

ASSESS & ACT



European Center for Not-for-Profit Law (ECNL)

2016

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This publication is financed by the Government of Sweden. The Government of Sweden does not necessarily share the opinions expressed here within.

Acknowledgements

This regional report was conducted as a part of the research project **Western Balkans Assembly Monitor** and authored by Ms Vanja Skoric Senior Legal Advisor at the European Center for Not-for-Profit Law (ECNL). The country overviews were designed and developed by Ms Reka Dancsecs.

ECNL would like to thank project partners and organizations that carried out the research on country level that informed this report: *Reactor - Research in Action* (Macedonia), *Civil Rights Defenders* (Bosnia and Herzegovina), *Human Rights House Zagreb* (Croatia), *Institute Alternative* (Montenegro) and *YUCOM Lawyers' Committee for Human Rights* (Serbia).

We would also like to thank the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) experts on freedom of assembly, for sharing their views and expertise to help improve the country reports. Finally, we are most grateful to all civil society activists, national experts and government officials that were interviewed for the country reports for sharing their insights and views.

The Western Balkans Assembly Monitor project is made possible by the International Center for Not-for-Profit Law through the Civic Space Initiative, implemented in partnership with ARTICLE 19, CIVICUS: World Alliance for Citizen Participation, and the World Movement for Democracy.



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EXECUTIVE SUMMARY

The following Regional Freedom of Assembly Report is a compilation of the activities carried out within the **Western Balkans Assembly Monitor** project, managed by the European Center for Not-for-Profit Law (ECNL) in partnership with the expert organisations in Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia.

The goal was to highlight the importance of the right to freedom of assembly (FOA), map challenges in law and practice, and how the freedom can be protected on country level and across the region. Country-level research reports provided the first comprehensive overview of the policy, legal framework and practical implementation of the FOA in selected countries, based on analysis and monitoring. This regional report summarises the key findings and recommendations from the country research reports. It focuses on the most relevant trends and issues, as each country report includes a more detailed overview of the respective local situation.

KEY FINDINGS

The five country reports on FOA address the level of compliance of the national legislation with the relevant international and regional standards, map the institutions for implementation, identify the main challenges and specific issues that arise from the implementation. Comparatively, the research shows that the five countries have not fully fulfilled their duty to protect and facilitate the enjoyment of the right to FOA. This is due to the lack of adequate legal protections on some specifics of the FOA, and the restrictions imposed in the actual implementation and enjoyment of this right in practice.

The following is an overview of several key general and specific challenges identified in the region, based on the information included in the country reports.

KEY CHALLENGES FROM THE REPORTS
GENERAL
In many countries, there are worrying tendencies of decline of the democratic processes and political influence on the institutions, which in turn hinders the exercise of the FOA. The examples include direct interference with the work of the judiciary and police and misuse of position to pressure employees of public institutions.
FOA in the region is a part of the policy framework dealing with security , and less of the framework dealing with human rights or rule of law. This approach is then reflected in both the legislation and implementation, as the law enforcement frequently decides on limitations on bans based on solely security reasoning, without balancing the rights.
In some countries, there is a general perception of assemblies as a threat to peace and stability of the state. In this ways, participants get under pressure from the institutions and the media based on stigma revolving around certain people (investigative journalists, human rights defenders, political activists and similar).

SPECIFIC

In some countries, there were cases of **disproportionate and indiscriminate use of force by the police**, followed by the lack of accountability of the police officers responsible for such use of force and stigmatisation of assembly organizers and participants through the media.

In most countries, there are neither clear criteria for **risk-assessment** conducted by law enforcement prior to holding the assembly, nor practice of communicating the risks with the organisers before or during the event. This limits possibilities of joint risk mitigation.

Some countries introduce **permanent prohibitions and/or restrictions** regarding place of assembly without taking into account principles of proportionality.

The legal **liability of the organizer of assembly** for a duty to secure public order and peace at the protest and to ensure enough security stewards in most countries is disproportionate to international standards. These could be used against the organizers of an assembly to discourage others in similar efforts.

In some countries, **there is an increase in misdemeanour and criminal charges and sentences** against participants of assemblies. In the same time, there is no legal guarantee for recourse to justice. The criminalization of participants is perceived as a measure to intimidate and to discourage future organizers and participants in assemblies.

