

CHALLENGES & RECOMMENDATION

# BOSNIA AND HERZEGOVINA

## on Freedom of Assembly

### OVER RESTRICTIVE LEGAL PROVISIONS CONCERNING SPACE



**Over restrictive legal provisions concerning space** for public assemblies in some parts of BiH - limitations of space/location of the assemblies are in conflict with international standards.



Existing limitations on the location of an assembly are in conflict with international standards, and it is recommended by the Venice Commission and the OSCE/ODIHR report on Monitoring of Freedom of Peaceful Assembly<sup>1</sup> that no blanket bans on the location of public assemblies should exist.<sup>2</sup> Blanket restrictions, such as prohibiting all assemblies at specific locations, are not in accordance with the principle of proportionality.

*International standard*



The space and time of assemblies should not be restricted for specific locations and time. 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.

*How it should be implemented?*



# SPONTANEOUS ASSEMBLIES NOT RECOGNIZED



Some parts of Bosnia and Herzegovina **do not recognize spontaneous assemblies.**

Relevant international documents recognize 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>3</sup> The recommendation further elaborates that notification (not a request) is only necessary when safety, traffic management and security measures are needed to enable the right to assembly to be exercised. When notification is needed, the Venice Commission recommends that scope for exceptions should be stated in the law.<sup>4</sup> In this sense, the assembly cannot be stopped or prohibited under the explanation that the request was not submitted or approved.

Spontaneous assemblies should be recognized and allowed in all applicable laws. And facilitated in practice by the authorities.



# HEAVY FINES AND LIABILITY OF ORGANIZERS



Some parts of Bosnia and Herzegovina **include heavy fines and liability** of organizers for unlawful (?) conduct during public assemblies.

Obligations on the organizers 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>5</sup>

The liability of the organizers should be reassessed and revised in the law, in accordance with the international standards.





# LACK OF COMMUNICATION BETWEEN ORGANIZERS & POLICE



Lack of communication between organizers and law enforcement (police) before and during the assembly.

International standards set the recommendations to establish and maintain effective communication between organizers and police officers.<sup>6</sup>

The police should ensure that they maintain effective communication with organizers before, during and after an assembly. For each assembly the police should nominate a contact person responsible for regular and organized communication with the organizers.



<sup>1</sup> OSCE/DIHR Report *Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States*, December 2014, available at: <http://www.osce.org/odihr/132281?download=true>, p. 8

<sup>2</sup> *Compilation of Venice Commission opinions concerning Freedom of Assembly*, CDL 2012, p.21, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2012\)014rev2-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2012)014rev2-e)

<sup>3</sup> OSCE/OIDHR Venice Commission Recommendations 2010, recommendation 4.1, p. 17/18

<sup>4</sup> Ibid. 4.2, p. 18

<sup>5</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>6</sup> OSCE/ODIHR Report *Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States*, December 2014, para. 230

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