadline for assembly notification in the laws on public assembly of Tuzla, Zenica-Doboj and Canton 10 with the time limit of five days for assembly notification stipulated in other laws,
- given the imprecise definition of “particularly justifiable reasons” for the extraordinary two-day assembly notification deadline, the laws on public assembly in BiH should elaborate on this wording to avoid legal uncertainty.

Repeal the provisions from laws on public assembly referring to “accessible” and “suitable” places as possible locations for assemblies due to their vagueness.

Repeal the provisions from all laws that explicitly designate places where assemblies cannot be held, and formulate all restrictions regarding assembly locations on a case-by-case basis.

Repeal the provisions from laws authorising municipal/city authorities to specify lists of locations where assemblies may be held by way of decision.

Amend the provisions of laws on temporary use of public spaces by specifying that public spaces can be temporarily used also for peaceful assemblies and public protests. In the laws on public assembly of Tuzla and Zenica-Doboj Canton, it is necessary to eliminate the time restriction stipulating that public assemblies can be held only in the period from 08:00 to 22:00h.

Change the deadline for the decision to ban assembly, stipulated by the provisions pertaining to the legal protection procedure, to be no later than 72 hours prior to the assembly (as opposed to the present 48 hours).

Consider removing the specific provisions on the deadline within which the organisers can appeal the decision to ban assembly, in order to facilitate the process of disputing the decisions of the competent authorities.

Limit the deadline for deciding on the appeal to at least 24 hours after receiving the appeal, to give the organisers sufficient time to continue with the activities of assembly organising or informing the public about the its cancellation.

Specify in the Law on Public Assembly of Central Bosnia Canton the deadline for the competent bodies to decide on the appeal as they are currently missing from that law. Taking into account the presumption in favour of holding an assembly, all laws should include a provision allowing organisers to continue activities aimed at holding an assembly within the notified timeframe, unless the competent authorities decide on the appeal before that date.

Bearing in mind the primary obligation of the state to enable and protect the exercise of the right to freedom of assembly, the laws on public assembly in BiH should remove the burden of numerous duties and responsibilities from the organisers, leaders and stewards, such as liability for others in case of damage, public order and peace, ensuring medical and firefighting assistance, and cleaning the location of the assembly. It should be clear in the laws that neither the duties nor the powers of police officers have been delegated to them.

Considering the recommendations of international bodies regarding the restriction of the right to freedom of assembly, the laws in BiH should avoid blanket bans or restrictions, which leave no room for balancing the interests in each specific case.

Eliminate the solutions from the laws on public assembly of Tuzla, Zenica-Doboj, Sarajevo, West Herzegovina, Posavina Cantons and Canton 10 according to which police bodies are authorised to suspend the assembly if only one of the participants is armed; a less restrictive alternative could be to disarm and ban that person from the assembly.

Guided by international standards, it is necessary to remove disproportionately severe penalties for organisers, leaders, stewards and participants in assemblies in the case of minor offenses. Particularly problematic in this regard is the possibility of imposing a prison sentence, which is stipulated by laws on public assembly of the Central Bosnia and the Herzegovina-Neretva Cantons for all persons on the side of the organisers, even for minor offenses.

For cantonal ministries of the interior, the Ministry of the Interior of the Republika Srpska and the Police of the Brčko District BiH

The competent bodies should carry out the process of communication and consultation with assembly organisers, as well as the process of maintaining public order and peace at assemblies, in the spirit of the principle of a positive obligation of the state to facilitate assemblies; that is, their actions should aim to enable the enjoyment of the right to freedom of peaceful assembly in the manner provided for in relevant international standards, in particular the following:

- avoiding automatic decisions banning unnotified assemblies, bearing in mind the importance of spontaneous assemblies in democratic societies and assessing all the circumstances on a case-by-case basis and in light of the proportionality principle;
- considering assembly notification immediately upon its receipt and, in case of ambiguities or dilemmas, contact assembly organisers in a timely fashion to remove any obstacles in time;
- deciding on the ban and informing the organisers thereon without delay, i.e., before the expiration of deadlines prescribed by law, in order to allow them enough time to compile and file an appeal against the decision, for the purpose of allowing the appeal procedure to be completed before than the expected date of the assembly;
- acting during the assembly with the aim of facilitating the peaceful assembly, which includes taking measures to interrupting the assembly only in strictly necessary cases of threat of violence, as required by international guidelines.