KEY RECOMMENDATIONS

The country reports provide a set of recommendations to relevant national level stakeholders on how to advance the protection of the FOA in each country. These are directed towards national governments and other stakeholders. They aim to propose steps that can be undertaken to ensure impartial, depoliticized institutions and development of their capacities. In addition, the recommendations call on improving the legal framework to align it with international standards. The following table presents several key recommendations, reflecting priorities for the region. More detailed lists of all recommendations are provided in section *Key Recommendations and Next Steps*.

KEY RECOMMENDATIONS

GENERAL

Legal and policy FOA framework should **include more consistently 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 FOA

FOA should be included in the policy framework that tackles protecting and promoting human rights and rule of law, such as annual programs or long-term strategies for protecting human rights.

Work of the relevant institutions, especially law enforcement and judiciary should be strengthened through **human rights-based approach** and staff should be trained for improved implementation of the FOA with respect to international standards.

Civil society should use past **experience and good practice examples**, such as networking with other organizations, cooperation with international public figures and institutions, involving political key stakeholders, network with independent institutions and use all available legal remedies to enhance FOA implementation.

SPECIFIC

Law enforcement institutions should **strengthen capacities** for internal control, especially in cases of (excessive) use of force. An external independent mechanism for police oversight should be established in order to ensure that law enforcement officials that violate the right to FOA are held personally and fully accountable for such violations.

The legal frameworks should **address ambiguous language**, restrictions on place and time of assemblies and liability of organizers of assemblies to be in line with international standards.

Where it becomes necessary in practice to impose restrictions on one or more simultaneous assemblies, those **restrictions should be determined through mutual agreement** or through a process that does not discriminate any of assemblies.

Law enforcement agencies should consider developing **communication and security plans**, especially for large assemblies. The same person should be in communication with the organizer before and during the assembly, as this helps to establish a certain relationship.

Resource centres could be created where organizations and initiatives that are not experienced would get advice on FOA issues.

INTRODUCTION

The right to FOA is defined as *“the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.”*¹ International legal instruments² recognize that only peaceful assemblies are protected and in this respect *“an assembly should be deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent. The term “peaceful” should be interpreted to include conduct that may annoy or give offense, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties.”*³

Over the last few years partners in the Western Balkan region reported increased restrictions to peaceful assembly both in law and in practical implementation of the freedom. Cognizant of the situation, ECNL launched a research project **Western Balkans Assembly Monitor** with the aim to identify the main challenges in the implementation of the national legislation on assemblies and the exercise of this right. Through the research we reviewed *“all types of peaceful assembly – both static and moving assemblies, as well as those that take place on publicly or privately owned premises or in enclosed structures – deserve protection”*⁴ jointly with partners in Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia. The research was conducted between January and June 2016, under the overall coordination of ECNL. Finally, the research covered also spontaneous and counter-assemblies.

The research methodology for monitoring and reporting relied on:

- *Joint Guidelines on Freedom of Association*, adopted by OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Council of Europe’s Commission for Democracy through Law (Venice Commission)⁵;
- United Nations Human Rights Council Resolution *The promotion and protection of human rights in the context of peaceful protests* 25/38, 2014⁶;
- *Joint report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, 2016⁷.

Based on these, the data for the qualitative analysis was gathered through desk research, Freedom of Information requests and fieldwork, which included semi-structured interviews with relevant stakeholders and observations of protests that happened during the time the project. The conclusions and recommendations were based on the findings from the data and were later validated with selected participants in the research.

¹ Organization for Security and Co-operation in Europe (OSCE) and Council of Europe's Commission for Democracy through Law (Venice Commission): *Guidelines on Freedom of Peaceful Assembly* (2nd edition), 2010

² Article 20(1), UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III)

³ Organization for Security and Co-operation in Europe (OSCE) and Council of Europe's Commission for Democracy through Law (Venice Commission): *Guidelines on Freedom of Peaceful Assembly* (2nd edition), 2010

⁴ Ibid

⁵ OSCE/ODIHR and Venice Commission: *Joint Guidelines on Freedom of Association*,

⁶ United Nations (2014), *Human Rights Council Resolution 25/38*, 11 April 2014, A/HRC/RES/25/38

⁷ United Nations (2016), *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*.

