

The Enjoyment of Freedom of Peaceful Assembly in Bosnia and Herzegovina

Monitoring Observations of the
OSCE Mission to
Bosnia and Herzegovina

**The enjoyment of Freedom of Peaceful
Assembly in BiH:
monitoring observations of the
OSCE Mission to Bosnia and Herzegovina**

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Foreword

Protecting the right to freedom of peaceful assembly

Enshrined in international and European human rights law, freedom of peaceful assembly is among the fundamental rights which are indispensable to the functioning of healthy democracies. It goes hand in hand with the rights to freedom of opinion and expression and to participate in public affairs.

Peaceful assemblies bring people together to express common views, concerns, grievances, demands and aspirations, and can also be a form of celebration, commemoration and expression of solidarity. They are a collective means to bring to the attention of governments critical issues of public interest, whether they concern the society as a whole or specific groups.

Whether peaceful assemblies take place outdoors, indoors or even online, it is the duty of authorities to facilitate and protect them. The ability of a State to respect, protect and fulfil the right to freedom of peaceful assembly is an indicator of the openness of authorities to listen to the public, including to criticism of their decisions and policies.

Legislation must be consistent in guaranteeing all forms of peaceful assemblies, including spontaneous gatherings. It should not impose unnecessary, disproportionate and discriminatory restrictions to the exercise of this right. Any restriction to peaceful assemblies should be exceptional, explicitly articulated in law, and subjected to review and appeal. Importantly, they should not disrupt the democratic functioning of a society.

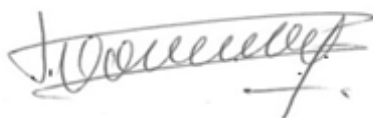
The dispersal of peaceful gatherings, and the arbitrary and unlawful arrests, detention and prosecution of organizers of peaceful assemblies and protesters is a most worrisome trend in many countries. In such contexts, the work of civil society organizations, including lawyers and legal practitioners, is particularly crucial to promote respect for the rights to freedom of peaceful assembly and ensure access to justice in case of violations experienced by people involved in peaceful assemblies. Lawyers and civil society organizations must therefore be able to exercise such work without any hindrance or pressure as I highlighted in my report to the United Nations Human Rights Council on access to justice as an integral part of the enjoyment of the rights to peaceful assembly and association.ⁱ

As I have emphasized on multiple occasions, peaceful assemblies are not a threat but demonstrate the willingness of the authorities to give space to people's views, no matter how unpopular the message of the gathering may be. By respecting the right to peaceful assembly, governments can feel the pulse of society, respond to legitimate concerns, and thereby prevent tensions and crises.

ⁱ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/106/53/PDF/G2110653.pdf?OpenElement>

Applicable international standards, such as General Comment No. 37 of the United Nations Human Rights Committee and the updated OSCE and Council of Europe Guidelines on Freedom of Peaceful Assembly, offer a solid general framework; still, limited guidance is available to legislators and law enforcement agencies as to the practical regulation of the exercise of freedom of peaceful assembly. I am glad that Bosnia and Herzegovina has started harmonizing its legislation with international human rights standards. Such efforts must be pursued across the country, complemented by improved practices.

Based on the meticulous monitoring by the OSCE of over 150 peaceful assemblies held in Bosnia and Herzegovina between 2017 and 2020, this report provides concrete recommendations to guide the authorities throughout the country to strengthen the protection of the right to peaceful assembly in law and practice.



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Special Rapporteur on the rights to peaceful assembly and of association

Introduction and methodology

Annex VI of the General Framework Agreement for Peace in Bosnia and Herzegovina envisages the role of the OSCE in monitoring the human rights situation in the country. This provision has served as the basis of the OSCE Mission to Bosnia and Herzegovina's (the Mission's) human rights monitoring over the past 25 years.

Utilizing its network of nine field offices, the Mission has systematically monitored public assemblies since 2017, including preparation activities, the conduct of local authorities during the assembly, and follow-up activities including – where relevant – prosecutions. The main instrument for monitoring public assemblies has been the Handbook on Monitoring Freedom of Peaceful Assembly,¹ developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

Between January 2017 and December 2019, the Mission monitored 134 public assemblies across Bosnia and Herzegovina (BiH). This figure does not include political rallies or any other, for-profit public gatherings that do not fall under the OSCE definition of peaceful assemblies.² The Mission monitored and documented 22 assemblies in 2017, 71 in 2018 and 40 in 2019; out of this, the largest number of assemblies happened in Banja Luka (41), followed by Mostar (29), Sarajevo (18) and Tuzla (14). The findings observed through direct monitoring of assemblies constitute the primary source of information included in this report.

Since 2019, the Mission shifted its focus from monitoring a large number of assemblies to monitoring assemblies on controversial topics and those for which it assessed the possibility of undue restrictions on the right to peaceful assembly, following the issues highlighted in the two previous years. Some of these more recent examples have been included in the report.

The Mission also collected insights and updates about different practices across the country during relevant training programmes and meetings with assembly organizers, local police representatives, civil society organizations (CSOs), as well as members of the legal community. Some of these insights have been included in this report.

This report aims to investigate restrictions that some groups and citizens have experienced in exercising their right to peaceful assembly viewed through the nexus of relevant international human rights treaties, notably the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR).

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- 1 OSCE Handbook on Monitoring Freedom of Peaceful Assembly (2011), <https://www.osce.org/odihhr/82979> The new edition of the Handbook was presented at the end of 2020 and is available at https://www.osce.org/files/f/documents/d/1/473439_0.pdf
 - 2 The OSCE and Venice Commission Guidelines on Peaceful Assembly define an assembly as “the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.” They make a clear distinction between peaceful assemblies for the purpose of expressing a message and any income generating activities (concerts, entertainment performances, sport or cultural events and similar). The latter type of assemblies is not covered by OSCE's monitoring or this report.

Several causes, including the general approach among law enforcement agencies to freedom of peaceful assembly (FoPA) and its enjoyment, as well as overly restrictive provisions in the majority of current FoPA laws in BiH and their practical application, lie behind the practices observed: some are related to legislation, whilst others pertain to enforcement. The report argues that the issues identified in various legislation and practices should be best rectified through careful revision of the legislation and, where necessary, its harmonization with international human rights norms and standards, including those governing the freedom of peaceful assembly.

Finally, the report offers concrete recommendations for the relevant BiH authorities and, in some cases, for potential assembly organizers and participants, to tackle the issues observed. By following these, authorities, as well as organizers of and participants in assemblies, can work together to ensure that all citizens are able to safely and fully exercise their right to FoPA, without any hindrance or discrimination.

Following a succinct overview of the applicable international standards upon which the Mission's analysis is based, each relevant element of the enjoyment of FoPA is examined through the lens of the aforementioned Mission monitoring. This report is not intended to offer a complete, detailed analysis of the compatibility of applicable legislation with international standards governing FoPA; rather, it focuses analysis on the key issues that came to light during the Mission's monitoring and contacts with relevant civil society organizations (CSOs), assembly organizers, police representatives, and members of the legal community. For an overview of the level of compliance of legislation in BiH's 12 jurisdictions with international standards, please see the Annex of this Report. For a full analysis of the legal framework at hand, see the report *In-Between Freedom and Restrictions: Legal Framework on Freedom of Assembly in BiH* of the NGO Analitika, which the Mission supported.³

3 Analitika, 2016, available at <http://www.analitika.ba/publications/between-freedom-and-restrictions-legal-framework-freedom-assembly-bih>

Overview of applicable international and national norms and standards

With its population of 3.5 million⁴ and a complex political and administrative structure consisting of two entities, ten cantons and the Brčko District of BiH (BD), BiH currently has 12 different laws directly governing freedom of assembly,⁵ alongside other legislation that impacts – directly or indirectly – the enjoyment of FoPA.⁶

The Mission's analysis of FoPA is based on various international standards deriving from documents and treaties to which BiH is party, including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the European Convention for the Protection of Human Rights and Fundamental Freedoms and other standards derived from the membership of BiH in the Council of Europe (CoE) and OSCE. Many of these instruments form an integral part of the BiH Constitution and are hence binding for BiH authorities,⁷ forming a relevant basis from which the enjoyment of FoPA on BiH territory can be analyzed. Below is a brief summary of key international standards relating to different aspects of FoPA covered in this report.