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ABOUT SARAJEVO OPEN CENTRE

Sarajevo Open Centre (SOC) advocates the full respect of human rights and social inclusion of LGBTI persons and women. Sarajevo Open Centre is an independent, feminist civil society organisation that strives to empower LGBTI (lesbian, gay, bisexual, trans* and intersex) persons and women by strengthening the community and building the activist movement. SOC also publicly promotes human rights of LGBTI persons and women, and it advocates the improvement of legislation and public policies in Bosnia and Herzegovina at the state, European and international level.

You can find out more about our work at: www.soc.ba

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- 88 Article 4 (1), Law on Public Assembly USC; Article 3 (1), Law on Public Assembly PC; Article 3 (1), Law on Public Assembly TC; Article 3 (1), Law on Public Assembly ZDC; Article 3 (1), Law on Public Assembly WHC; Article 3 (1), Law on Public Assembly SC; Article 3 (1), Law on Public Assembly C10; Article 3 (3), Law on Public Assembly RS. Article 9 of the Law on Peaceful Assembly of BD BiH defines the location for a peaceful assembly as a place where the assembly does not endanger the rights of others, public morals, the safety and health of people and the safety of property.
- 89 Laws on Public Assembly BPC, SCB and the Law on Peaceful Assembly BD BiH are the only ones not containing the formulation “accessible” and “suitable” location for an assembly.
- 90 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 55.
- 91 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 55.
- 92 Article 3 (3), Law on Public Assembly WHC; Article 3 (3), Law on Public Assembly RS.
- 93 Article 3, Law on Public Assembly HNC.
- 94 Article 7 (2), Law on Public Assembly BD BiH.
- 95 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 56.
- 96 Decision on Designating Spaces for Public Assemblies in the Territory of Banja Luka Municipality, Official Gazette RS 31/11.
- 97 Article 1, Decision on Designating Spaces for Public Assemblies in the Territory of Banja Luka Municipality.
- 98 Law on Temporary Use of Public Spaces in the Territory of Sarajevo Canton, Official Gazette Sarajevo Canton 20/04, 26/12, 32/12, 24/15.
- 99 Article 2 (2), Law on Temporary Use of Public Spaces in the Territory of Sarajevo Canton.
- 100 Specijalno izvješće o pravu na slobodu mirnog okupljanja, Human Rights Ombudsman Institution of BiH, Banja Luka, 2020, pgs. 34. – 35.
- 101 Laws on Public Assembly BPC, SCB and HNC are the only ones not containing provisions on prohibited locations for assemblies.
- 102 Article 10, Law on Public Assembly USC; Article 15, Law on Public Assembly PC; Article 14, Law on Public Assembly TC; Article 14, Law on Public Assembly WHC; Article 16, Law on Public Assembly ZDC; Article 15, Law on Public Assembly SC; Article 15, Law on Public Assembly C10; Article 12, Law on Public Assembly RS; Article 10, Law on Peaceful Assembly BD BiH.

