



MONITORING  
RIGHT TO

# FREE ASSEMBLY

**Country Report  
2016-2017**

**Bosnia and Herzegovina**



# Monitoring Right to Free Assembly

## Bosnia and Herzegovina Country Report 2016-2017

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## Brief Description of the Initiative

There is an increased number and intensity of protests and violations around them in the Western Balkans and Eastern Partnership region. To ensure that freedom of assembly rights are better understood and advocacy efforts are strengthened, the European Center for Not-for-Profit Law (ECNL) works with local experts from nine countries (Albania, Armenia, Belarus, Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Kosovo, Serbia) on mapping the existing environment for assembly in their respective countries. This assessment is a brief overview of topical issues and recent developments related to freedom of assembly in **Bosnia and Herzegovina**.

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## SUMMARY

The right to freedom of peaceful assembly in Bosnia and Herzegovina remains a right that is marginally respected. Even though the highest human rights standards apply to the legislation in the country, having the European Convention on Human Rights enshrined in the Constitution (Annex IV of the Dayton Peace Accord), there are clear tendencies to restrict the freedom to peaceful assembly. These attempts follow the increase in numbers of assemblies organised in local communities, and show a worrying trend of gender-based violence and discrimination when allowing and securing the assemblies.

The fragmented legal regulation of the right to assembly reflects the administrative division of the country. Existing 11 laws regulating Freedom of Assembly (FoA) should be replaced by three laws in 2 entities and one district. While such division creates space for misinterpretation of the standards concerning this right, as well as poor implementation of existing laws, the attempt to unify jurisdiction in the Federation BiH (FBiH) implies the derogation of the right in this entity. The Pre-Draft of the FBiH FoA Law is created in an attempt to intimidate future and current assembly organisers, imposing disproportional responsibilities and severe fines for them. Further on, the text of the law is unclear, certain terms are not elaborated and the length is deceiving. The final act of the law says that it will be adopted according to the urgent procedure, which is worrying.

The implementation of the right is proven to be arbitrary. Violent incidents by the security agencies in different local communities demonstrate lack of will to facilitate this right. The disproportional use of violence was mainly registered in the Zenica-Doboj Canton, while Hercegovina-Neretva Canton is the least responsive to our freedom of information requests. Internal complaints procedure is generally unknown to public, while these regulations in Republika Srpska are not accessible to public.

The main recommendation for the improvement of the right to freedom of assembly in BiH is that the harmonisation of respective laws needs to be in line with international standards set out in the European Convention on Human Rights, OSCE/ODIHR and Venice Commission Recommendations, and recommendations provided by the UN Special Rapporteur on Freedom of Assembly. The respective entities and district should create a unique regulatory body that would enable equal implementation of the right to assembly, desirably operating under the Institution of Ombudsmen. Additionally, the work of the responsible institutions should be strengthened (institution of ombudsman) and staff (police, MUP and ombudsman) should be trained for improved implementation of these recommendations and regulations.

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



## Legislation and implementation

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

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

Since July 2016, when the report *Freedom of Assembly in Bosnia and Herzegovina* has been published, two new laws and/or amendments to laws have been introduced. These are amendments to the Freedom of Assembly Laws in Posavina Canton and Zenica-Doboj Canton. Additionally, an initiative to adopt overarching Freedom of Assembly Law in the Federation BiH has been pushed from the government and local OSCE office. Furthermore, new Peace and Order Laws have been adopted in Zenica-Doboj (amendments in 2016 and 2017) and Posavina Cantons (2016).

Positive changes, in relation to the adoption of cantonal laws and amendments, are to be found in Posavina Canton Law. This Law defines places with traffic as places appropriate for public assemblies, adding that different regiments of traffic will be upheld during the assemblies. Posavina Canton Assembly Law also defines that communication during the dispersal of the assemblies needs to be peaceful, and that appropriate measures will be taken only in cases of non-compliance to the verbal requests. However, some of the grounds for dispersal are not in accordance with UN and Venice Commission recommendations regarding peaceful assemblies (see below).

Conversely, Zenica-Doboj Canton Assembly Law is posing concerns, and so far, it is the most restrictive law in the country. Article 8 of this law defines spontaneous assemblies, but also acknowledges that spontaneous assemblies must be announced to the police. Further on, lack of the announcement to the police is named as one of the grounds for dispersal of the assembly. This law clearly states what are so-called designated places of assembly, adding that one of the grounds to forbid (and disperse) an assembly is if it is taking place on some other location than the one defined in the law. Additional reason to forbid an assembly is if the organiser has not undertaken necessary security measures that are communicated to him or her through the written police submissions.