KEY INTERNATIONAL GUARANTEES FOR FREEDOM OF PEACEFUL ASSEMBLY

The right to freedom of peaceful assembly is a fundamental right secured by the major international treaties, most notably the *International Covenant on Civil and Political Rights (ICCPR)*⁸, the *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)* and the *Charter of Fundamental Rights of the European Union*. It has been upheld by the international and European case law, e.g., jurisdiction of the European Court of Human Rights and European Court of Justice. In addition, other international documents and guidelines have been adopted to further strengthen the implementation of these freedoms in practice. The *Joint Guidelines on Freedom of Association*, adopted by OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law (Venice Commission)⁹ provide practical guidance to legislators, civil society and human rights defenders for drafting the legal framework and implement the right in practice. In addition, the United Nations Human Rights Council adopted several resolutions to safeguard the FOA, most notably Resolution 25/38.¹⁰ The promotion and protection of human rights in the context of peaceful protests, and the Resolution for protection of the Civil Society Space, emphasizing the right to FOA.¹¹ Finally, the Joint report on the proper management of assemblies¹² provides valuable practical solutions and good practice examples on how to implement FOA on national level.

All documents emphasize that FOA belongs to everyone without discrimination: FOA should be guaranteed and enjoyed by everyone without any discrimination.¹³ Additionally, they provide that restrictions can be imposed only when it is *"prescribed by law and ... necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, the protection of public health or morals or the protection of the rights and freedoms of others."*¹⁴ They also include the presumption in favour of holding an assembly, the state's obligation to facilitate and protect peaceful assembly, legality and proportionality of the restrictions on the assembly, good administration of the assembly and liability of the regulatory authorities in case of failure to comply with their legal obligations. According to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association there should be no prior authorization required for holding an assembly, but at the most there might be a notification prescribed, although not burdensome. Furthermore, the legal framework should allow for spontaneous, simultaneous and counter-assemblies.¹⁵

⁸ Article 21 of the International Covenant on Civil and Political Rights (ICCPR): *"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."*

⁹ OSCE/ODIHR and Venice Commission: *Joint Guidelines on Freedom of Association*, 2015

¹⁰ United Nations (2014), *Human Rights Council Resolution 25/38*, 11 April 2014, A/HRC/RES/25/38

¹¹ UN Human Rights Council Resolution A/HRC/27/31

¹² United Nations (2016), Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies

¹³ OSCE/ODIHR and CoE Venice Commission: *Guidelines on Freedom of Peaceful Assembly*, Second Edition, 2010.

¹⁴ Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

¹⁵ Maina Kiai, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, 2012

KEY CHALLENGES IN PRACTICE

The country reports show that, in practice, there have been significant developments that limit the implementation of FOA. In general, in all countries, the governments have failed in fulfilling their positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without unnecessary restrictions.

GENERAL CHALLENGES

In many countries, the democratic process in general is in decline and there is a high tendency to politicise institutions. This is then reflected negatively on the exercise of the FOA, as political influence on law enforcement and judiciary result in discriminatory treatment of assemblies seen as "anti-establishment".

In addition, the FOA in the region is a part of the policy framework dealing with security issues, and less of the framework dealing with human rights or rule of law. For example, the FOA is not included in the national programs or policies for protection of human rights. This approach is then reflected in both the legislation and implementation, as security risks become predominant in authority decisions on assembly limitations. Moreover, in some countries, there is a general perception of assemblies as a threat to peace and stability of the state. In this ways, institutions and sometimes the media put investigative journalists, human rights defenders, political activists and similar under pressure because of their participation or connection to assemblies.

In most countries FOA legal framework includes ambiguous language, such as on the limitations of place and time for assembly, which may lead to differences in interpretations. In practice, organizers and participants of assemblies have no legal certainty regarding the exact scope of their rights and obligations. This further leads to deterring people from exercising their right.

SPECIFIC CHALLENGES

Management of Assemblies by Law Enforcement Officials

The main obstacle for implementing FOA that almost all country reports identified (except Croatia) is the practice of law enforcement management of assemblies (policing of assemblies). This practice sometimes hinders free exercise of FOA in various ways: failed communication between the organizers of assemblies and the law enforcement, excessive use of force by law enforcement, abuse of video recording by authorities, all combined with a lack of adequate measures for accountability of law enforcement, when overstepping their authorizations.

Communication between organizers of assembly and the law enforcement

In most countries, there are no clear criteria for risk-assessment conducted by police prior to holding the assembly. Moreover, the risks are not being communicated with the organisers beforehand or during the event, to jointly try to find mitigating measures and preserve the right to FOA. International standards set the recommendations to establish and maintain

effective communication between organizers and police officers¹⁶. This practice is necessary in order to create mutual understanding and prevent violence at the event.

In Montenegro, the LGBT Forum Progress was prohibited to organize a Pride in the center of Nikšić, in 2015, with the police stating safety risks being too high due to conservative local population. However, there was no clear risk assessment conducted. The Police prohibited the assembly three times, without offering alternative routes to the organizers.