- 103 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 133.
- 104 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 57.
- 105 Article 10 c), Law on Public Assembly USC; Article 14 (1) d), Law on Public Assembly TC; Article 16 d), Law on Public Assembly ZDC; Article 14 c), Law on Public Assembly WHC; Article 15 c), Law on Public Assembly SC; Article 15 c), Law on Public Assembly C10; Article 12 v), Law on Public Assembly RS.
- 106 Joint Opinion on the Act on Public Assembly of the Sarajevo Canton by the Venice Commission and OSCE, p. 9, para. 33.
- 107 Article 14 (1) g), Law on Amendments to the Law on Public Assembly TC; Article 16 g), Law on Public Assembly ZDC; Article 15 g), Law on Public Assembly C10; Article 12 đ), Law on Public Assembly RS.
- 108 Article 14 (1) g), Law on Amendments to the Law on Public Assembly TC.
- 109 Article 15 (g) of the Law on Public Assembly C10 lists the Government building in Livno and the Assembly building in Tomislavgrad as facilities with special security; assemblies may be held at least ten meters from these buildings.
- 110 See Ljubinko Mitrović, “Javni skupovi u Republici Srpskoj” in *Federalno ministarstvo pravde, Pravna misao* 5 – 6, Sarajevo, 2010, p. 68.
- 111 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 55.
- 112 Article 5, Law on Public Assembly USC; Article 4, Law on Public Assembly PC; Article 4, Law on Public Assembly TC; Article 4, Law on Public Assembly ZDC; Article 4, Law on Public Assembly WHC; Article 4, Law on Public Assembly SC; Article 4, Law on Public Assembly C10; Article 4, Law on Public Assembly RS.
- 113 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 58.
- 114 Article 2 (c), Law on Peaceful Assembly BD BiH.
- 115 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 59.
- 116 Article 3, Law on Amendments to the Law on Public Assembly TC; Article 15, Law on Public Assembly ZDC.
- 117 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 146.
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- 120 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 125.
- Report of the Special Rapporteur, A/HRC/20/27, p. 12., para. 42.
- 121 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 125.
- 122 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 126.
- 123 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 123.
- 124 Article 11 (2), Law on Public Assembly USC; Article 16 (2), Law on Public Assembly PC; Article 18 (2), Law on Public Assembly TC; Article 20 (2), Law on Public Assembly ZDC; Article 15 (2), Law on Public Assembly WHC; Article 16 (2), Law on Public Assembly SC; Article 17 (2), Law on Public Assembly C10; Article 15 (3), Law on Peaceful Assembly BD BiH.
- 125 Article 11 (2), Law on Public Assembly USC; Article 16 (2), Law on Public Assembly PC; Article 18 (2), Law on Public Assembly TC; Article 20 (2), Law on Public Assembly ZDC; Article 16 (2), Law on Public Assembly SC; Article 17 (2), Law on Public Assembly C10; Article 13 (2), Law on Public Assembly RS.
- 126 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 122.
- 127 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 83.
- 128 Article 12 (1), Law on Public Assembly USC; Article 17 (1), Law on Public Assembly PC; Article 19 (1), Law on Public Assembly TC; Article 21 (1), Law on Public Assembly ZDC; Article 4a. (2), Law on Public Assembly BPC; Article 18 (3), Law on Public Assembly CBC; Article 16 (1), Law on Public Assembly WHC; Article 17 (1), Law on Public Assembly SC; Article 18 (1), Law on Public Assembly C10.
- 129 Article 16 (1), Law on Peaceful Assembly BD BiH.
- 130 Article 19 (1), Law on Public Assembly TC; Article 21 (1), Law on Public Assembly ZDC.
- 131 Article 14, Law on Public Assembly RS.
- 132 Article 18 (4), Law on Public Assembly CBC.
- 133 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 86.
- 134 Article 12 (3), Law on Public Assembly USC; Article 19 (4), Law on Public Assembly TC; Article 21 (4), Law on Public Assembly ZDC; Article 14 (4), Law on Public Assembly RS; Article 16 (4), Law on Peaceful Assembly BD BiH.
- 135 Article 19 (4), Law on Public Assembly TC; Article 21 (4), Law on Public Assembly ZDC.
- 136 Article 17 (4), Law on Public Assembly PC; Article 4a. (4), Law on Public Assembly BPC; Article 16 (4), Law on Public Assembly WHC; Article 17 (4), Law on Public Assembly SC; Article 18 (4), Law on Public Assembly SC.
- 137 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 125.
- 138 Article 12 (2), Law on Public Assembly USC; Article 17 (3), Law on Public Assembly PC; Article 19 (3), Law on Public