The reasons to disperse the assembly, according to this law are: if the assembly is not announced to the police in time, if the assembly is taking place on a different location than reported, if the stewards cannot maintain peace and order. These three provisions are in collision with UN Special Rapporteurs and Venice commission's recommendations. The liability of stewards and organisers is further elaborated in the Article 39 which prescribes financial punishments for organisers, leaders, stewards and physical persons. The same limitation is named in the ZDC's Peace and Order Law. Posavina Canton Law on Assemblies

defines in Article 35 financial sanctions in the same way, taking the liability of organisers, stewards leaders and all persons attending the assembly in account. Additionally, this law also defines designated places for the assembly, adding that non-compliance with this provision can be used as a legal basis for forbidding the assemblies.

### ***PRE-DRAFT OF THE PUBLIC ASSEMBLIES LAW IN FEDERATION BIH***

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In April 2017, the Federal Ministry of Internal Affairs has initiated a working group regarding the adoption of the law that would regulate peaceful assemblies in this entity.<sup>1</sup> The initiative is seen as positive, as it would simplify procedures regarding the assemblies, and result overall in three laws for two entities and one district, in contrast to the current 11 laws. However, the analysis of the pre-draft shows that the intention of this initiative is to restrict freedom of assembly in this entity, and to decrease responsibilities of the police and Ministry of Internal Affairs for regulating the right, by placing unjustifiable requirements to the organisers, and designated leaders of the assemblies.

The first section of the pre-draft, titled *General Provisions*, is introducing some positive development, since they prescribe adherence of the Law to the international standards. The Article 3 recognises both registered and spontaneous assemblies. This part of the law acknowledges both genders and defines different types of assemblies. However, the Article 5 introduces the function of the "assembly representative", which is a new function not defined in the local nor international principles. Also, in spite of the Article 3, further text of the law does not recognise spontaneous assemblies, as the Article 19 says that under justified circumstances the assembly can be announced 48h before, instead of 72h prescribed by the Article 10.

All of the **international documents recognise spontaneous assemblies**, and the Venice Commission states: "*Indeed, in an open society, many types of assembly do not warrant any form of official regulation.*"<sup>2</sup> The recommendation further elaborates that the notification is only necessary when security measures are needed for the right to peaceful assembly to be accomplished. When notification is needed, the Venice Commission recommends that space for exceptions should be stated in the law.<sup>3</sup> In this sense, the assembly cannot be stopped or prohibited under the explanation that the request was not submitted or approved.

### ***Place of the assembly***

The Article 13, defining the place of the assembly is generally well framed, except for the implication that the assembly cannot be held so as to disturb the traffic. This is in contrast with the further text of the law, namely Article 20 (3) and (4), and international standards prescribing "sight and sound" and "time, place and manner" of the assemblies.<sup>4</sup> Article 14

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<sup>1</sup> Law to be found at <http://www.fmup.gov.ba/v2/propisi.php?idkat=1>

<sup>2</sup> OSCE/OIDHR Venice Commission Recommendations 2010, recommendation 4.1, pg 17/18

<sup>3</sup> *ibid.* 4.2, page 18

<sup>4</sup> "Time, place and manner" restrictions refer to prior restrictions regarding when, where and how an assembly may be conducted. Such restrictions should never be used to undermine the message or expressive value of an assembly or to dissuade the exercise of the right to freedom of assembly. See OSCE/OIDHR Recommendations 3.4 and 3.5, 2010; page 17

further allows the assemblies in motion, with a limitation to the continuous movement. This demand, not to stop during the assembly in motion, is not based on any international principle, and rationale behind it is unclear. The Article 25 further says that the places of the assemblies will be defined through the Act on definition of the places for the assembly, where at least owner place will be designated for spontaneous assemblies/assemblies without an organiser.