In Bosnia and Herzegovina, most interviewees point out that, during communication about organizing an assembly, the police officers tend to be haughty, threatening and even insulting during assemblies.

Excessive use of force

The state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence.¹⁷ However, in Bosnia and Herzegovina, Macedonia and Montenegro, cases of disproportionate and indiscriminate use of force by the police were singled out as highly problematic issue.

In BiH during the protests in February 2014 in Tuzla, Sarajevo and Mostar interviewees reported the following types of force used by police: physical beating (violence) against protesters including elderly people, chasing of protesters from the place of assembly and demolition of a shopping mall by the police. There are medical records of two persons detained during the protests in Sarajevo 2014, showing signs of beating, as well as the photo of an activist detained.

The police dispersed the assembly that took place in Skopje in 2015 by the use of force, with documented cases of violence (namely, physical beating) against demonstrators and journalists. The United Nations Human Rights Committee expressed concerns about reports of police resorting to excessive violence.

Video recording of assembly participants

A few reports highlighted video recording of public assemblies as a contentious issue, especially regarding how the recorded materials were stored and how the police uses them. In this regard, the UN Human Rights Council clearly states "recording peaceful assembly participants in a context and manner that intimidates or harasses is an impermissible interference to these rights."¹⁸

¹⁶ OSCE/ODIHR Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, December 2014, para. 230

¹⁷ *Plattform 'Ärzte für das Leben' v. Austria* (1988), para.32. as cited by OSCE/ODIHR and Venice Commission (2010) Guidelines on Freedom of Peaceful Assembly, Second edition, p. 75

¹⁸ UN Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, 4 February 2016, A/HRC/31/66, para 76

In 2015 the Montenegrin coalition Democratic front organized an assembly of 4.500-5.000 people who called upon the immediate resignation of Montenegrin Prime Minister. Police officers used excessive force in several cases, which was well documented. In response, the European Commission, the OSCE and other international organisations issued appeals for investigations into incidents that happened during the protests. These helped with launching the investigation of incidents.

Video recordings of participants in assembly are sometimes given to the media in Macedonia and then abused for labelling and discrediting participants. Participants, especially those that work in the public administration, reported threats and intimidations for participating in specific assemblies.

Accountability of law enforcement

In Macedonia, Bosnia and Herzegovina and Montenegro, reports include disproportional use of force against participants, which has not been adequately sanctioned and law enforcement officials who abused their authorizations were not held accountable. As a consequence, people lose faith their rights would be protected even if they submit complaints, and they refrain from using legal mechanisms. Relevant institutions such as Parliament and the Public Prosecutor did not initiate investigations or other appropriate proceedings.

During the protests in 2015, inefficiency of internal controls was exposed in Macedonia when journalists complained of documented police misconduct. For example, when the police seized recordings of police actions from media crews, the journalists submitted complaints. Within 24 hours they received a response that there was no evidence such an incident occurred and that all 34 police officers were interviewed and denied the allegations. Similarly, in the police intervention during the assembly, a law enforcement officer hit a journalist. Even though there was a video recording of the event, no official action has been undertaken.

In Montenegro, during a protest in 2015, numerous citizens were hurt, and among them, many journalists. During the same night, and in days that followed, many citizens submitted complaints to the Council of the Civic Control of the Police about mistreatment by police officers. Additionally, footage of police officers, members of Special Anti-Terrorist Unit (SAU), brutally beating one citizen and destroying his car appeared on social media. The Commander of the SAU testified before the Basic Prosecutor's Office, stating that he cannot identify who were the members of the unit that have beaten the citizen, since they wore helmets and masks protecting them against chemicals. Not a single official neither from the Police Administration nor from the Ministry of Interior has been held responsible for the acts of the Police. Additionally, the decision of the Police Administration to have SAU at the public assembly is still unclear since the Rulebook on Internal Organization and Systematization of the Ministry of Interior does not recognize the role of this unit in securing public assemblies.

One activist from Bosnia and Herzegovina was arrested after the assembly in 2014, as he was standing on a sidewalk, and refused to leave. The officers took him to the car, hitting his head on the edge of the car while pushing him inside, causing him a concussion) Later, during the interrogation they slapped him several times, allegedly, for no reason. After he left the detention he filed an appeal against these police officers. The authorities found them not guilty, and they initiated charges against the activist for insulting the police officers.