- Assembly TC; Article 21 (3), Nacrt Zakona o javnom okupljanju ZDC; Article 18 (5), Law on Public Assembly CBC; Article 16 (3), Law on Public Assembly WHC; Article 17 (3), Law on Public Assembly SC; Article 18 (3), Law on Public Assembly C10; Article 14 (3), Law on Public Assembly RS; Article 16 (3), Law on Peaceful Assembly BD BiH.
- 139 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 126.
- 140 Article 19 (5), Law on Public Assembly TC; Article 21 (5), Law on Public Assembly ZDC; Article 14 (5), Law on Public Assembly RS.
- 141 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 123.
- 142 Laws on Public Assembly of CBC, TC and ZDC do not stipulate the right to appeal against a decision of the competent authority to an independent court; the Law on Public Assembly HNC lacks any provisions on the appeal procedure.
- 143 See the specific recommendation that refers to an identical legal solution in the Law on Public Assembly of Montenegro in OSCE/ODIHR Report, Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (Warsaw: OSCE Office for Democratic Institutions and Human Rights 2014), p. 50., para. 173.
- 144 See, e.g., the Law on Internal Affairs Sarajevo Canton (Official Gazette Sarajevo Canton 1/16 i 9/2019), Article 8: "Internal affairs within the competence of the Canton are: a) protection of life and property, as well as other rights and freedoms established by the constitutions in BiH; ... c) tasks and duties related to the maintenance of public order and peace; d) tasks and duties related to public assemblies..."
- 145 Article 13 (7), Law on Public Assembly USC; Article 19 (7), Law on Public Assembly PC; Article 17 (7), Law on Public Assembly WHC; Article 19 (7), Law on Public Assembly SC; Article 20 (7), Law on Public Assembly C10; Article 16 (2), Law on Public Assembly RS.
- 146 Article 13 (6), Law on Public Assembly USC; Article 19 (6), Law on Public Assembly PC; Article 20 (5), Law on Public Assembly TC; Article 22 (5), Law on Public Assembly ZDC; Article 17 (6), Law on Public Assembly WHC; Article 19 (6), Law on Public Assembly SC; Article 20 (6), Law on Public Assembly C10; Article 16 (1), Law on Public Assembly RS.
- 147 Article 22, Law on Peaceful Assembly BD BiH.
- 148 Article 6, Law on Public Assembly HNC.
- 149 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 149.
- 150 This responsibility is explicitly foreseen by all laws on public assembly in BiH u BiH, except for the laws of USC, BPC, SCB and HNC, as well as of the RS.
- 151 Article 13 (1), 14 (3), 15 (1), Law on Public Assembly USC; Article 19 (1), 20 (3), 21 (1), Law on Public Assembly PC; Article 20 (1), 23 (3), 24 (1), Law on Public Assembly TC; Article 22 (1), 25 (3), 26 (1), Draft Law on Public Assembly ZDC; Article 11, 9 (2), Law on Public Assembly BPC; Article 10, Law on Public Assembly CBC; Article 17 (1), 18 (3), 19 (1), Law on Public Assembly WHC; Article 19 (1), 20 (3), 21 (1), Law on Public Assembly SC; Article 20 (1), 22 (3), 23 (1), Law on Public Assembly C10; Article 15 (1), 18 (3), 19 (1), Law on Public Assembly RS; Article 18 (2) f), Law on Peaceful Assembly BD BiH.
- 152 This duty is foreseen by all laws on public assembly in BiH, except for the laws of BPC and BD BiH.
- 153 Article 13 (2), Law on Public Assembly USC; Article 19 (2), Law on Public Assembly PC; Article 17 (2), Law on Public Assembly WHC; Article 19 (2), Law on Public Assembly SC; Article 20 (2), Law on Public Assembly C10.
- 154 Article 19, Law on Public Assembly CBC.
- 155 This form of liability of the organisers for the damage is explicitly foreseen in the laws on public assembly of TC, ZDC, WHC, SC and C10.
- 156 Article 6, Law on Public Assembly PC.
- 157 Article 180, Law on Obligations, Official Gazette FBiH 29/03 i 42/11.
- 158 Article 19, Law on Public Assembly PC.
- 159 Join Report of the UN Special Rapporteur (2016), A/HRC/31/66, para. 26.
- 160 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 70.
- 161 Articles 14 and 15, Law on Public Assembly USC; Articles 19 and 20, Law on Public Assembly PC; Articles 23 and 24, Law on Public Assembly TC; Articles 25 and 26, Law on Public Assembly ZDC; Article 10, Law on Public Assembly BPC; Article 8, Law on Public Assembly CBC; Articles 18 and 19, Law on Public Assembly WHC; Articles 6 and 7, Law on Public Assembly HNC; Articles 20 and 21, Law on Public Assembly SC; Articles 22 and 23, Law on Public Assembly C10; Articles 18 and 19, Law on Public Assembly RS.
- 162 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 68.
- 163 Article 18 (2) b) i 19 (1), Law on Peaceful Assembly BD BiH.
- 164 Article 15 (2), Law on Public Assembly USC; Article 21 (2), Law on Public Assembly PC; Article 24 (2), Law on Public Assembly TC; Article 26 (2), Law on Public Assembly ZDC; Article 19 (2), Law on Public Assembly WHC; Article 21 (2), Law on Public Assembly SC; Article 23 (2), Law on Public Assembly C10; Article 19 (2), Law on Public Assembly RS.
- 165 Article 15 (5) a), Law on Public Assembly USC; Article 21 (5) a), Law on Public Assembly PC; Article 24 (4) a), Law on Public Assembly TC; Article 26 (4) a), Law on Public Assembly ZDC; Article 19 (5) a), Law on Public Assembly WHC; Article 21 (5) a), Law on Public Assembly SC; Article 23 (5) a), Law on Public Assembly C10; Article 19 (5) a), Law on Public Assembly RS.