**Limitations of space/location of the assemblies are in conflict with *international standards and the Constitution***, having in mind the recommendations regarding the “sight and sound” and the “time, place and manner” of the assembly, are set in European Charter on Human Rights, enshrined in the Constitution of BiH, and elaborated in the OSCE/OIDHR Recommendations for Peaceful Assembly and the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. The restrictions of time and place are legitimate only if they are in accordance with the Article 11(2) of the ECHR.<sup>5</sup> The Venice Commission explicitly stipulates that the burden of proof for restrictions on time and place for holding a particular assembly lies on the state (responsible bodies), and that restrictions need to be proportional to the situation. General restrictions, such as prohibiting restrictions for specific locations, as a rule, do not allow the application of the principle of proportionality which requires that the competent authorities during the limitation of rights apply the least restrictive measure to achieve legitimate objectives.

#### ***Liability of organisers, representatives and stewards at the assemblies***

Article 17, in conjunction with Articles 30, 31 and 32 prescribe the most worrying measures, defining the liability of organisers, representatives and stewards at the assemblies. The level of obligations to the organisers exceeds the responsibility prescribed by ECHR standards, burdening organisers, representatives and stewards at the assemblies with obligations that are belonging to local police enforcement. In this sense, Article 30 prescribes that: (1) the organiser needs to ensure undisturbed peace and order at the assembly, (2) disarm all the participants, (3) take necessary medical and anti-fire measures etc. The point (4) of this Article says that these obligations can be transferred to the private security agency, engaged by the organiser.

Article 18 defines the organiser, and prescribes that in the case the assembly is organised by the group of people, this group needs to appoint their representative.<sup>6</sup> It is not clear if the provisions regarding the “leader of the assembly” prescribed in the Article 31 of law belong to the representative, or the organiser, or some third person. In any case, the duties of the leader prescribe by this article include supervision of the peace and order, and stopping the assembly in cases of violence, which again exceeds the power that should be placed in a civilian and goes under the jurisdiction of the law-enforcement agencies.

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<sup>5</sup> Article 11(2) allows only restrictions that “are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”.

<sup>6</sup> Article 18 (2) of the Pre-Draft Law on Public Assemblies of the Federation BiH

The role of stewards is defined in the Article 32, and the description of the steward is in line with the description of police duties in maintaining peace and order, including (2) "protection of the public assembly participants and the property found in the area where the public assembly is being held." The obligation of the stewards includes surrendering individuals with weapons or violent participants; provide information to the police officers about the person violating peace and order; to exclude or remove individual violating peace and order; and surrender to the police an individual that is gravely violating the peace and order. All of these obligations are in line with the description of the police duties elaborated in the Laws on police officers, explained below, and as such are cannot be within the scope of obligations of the assembly stewards. Assembly stewards need to communicate with the police, and point to the individuals that are causing disturbances. Evidence gathering, arrests and comprehension of individuals and other duties belong to the police officer. Transfer of these duties to the civilians is unconstitutional and in violation of international standards and principles.

**Obligations of the organisers to protect the citizens' rights and public order do not correspond with international standards.** The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association states: *"Assembly organizers and participants should not be considered responsible (or held liable) for the unlawful conduct of others... [and, together with] assembly stewards, should not be made responsible for the maintenance of public order"*<sup>7</sup>. OSCE/ODIHR elaborates in the Recommendation number 197: *"The organisers should not be liable for actions of individual participants..."*<sup>8</sup> The requirements for stewards and organisers need to be set in line with Chapter 7 of the *OSCE/ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly*.

### ***Limitations of the assembly***

Further on, the Article 35 is defining measures for stopping the assemblies, which the law defines as "required and necessary." The international principles are clear in pointing out that all the measures taken by the police at the assemblies need to be in line with **"proportionality"** and **"necessity"** requirements, defined in the OSCE/ODIHR's Human Rights Handbook on Policing Assemblies. The proportionality is further elaborate as: *"The least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference."*<sup>9</sup> The necessity test in this handbook is determined by providing evidence of the "pressing social need" for restricting freedom of assembly in special circumstances.

The Part III of this law further prescribes principles for the organisation of so-called *"public event."* Article 39 prohibits the use and selling of alcoholic beverages at the public event,

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<sup>7</sup> United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. (2012). Best practices related to the rights to freedom of peaceful assembly and of association, para. 31. A/HRC/20/27. See more in the OSCE/ODHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly Second Edition 2010; recommendation 5.7

<sup>8</sup> OSCE/ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly, Second Edition 2012. Pg 93

<sup>9</sup> OSCE/ODIHR, „Human Rights Handbook on Policing Assemblies“, 2016. Pg. 19



prescribing non-compliance to this as a reason to forbid the assembly.<sup>10</sup> Other grounds for forbidding the public event include the organisation of the public event at “an inappropriate location for public events.”<sup>11</sup> This provision is vague, without further elaborating the criteria for defining appropriate and inappropriate locations.