Presumption in favour of holding public assemblies. As a fundamental right, FoPA should be enjoyed without regulation insofar as possible. The principle of presumption in favour of holding peaceful assemblies should be clearly established in law, and organizers should not be required to obtain permission to hold an assembly.⁸

Moving assemblies are a legitimate form of peaceful assemblies. Examples include parades, processions, funerals, pilgrimages and convoys. More recent forms of assemblies include processions by cyclists, drive-slow protests, and flash mobs. Any of these forms of peaceful assembly should be protected without unreasonable interference by the authorities.

Spontaneous assemblies. Where legislation may require advance notification of peaceful assemblies, it should explicitly provide for exceptions when this is impracticable, namely in the case of gatherings prompted by an unforeseen event. Such an exception would apply in circumstances where the legally established deadline cannot be met. The authorities should always protect and facilitate any spontaneous assembly so long as it is peaceful in nature.⁹

4 According to the latest census, conducted in 2013, the total population of Bosnia and Herzegovina was 3,531,159. See at http://bhas.gov.ba/data/Publikacije/Bilteni/2019/DEM_00_2017_TB_0_BS.pdf

5 Relevant laws exist in RS, ten cantons of FBiH, and in BD.

6 Including, for instance, the Laws on Public Peace and Order.

7 Annex I of the Constitution of BiH provides an enumerated list of treaties to have immediate legal effect in its territory.

8 See, for example, in OSCE and CoE Guidelines on Freedom of Peaceful Assembly (2010), p.15, or HRC General Comment 37 (2020), paragraph 17.

9 Op. cit. footnote 8, p. 18

Venues for holding assemblies. Peaceful assemblies may in principle be conducted in all spaces to which the public has access, outdoor or indoor, including – in certain cases – on private property that is accessible to the public.¹⁰ The assemblies should not be relegated to remote areas which are difficult to access and where they cannot effectively capture the attention of the intended audience.

Time-related restrictions. Participants must have sufficient opportunity to manifest their views and assemblies should generally be left to end by themselves. Restrictions on the precise time of day or date when assemblies can or cannot be held raise concerns about their compatibility with international human rights treaties, notably the ICCPR and the ECHR, for the timing, duration or frequency of a demonstration may play a central role in reaching the intended audience.¹¹

Content-based restrictions. Any restrictions on assemblies should not be based on the content of the message(s) that they seek to communicate within the limits set by Article 10(2) ECHR and Article 21 of ICCPR in conjunction with Article 20. Restrictions must not be justified simply on the basis of the authorities' own disagreement with the merits of a particular protest – and so both criticism of government policies or ideas contesting the established order by non-violent means deserve protection.¹²

The obligations and liability of organizers. Organizers should not be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so. The organizers should also not be held liable for the actions of individual participants, non-participants or *agents provocateurs*.¹³ Stewards do not have the powers of law-enforcement officials and should aim to obtain the co-operation of assembly participants by means of persuasion rather than force. The costs of providing adequate security and safety should be fully covered by the relevant authorities. The state must not levy any additional financial charges for providing adequate policing.¹⁴

10 The OSCE and CoE Guidelines on Freedom of Peaceful Assembly (2019) note: “State authorities shall facilitate access to suitable public space and should provide adequate security and safety measures, including traffic and crowd management and first-aid services. Similar facilitation duties arise in cases of privately owned spaces where these places are the physical and functional equivalents of public places. Thus, where the owner of such a space capable of accommodating an assembly does not give permission for an assembly and where the bar on access to property has the effect of preventing any effective exercise of freedom of expression or assembly, or where it destroys the essence of such rights, the state may have a positive obligation to ensure access to such a privately owned place for the purposes of holding an assembly. This is particularly the case where public spaces suitable for assemblies, e.g. streets or squares, have been privatized, and where any prohibitions against assemblies would significantly reduce access to spaces otherwise suitable for peaceful assemblies. The same may apply to spaces open to the public (such as in privately owned shopping centres), many of which fulfil a function similar to that of more traditional public spaces such as streets and squares. Prohibiting assemblies at such locations could seriously inhibit the rights to freedom of speech and assembly by precluding access to an intended audience. Generally, in cases where people are prevented from holding assemblies in privately owned places, the rights of the property owner must be balanced against the competing right to freedom of peaceful assembly.”

11 See, for example, in ICCPR General Comment 37 (2020), paragraph 54

12 Op. cit. footnote 8, paragraph 94, p. 57

13 Op. cit. footnote 8, paragraph 5.7, p. 21

14 Op. cit. footnote 8, paragraph 32, GC 37, paragraph 64

Blanket restrictions as a rule constitute excessive restrictions violating the right to freedom of assembly. Blanket bans fail to differentiate between different ways of exercising this right and preclude any consideration of the specific circumstances of each case. Any restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participant and/or the assembly concerned.¹⁵

Review and appeal. The right to an effective remedy entails the right to appeal against any restrictions on an assembly. An initial option of administrative review can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. However, where such a review fails to satisfy the applicant, there should be a mechanism for appeal to an independent court. Appeals should take place in a prompt and timely manner so that any revisions can be implemented without further detriment to the applicant's rights. A final ruling should be given prior to the date for the assembly provided in the notification.¹⁶

Human rights-based policing. Law enforcement agencies should adopt a human rights-based approach to all aspects of the planning, preparation and policing of assemblies. This requires that they take into consideration and are fully aware of their duty to facilitate, enable and protect the right to freedom of peaceful assembly. Law enforcement agencies should be appropriately trained to deal with public gatherings and on how to adequately prioritize human rights.¹⁷

15 Op. cit. footnote 11, paragraph 42, p. 7

16 Op. cit. footnote 8, paragraph 4.6, p. 19

17 The principles of human rights policing of assemblies are outlined, inter alia, in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, available on the webpage <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>, as well as in the OSCE ODIHR publication Human Rights Policing of Assemblies, available on <https://www.osce.org/files/f/documents/c/5/226981.pdf>



Observations from the Mission's monitoring

a. Presumption in favour of holding public assemblies in observed practice

According to relevant international treaties to which BiH is party, notably ICCPR and ECHR, the presumption in favour of permitting public assemblies should preside in both law and practice. However, the Mission's monitoring underlined that in BiH, the decision-making process of whether to facilitate a peaceful assembly is frequently subject to extensive deliberations by the approving agencies, in some cases resulting in the prohibition of an assembly. Some assemblies are *a priori* prohibited merely for the reasons of their potential to 'disturb citizens,' or because of a hypothetical potential to lead to any form of violence or minor disturbances of traffic. None of these reasons are recognized in international human rights law as legitimate grounds for prohibiting assemblies.¹⁸

The scarce domestic jurisprudence available to the Mission also notes in several cases that restrictions of FoPA are frequently based solely on assumptions and that the police generally failed to ascertain a 'real and imminent threat of violence' as required by international treaties to which BiH is bound.