- 166 Article 15 (3), Law on Public Assembly USC; Article 21 (3), Law on Public Assembly PC; Article 24 (3), Law on Public Assembly TC; Article 26 (3), Law on Public Assembly ZDC; Article 19 (3), Law on Public Assembly WHC; Article 21 (3), Law on Public Assembly SC; Article 23 (3), Law on Public Assembly C10; Article 19 (3), Law on Public Assembly RS.
- 167 Article 15 (5) b), Law on Public Assembly USC; Article 21 (5) b), Law on Public Assembly PC; Article 24 (4) b), Law on Public Assembly TC; Article 26 (4) b), Law on Public Assembly ZDC; Article 19 (5) b), Law on Public Assembly WHC; Article 21 (5) b), Law on Public Assembly SC; Article 23 (5) b), Law on Public Assembly C10.
- 168 Article 15 (5) c), Law on Public Assembly USC; Article 21 (5) c), Law on Public Assembly PC; Article 24 (4) c), Law on Public Assembly TC; Article 26 (4) c), Law on Public Assembly ZDC; Article 19 (5) c), Law on Public Assembly WHC; Article 21 (5) c), Law on Public Assembly SC; Article 23 (5) c), Law on Public Assembly C10; Article 19 (5) b), Law on Public Assembly RS; Article 20 (2) a), Law on Peaceful Assembly BD BiH.
- 169 Article 15 (5) d), Law on Public Assembly USC; Article 21 (5) d), Law on Public Assembly PC; Article 24 (4) d), Law on Public Assembly TC; Article 26 (4) d), Law on Public Assembly ZDC; Article 19 (5) d), Law on Public Assembly WHC; Article 9 (1), Law on Public Assembly HNC; Article 21 (5) d), Law on Public Assembly SC; Article 23 (5) d), Law on Public Assembly C10.
- 170 Article 15 (4), Law on Public Assembly USC; Article 21 (4), Law on Public Assembly PC; Article 19 (4), Law on Public Assembly WHC; Article 21 (4), Law on Public Assembly SC; Article 23 (4), Law on Public Assembly C10; Article 19 (4), Law on Public Assembly RS.
- 171 Article 20 (2), Law on Peaceful Assembly BD BiH.
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- 173 Article 8, Law on Internal Affairs SC.
- 174 Article 13 (3), Law on Public Assembly USC; Article 19 (3), Law on Public Assembly PC; Article 20 (4), Law on Public Assembly TC; Article 22 (4), Law on Public Assembly ZDC; Article 8, Law on Public Assembly CBC; Article 17 (3), Law on Public Assembly WHC; Article 19 (3), Law on Public Assembly SC; Article 20 (3), Law on Public Assembly C10; Article 15 (2), Law on Public Assembly RS.
- 175 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 67.
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- 177 Article 6, Law on Agencies and Interior Services for the Protection of People and Property of FBiH, Official Gazette FBiH 78/08; Article 2, Law on Agencies for Securing Persons and Property and on Private Detective Work of the RS, Official Gazette RS 50/02, 92/2005, 91/06.
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- 179 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 157.
- 180 Article 19, Law on Public Assembly CBC.
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- 184 UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights: Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, A/HRC/22/28, 21.1.2013., p. 7., para. 21.
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- 186 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 133.
- 187 Report of the Special Rapporteur, A/HRC/20/27, p. 11., para. 39.
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- 189 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 72.
- 190 Articles 11 and 16, Law on Public Assembly USC; Articles 16 and 23, Law on Public Assembly PC; Articles 17 and 26, Law on Public Assembly TC; Articles 19 and 28, Law on Public Assembly ZDC; Articles 15 and 21, Law on Public Assembly WHC; Articles 16 and 23, Law on Public Assembly SC; Articles 17 and 25, Law on Public Assembly C10; Articles 13 and 21, Law on Public Assembly RS; Articles 15 (1) and 23, Law on Peaceful Assembly BD BiH.
- 191 Article 11 (1) c), Law on Public Assembly USC; Article 16 (1) c), Law on Public Assembly PC; Article 17 (1) d), Law on Public Assembly TC; Article 19 (d), Law on Public Assembly ZDC; Article 7(6), Law on Public Assembly BPC; Article 16 (2), Law on Public Assembly CBC; Article 11, Law on Public Assembly HNC; Article 15 (1) c), Law on Public Assembly WHC; Article 16 (1) c), Law on Public Assembly SC; Article 17 (1) c), Law on Public Assembly C10; Article 13 (1) b), Law on Public Assembly RS.