The Part VII of this law defines *penal provisions* for organisers, leaders, stewards, and individuals at the assembly in form of financial fines. The different scales of fines are prescribed for legal and private entities. However, these are too high.

Referring to the Article 27 of the pre-draft, that is defining reasons for forbidding the assemblies, it is important to point out that the UN Special Rapporteur for Freedom of Assembly emphasizes, **the assembly cannot be unlawful only because the organisers fail to notify authorities**, and consequently this argument should not be used as a basis for dispersing the assembly. Additionally, failure to properly notify does not justify criminal or administrative sanctions resulting in fines or imprisonment of the organisers, community or political leaders (see A/HRC/20/27, para. 29). This applies equally in the case of spontaneous assemblies, where prior notice is otherwise impracticable or where no identifiable organiser exists.<sup>12</sup>



## Policing of Assemblies

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

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

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

*Are undercover police ever used at assemblies?*

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

Concerning the communication with the police regarding the assemblies, in most of the places police engages in communication before the assemblies, during the submission of a request for the assembly. Occasionally, and mainly in cases of assemblies organised by LGBTI organisation in Sarajevo (Sarajevo Open Centre), police engages in communication after the assembly. These are mainly regarding incidents that occurred during the assemblies, initiated

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<sup>10</sup> Article 40 b)

<sup>11</sup> *ibid.* C)

<sup>12</sup> European Court of Human Rights, *Bukta v. Hungary*, application No. 25691/04, 17 July 2007.

by external groups (groups not participating in the assembly). To our knowledge, other debriefing meetings with organisers after assemblies are not being held. Police normally does not engage in peaceful communication during the assemblies, unless it is an LGBTI event, and potential dispersals are being held violently or with brief and non-informative announcements.

The facilitation and enabling of spontaneous/non-notified assemblies, simultaneous assemblies, counter protests, peaceful assemblies that block roads/traffic, sit-ins or occupations of buildings, and similar, depends on the cause and location. In Canton Sarajevo, in most occasions local authorities facilitate all types of assemblies (including football matches that not incite inter-ethnic violence). Especially in municipality of Old Town. Nevertheless, in the case of the Protests against Violence over LGBT People, organised by Sarajevo Open Centre, the assembly did not receive timely permission. The lack of approval of the assembly in motion by the Ministry of Traffic in Canton Sarajevo has prevented the LGBTI people to fully exercise their right to peaceful assembly.

*Table on the number of assemblies in 2016 and first half of 2017 received through freedom of information requests*

<b>Canton</b>	<b>Registered 2016</b>	<b>Registered ½ 2017</b>	<b>Approved 2016</b>	<b>Approved ½ 2017</b>	<b>Denied 2016</b>	<b>Denied ½ 2017</b>	<b>Held 2016</b>	<b>Held ½ 2017</b>
<b>Tuzla</b>	2602 (105 protests)	1295 (84 protests)						
<b>Bosna-Podrinje</b>	47	35	47	35	0	0	47	35
<b>Hercegovina-Neretva</b>	No response	/	/	/	/	/	/	/
<b>Canton 10</b>	305	105	305	105	0	0	305	105
<b>Sarajevo</b>	2539	1625	2539	1625	0	0	2537	1619
<b>Una-Sana</b>	0	0	0	0	0	0	0	0
<b>Zapadna-Hercegovina</b>	444	230	442	226	3	3	442	226
<b>Zenica-Doboj</b>	1852	823					1852	823
<b>Posavina</b>	273	173	273	173	0	0	273	173
<b>Srednja-Bosna Canton</b>	666	405	664	404	2	1	666	405
<b>Republika Srpska</b>	2323	1262	2322	1259	1	3	2322	1259
<b>Brčko District</b>	0	0	0	0	0	0	0	0

In smaller places the restrictions are much higher and such assemblies are less likely to be facilitated. According to the responses to freedom of information requests we have sent out to the respective ministries of interior, there were 6 denied assemblies in 2016, and 7 denied in the first half of 2017. None of the denied assemblies were supposed to take place in Canton Sarajevo. In almost all communities, namely small municipalities, local police mostly engages in surveillance, intimidation and dispersal of assemblies, often violent dispersals.