The Mission observed, for example, that the announced commemoration of Bosniak victims of the 1990s conflict in BiH by the Association of 111th Knightly Brigade of the Army of Bosnia and Herzegovina in Foča on 6 November 2019 was banned by a decision of the Foča Police Station for its potential to disturb the local population. In an example from Prijedor, the police banned a commemoration of women and girls killed during the 1992-1995 conflict due to "different ethnic feelings and affiliations." Under the aforementioned international standards, the state's duty to protect FoPA is of particular significance in situations where assembly participants are expressing unpopular views, while potential disorder must not be used to justify the imposition of restrictions.

Specific measures such as blocking streets or redirecting traffic may at times be required on the part of authorities under obligations to facilitate FoPA and make it possible for participants to achieve their objectives. During the reporting period, the Mission's monitoring showed that, on occasions, the relevant authorities failed to fulfil this obligation. For example, in 2019 in Čapljina, the town's mayor prohibited the celebration of Eid in a school yard. In his letter to the Islamic Community, he noted that "the safety of the participants would be jeopardized at the requested location by dense traffic" and that "the safety of individuals must be our priority", although the authorities should have endeavoured to facilitate the peaceful assembly in question.

In another example, in Jajce on 20 June 2017, the Mission observed during a protest by high school students against segregation in schools that the police failed to secure the location properly and regulate traffic where the assembly was taking place. The vehicles were moving among the protesters who were mainly underage students, presenting an obvious (avoidable) safety hazard not conducive to the enjoyment of FoPA.

18 See, for example, in HRC General Comment 37 (2020), paragraph 27

It is worth noting that all BiH jurisdictions impose obligations on assembly organizers to request permission from a competent body whenever an assembly is to take place on a road where traffic would be interrupted or disturbed. The procedure, upon the organizer's request for changes in traffic, is conducted in line with administrative procedural laws and assumes differing deadlines (15 days, or 30 days in complex cases) compared to the shorter deadlines provided in the BiH legislation governing freedom of peaceful assembly. This can serve to limit the enjoyment to FoPA, for the administrative deadlines for making traffic changes are not in line with the relevant international FoPA standards.

Light was shed on this issue in 2017 when the Sarajevo Open Center (SOC) appealed a decision preventing a protest march in central Sarajevo. The SOC had requested changes to traffic flows in order to allow the assembly to take place on a public road, however the Ministry of Transport of Canton Sarajevo did not respond to the request in a timely manner. Following the SOC's appeal, the Institution of Human Rights Ombudsman/Ombudsmen of BiH (the BiH Ombudsman Institution) issued a recommendation¹⁹ stating that the Ministry of Transport of Canton Sarajevo violated the right to FoPA by failing to respond to the SOC's request for changes in traffic, thereby *de facto* preventing the planned march.

Furthermore, the Mission's findings demonstrated some further concerning tendencies in bureaucratic hurdles being applied to the holding of assemblies beyond the aforementioned issues in traffic re-routing. When certain administrative requirements are not adhered to the letter, the Mission's monitoring revealed drastic penalties and restrictions of the right to FoPA. Furthermore, some such legislation evidently allows excessive room for interpretation, meaning that certain assemblies can be treated differently from others.

For example, the Herzegovina Neretva Canton Law on Public Gathering in its Article 5 (1) and Central Bosnia Canton Law on Public Gatherings in its Article 18 (1) envisage the issuance of administrative decisions permitting the holding of assembly, while all cantons and RS legislation require the provision of extensive documentation along with the application, including personal information of organizers and stewards, the goal, purpose and content of messages that will be presented, development of the security plan, and other details. A frequent reason given for restricting assemblies is the failure of the organizers to submit applications for holding assemblies, which contravenes applicable international human rights standards.²⁰

19 Recommendation no. P-174/17

20 See, for example, in Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/C/20/27 (2012), p.8, paragraph 28: "The Special Rapporteur believes that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities (as explicitly expressed in the Spanish Constitution), but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others. Such a notification should be subject to a proportionality assessment, not unduly bureaucratic and be required a maximum of, for example, 48 hours prior to the day the assembly is planned to take place."

Relating to this, the Co-ordination Board gathering nine associations of persons with disabilities in Una-Sana Canton was fined 4,000 BAM for organizing protests in Bihać on 26 October 2019 without notifying the police. Similarly, RS National Assembly deputy (now Banja Luka Mayor) Draško Stanivuković received a 1,500 BAM fine for organizing an anti-government protest in September 2017.

In July 2017, Vitez police approved less than 24 hours in advance of the planned start of a protest by women from Kruščica against the construction of a mini hydropower plant. In approving the assembly, the police demanded that the organizers secure an ambulance, fire brigade and security officers – demands that, beyond being unrealistic to achieve within 24 hours, pose unreasonable de facto limitations to the enjoyment of FoPA. Indeed, even without such additional demands, short periods between issuing permission for an assembly and the assembly taking place can cause difficulties in the practical organization of the assembly, especially considering the other obligations imposed on organizers (see the section below on obligations of assembly organizers).

- ❖ All levels of authority, including the municipal level, should implement their positive obligation to facilitate and protect peaceful assemblies.
- ❖ The authorities should refrain from prohibiting peaceful assemblies, especially those that are announced in advance and where sufficient time was given to take necessary steps, such as organizing security measures and making adjustments (e.g., in relation to traffic) during the planned assembly.
- ❖ The authorities should seek practical ways of simplifying administrative procedures and avoid placing an excessive bureaucratic burden on (potential) assembly organizers.

Moving assemblies

Moving assemblies should be enabled by the relevant authorities. This principle is intertwined with the concept of “sight and sound”,²¹ which is an essential element of the freedom to peaceful assembly.

The BiH laws on public assemblies do generally recognize the possibility of holding moving assemblies.²² The Mission monitored at least 20 such assemblies during the period under review. Yet, various BiH laws restrict this type of assembly, for instance by allowing only uninterrupted movement between defined start and finish points. CSOs and human rights defenders that spoke with the Mission consider that such limitations can create difficulties for organizers who wish to convey their message(s) to several institutions en route.

Observed examples include the organization, in spring 2017, of a protest march in Sarajevo to raise awareness of violence against the LGBTI population in BiH that envisaged a couple of planned stops.²³ However, the relevant authorities first attempted to move the assembly to a different location, and then permitted the assembly (with planned stops) just before the expiry of the 30-days deadline, resulting in the assembly’s cancellation due to the inability of the organizers to complete necessary preparations within this limited period of time.²⁴

The Mission notes that, in practice, the police rarely prevent stops during moving assemblies despite the aforementioned excessively restrictive legislative provisions. The practice is thus generally in line with international standards that call for the acceptance of stopovers. This can be considered as a positive use of discretion on the part of the police and law enforcement to enable the enjoyment of FoPA. This was seen during the first BiH Pride March, on 9 September 2019 in Sarajevo, which was the largest moving assembly monitored in the reporting period, attracting more than 2,000 participants from BiH and the region. Despite a significant police and security agencies’ presence, the Mission assessed that the police conduct was professional and aimed to ensure safety for all participants rather than to intimidate them, especially in the light of concerns about possible counter-protests and violence. Most recently, although outside of the report’s primary monitoring period, the Canton Sarajevo Police showed similar professionalism in facilitating the second Sarajevo Pride March on 14 August 2021. At least in the case of the high-profile Pride Marches, the police have demonstrated their capacity to manage moving assemblies in a professional manner, ensuring the safety of those involved.

