



MONITORING THE RIGHT TO FREE ASSEMBLY

Ena Bavčić

2017 BOSNIA AND
2018 HERZEGOVINA

 **#right2freeassembly**



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Published in January 2019



The monitoring report was conducted as part of the 'Monitoring the Right to Free Assembly' regional project, managed by the European Center for Not-for-Profit Law (ECNL). The project is made possible by the International Center for Not-for-Profit Law (ICNL) through the Civic Space Initiative.

This publication is wholly financed by the Government of Sweden. The Government of Sweden does not necessarily share the opinions here within expressed. The author bears the sole responsibility for the content.

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I. EXECUTIVE SUMMARY

This research represents a summary of the longitudinal analysis of peaceful assemblies in Bosnia and Herzegovina, with an effort to include both legal and practical analysis of all major events in this regard. This paper is to be seen in the light of the 2016¹ and 2017² publications, where all major laws and practices have been analysed. Having in mind that after our 2016 report, two additional analysis of legal framework have been issued,³ in terms of legal issues this paper focuses on areas that have not been covered with these analyses, subsequently focusing on the new recommendations issued to our government; comparison of these recommendations with

1 Freedom of Assembly in Bosnia and Herzegovina. 2016. European Centre for Non-Profit Law and Civil Rights Defenders. http://ecnl.org/wp-content/uploads/2016/10/BiH_WBA-Project-Report-Bosnian.pdf

2 Ena Bavčić. Monitoring the Right to Free Assembly: Country Report 2016-2017, Bosnia and Herzegovina. European Centre for Non-Profit Law and Civil Rights Defenders. December 2017. <http://ecnl.org/wp-content/uploads/2017/12/ECNL-FoPA-BiH-2017.pdf>

3 Uglješa Vuković. Pravo na slobodu okupljanja u BiH: između međunarodnih standarda i nacionalnih praksi. Sarajevski otvoreni centar, Sarajevo, februar, 2018 http://soc.ba/site/wp-content/uploads/2018/04/HRP-sloboda-okupljanja_web.pdf

Amila Kurtović, edotor Edin Hodžić. In-between freedom and restrictions: legal framework of freedom of assembly in BiH. Analitika. Sarajevo 2016. <http://www.analitika.ba/publications/between-freedom-and-restrictions-legal-framework-freedom-assembly-bih>

already existing, relevant legislation; and analysis of the contribution of independent institutions to the better implementation of the right to freedom of assembly in BiH. Moreover, the largest part of this paper focuses on findings from the monitoring missions, interviews with the authorities and assembly participants and media analysis.

Civil Rights Defenders has been following the initiative to adopt an over-arching law on freedom of assembly in Federation BiH, made with an intention to simplify heavy legislation burdening this entity. The Pre-Draft Freedom of Assembly Law for FBiH has been drafted by the Ministry of Interior Affairs of FBiH, in consultation with cantonal ministries. This resulted in a Pre-Draft that was not in line with international standard on peaceful assemblies. In consultation with Civil Rights Defenders, the OSCE Mission invited OSCE/ODIHR to review the Pre-draft and provide comments, with the aim of improving a final draft.

The main issues observed in the implementation of the right to peaceful assembly are: unreasonable demands from the organizers by the state agencies (in form of additional fees to private security agencies, medical care, fire insurance); responsibility of the organizers

and stewards to maintain public peace and order, which is not in line with international standards; discrimination in administering and policing assemblies, namely a ban on LGBT assemblies; a disproportionate police response to assemblies led by women and war veterans; and an increase in restrictions on places where assemblies may be held through legal acts as well as practice.

What has marked 2018 in terms of the right to peaceful assembly was an uprising in Banja Luka and the violent crackdown by the police in response. Up to 2018, the assemblies in this part of Bosnia and Herzegovina were limited to a small group of activists, trade unions or war veterans. The first two types of assemblies have been under a lot of pressures by the local authorities, exercised through financial pressures and political pressures against human rights defenders organising them. In 2018, though, a father of a brutally murdered boy, started daily protests in Banja Luka's public square, demanding that the police discover the perpetrators of his son's murder. Since March, when the murder occurred, he has mobilised the biggest rallies ever recorded in the country. What started as a protest for the accountability in one murder has become a demand for overall accountability of public authorities and a clear demand for a political change in this entity. Members of these group have reported political pressures on them throughout the year, culminating with police brutality, arrests and criminalisation of peaceful protesters which began on the 25 December 2018 and continued into January 2019 when this report was finalized.