Political Pressure on Institutions and the Media

In most countries, the research identified the political interference in the work of institutions as an important obstacle to the implementation of the freedom to assembly. The examples include direct interference with the work of the judiciary and police, misuse of positions, as well as misuse of the message of certain assemblies for political purpose by the ruling parties. In addition, pressure is used on public and local institutions to "control" their employees.

In Bosnia and Herzegovina and Macedonia in some instances employees in public administration did not participate in assemblies during 2014 and 2015, either because of fear from repercussion from their supervisors, and/or threats to job positions.

The role of media and political parties goes as far as stigmatizing the protesters and organisers of protests, and creating specific shaming campaigns against civil society organisations which are engaged in assemblies. Moreover, the media, in some cases using even hate speech, negatively depicts the assemblies in the public, contributing to an atmosphere of suppression where the exercise of the right is rather difficult.

Liability of the Organizers

One of the problematic aspects in all countries for the organizers of assemblies comes from the way the laws formulate their obligations and liability. Specifically, many laws oblige organizers to maintaining security and order during the assemblies. The obligations usually include ensuring safety and order by organizing a security service during the assembly and ending the public assembly and immediately inform the police if the life, health, security and personal safety of people and property are jeopardized. These obligations are broadly defined and require extensive capacities and expertise from organizers to ensure they are safe from prosecution. The laws prescribe considerable fines for not complying with these obligations (e.g., preserving order during the assembly and providing a certain number of security stewards). Obligations are also formulated in a way that can be used by the authorities to arbitrarily either stop the assembly or fine the organizers. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association states that "*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*"¹⁹.

¹⁹ UN Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, 21 May 2012, A/HRC/20/27, Best practices related to the rights to freedom of peaceful assembly and of association, para. 31. A/HRC/20/27

Bans on Assemblies

Country reports reveal three types of actions by authorities in case they wish to ban assemblies. In some countries, when politically sensitive assemblies are scheduled at the same time, both assemblies and counter assemblies are banned, without legal reasoning, regardless of the goals and messages of the organizers. For example, in Serbia, many decisions issued by Ministry of Interior do not have any determined facts or indicated reason for its prohibition and contain non-specified legal grounds for prohibition of assembly.

In Montenegro, in some instances the state institutions used their internal acts to additionally justify ban on assembly rather than using solely the limitations prescribed by the law. In this way, authorities chose the solution that resolves them of balancing the limitations on FOA that the law requires.

In Montenegro, the police banned an assembly using the Law on Public Assembly as a legal ground, but they used additional internal act to justify the ban, the Rulebook on Internal Order in the Building of the Government. The Rulebook is not publicly available document.

In addition, in certain cases in Montenegro, assemblies were banned under excuse that these could cause violence during counter assemblies. The fact that peaceful assembly could be misused by third persons as a pretext for violence does not give the state the right to ban peaceful assemblies.²⁰

Criminalization of Participants

The trend of criminalization of participants in assembly is relatively new in the Western Balkan context. It has become particularly relevant in the past two years, as there was an increase in social protests where the authorities responded with an increase in misdemeanour and criminal charges and sentences against participants. In the same time, there is no legal guarantee for recourse to justice. The criminalization of participants is perceived as a measure to intimidate and to discourage assemblies. The following issues were identified that add to this problem:

- The unequal administration of justice was stressed particularly in Bosnia and Herzegovina and Macedonia. This is a result of politicization of the judiciary, which is a problem confirmed by international experts and bodies.²¹
- There is limited internal and external oversight of the law enforcement institutions and the criminal justice system. Particularly worrying is the information "blackout" about what happens in the detention after the participants have been arrested,
- After detention, there is no transparency on how charges have been defined, on what grounds.²² In addition, once cannot exercise the right to access to information as authorities justify denial for information under data protection rules.

²⁰ The ODIHR and Council of Europe's Venice Commission Guidelines on Freedom of Peaceful Assembly

²¹ The political influences in the judiciary and public prosecution was noted by international experts in the *The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015 (Priebe report)*; UN Human Rights Committee (HRC), *Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia*, 17 August 2015, CCPR/C/MKD/CO/3

²² Notably in Bosnia and Herzegovina.

Good Practice Examples

There are examples of good practice devised by civil society in several countries, when it comes to overcoming practical challenges organizing or participating in assemblies.²³ Some of those include:

- Networking of different CSOs and cooperation and long-term negotiation with Ministry of Interior and relevant institutions in case of planning high risk assemblies (such as organizing LGBT prides in Serbia);
- Building trustful and open communication between organizers and police (in Croatia);
- Seeking open support to assemblies from key international political stakeholders that act in the country (LGBT organizations from Croatia and Serbia);
- Involving national key political stakeholders (opposition leaders, international organization's or diplomatic corps representatives) as supporters of highly risk assemblies (in Montenegro, Serbia);
- Specializing of organizations in legal protection and strategic litigation on FOA (Serbia);
- Organizers of assemblies agreeing with the law enforcement to have designated police officers as "shadows" during the assemblies, to facilitate communication (LGBT and environmental activists in Croatia).