❖ Relevant authorities should enable moving assemblies and permit participants to make stops if they wish, especially if messages to be expressed require addressing different audiences *en route*.

21 The principle of “sight and sound” underlines the importance of facilitating peaceful assemblies whereby the targeted audience should be able to hear and see the message(s) conveyed by the assembly. See, for example, in OSCE and CoE Guidelines on Freedom of Peaceful Assembly (2010), p. 17.

22 Only the Bosnian Podrinje Goražde Canton Law, the Central Bosnia Canton Law and the Herzegovina Neretva Canton Law do not recognize this type of gathering.

23 The organizers planned to start the moving assembly in front of the “Eternal flame” in Sarajevo and move towards BiH Parliamentary Assembly via Titova Street, making a stop at the BiH Presidency building. The Canton Sarajevo Ministry of Traffic demanded that the organizers change the route entirely and proposed that the assembly take place on Wilson’s Promenade, out of sight of the intended audience.

24 BiH Ombudsman Institution issued a statement in relation to this decision: “BiH Ombudsmen hold the view that the Ministry’s decision on the thirtieth day upon submitted request of the Sarajevo Open Centre is in line with law, but has resulted in this concrete case to the inability to organize the protest march as well as inability to realize the right to peaceful assembly. The Ombudsmen find the Ministry’s action unusual, especially in the light of its practices to decide on other, similar requests within a period of 3-5 days.”

Spontaneous assemblies

A spontaneous assembly is generally regarded as an assembly organized in response to an unforeseen event or another assembly requiring an immediate reaction, where the organizer (if there is one) is unable to meet the legal deadline for prior notification. Under international standards, spontaneous assemblies should be protected and facilitated in the same way as assemblies that are planned in advance. This principle is mainly upheld in the laws of BiH's jurisdictions, with the exception of Zenica-Doboj and Tuzla cantons, and laws recognize spontaneous assemblies as a form of immediate response to special and exceptional situations. These assemblies, however, must also be announced to the police.

The Mission's monitoring findings indicate that unannounced assemblies were generally facilitated by the police, with some important exceptions where the authorities demonstrated a less tolerant attitude towards the enjoyment of this freedom.

Examples of monitored spontaneous assemblies include protests of defrauded buyers of the 15 May building apartments in Tuzla that took place regularly during the reporting period and at a location that is not designated for assemblies – these were responded to by the police in a FoPA-enabling manner, in spite of Tuzla Canton's lack of legal recognition of such assemblies. On the other hand, during protests in response to environmental concerns at Uborak landfill in Mostar, including on 9 December 2019, police forcibly removed the protestors. This was followed by the initiation of more than 50 minor offence proceedings against the participants. Before the police violently dispersed the peaceful assembly on 25 December 2018, peaceful assemblies of the Justice for David (JfD) group in Banja Luka had taken place daily since late March 2018 following the death of David Dragičević. The Banja Luka police initiated proceedings against three opposition leaders for organizing protests in November 2018, which resulted in their acquittal during the minor offence proceedings conducted before Banja Luka Basic Court.²⁵

Similarly, a group of women from the village of Kruščica peacefully protested for an entire month before police forcibly dispersed the assembly on 24 August 2017. The police then started legal proceedings against several individuals accused of organizing the protests – despite the fact that all participants claimed that the protest was spontaneous. This goes against best practice in handling such assemblies, for authorities should accept that spontaneous assemblies often lack a formal leadership structure. The ensuing court cases resulted in the acquittal of all accused parties by the end of 2018.

Through the Mission's direct contacts with BiH police forces, it transpired that law enforcement authorities in BiH often have reservations that people can assemble spontaneously and opined that each assembly “must have an organizer.” They admitted actively monitoring potential organizers' social media accounts (including private accounts), reportedly with an aim of establishing contact with them.

- ❖ Failure to notify authorities of an assembly should not render the assembly unlawful and should not be used as a basis for dispersing it.
- ❖ In cases where the organizers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organizer, the police should still facilitate such assemblies.

²⁵ The opposition leaders were accused of violating Article 9 (1) of the RS Law on Public Assemblies for failing to notify the authorities about the gathering in the vicinity of the hospital on 12 September 2018. See Decision of the Banja Luka Basic Court number 71 0 Pr 296330 Pr dated 20 December 2019.

Location of an assembly

In BiH, most laws employ terms such as “appropriate and accessible location” for an assembly of individuals whose “number and identity are not *a priori* determined” and where “assemblies do not lead to jeopardizing the rights of other individuals, public morals, security of people and property or health” or act as a “disturbance of public traffic.” Such general venue-based restrictions do not conform to international standards, which state that any public venue, and many private venues that are accessible to the public, can be used for holding peaceful assemblies.

As already mentioned, the purpose of any given assembly is often linked to a specific location and the “sight and sound” of its target object. The Mission's monitoring indicates however that relevant stakeholders are rarely aware of this important principle. The majority of municipalities in BiH envisage only one location in their territories for the holding of assemblies, while numerous municipalities do not envisage any locations for this purpose, creating unreasonable obstacles to exercising this right. However, the Mission has also observed good practices in some municipalities that have indicated multiple locations – and thus a good degree of flexibility and choice for organizers – for holding assemblies such as Lukavac (33 locations), Srebrenica (19), and Prijedor (9).

Further, the Mission observed several examples where organizers of assemblies were denied the opportunity to choose a venue and were advised by law enforcement agencies to choose an alternative location, frequently completely out of sight of their intended audience – going against the key principle of sight and sound. Examples of refusals include the request of the SOC to hold a street action marking the International Day of Visibility of Transgender Persons in front of the BBI Center (a shopping mall in downtown Sarajevo)²⁶ and the National Theatre in Sarajevo in March 2018, a request of veterans' associations to hold a peaceful assembly at the Spanish Square in Mostar on 11 February 2019, as well as numerous requests of JfD to hold assemblies on Krajina Square in Banja Luka or in front of the church in the city centre. In the case of the SOC, a complaint against the conduct of the BBI Centre was filed with the BiH Ombudsman Institution which did not find discrimination or a violation of the right to freedom of peaceful assembly.²⁷

In spite of international treaties to which BiH is party stipulating otherwise, BiH courts do not always recognize the importance of allowing potential assemblies to take place in a broad range of settings. A 2019 initiative by an individual applicant to examine the constitutionality of Article 3 of the RS Law on Public Assemblies (governing place-based restrictions imposed by municipal policies) was rejected by the RS Constitutional Court, confirming the right of municipalities to determine locations suitable for peaceful assemblies,²⁸ which is in contradiction with the numerous applicable international human rights standards.

²⁶ Op. cit. footnote 10

²⁷ See Ž-SA-06-378/18. The Ombudsman Institution found that the SOC's complaint was groundless, and upheld the right of the BBI Centre to prohibit the use of its property for promoting ideas inconsistent with the owners' views. This, according to the recommendation, did not amount to discrimination or a violation of the right to FoPA.

²⁸ See Official Gazette of RS number 46 (2019), pp. 29-30; The RS Constitutional Court stated that “the legislator, in accordance with its constitutional competency and within given limitations, has prescribed in article 3(1) of the law the criteria and has defined the space appropriate for public assemblies; has prescribed in article 12 the venues where public assemblies may not take place, and has prescribed in

- ❖ Municipal authorities should review their policies and practices relating to FoPA and amend them in line with applicable international human rights standards.
- ❖ Municipal authorities should regard the use of roads for the purpose of peaceful assemblies as a legitimate use of public space.

e.