Civil Rights Defenders has registered **gender-based discrimination** in relation to policing of the assemblies during the last year at large. Sit-ins and occupations organised by women, and assemblies in movement organised by LGBT community are more prone to violence and intimidation in comparison to the war-veteran protests or worker's protests that were the most common type of protests in the past period.

The discrimination of the assemblies in relation to the gender occurred during three prominent cases. In the case of women from Kruščica that have peacefully occupied the bridge in order to prevent building of a river dam on a national park's river, that is crucial for their lands. In August 2017 workers tried to enter the construction site several times but were stopped by the protestors. Situation escalated in the morning of 24th of August, when the police removed a group of some 50 women who held a peaceful protest on a bridge over the river Kruščica. Members of a special police unit placed the protestors into busses using excessive force that caused several injuries and ruined the protestors' personal belongings and clothes. The police blocked the area around the bridge and did not allow other residents to the site to witness what was happening after they had heard the protestors scream for help. 27 protestors were injured and 23 were arrested. Those who were arrested are currently waiting for a trial scheduled for the 25th of October 2017.

The second case is of the occupation of women, workers of Borac Travnik, demanding their social benefits from the government. The women were forbidden to sit on a lawn in front of the FBiH Governmental building, and to make a camp-site, while their movement was recorded by non-uniformed police (persons in civilian suits, that were accompanying police, but did not wear name-tags). This is in contrast to war-veteran protests, which receive more attention, better communication and less restrictions by the police. War-veterans have been occupying the same place for two months, camping with no restrictions imposed by the police. The conduct of the police during the war veterans' protests should serve as an example of policing the assemblies.

The third case is the violence over the women demanding their social rights in Gračanica, known as the Women of Fortuna. During an ongoing protest, some 10 women have been attacked and violently dispersed by the local police.

From these three examples, it is apparent that police has used force mainly to disperse assemblies. As per the type of tools they use for such actions, police in BiH generally does not have many resources to purchase weapons. Violence is mostly conducted with batons, bare hands, shields and barriers. Verbal warnings are rarely issued before the use of force.

In the case of women from Kruščica, verbal communication referred to sexist remarks (when they arrived, women claim that they have commenting on their appearance saying "we can even choose some [for us] from this lot); or orders to the other police (again, case of Kruščica, when a son tried to help his unconscious mother, a commander was heard by other protestors saying to two other police officers: "he is yours to handle, all the way to the station". The boy was immediately grabbed and brutally taken to the police car, where he was beaten by these two police officers).

Generally, *medical assistance* is at the site of the assemblies, either when the police intends to use force, or in case of LGBTI events, when police expects violent interruptions. Emergency vehicle, however, is often not appropriately located or reachable by the people in protests (in the case of violence over Kruščica women the vehicle was located at a 50m distance from the place of the assembly, and behind the violent special police units). Additionally, organisations, such as LGBTI organisations are required to pay fee for the presence of medical staff at the place of the assembly.

Undercover police is almost always present at the assemblies. Even though they do not wear any form of identification, they are easy to identify due to their behaviour - normally they stand next to the uniformed police, or talk in groups. Their appearance is also distinct, as they are mainly threatening male figures. Their role is mostly to monitor and intimidate, so in the smaller assemblies it is easy to make a distinction between persons recording outside of the assembly. In the larger-scale assemblies, the people taking part in the assemblies are only aware of this surveillance material in the potential law-suits after the assemblies, when police presents these records as evidence. However, at the large-scale events it is possible to see uniformed police officers taking video and photo material. In order to record the assembly, non-uniformed police mainly take photos using mobile-phone cameras, while uniformed police uses video and photo cameras.

The police laws define that police agency can conduct audio and video recording of individual or group of individuals, surrounding, and any other situation or object with the goal of prevention of criminal acts or for keeping order and safety. Devices for audio and video recording on public places are set up so that they are easily visible for citizens<sup>13</sup>.

Conversely, we are not aware of the data protection legislation regulating how long the police can retain such imagery and what it can be used for. There are internal regulations of the police that we do not have access to.

Participants in assemblies are allowed to video/film/photograph police actions in regular circumstances. Exceptionally, there may be limitations to this right. An example of a limitation occurred during police violence in Kruščica. During the police action, individual officers were commanded to seize phone cameras from the people externally recording their action. One person reported being chased by the police with an intention to violently stop and/or seize their video/photo equipment.