192 Article 11 (1) g), Law on Public Assembly USC; Article 16 (1) g), Law on Public Assembly PC; Article 17 (1) g), Law on Public Assembly TC; Article 19 (g), Law on Public Assembly ZDC; Article 7 (8), Law on Public Assembly BPC; Article 15 (1) g), Law on Public Assembly WHC; Article 16 (1) g), Law on Public Assembly SC; Article 17 (1) g), Law on Public Assembly C10.

193 Article 16 (i), Law on Public Assembly USC; Article 23 (i), Law on Public Assembly PC; Article 26 (h), Law on Public Assembly TC; Article 28 (h), Law on Public Assembly ZDC; Article 21 (i), Law on Public Assembly WHC; Article 25 (i), Law on Public Assembly C10; Article 21 (e), Law on Public Assembly RS.

194 Article 11 (1) d), Law on Public Assembly USC; Article 16 (1) d), Law on Public Assembly PC; Article 17 (1) c), Law on Public Assembly TC; Article 19 (c), Law on Public Assembly ZDC; Article 15 (1) d), Law on Public Assembly WHC; Article 13 (v), Law on Public Assembly RS.

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196 Article 11 (1) a), Law on Public Assembly USC; Article 16 (1), Law on Public Assembly CBC; Article 16 (3), Law on Public Assembly HNC; Article 13 (a), Law on Public Assembly RS.