Time-related restrictions

International documents to which BiH is party outline the right of participants to be given sufficient time to manifest their views and that assemblies should generally be left to end by themselves. Furthermore, as the timing, duration or frequency of a demonstration can play a central role in reaching an intended audience, blanket restrictions on acceptable times for assemblies to be held are best avoided.

However, it is clear that across BiH, such restrictions exist and are generally enforced, reducing the possibilities for citizens to exercise their right to peaceful assembly. The Public Gathering laws of Zenica-Doboj, Tuzla and Bosnia-Podrinje Goražde cantons prohibit holding assemblies between 22:00 and 08:00 hours. Furthermore, some municipalities introduced time-related restrictions that are in contradiction with applicable laws; the municipality of Kostajnica restricted the duration of assemblies to a maximum of three hours and introduced time-related restrictions, allowing gatherings to take place between 08:00 and 14:00 or 18:00 and 23:00, while the municipality of Ljubuški prohibited all assemblies between 19:00 and 08:00 hours which contradicts provisions of the applicable West Herzegovina Canton law.

Peaceful protests of war veterans observed by the Mission in several locations (Tuzla, Zenica, Vogošća) in late February 2018 lasted for three days (including during the night) until special police forces dispersed them, injuring two veterans and arresting eight. The peaceful protests were organized to voice veterans' dissatisfaction with the non-adoption of the FBiH Law on the rights of demobilised veterans and to draw attention to their poor social and economic situation. A protest having continued for a long period is not an acceptable reason, as far as the relevant standards are concerned, to break-up an assembly, especially not with the use of force.

- ❖ The relevant authorities should not introduce blanket restrictions relating to the timing, duration or frequency of peaceful assemblies and can only impose restrictions on a case-by-case basis, based on an individual assessment.

the disputed article 3 of the law that the units of local self-governance will have the authority to create their own policies and determine specific venues in its territory that are appropriate for public assemblies... The Court underlines that the legislator is not able to define venues appropriate for public assemblies in each of the units of local self-governance, for which reason it is necessary that the competent authority determine such venues in their territories and within the legally prescribed criteria.”

Content-based restrictions

While the right to freedom of expression is protected under international human rights law and should be upheld even if it can be considered offensive to other individuals or groups, the advocacy of national, racial or religious hatred that constitutes incitement to imminent violence should be prohibited by law. The regulation of public assemblies should not be based upon the content of the messages that will be communicated. However, BiH legislation regulating FoPA generally requires organizers to inform the police in advance of any messages that will be conveyed, as well as any other (visual or audio) content that will be used.

Several CSO partners confirmed to the Mission that these provisions are regularly and strictly implemented. The Mission notes that the authorities applied existing provisions relating to content-based restrictions of public assemblies in some cases (e.g., in the case of the Gračanica shoe factory, see below) overly restrictively and in others insufficiently (e.g., in the case of *Ravnogorski Pokret*, see below), allowing in some instances the holding of highly contentious assemblies with considerable potential for incitement to hatred and violence while restricting other assemblies.

In April 2018, the workers of the Fortuna shoe factory in Gračanica who protested against violations of their social and economic rights were prevented by the factory management and the police from taking their banners outside the factory. In other instances, highly controversial assemblies promoting divisive topics were allowed, included the annual gatherings of *Ravnogorski pokret* in Višegrad, on 13 March 2017 and 2018, assemblies in honour of convicted war criminal Slobodan Praljak, in Mostar, in November 2017, as well as the celebration of Croatia's second place in the World Cup final on 24 July 2018, in Livno. Participants in these assemblies wore insignia and sang songs offensive to other groups.

In the example of *Ravnogorski pokret*, besides participants wearing insignia and symbols that are offensive to many, the main concern was the singing of nationalist songs perceived as incitement to violence against non-Serbs. In relation to these events, the BiH Prosecutor's Office initiated in 2019 several criminal proceedings for incitement of ethnic, racial and religious hatred and discord (the indictment was confirmed in early 2021), while RS authorities did not find sufficient grounds based on the organizers and participants' behaviour for restricting the assembly. Open incitement to ethnic, racial or religious hatred, besides being recognized as a criminal act under all BiH's criminal codes, is one of the legitimate grounds for prohibiting announced assemblies or dispersing assemblies.

This is in stark contrast to the Mission's monitoring observations of activists gathered to mark International Women's Day on 8 March 2019 in Banja Luka. They were accused of violating public peace and order because they exclaimed the word "Justice" which, according to the police caused distress and disapproval among passers-by. Furthermore, announced commemorations of Bosniak victims in Srebrenica by the NGO *Mothers of Srebrenica* on 13 July 2016 and of Serb victims in Srebrenica by the NGO *Istočna alternativa* on 13 July 2018, were both banned because of an alleged threat of violence.

In its monitoring to date, the Mission has not observed a single instance of an assembly being dispersed due to calls for violence or incitement to hatred, but it has noted evidence of law enforcement agencies' deliberation on whether or not to ban assemblies due to their potential to result in discrimination and violence. An example includes a planned assembly in Banja Luka, on 10 July 2017, in support of Ratko Mladić. The authorities prohibited the event as it coincided with the Srebrenica genocide commemoration. This practice can be considered to be in line with relevant international standards urging that the prohibition of an assembly should be a measure of last resort and should only be considered when a less restrictive response would not achieve the purpose pursued by the authorities in safeguarding other relevant rights, freedoms, and public order. In this case, given the sensitive date of the proposed assembly in contrast with its contents (at that time, Ratko Mladić was, *inter alia*, on trial before the ICTY for the Srebrenica genocide), the authorities' response can be viewed as an acceptable last-resort measure.

- ❖ The authorities should refrain from *a priori* restricting assemblies on the ground of messages that are to be communicated to the public. Speech and other forms of expression should enjoy protection except in situations where messages amount to incitement to hatred and discrimination.
- ❖ The relevant authorities should ensure that their personal viewpoints on the merits of a particular assembly or protest do not interfere with the right to FoPA.

g. Obligations of organizers, leaders, stewards

Under the applicable international standards, organizers should not be held liable for the failure to perform their responsibilities in cases where they are not individually responsible, e.g., where participants or onlookers acting independently cause property damage, disorder, or carry out violent acts. However, the obligations assigned to organizers, leaders and stewards in BiH are far more numerous than those assigned to the police. Several BiH laws contain provisions envisaging organizers' responsibility, including liability for damage as a result of actions committed by participants during assemblies.

These pose a significant obstacle to freedom of peaceful assembly and are a deterring factor for anyone wishing to freely enjoy this constitutionally guaranteed right. Although not explicitly stipulated in the RS Law on Public Gatherings, the organizers' responsibility for damage was raised in a lawsuit worth 178,500 BAM that the City of Banja Luka filed against three individuals associated with the JfD group for alleged damages borne by the city due to the cancellation of several events that the city had planned on 31 December 2018.

The obligation for organizers of assemblies to maintain public peace and order is found in most applicable BiH laws and is contrary to applicable international standards. On 20 June 2017, during a protest of secondary school students in Jajce, the police failed to provide security to (mainly underage) participants and required that they ensure security in their capacities as protest organizers. On 20 October 2018 in Bihać, during protests related to the migrant situation, the organizers were fined for not providing stewards and changing the route of the moving assembly. In both cases, a police presence would have been more appropriate to ensure the safety of the assemblies.