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<sup>13</sup> Law on Police Officers of Bosnia and Herzegovina, Article 26; Law on Police Officers of Federation of Bosnia and Herzegovina, Article 26; Law on Police Officers of Republika Srpska , Article 28; Law on Police Officers of Brčko District in Bosnia and Herzegovina, Article 31 and Article 32; Law on Police Officers of Una Sana Canton, Article 26; Law on Police Officers of Zenica-Doboj Canton, Article 26; Law on Police Officers of Canton 10, Article 26; Law on Police Officers of Tuzla Canton, Article 26; Law on Police Officers of West Herzegovina Canton, Article 26. Law on Police Officers of Herzegovina-Neretva, Article 26; Law on Police Officers of Sarajevo Canton, Article 26; Law on Police Officers of Bosnian-Podrinje Canton Gorazde, Article 27; Law on Police Officers of Central Bosna Canton, Article 26.



## Media and Assemblies

Police officers can use force only when it is necessary and only for accomplishing legal goals. The allowed use of force remains as elaborated in the 2016 report.<sup>14</sup>

*Is the mass media able to report freely at assemblies?*

*Are citizen journalists or non-accredited journalists able to report freely at assemblies?*

*Are human rights defenders and or monitors able to observe freely at assemblies?*

Generally, mass media and citizen-journalists are able to report freely at assemblies to the best of our knowledge. Restrictions have been marginal, and have not repeated since 2014. However, violence over the protesters in Kruščica occurred after the journalist team that has been staying over-night with women occupying the bridge, has left the place. Police actions that had violent outcomes have been planned at times and places that seem unappealing to media.

So far, human rights defenders and or monitors have been able to observe freely at assemblies, even though there are no legal assembly monitors in the country.



## Social Media and Assemblies

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

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

Organisers of, and participants in, assemblies use social media before, during and after assemblies. Social media is used for multiple purposes, including advertising, organising, raising awareness, highlighting police actions and similar. In Bosnia and Herzegovina, most frequently used social media is Facebook. Before organising assemblies, it is frequent to create interest groups that would be followed by organising an event. During the assemblies, especially the ones where stronger reactions are expected, participants conduct live-

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<sup>14</sup> Civil Rights Defenders and European Center for Not-for-Profit Law "Freedom of Assembly in Bosnia and Herzegovina, 2016. Pg 13 [http://ecnl.org/wp-content/uploads/2016/07/BiH\\_WBA-Project-Report-July8.pdf](http://ecnl.org/wp-content/uploads/2016/07/BiH_WBA-Project-Report-July8.pdf)

streaming. After the assembly is finished, follow-up actions and impressions are discussed in already created groups and/or events.

Due to legal liability and violence against organisers that has occurred in the past, participants refrain from use their individual social media profiles to create events or invitations to the assemblies. In order to determine organisers, and leaders, that are held liable under most of the freedom of assembly laws in BiH, police forces analyse social media



## Responsibility of Organisers

content, according to which they create judicial basis for intervention. Misuse of such information has been previously detected and elaborated in the first report.<sup>15</sup>

### ***Are the organisers of an assembly held liable for behaviour of others?***

#### ***If there is no identifiable organiser, how do the police respond?***

According to laws in most of the cantons and RS organisers of an assembly are being held liable for behaviour of others. In the case of Kruščica, police has designated a "leader" in spite of the fact that assembly was spontaneous. One person is being charged in Srednja-Bosna Cantonal police for leading and organising this sit-in, currently.

While designating organisers or leaders for spontaneous assemblies, in case there is no Facebook event, police usually targets the most vocal (male) figure. In cases when assembly has been organised in urban areas, they use Facebook to determine who has been mobilising people for protests.

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<sup>15</sup> Civil Rights Defenders and European Center for Not-for-Profit Law "Freedom of Assembly in Bosnia and Herzegovina, 2016. Pg 22/23 [http://ecnl.org/wp-content/uploads/2016/07/BiH\\_WBA-Project-Report-July8.pdf](http://ecnl.org/wp-content/uploads/2016/07/BiH_WBA-Project-Report-July8.pdf)



## Detention and Prosecution

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

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

***Are the courts generally seen as neutral and impartial?***

People are normally not arrested or detained in advance of an assembly to our knowledge. People at the assemblies are being randomly arrested, usually for no obvious reasons. The case of Kruščica has demonstrated the randomness of such actions, with the only aim to end the respective assemblies. In cases of violence during protests, individuals are being detained because they are allegedly perceived as initiators of disobedience and/or violence. The practice shows that the arrests occur in such manner in order to intimidate other participants.