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198 Article 11 (1) i), Law on Public Assembly USC; Article 16 (1) i), Law on Public Assembly PC; Article 17 (1) h), Law on Public Assembly TC; Article 19 (h), Law on Public Assembly ZDC; Article 7 (9), Law on Public Assembly BPC; Article 16 (2), Law on Public Assembly HNC; Article 15 (1) i), Law on Public Assembly WHC; Article 16 (1) i), Law on Public Assembly SC; Article 17 (1) i), Law on Public Assembly C10.

199 Article 11 (1) j), Law on Public Assembly USC; Article 17 (1) i), Law on Public Assembly TC; Article 19 (h, i), Law on Public Assembly ZDC; Article 5, Law on Public Assembly CBC; Article 16 (1), Law on Public Assembly HNC; Article 15 (1) i), Law on Public Assembly WHC; Article 23 (f), Law on Public Assembly SC.

200 Article 11 (1) h), Law on Public Assembly USC; Article 16 (1) h), Law on Public Assembly PC; Article 17 (1) f), Law on Public Assembly TC; Article 19 (f), Law on Public Assembly ZDC; Article 16, Law on Public Assembly CBC; Article 15 (1) h), Law on Public Assembly WHC; Article 16 (4), Law on Public Assembly HNC; Article 16 (1) h), Law on Public Assembly SC; Article 13 (1) d), Law on Public Assembly RS.

201 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 149 – 150.

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203 Article 16 (1) a), Law on Public Assembly PC; Article 7 (1), Law on Public Assembly BPC; Article 15 (1) a), Law on Public Assembly WHC; Article 16 (1) a), Law on Public Assembly SC; Article 17 (1) a), Law on Public Assembly C10; Article 15 (1) a), Law on Peaceful Assembly BD BiH.

204 Article 11 (1) e), Law on Public Assembly USC; Article 15 (1) e), Law on Public Assembly PC; Article 16 (1) e), Law on Public Assembly PC; Article 17 (1) e), Law on Public Assembly TC; Article 19 (e), Law on Public Assembly ZDC; Article 16 (1) e), Law on Public Assembly SC; Article 17 (1) e), Law on Public Assembly C10; Article 13 (1) g), Law on Public Assembly RS; Article 15 (1) c), Law on Peaceful Assembly BD BiH.

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207 Article 16, Law on Public Assembly CBC.

208 Article 7, Law on Public Assembly BPC.

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210 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 78.

211 Article 11 (1) f), Law on Public Assembly USC; Article 16 (1) f), Law on Public Assembly PC; Article 16, Law on Public Assembly CBC; Article 7 (7), Law on Public Assembly BPC; Article 15 (1) f), Law on Public Assembly WHC; Article 16 (3), Law on Public Assembly HNC; Article 16 (1) f), Law on Public Assembly SC; Article 17 (1) f), Law on Public Assembly C10; Article 13 (1) d), Law on Public Assembly RS; Article 15 (1) d), Law on Peaceful Assembly BD BiH.

212 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 77.

213 Article 11 (1) h), Law on Public Assembly USC; Article 16 (1) h), Law on Public Assembly PC; Article 16, Law on Public Assembly CBC; Article 17 (1) f), Law on Public Assembly TC; Article 19 (f), Law on Public Assembly ZDC; Article 15 (1) h), Law on Public Assembly WHC; Article 16 (4), Law on Public Assembly HNC; Article 16 (1) h), Law on Public Assembly SC; Article 17 (1) h), Law on Public Assembly C10; Article 13 (1) d), Law on Public Assembly RS; Article 15 (1) d), Law on Public Assembly BD BiH.

214 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 77.

215 Article 11 (1) c), Law on Public Assembly USC; Article 16 (1) c), Law on Public Assembly PC; Article 16, Law on Public Assembly CBC; Article 17 (1) d), Law on Public Assembly TC; Article 19 (d), Law on Public Assembly ZDC; Article 7 (6), Law on Public Assembly BPC; Article 15 (1) c), Law on Public Assembly WHC; Article 11, Law on Public Assembly HNC; Article 16 (1) c), Law on Public Assembly SC; Article 17 (1) c), Law on Public Assembly C10; Article 13 (1) b),

Law on Public Assembly RS.