The authorities should fully cover the costs of providing adequate security and safety (including traffic and crowd management). Similarly, the responsibility to clean up after a public assembly should lie with the municipal authorities, as requiring organizers to pay such costs is a significant deterrent to exercising the right to freedom of assembly and could be prohibitive for many organizers. As such, financial requirements imposed on assembly organizers likely constitute an unreasonable and disproportionate prior restraint.

Several sources reported that Banja Luka police asked that the RS Labour Union pay 3,080 BAM for securing the 2017 International Workers' Day assembly in Banja Luka.²⁹ For the first LGBTIQ Pride March in September 2019 in Sarajevo, the organizers were asked by the Cantonal Ministry of Interior to secure nearly 100,000 BAM for concrete barriers and metal fences and to hire an extensive number of stewards to help with securing the assembly (the organizers told the Mission that they covered around 40,000 BAM of the requested funds through the assistance of international donors). Most assembly organizers cannot afford such fees, which constitute an unnecessary and unreasonable impediment to the enjoyment of this freedom.

The Mission noted practices in various parts of the country to charge fees for the police to secure a peaceful assembly³⁰ as well as for medical and fire protection, utility companies, and other similar purposes. From the Mission's observation, such fees are usually calculated per person and hour of their engagement. In one of the rare judicial decisions in BiH on the topic, the Banja Luka District Court stated that "the intention of the legislator, both in the case of the Republika Srpska Constitution and the ECHR, was precisely to impose a positive obligation on competent authorities to protect the rights to freedoms of association and assembly by way of undertaking measures to ensure that peaceful assembly is protected from violence by others who may not benefit from holding the assembly."³¹

- ❖ The organizers, leaders and stewards should make reasonable efforts to comply with legal requirements but should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so.
- ❖ Organizers of peaceful assemblies should be exempted from payment of any fees for securing assemblies, providing medical and fire protection, or cleaning the venue after peaceful assemblies.

29 According to the RS Ministry of Interior, the organizers in the end did not pay this fee.

30 See, for example, RS Ministry of Interior's decision on chargeable fees (2016), <<https://mup.vladars.net/lat/obrasci/ODLUKOVISINIINACINUNAPLATEOBRAZACAIUSLUGA.pdf>>

31 Judgment 11 0 U 009737 12 U, dated 11 July 2013.

Blanket bans on holding of public assemblies

Blanket restrictions constitute excessive violations of the right to freedom of peaceful assembly and are intrinsically disproportionate as they preclude consideration of the specific circumstances of each proposed assembly.³² In its monitoring, the Mission has noted several examples of blanket bans on holding public assemblies at certain locations. The practice of prescribing blanket restrictions is deeply rooted in the current BiH FoPA legislation, which envisages that each city or municipality decides which locations are appropriate and suitable for holding public assemblies. Such provisions may interfere significantly with the ability to hold assemblies within sight and sound of the intended audience.

Examples include the prohibition of assemblies of the CSO *Djeca rata* in Mostar, on 8 June 2017, for non-compliance with the City of Mostar's designated locations, NGO *ReStart Srpska* and RS National Assembly Deputy Draško Stanivuković's assemblies on multiple occasions³³ in front of the RS National Assembly in Banja Luka, and assemblies of the RS opposition parties (and pro-government counter-assembly) in Banja Luka on 27 July 2019 and 26 December 2019. Following the violent dispersal of an assembly on Krajina Square in Banja Luka on 25 December,³⁴ the RS Ministry of Interior issued a press release stating that “all future assemblies of the Justice for David group will be prevented and dispersed in line with RS Law on Public Assembly, and participants of such assemblies will be sanctioned under the law,”³⁵ which constituted a clear example of a general ban. In 2019, six requests of the JfD group to hold a peaceful assembly on the Banja Luka main square were banned because of the participants' alleged previous commission of various minor offences and criminal acts.³⁶

32 See, for example, in Joint Report of UN Special Rapporteurs (2016), A/HRC/31/66, paragraph 30.

33 20 September 2017, 10 December 2017, 12 December 2017, 21 December 2017, 18 January 2018, 28 January 2018, 23 March 2018, 26 March 2018, 27 March 2018, 10 June 2018

34 Between March and December 2018, daily protests were staged on Banja Luka's main square by Davor Dragičević, the father of David Dragičević, a 21-year-old found dead on 24 March 2018. Other citizens, generally referred to as the “Justice for David” (JfD) group, joined the protest demanding a proper investigation into his death. Due to sustained social pressure, the RS National Assembly (RSNA) eventually formed an ad hoc committee to address the case, concluding that David was in fact murdered and that the initial investigation had been flawed. The situation escalated on 25 December 2018, when RS police arrested Davor Dragičević and several other individuals, including members of RS National Assembly, and forbade any further gatherings of the JfD group due to alleged violations of the law. In March 2020, the BiH Ombudsman for Human Rights issued a recommendation in relation to the events of December 2018, calling on the RS Ministry of Interior to “re-examine all its decisions made in relation to public assemblies on 26 and 30 December,” and urging it to “make sure to act exclusively in line with international treaties and conventions, the Constitution, laws and other regulations.” (Recommendation number P-15/20 dated 5 February 2020., p. 24).

35 RS Ministry of Interior Press Release number 13-053-655/18 dated 31 December 2018.

36 RS MoI decisions 13-213-36/19 (15 February 2019), 13-213-105/19 (15 March 2019), 13-213-214/19 (19 April 2019), 13-213-430/19 (12 July 2019), 13-213-435/19 (18 July 2019). At the time of writing, the defendants in all legal proceedings initiated against JfD group for alleged minor offences have been acquitted.

On 26 December 2019, several opposition parties organized a protest to mark the anniversary of the December 2018 violence, which was approved by the RS Mol. During the same day, pro-government counter-protests were organized at the same location, and the police secured both events that passed without incidents. The following day, on 27 December, RS Ministry of Interior issued another blanket ban on further protests noting on its website that “the Ministry will not allow the holding of any public assemblies in the territory of Banja Luka until mid-January 2020 unless they aim at the promotion of tourism and upcoming holidays.”³⁷ These examples represent clear violations of international standards, for they constitute blanket bans on assemblies in key locations that are often necessary for the purpose of “sight and sound”, i.e. to reach a given audience.

- ❖ The authorities should not introduce blanket bans of FoPA; a system should be devised to review and handle complex cases on a case-by-case basis and without excessive regulation;
- ❖ Any prohibition of an assembly must be based on a real and imminent threat and not a hypothetical risk of possible violence.

i. Right to appeal negative decisions on holding assembly

The majority of laws in BiH envisage that appeals against a decision prohibiting an assembly need to be filed with the higher authority within the same ministry that decides upon the appeal in the second instance procedure (usually the Ministry of Interior). According to CSOs and human rights defenders with whom the Mission was in contact, this instils a lack of trust in the institution among organizers, resulting, in most cases, in a decision not to appeal against the first instance decisions at all as the second instance bodies, as a rule, always confirm the first instance decisions. In the reporting period, only one appeal was filed in the entire country (in West-Herzegovina Canton), which is discouraging and confirms the lack of trust of organizers in the possibility of remedying police restrictions. Earlier observed examples include assemblies organized by human rights NGOs such as *Kvart*, *Izvor*, and the Sarajevo Open Centre.