In January 2019, however, the Constitutional Court of Bosnia and Herzegovina has ruled

a milestone verdict, saying that the relevant governmental institutions (ie. Canton Sarajevo police) has violated the right to free assembly of LGBTIQ persons, by failing to protect Queer festival Merlinka, organised by Sarajevo Open Centre. This is the first verdict related to the accountability of public officials in relation to FOPA (Freedom of Peaceful Assembly) in BiH.

In terms of this research, the Republika Srpska's Ministry of Internal Affairs has prolonged our request for an interview by not responding to our verbal or written appointments. After numerous attempts to receive some kind of response, we have received only a written summary on the right to peaceful assembly, signed by the Commissioner, Mirna Miljanović (document in the Appendix). In Federation BiH, we have also noted difficulties in interviewing lower ranking police officers, as our requests were bounced from municipal to cantonal level and vice-versa. We have, however, interviewed three high-ranking officials in Canton Sarajevo and Central-Bosnia Canton, and engaged in FoPA related dialogue with Adviser of the Federal Minister for Internal Affairs, with the help of OSCE Mission to BiH, as well as unofficial dialogue with 2 lower-ranking police officers in Sarajevo. Two later examples have not been officially used as a part of this research but have served as a basis for interviews with higher ranking officials as well as assemblies' participants.

When it comes to participants, we have conducted a number of semi-structured interviews throughout 2018, as well as 2017. Our aim was to cover more cities with different population – smaller and bigger places as well as dealing with different level of administrative units in BiH (entity level

and Cantonal/municipal level). Therefore, we have interviewed, among others, 9 women in the small city of Gračanica, 11 women in the village of Kruščica, 1 representative of war veterans from a small town of Srebrenik near Tuzla, 1 representative of LGBT organisation in Sarajevo, 1 representative of LGBT organisation in Tuzla, 1 representative of organisation in Prijedor, 1 representative of the Justice for David movement in Banja Luka, as well as 4 journalists, and an OSCE Mission representative, as a complementary interview to the police interviews.

II. BACKGROUND AND CONTEXT



As a part of three year long monitoring efforts, Civil Rights Defenders has been following legal changes, administration and policing of assemblies; as well as media, social media, and penalisation/criminalisation of protesters. Since 2013, Civil Rights Defenders has actively followed all major assemblies in BiH, namely the ones where the risk of human rights violations is the highest. In this context, we have observed several changes in the assembly management since 2013. In general, respect for human rights varies and depends on the scale of the assembly, the political pressure the assembly excerpts, and, as the longitudinal analysis shows, the location of the assembly. While in 2014 and 2015 we witnessed mass-scale, self-organised, spontaneous protests in Federation BiH's cities and urban areas, in 2017 we witnessed more localised assemblies, organized by women in small local communities or villages; in Republika Srpska we have observed regular, notified assemblies, in commemoration of war-crimes, as well as some degree of war veteran protests.

This trend has somewhat changed in 2018, with large-scale peaceful protests in Republika Srpska, concerning the Justice for David movement. Throughout the year, the

assemblies concerning the mysterious death of a teenage boy in Banja Luka, in March 2018 have been a major issue, bringing hope for change, having in mind that 2018 was also an election year. The attempt to further restrict freedom of assembly has been marked by a Pre-Draft Law on Public Assemblies in the Federation BiH, which has envisaged certain provisions in contrast to the international regulations and recommendations.

Taking all this into consideration, it is difficult to say that progress has been made. Our estimation is that the level of respect for the right is the same, just that violations are different. This is to say that most of the assemblies are conducted in a free manner, however, there are several types of assemblies that are being discriminated against. In 2017 and 2018, this discrimination was even more apparent, and is reflected in assemblies organised by women and by the LGBT+ community. In addition to this, war-veteran protests and Justice for David protests have fuelled more controversies and the police response to both, even though different just as the nature of these assemblies was different, was directed to narrowing down space for these two groups. Additionally, assemblies in smaller local communities often attract more



pressure by the local authorities, including politicians.

In order to analyse the level of respect for the right to assemble, Civil Rights Defenders sent out Freedom of Information requests to all relevant Ministries of Internal Affairs that manage assemblies, including all cantons, Entity of Republika Srpska as well as Brčko District for 2017 and first-half of 2018. The Republika Srpska reported that **1755 assemblies** have been notified to their Ministry of Internal Affairs, without more detailed statistics. The Brčko district noted no assemblies in the relevant period. Statistics for each of the cantons of Federation BiH as set out in the table below.