²³ These practices have been mostly developed by LGBT activist organizations in Serbia and Croatia.

KEY RECOMMENDATIONS AND NEXT STEPS

The overall recommendation for ensuring unhindered FOA implementation is removing political influence from the public institutions and developing their capacities. The majority of recommendations focus on undertaking actions to develop adequate knowledge, skills and sense on how authorities should handle public assemblies. Reports also recommend changes to the legal framework to further align it with international standards. Below are the key general and specific recommendations.

GENERAL RECOMMENDATIONS

Legal and policy framework

- Legal and policy framework should include more consistently 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 FOA.
- There is a need to harmonise all country legislation and possibly create a unique regulatory framework on national level that would enable equal implementation of the right.
- FOA should be included and further developed in the policy documents that have the task of protecting and promoting human rights and rule of law, such as annual programs or long-term strategies for protecting human rights.
- In addition, the research showed that it is necessary to have clear and special procedural rules for protection of FOA both in administrative procedure and administrative dispute.

Institutional capacity

- Overall, the work of the responsible institutions should be strengthened through human rights-based approach and staff should be trained for improved implementation of the FOA with respect to international standards. Moreover, judges in courts should be empowered and educated in the field of FOA.
- The role of the Institution of Ombudsperson could be enhanced and strengthened in regards to the FOA; they could be empowered to monitor public assemblies and mediate between the law enforcement authorities and the assembly organizers. The Institution should be included in the development of the Standard Operating Protocols for policing the assemblies.
- The role of the local authorities should be clarified and further defined with the purpose of avoiding overlap of competences and ensuring consistency of implementation of FOA.

Civil society engagement

- Civil society should use past experience and good practice examples, such as networking with other organizations, cooperation with international public figures and institutions, involving political key stakeholders, network with independent institutions and use all available legal remedies to enhance FOA implementation. At the same time, people should be educated on their rights, how these can best be exercised and how to demand

accountability when their rights are limited. This role in raising awareness of citizens' rights could be embraced by the State, as well as by civil society.

SPECIFIC RECOMMENDATIONS

Legal and policy framework

Regarding the legal framework, the recommendations include:

- the liability of the organisers and participants, as well as the role of the stewards, should be reassessed and relaxed, and fines for organizers and/or participants should be reduced;
- the space and time of assemblies should not be restricted so as it does not comply with "time, place and manner" recommendations;
- more detailed provisions are necessary to regulate the conditions and procedures for use of force, including respecting human rights in the use of force.

Strict guidelines should be established on the recording and use of recordings of the assemblies, which would ensure recorded materials are not misused.

Institutional capacity

- Practical activities should be directed towards capacity development in law enforcement agencies and the institutions of the criminal justice system for adequate and non-discriminatory application of the legislation.
- The most important institutions for implementing FOA, country's ministries of interior, should strengthen its capacities for internal control of the actions of police officers, especially in cases of (excessive) use of force. An external independent mechanism for police oversight, which would include non-state actors, should be established in order to ensure that law enforcement authorities that violate the right to FOA are held personally and fully accountable for such violations.
- The security procedures implemented by the police should always be implemented under the principles of proportionality, without exceptions. Specific training should be designed for police officers integrated in the lifelong learning curriculum, which should enable them to protect the right to FOA as well as the rights of the participants.
- Where it becomes necessary to impose restrictions on one or more simultaneous assemblies, those restrictions should be determined through mutual agreement or through a process that does not discriminate any of peaceful assemblies.
- Relevant institutions could develop specific guidelines for the implementation of detention measures with regard to accused participants, increasing the knowledge and the awareness of the judges on the right to FOA.
- Law enforcement agencies should consider developing communication plans, especially for large assemblies.
- It is highly recommended that the same person remains in communication with the organizer before and during the assembly, as certain relationship is established.

Civil society engagement

- Resource centres could be created where organizations and initiatives that are not experienced would get advice on FOA issues.

- Civil society would be networks of various stakeholders to raise the FOA issues on national level and engaging especially with "middle management" of responsible institutions for enhancing awareness of the issues.
- Regular monitoring of implementation of FOA should be performed by civil society in a more systematic way to create knowledge-base and gather relevant data for further advocacy.