216 Article 11 (1) d), Law on Public Assembly USC; Article 16 (1) d), Law on Public Assembly PC; Article 17 (1) c), Law on Public Assembly TC; Article 19 (c), Law on Public Assembly ZDC; Article 15 (1) d), Law on Public Assembly WHC; Article 11, Law on Public Assembly HNC; Article 16 (1) d), Law on Public Assembly SC; Article 17 (1) d), Law on Public Assembly C10; Article 13 (1) v), Law on Public Assembly RS.

217 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 80. Joint Opinion on the Act on Public Assembly of the Sarajevo Canton by the Venice Commission and OSCE/ODIHR, p. 11., para. 52.

218 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 171.

219 Article 11 (1) g), Law on Public Assembly USC; Article 16 (1) g), Law on Public Assembly PC; Article 17 (1) g), Law on Public Assembly TC; Article 19 (g), Law on Public Assembly ZDC; Article 7 (8), Law on Public Assembly BPC; Article 15 (1) g), Law on Public Assembly WHC; Article 16 (1) g), Law on Public Assembly SC; Article 17 (1) g), Law on Public Assembly C10.

220 Article 16 (i), Law on Public Assembly USC; Article 23 (i), Law on Public Assembly PC; Article 26 (1) h), Law on Public Assembly TC; Article 28 (h), Law on Public Assembly ZDC; Article 16, Law on Public Assembly CBC; Article 21 (i), Law on Public Assembly WHC; Article 23 (i), Law on Public Assembly SC; Article 25 (i), Law on Public Assembly C10; Article 21 (e), Law on Public Assembly RS.

221 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 75 and 89.

222 Article 16, Law on Public Assembly CBC; Article 7 (5), Law on Public Assembly BPC; Article 16 (3), Law on Public Assembly HNC.

223 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 82.

224 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 142.

225 Article 23 h), Law on Public Assembly PC; Article 26 (1) g), Law on Public Assembly TC; Article 28 (g), Law on Public Assembly ZDC; Article 21 (h), Law on Public Assembly WHC; Article 23 (h), Law on Public Assembly SC; Article 25 (h), Law on Public Assembly C10.

226 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 139.

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232 Report of the Special Rapporteur, A/HRC/23/29, p. 19., para. 77.

233 CDL-AD (2019) 026 Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in BiH, in its two entities and in Brčko District, para. 88.

234 Article 27 (1) c), (2), (4), Law on Public Assembly USC; Article 35 (1) a), (2), (4), Law on Public Assembly PC; Article 38 (1) a), (2), (3), Law on Public Assembly TC; Article 39 (1) a), (2), (3), Law on Public Assembly ZDC; Article 16, Law on Public Assembly BPC; Article 20 (1), 21 (1), Law on Public Assembly CBC; Article 33 (1) a), (2), (4), Law on Public Assembly WHC; Article 17 (1) 1., (2), Law on Public Assembly HNC; Article 35 (1) a), (2), (4), Law on Public Assembly SC; Article 37 (1) a), (2), (4), Law on Public Assembly C10; Article 31 (1) a), (2); Article 32, Law on Public Assembly RS; Article 29 i 30, Law on Peaceful Assembly BD BiH.

235 Article 20, Law on Public Assembly CBC; Article 17, Law on Public Assembly HNC.

236 CDL-AD (2019) 017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), para. 222., 225.-226. Report of the Special Rapporteur, A/HRC/20/27, p. 9., para. 29.

237 OSCE/ODIHR Report, Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (Warsaw: OSCE Office for Democratic Institutions and Human Rights 2014), p. 57., para. 203.

238 Laws on public assembly of USC, TC, ZDC, WHC, C10, SC and RS.

239 Article 4a, Law on Public Assembly BPC; Article 18 (1), Law on Public Assembly CBC; Article 5 (1), Law on Public Assembly HNC.