The reasons for organising assemblies, defined in the freedom of information responses by the relevant ministries were: war veterans’ protests (Herzegovina-Neretva, Bosna-Podrinje, Tuzla, Zenica-Doboj, West Herzegovina, Central Bosnia and Sarajevo). Herzegovina-Neretva Canton, Tuzla Canton, Zenica-Doboj and Sarajevo Canton noted that another main reason for peaceful protests were unsettled labour rights due to failed privatisation; as well as dissatisfaction with the work of legislative and executive authorities, and unfinished housing in Tuzla Canton; dissatisfaction with the departure of young people from BiH, and evictions in Zenica-Doboj Canton. While Sarajevo Canton further noted reasons for protests as: reading a statement of support to the Turkish people, support to the accused for war crimes, and loan settlements.

In 2017, protests of workers took place during the year with the Police Union in Mostar; Trade Unions of the Republika Srpska Railways across the RS; and other firms, trade unions,

and farmers over late payments of salaries, privatization, and health insurance. In 2018 protests of workers’ and trade unions’ protests continued to take place. They mostly ask for higher wages and better working conditions, for unpaid salaries and benefits, or they protest directly against bankruptcy process.

Reasons for banning protests were disabling public transport in Central Bosnia Canton (1 assembly), and in Herzegovina-Neretva Canton (2 assemblies). Disabling public transport was also given as a reason for banning an assembly in Zenica-Doboj Canton.

A statement was submitted to the Prosecutor’s Office in Zenica-Doboj Canton against 3 persons on the grounds of suspicion that they have committed criminal offenses: “being part of a group of people preventing an official person from performing an official duty” under Article 360 paragraph 2 of the FBiH Criminal Code and ‘Preventing an official to exercise official duty’ under the Article 358, paragraph 2 of the FBiH Criminal Code. Even though this was the only information provided in reply to the freedom of information request sent to Ministry of Internal Affairs of this canton, we were able to track two instances of push-backs at assemblies in Zenica-Doboj Canton.

One dates to January 2018, when reportedly, police and protesters of the Metal Factory Zenica clashed. The video published by an online portal Klix.ba show police officers trying to prevent a group of people getting to their cars. Even though the police response on the video shown in the link can be deemed as proportional, there is a voice of police officer telling to the camera man to stop recording. The pictures published by Klix.ba demonstrate that at least one women was in need of medical

CANTON	REGISTERED	APPROVED	HELD	HELD IN MOVEMENT	HELD WITHOUT MOVEMENT	FORBIDDEN	INTERRUPTED
Una-Sana Canton	7	7	7	0	7	0	0
Herzegovina-Neretva Canton	0	0	1	1	0	2	1
Bosna-Podrinje Canton	0	0	0	0	0	0	0
Tuzla Canton	109	109	158	0	158	0	0
Canton 10	0	0	0	0	0	0	0
Posavina Canton	0	0	0	0	0	0	0
Zenica-Doboj Canton	9	9	38	3	35	0	0
Zapadna-Herzegovina Canton	2	0	3	0	3	2	1
Srednja-Bosna Canton	5	3	4	1	3	2	1
Canton Sarajevo	44	159	164	12	154	0	0

assistance.⁴

The other instance occurred in March 2018, when police prevented war veteran protesters from blocking the street.⁵ The video shows the police using their shields and chanting “back-off” to push peaceful protesters, after which the protesters respond by pushing the police

4 More to be found on <https://www.klix.ba/vijesti/bih/radnici-zeljezare-zenica-se-naguravali-s-policijom-ima-povrijedjenih/180125029#1> (accessed on December 7th 2018)

5 Available at <https://www.klix.ba/vijesti/bih/pogledajte-naguravanje-specijalaca-i-bivsih-boraca-u-mjestu-mravici-kod-doboja/180303046#9> (accessed on December 7th 2018)

themselves back.

In 2017 a misdemeanour charge was handed over to the “leader” of a public assembly in Republika Srpska. In 2018, a motion for initiation of misdemeanour proceedings against the “leader” of the public assembly was filed according to the Law on Public Assembly of Republika Srpska.



II. LEGAL FRAMEWORK

While freedom of assembly laws in the FBiH are adopted at the cantonal level, the RS has one entity-level law. Considering that there are 10 cantons in FBiH, this arrangement results in having 11 laws regulating public assemblies in Bosnia and Herzegovina, including District Brčko. Subsequently, there are additional 10 laws regulating public peace and order in the country.

Restrictions of freedom of speech at the assemblies, in respective laws are set according to international recommendations.⁶ When it comes to the **restrictions that are not in accordance to the international standards**, the Freedom of Assembly Law of Central Bosnia Canton⁷ contains the strictest punishments for the organizers. The Law prescribes financial punishments and imprisonment of up to 30 days. Grounds for these punishments are regulated in Article 20, where it is also stipulated that the organizer can be sentenced to 30 days in prison for not announcing the assembly. Furthermore, in Article 21, the legislator prescribes imprisonment up to 30 days only for representatives of legal entities,

whereas for the same grounds an individual can only be financially punished. Article 21 overlaps in 3 out of 5 provisions with Article 20 and at the same time also prescribes higher financial fines, so it remains unclear which situations fall within the scope Article 20 and which situations fall within the scope of Article 21.