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Freedom of Assembly

BOSNIA and HERZEGOVINA



Challenges



Fragmented & unharmonized legal framework

The territorial division creates specific challenges for Freedom of Assembly.



Over restrictive provisions concerning space

- limitations of locations/space in some parts of BiH



Heavy fines & liability

- of organizers for conduct during public assemblies

Spontaneous assemblies not recognized

in some parts of BiH.

Political influence

& interference in the work of judiciary and police.



Police limitation

regarding the space and route, citing security issues.



Ownership of public surfaces

in case of public/private ownership of a space, permission is needed from the private owners.



Lack of communication

between organizers and law enforcement before and during the assembly.



Pressure on citizens

- related to participation in assembly
- cases when public servants were threatened with sanctions



Stigmatization of assemblies

- and participants
- public discourse through media reporting: shaming, pressure, intimidation and threats



Information blackout in regards detention

No information is provided about the 24 hours detention.



Freedom of Assembly

BOSNIA and HERZEGOVINA



Recommendations



Regulate freedom of assembly on a state level

Comprehensive legal framework to be created that sets standards complementary to the constitution and international law.



Spontaneous assemblies should be recognized and allowed in applicable laws.



Space, time and duration of the assembly should not be restricted.



Reassess and relax liability of organizers in line with international standards.



Establish control & monitoring mechanisms

The internal control mechanisms of the police should be strengthened. External, objective-monitoring body should be established.

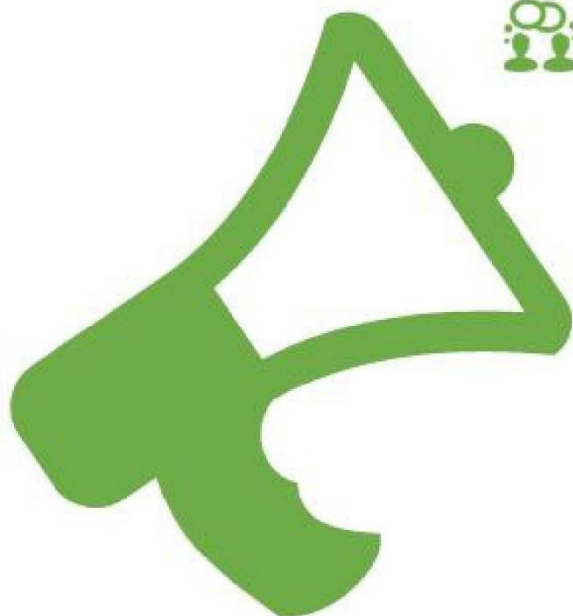


Train police on how to pacify assemblies with use of human rights methods.



Communication for enhanced risk management

Communication between organizers and police regarding risk-management during assemblies should be enhanced.



Freedom of Assembly

CROATIA



Challenges

Irresolute police in politically sensitive cases



Police is often hesitating in taking perceived politically sensitive decisions during the assembly. Which is due to

- lack of police education
- hierarchical structure of Ministry of Interior
- lack of political independence

 **Spontaneous assemblies not recognized by the law.**



Ambiguity of legal terminology

- some terminology in the law can be interpreted differently
- Ø incorporate legality, necessity & proportionality tests



Liability of organizers

- opens space for different and arbitrary interpretations

Recommendations



Spontaneous assemblies should be recognized and regulated by the law.



Legality, proportionality & necessity principles to be included in the law.



In case of inconsistency interpret the law **in favor of the right to exercise Freedom of Assembly.**



Amend the law in line with **international human rights standards** regarding liability of organizer.



While taking decisions and actions in the field law enforcement should have **greater independence from politics.**



Train police on protection of the right of freedom of assembly & of rights of protesters.



Freedom of Assembly MACEDONIA



Recommendations



Reduce the required information

A notification shall contain only basic information such as date, time, location, expected duration.



Amend provisions on liability

in line with international standards.



Develop capacity in law enforcement and the institutions of criminal justice system on **adequate and nondiscriminatory application of legislation.**



Educate police on legislative framework and legitimate restrictions and on **non-violent conflict resolution.**



External, independent mechanism for police oversight

- that includes non-state actors
- authorities shall be held personally accountable for violating the right to FoA



Strict guidelines on recording

and use of recording to ensure materials are not misused.



Detention shall be only a last resort

and for individuals who are danger to public safety.