From an international human rights standards point of view, it is worrying that appeals against a first instance negative decision do not suspend enforcement of such decisions. Some laws in place in BiH fail to incorporate deadlines for deciding upon an appeal or indication of the urgency of appellate procedure against the first instance decision

37 See <https://mup.vladars.net/index.php?vijest=22525&vrsta=novosti> “RS police officers successfully secured two public assemblies that were held simultaneously in Mladen Stojanović park in Banja Luka and that passed without a single incident and without violations of public peace and order. In conjunction with the upcoming New Year and Christmas holidays, as well as 9 January, the Day of Republic, the RS Mol is conducting increased security measures so that RS citizens could spend the holidays peacefully and dignifiedly. The Ministry will not permit any public assemblies that are not linked with the promotion of tourism and upcoming holidays until mid-January 2020.”

prohibiting or restricting an assembly. Different deadlines for deciding on an appeal are in place, with the dominant deadline of 24 hours upon receiving a first instance decision. Only three laws (in RS, Tuzla and Zenica-Doboj Cantons) state that an assembly may take place if the second-instance authority fails to pass a decision upon the appeal within prescribed deadlines. In December 2020, the RS Ministry of Interior informed – by telephone and only a couple of hours before the planned assembly – the organizers of a protest announced for 18 December that their appeal against the first-instance decision banning the assembly had been rejected. The organizers claim that they never received a written decision, in spite of – among others – ODIHR and Venice Commission standards, to which BiH is party, requiring that negative decisions always be communicated in writing.

With regards to the possibility of initiating an administrative dispute before a court against the final, second-instance decisions, several laws on peaceful assemblies fail to explicitly incorporate this opportunity. In one observed example, an administrative dispute initiated against a West Herzegovina Canton decision banning an assembly in Ljubuški was completed more than a year after the assembly was supposed to take place. The final decision instructed the first instance authorities to allow the gatherings of citizens as requested, although this came too late to be useful for the affected parties.

- ❖ A system should be devised whereby appeals against decisions banning peaceful assemblies should be dealt with by an independent judicial authority and not by the body that banned the assembly in the first place.
- ❖ In the interest of the right to an effective legal remedy, any appeals should be examined in a prompt and timely manner, and the final decision should be reached prior to the date of the assembly provided in the notification.

j. Policing Assemblies

The role of the police in facilitating assemblies is crucial as they are the most visible manifestation of state authority and are obliged under various international documents to demonstrate the state's commitment to upholding the rule of law and protecting fundamental freedoms, including FoPA. Experience has shown that the majority of assemblies are peaceful in nature; yet, many law enforcement agencies continue to look at assemblies as potentially dangerous events that require strict and frequently disproportionate measures to limit the possibility of any incidents. Through its training offered over the past three years, the Mission has aimed to promote a change in police mentalities towards the policing of assemblies. During such sessions, trainers encouraged police participants to move from viewing public assemblies as strictly security issues to recognizing peaceful assemblies as a human right that requires respect and protection rather than extensive regulation or control. Facilitating the right to FoPA can of course prove challenging for law enforcement agencies whose primary responsibility is to maintain peace and order. In this vein, it is important to underline that the right to assemble is the right to assemble peacefully. The right to act in a violent manner is not protected under any international standard. However, violent acts by isolated individuals do not necessarily render the entire assembly violent.

The Mission's monitoring indicates that law enforcement agencies are more often than not lenient in their interpretation of the legal framework they are bound to work in: in general, police officials facilitate and protect moving gatherings as well as the assemblies that are not duly and timely notified. For instance, the Mission commended the professionalism and preparedness of the security forces and deployed police officers during the First Pride March (September 2019) that took place peacefully, drawing over 2,000 participants from across BiH and the region. The Mission also notes that a significant security presence contributed to an atmosphere of safety and professionalism rather than intimidation.

However, in spite of the generally positive attitude of the police towards FoPA, the Mission also recorded several instances of potential discrimination against groups and individuals whose messages were considered as unpopular and/or undesirable. For instance, throughout 2019, the RS Ministry of Interior conducted targeted checks of anyone potentially associated with the JfD group, exposed them to daily identity checks as soon as they would appear individually or collectively in the centre of Banja Luka, demanded their dispersal even during innocuous activities such as sitting in the park, and subjected them to more than a hundred criminal and minor offence charges. In an example from June 2019, six police officers restrained one JfD supporter (Swedish citizen, aged 66) for refusing to show his identification documents.³⁸ This was evidently excessive and not in line with policing best practice vis-à-vis enabling the enjoyment of FoPA.

During the period covered by this report, the Mission organized and delivered training for senior police officers in Sarajevo, Tuzla, Brčko, Mostar, Trebinje and Ljubuški on international human rights standards, and facilitated two training sessions at Banja Luka and Sarajevo police academies on policing peaceful assemblies in co-operation with OSCE ODIHR. In addition, four representatives of BiH law enforcement agencies attended a regional train-the-trainers workshop that focused exclusively on policing aspects of public assemblies in line with the guidelines adopted by the OSCE. This demonstrates a genuine interest on the part of the various police authorities in BiH in understanding how to police demonstrations in line with relevant international standards and guidelines – which is positive for the enjoyment of FoPA in practice.

- ❖ Potential organizers of peaceful assemblies must not be discriminated against or subjected to behaviour that could amount to harassment or intimidation based on previous conduct unrelated to the purpose of the assembly.
- ❖ Ministries of Interior should consider incorporating in their professional development the OSCE Guidelines on Policing Assemblies as well as international human rights standards in the field of FoPA.

38 In response to this and several other incidents involving the police, the BiH Ombudsman Institution called upon the RS Mol to “act exclusively in accordance with international treaties and conventions, the Constitution, laws and other regulations, and to adhere to the standards of police conduct, in particular those arising from the obligation laid down in international acts that relate to their duty to serve citizens, respect legality, the principle of minimum use of force, etc.” The Institution of Ombudsman for Human Rights reminded all police officers of the RS Mol of their obligation to treat citizens with due care, “taking care not to violate the dignity of the individual and not to expose citizens to unnecessary harassment and to ensure full respect for human rights and fundamental freedoms of all citizens in line with constitutions and the ECHR, taking into account the principles of ethics, professionalism and legality, as well as the dignity, reputation and honor of the person subject to the act in question.”

Observed judicial proceedings

Since the beginning of 2017, the Mission was made aware of more than 200 minor offence proceedings relating to the exercise of FoPA.

In Banja Luka alone, more than 100 minor offence proceedings have been initiated against supporters of the JfD group as well as other human rights CSOs (including, among others, *Oštra nula* and *Kvarf*). During only one week in May 2019, Banja Luka police filed 82 minor offence reports against JfD supporters for alleged violations of the public peace and order that reportedly caused anxiety among the local population. Minor offence proceedings were initiated before the Travnik Municipal Court against 40 women in Kruščica, as well as against participants in environmental protests in Uborak in Mostar and demobilized soldiers in Tuzla, mainly for alleged violations of public peace and order during assemblies and failures to announce assemblies in a timely manner.

In most cases, courts pronounced lenient sentences (e.g., ten demobilized soldiers in Tuzla who blocked the roads in March 2018 were only reprimanded), while the Banja Luka Basic Court acquitted the organizers of the protests in Banja Luka including the leader of Justice for David and three opposition leaders in 2019 and early 2020. Out of 82 minor offence proceedings referenced to in the paragraph above, the court acquitted 12 persons, suspended proceedings in four cases (for technical reasons such as an incomplete Mol report) and returned six cases for re-trial upon RS Mol appeal against the first instance judgments acquitting alleged offenders. The Banja Luka Basic Court generally found that the Ministry of Interior failed to prove that JfD supporters' actions, such as expressing dissatisfaction with the work of the police, caused anyone anxiety. The Municipal Court in Travnik took the same approach concerning a group of 23 women charged with violations of public peace and order during protests against a hydroelectric plant in Kruščica in 2018, as well as the court in Konjic in relation to environmental protesters in Jablanica.