People detained at an assembly are normally not given access to legal advice or support, and they are interrogated without access to lawyer or phone calls.

Access to medical assistance for the detained people is allowed on demand, a few hours after medical issue (normally violent intervention) has occurred. In the case of Kruščica, people had to pay 50 BAM (cca. 25 EUR) to have examination and receive medical opinions.

Generally, people detained at the assemblies are released soon after the assembly is finished and given an administrative punishment. An increase in level of fines imposed on people detained at assemblies in recent years has been noted, as well as their frequency. In the case of Kruščica, participants have been receiving regularly fines for breaching peace and order by local police officers, without court procedures. Normally, higher number of people is arrested and fined in relation to the assemblies in smaller communities, by the principle of proportionality.

Courts generally are not seen as neutral and impartial. In case there is no objective monitoring of assembly-related trials, courts bring decisions that are not always established on facts and evidences.



## Accountability

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

Work of the institutions in Bosnia and Herzegovina is weak. General lack of accountability is apparent. The institution of the Ombudsman does not have the same power as in other countries, as the body lacks independence. Three politically nominated Ombudspersons

share their role, and issue recommendations by consensus. Apart from the LGBTI issues, Ombudsman's office have not issued any analysis or recommendation concerning freedom of assembly. However, two statements have been issued in 2017, regarding administrative silence regarding the assembly in movement organised by Sarajevo Open Centre, and police violence over villagers in Kruščica. Additionally, the Agency for Gender Equality of BiH has issued a statement condemning these actions. Unfortunately, these statements have no legal power.

Police are being held accountable for their behaviour and actions (use of force, restrictions, forced dispersal, detentions) through internal procedure, courts and administrative appeals.

As mentioned in the analysis of police laws, in most places an individual complain can be started by the civilians, but the internal procedures do not necessarily follow the complaint. In Canton Sarajevo, SOC has initiated administrative appeal for the silence of administration in case of not-issuing timely approval of the assembly in motion.

There are two cases in procedure in which police officers are being held to account for their actions at an assembly, both by Sarajevo Open Centre (SOC). Also, complaint against the police has been submitted to Srednja-Bosna Canton, to investigate violence in Kruščica.

However, police officers are not always individually identifiable when policing an assembly. In many cases non-uniformed police officers are present and citizens are not aware of their official role.

### **LAWS ON POLICE OFFICERS**

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Similar to other laws in BiH, laws on police officers differ in every canton and are under jurisdiction of the cantonal ministries of internal affairs. Aside from individual cantonal laws in the Federation BiH, there are Republika Srpska and Brčko District laws, together with one integral law for Bosnia and Herzegovina which aims to overarch all previously mentioned laws. However, local laws are treated as first-instance laws.

Articles 106 to 115<sup>16</sup> of the integral Law on Police Officers in BiH are defining internal procedures when there is a need for disciplinary procedure towards police officers. It stipulates that procedure can be initiated by citizens, other police officers, higher ranked police authorities and by officer in charge of the Office for Complaints<sup>17</sup>. Exceptions are the Law on Police officers of Una-Sana Canton<sup>18</sup>, as well as the Law on Police Officers in Republika Srpska,<sup>19</sup> where it is not clear if it is possible for citizens to initiate this procedure.

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<sup>16</sup> Integral Law on Police Officers of Bosnia and Herzegovina, article 106

<sup>17</sup> Integral Law on Police Officers of Bosnia and Herzegovina and Law on Police Officers of Canton 10, Zenica – Dobož Canton, West Herzegovina Canton, Canton Sarajevo, Bosna Podrinje Canton, Posavina Canton, Central Bosnia Canton, Herzegovina Neretva Canton, Tuzla Canton Brcko District and Law on Police Officers of Federation of BiH

<sup>18</sup> Law on Police Officers of Una Sana Canton

<sup>19</sup> Law on Police Officers of Republika Srpska



Ministry of Internal Affairs of Republika Srpska website elaborates that internal procedure is conducted according to the document titled *"Regulation on Disciplinary and Material Responsibility of Police Officers and Other Employees of Ministry of Internal Affairs of Republika Srpska."* The document is not available on their website or elsewhere online.