Freedom of Assembly

MACEDONIA



Challenges

Excessive & indiscriminate use of force

Some actions of the police constitute a violation of international human rights standards.



Restriction on location

Limitations beyond what is provided as restricted locations under the law.



Pressure on citizens

- related to participation in assembly
- cases when public servants were threatened with sanctions



Video recording

of public assemblies are sometimes given to media and then abused for threatening and intimidating participants.



Criminalization of assemblies

- selective administration of justice
- criminal charges brought against anti-government protesters



Politicization of law enforcement

Police is selective i.e. stricter when dealing with anti-government assemblies.



Bottom restriction on participants' number

- can limit the protection of the right
- only gatherings with +20 participants recognized as public assembly



Extensive information required on a planned assembly

Although not obligatory, it goes beyond the information requirements set by international standards.



Liability of organizers

Obligation to ensure security requires extensive capacity & expertise.

Freedom of Assembly

MONTENEGRO



Challenges

Excessive use of force

- lack of institutional capacities to deal with such issues



Exit strategies poorly communicated

- to the organizers when dispersing an assembly and using tear gas
- this prevents the citizens in exercising their right to peacefully leave the assembly



Insufficient reasoning about prohibition

- new application needs to be submitted instead of adding the missing information



Prohibition instead of derisking

- prohibition not based on gathered information
- organizers are not notified on any follow-up activities regarding reducing threats



Cases of complete prohibition

although no such legal possibility exists in the law.



Liability of organizers

- to ensure safety and order by organizing security service



Unclear competences, deficient procedures

- overlapping competences - not clear to whom to file inquiries.
- notifying, response & legal remedies - not in accordance with good governance practices.



Spontaneous assemblies not recognized

- disregarding the circumstances

Permanent prohibition of assemblies

- in locations listed in law



Freedom of Assembly

MONTENEGRO



Recommendations



Amend blanket bans regarding places of assembly.



Recognize simultaneous assemblies.



Reassess and relax liability of organizers
in line with international standards.



Establish "one-stop-shop"
a single contact point for submitting notifications.



Improve communication with organizers

Police shall nominate for each assembly a contact person in charge of constant and organized communication.



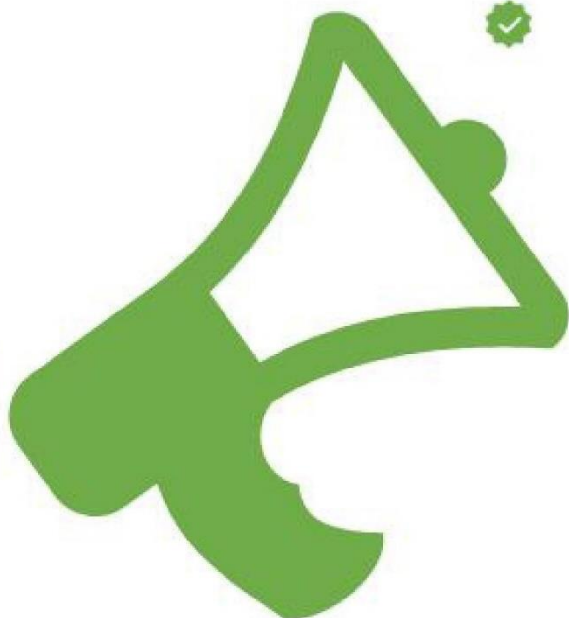
Establish external, independent oversight mechanism

in order to ensure that law enforcement authorities that violate the right to freedom of assembly are held personally and fully accountable.



Specify risks when prohibiting assembly

Authorities shall be obliged to elaborate the decision if an assembly is prohibited due to the risk of endangering safety or human rights.



Freedom of Assembly

SERBIA




Challenges

Ban on politically sensitive assemblies

- if scheduled at the same time
- regardless of messages, goals

Banning without legal reasoning

- regardless of who is the organizer


 **Cumulative fines**
for organizers,
leaders of assembly;
responsible person of a legal entity.

 **High fines**
• even minimum violations of technical character can lead to dissolution


 **Inadequate provisions**
• on the obligation of law enforcement to notify on the decision
• on the right of organizer to submit appeal in case of silence


 **Restrictions on the location**
• Ø proportional
• vague & abstract

Recommendations

 Educate police on legislative framework & on **non-violent conflict resolution**.

 **Change disproportional fines** for organizers of assembly.

 Include in the law **procedural rules for protection** of Freedom of Assembly in administrative procedure & dispute.

 Amend the law in line with **international human rights standards** regarding limiting location, time of the assembly.