These examples demonstrate that the courts generally play an important, positive role in upholding and protecting the right to freedom of peaceful assembly, more than it was the case with the various ministries of interior. In a judgment of the Banja Luka Basic Court in March 2021,³⁹ the police's claim that the area in front of the Banja Luka central church was "inappropriate" for holding public assemblies was labelled "tendentious" by the court which noted: "it is not clear how this location would be appropriate for the high-school graduates and the trumpeters, but not for peaceful assemblers seeking an investigation of the death of their fellow citizen."

Further, the Mission is aware of several criminal proceedings initiated in Banja Luka for alleged *attacks against an official person in the execution of official duties* during the 25 December 2018 protests as well as for material damage caused during protests on 30 December 2018, alleged endangering security (of the RS Minister of Interior), as well as incitement to violent change of the RS constitutional order. The first hearings in relation to these cases had not taken place at the time of writing.

The Mission finds it encouraging that the courts in BiH generally took into account that FoPA is a fundamental right that should be facilitated rather than regulated, and that they acquitted the vast majority of people against whom minor offences cases were filed for participation in protests.

³⁹ Case no 71 0 Pr 307 659 21 Pr2, judgment dated 24 March 2021.



Conclusion and recommendations

The enjoyment of freedom of peaceful assembly in BiH is extensively regulated by 12 different pieces of legislation and numerous local policies that are only partially harmonized with applicable international human rights standards. Some laws impose a heavy burden on organizers and effectively limit the enjoyment of this fundamental right to an unreasonable degree. There has however been some progress on the legislative front in recent years, with the adoption of the BD Law on Public Assembly in July 2020. This is a key development towards the harmonization of BiH laws on public assemblies with international human rights standards and the Mission hopes that this will serve as an example to other ministries of interior in BiH to improve their laws in line with this exemplary model.

At the same time, in most parts of the country, enforcement seems to be more lenient than legislation, while police officers increasingly recognize the importance of balancing the security-related aspects of policing public assemblies with the requirement to protect and facilitate the enjoyment of FoPA. The training that the Mission has provided over the past three years on international human rights standards has likely contributed to this change of mentality. The Mission has observed strict application of the laws as well as instances where law enforcement agencies exercise some flexibility in applying the law. In the latter cases, the law enforcement agencies have frequently shared the view that legislative changes and the harmonization of domestic practices with international standards were key to improving the overall conduct of both organizers of assemblies and law enforcement agencies. However, numerous inconsistencies highlighted in this report, including within individual administrative units or authorities, pose serious concerns regarding the effective enjoyment of freedom of peaceful assembly and, more broadly, legal security.

It is worth mentioning that all levels of governance, including municipal authorities, are equally obliged to respect, protect and promote human rights. The local (municipal/city) authorities, as shown in this report, play an important role as they prescribe venues for (and sometimes other elements including the timing and duration of) peaceful assemblies.

For these reasons, the Mission recommends the following:

To organizers:

- The organizers, leaders and stewards should make reasonable efforts to comply with legal requirements but should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so.

To authorities:

- All levels of authority, including at municipal level, should implement their positive obligations to facilitate and protect peaceful assemblies.
- The authorities should refrain from prohibiting peaceful assemblies that are announced in advance and where sufficient time was given to take necessary steps such as organizing security measures and making adjustments (e.g., in relation to traffic) during the assembly.
- The authorities should seek practical ways of simplifying administrative procedures and avoiding an excessive bureaucratic burden on assembly organizers.
- Assembly participants should be allowed to organize moving assemblies and make stops if necessary, especially if messages are to be conveyed to different audiences *en route*.

- Failure to notify authorities on an assembly should not render an assembly unlawful, and should not be used as a basis for dispersing the assembly.
- In cases where the organizers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organizer, the police should still facilitate such assemblies.
- Municipal authorities should review policies and practices relating to FoPA and amend them in line with applicable international human rights standards.
- Municipal authorities should regard the use of roads for the purpose of peaceful assemblies as a legitimate use of public space.
- The relevant authorities should not introduce blanket restrictions relating to the timing, duration or frequency of peaceful assemblies and can only impose restrictions on a case-by-case basis, based on an individual assessment.
- The authorities should refrain from *a priori* restricting assemblies on the ground of messages that are being communicated to the public. Speech and other forms of expression should enjoy protection except in situations where messages amount to incitement to hatred and discrimination.
- The relevant authorities should ensure that their personal viewpoints on the merits of a particular assembly or protest do not interfere with the right to FoPA.
- Organizers of peaceful assemblies should be exempted from payment of any fees for securing assemblies, providing medical and fire protection, or cleaning the venue after peaceful assemblies.
- The authorities should not impose blanket bans of FoPA as this is contrary to international human rights norms and standards; a system should be devised whereby complex situations will be reviewed and dealt with on a case-by-case basis and without excessive regulation.
- Any prohibition of an assembly must be based on a real and imminent threat and not a hypothetical risk of possible violence.
- A system should be devised whereby appeals against decisions banning peaceful assemblies should be dealt with by an independent judicial authority and not by the body that banned the assembly in the first place.
- In the interest of the right to an effective legal remedy, any appeals should be examined in a prompt and timely manner, and the final decision should be reached prior to the date of the assembly provided in the notification.
- Potential organizers of peaceful assemblies must not be discriminated against or subject to behaviour that could amount to harassment or intimidation based on previous conduct unrelated to the purpose of the assembly.
- Ministries of Interior should consider incorporating in their professional development the OSCE Guidelines on Policing Assemblies as well as international human rights standards in the field of FoPA.

Annex:

Degree of domestic legislation's compliance with international standards


	Presumption in favour of assemblies	Definition	Blanket prohibitions	Moving assemblies	Venue-related restrictions	Time-related restrictions	Notification of assemblies	Obligation of organizers and stewards	Penal provisions
USC	Red	Red	Red	Red	Red	Blue	Red	Red	Red
PC	Red	Red	Red	Blue	Red	Red	Red	Red	Red
TC	Red	Red	Red	Blue	Red	Red	Red	Red	Red
ZDC	Red	Red	Red	Blue	Red	Red	Red	Red	Red
BPC	Red	Red	Red	Blue	Red	Blue	Red	Red	Red
CBC	Red	Red	Red	Blue	Red	Blue	Red	Red	Red
HNC	Red	Red	Red	Blue	Red	Blue	Red	Red	Red
WHC	Red	Red	Red	Blue	Red	Blue	Red	Red	Red
SC	Red	Red	Red	Blue	Red	Blue	Red	Red	Red
C10	Red	Red	Red	Blue	Red	Blue	Red	Red	Red
RS	Red	Red	Red	Blue	Red	Blue	Red	Red	Red
BD	Green	Green	Green	Green	Green	Green	Green	Green	Green


Graphic overview of the current legislation focusing on key elements of the laws such as presumption in favour of holding assemblies, definition of assemblies, etc. Red indicates that the provisions are not harmonized with international standards, blue indicates that the provisions are partially harmonized, and green indicates that the provisions are fully harmonized.⁴⁰

⁴⁰ USC – Una-Sana Canton; PC – Posavina Canton; TC – Tuzla Canton; ZDC – Zenica-Doboj Canton; BPC – Bosnian Podrinje Canton Goražde; CBC – Central Bosnia Canton; HNC – Herzegovina-Neretva Canton; WHC – West Herzegovina Canton; SC – Sarajevo Canton; C10 – Canton 10; RS – Republika Srpska; BD – Brčko District of Bosnia and Herzegovina.

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