The general law defines that the internal procedure after complaint must be completed within 30 days for minor violation of duty and within 3 months for major violations, and can be extended for 2 more months depending on severity of situation<sup>20</sup>. Alternatively, decisions regarding sanctions should be made within 2 months for the first group of violations and within 9 months for severe violations<sup>21</sup>. Other cantonal laws tend to have similar legislation integrated in their laws<sup>22</sup>. Law in Tuzla Canton is partly similar to the ones in other cantons with exception of prescribed length for decisions on sanctions which are not clearly prescribed like in other cantonal laws<sup>23</sup>.



## Overall Assessment

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

The right is yet to be improved and respected. A significant increase of interest to improve the right to peaceful assembly has been noted since we have issued our report. One additional legal analysis has been conducted, and OSCE has initiated an assembly-monitoring program that is very helpful in terms of respect of procedures notably in smaller communities. Additionally, the initiative to create an umbrella law in the FBiH has been undertaken, which is seen as a positive move forward.

On the other side, violence, intimidation and restrictions over assemblies organised and mainly attended by women and minority communities has increased during the past years, mainly in local communities outside of the capital city. The lack of cooperation in the local police stations towards international and local organisation has been also observed. This is perhaps due to the increased number of assemblies in these communities, as well as increase attention by local and international staff in BiH towards these happenings. In general, the level of the respect of the right to peaceful assembly is assessed as similar to the one in the time of issuing our first report.

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<sup>20</sup> Integral Law on Police Officers of Bosnia and Herzegovina, article 106

<sup>21</sup> Integral Law on Police Officers of Bosnia and Herzegovina, article 114

<sup>22</sup> Law on Police Officers of Canton 10, Zenica – Doboј Canton, West Herzegovina Canton, Canton Sarajevo, Bosna Podrinje Canton, Posavina Canton, Central Bosnia Canton, Herzegovina Neretva Canton, Brcko District and Law on Police Officers of Federation of BiH

<sup>23</sup> Law on Police Officers of Tuzla Canton

## RECOMMENDATIONS

### Recommendations Regarding Legislative And Institutional Framework:

- Civil society needs to be included in the discussions regarding the creation of Draft Freedom of Assembly Law in Federation BiH (and possible future laws on different levels). This law should set standards complementary to the constitution and international human rights standards, as well as delegate authority to the respective entities/district and/or cantons, cities and municipalities. The law needs to follow OSCE/ODIHR and Venice Commission Recommendations for Peaceful Assembly.
- Freedom of Assembly Law of the Federation BiH, or any other similar law in the future should not be taken in the urgent procedure without public consultations.
- The state and the delegated authorities should not further restrict the right but enable it; the respective laws should include the principles of legality, proportionality and necessity and explicitly state that any possible inconsistencies between laws or ambiguous provisions shall be interpreted in favour of the right to exercise freedom of assembly.
- Spontaneous assemblies should be recognised in all applicable laws regarding freedom of assembly in BiH. The treatment of spontaneous assemblies should be defined in accordance with the provided standards.
- The space and time of assemblies should not be restricted so as they do not comply with "time, place and manner" recommendations.
- The liability of the organisers and participants, as well as the role of the stewards, should be reassessed and relaxed in accordance to the international standards. Stewards should undergo trainings that would enable them to use tools necessary for their roles.
- Respective laws and regulations guiding the freedom of assembly should be accessible to public.

### Recommendations Regarding Institutions:

- The role of the Institution of Ombudsman should be enhanced and strengthened in regards to the freedom of assembly; the ombudspersons should be empowered to monitor public assemblies and mediate between the law enforcement authorities and the assembly organisers. The Institution should be included in the development of the Standard Operating Protocols for policing the assemblies, with the example of Croatia.

### Recommendations Regarding The Police:

- The internal control mechanisms of the police should be strengthened. External, objective monitoring body should be established. Internal police protocols, determining their jurisdiction should be available to public.
- The police at all levels should undergo trainings for the use of human rights methods for pacifying assemblies. The use firearms to secure the peaceful assemblies should at all times be justified in line with the international standards and communicated with the protesters and public.

- The communication with the police regarding the risk-management during and after the assemblies should be enhanced.
- The security procedures implemented by the police should always be implemented under the principles of proportionality, without exceptions.
- The MUP should increase the access to information about the police procedures when dealing with public assemblies