Appropriate Space for Public Assemblies is the most common restriction that is in contrast to the recommendations regarding the “sight and sound” and the “time, place and manner”⁸ of the assembly, set in European Charter on Human Rights, enshrined in the Constitution of BiH, and elaborated in the OSCE/ODIHR Guidelines for Peaceful Assembly for Peaceful Assembly and the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. Such limitations are stipulated in the Una-Sana Canton, Republika Srpska, Brčko District, Zapadna Hercegovina

⁶ Relevant analysis can be found at http://ecnl.org/wp-content/uploads/2016/10/BiH_WBA-Project-Report-Bosnian.pdf

⁷ Available at https://www.mupsbk-ksb.gov.ba/images/zakoni/zakon_o_javnim_okupljanjima.pdf

⁸ “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/ODIHR Guidelines for Peaceful Assembly 3.4 and 3.5, 2010; page 17

ENTITY/ DISTRICT	CANTON	LAW ON PUBLIC ASSEMBLY	LAW ON PUBLIC PEACE AND ORDER
Federation BiH	Una-Sana Canton	2010	2010
	Posavina Canton	Part of Peace and Order Law from 2016	2016
	Tuzla Canton	2008, Amendments 2015	2001, Amendments 2007
	Zenica-Doboj Canton	New law in urgents procedure	Amendments 2017
	Bosna Podrinje Canton	s/a ¹⁰	-
	Srednja-Bosna Canton	2000 (Draft Law - not available to public)	-
	Hercegovina-Neretva Canton	-	2005
	Zapadna-Hercegovina Canton	2015	2009
	Canton 10 (Hercegovačko-bosanska Županija)	2014	2007
	Sarajevo Canton	2009, Amendments 2011	2007
Republika Srpska	-	2008	2015
Brčko District	-	2012 ¹¹	2009

and Srednja Bosna cantons.⁹ **Tuzla Canton provisions regarding location of assemblies** are the most detailed, restricting the time of the assemblies as well, stipulating that

9 Relevant analysis can be found at http://ecnl.org/wp-content/uploads/2016/10/BiH_WBA-Project-Report-Bosnian.pdf

10 Available at <http://www.bpkg.gov.ba/zakoni/Zakona%20o%20javnom%20okupljanju.pdf>

assemblies in this Canton can only take place from 8am to 10pm.¹²

Prohibitions of places where assemblies can be held simply on the basis of potential traffic disruptions, as prescribed in West Herzegovina

11 Available at http://policijabdbih.gov.ba/images/Naslovna/593.70._Zakon_o_javnom_okupljanju_B.pdf

12 Official Gazette of the Tuzla Canton; Number 11, Page 1290; Published on: October 7th 2015. Article 16.

Canton and the Brčko District laws,¹³ are not in line with the proportionality principle. According to the OSCE/ODIHR and Venice Commission, “assemblies are an equally legitimate use of public space as commercial activity or the movement of vehicles and pedestrian traffic.”¹⁴ A **complete ban** on assemblies in relation to the ‘Justice for David’, due to the traffic disruptions and protesting outside the designated places of assemblies was published on in December 2018.¹⁵

Breaches of the laws on public assemblies in Bosnia and Herzegovina are considered a **responsibility of the organiser**. All of the laws prescribe fines and other penalties under the respective laws on public order against the participants and organisers.¹⁶ However, such 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

13 Law on Public Assemblies of the Zapadna Hercegovina Canton: Article 14(e) and Law on Public Assemblies of the Brčko District, Article 14(c): na javnim cestama na način kojim se ugrožava nesmetano odvijanje prometa

14 See A/HRC/20/27, para. 41, and ODIHR/OSCE *Guidelines*, para. 20. European Court of Human Rights, *Kuznetsov v. Russia*, application No. 10877/04, 23 October 2008, para. 44, and Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, para. 197.

15 <http://ba.n1info.com/Vijesti/a306829/MUP-RS-zabrani-nove-proteste-grupe-Pravda-za-Davida.html>

16 Article 6 of the laws on public assemblies in Cantons Sarajevo, Podrinje, 10, and Tuzla prescribe that the organiser should be held accountable for breaches of these limitations.

public order”.¹⁷

When it comes to the **termination of peaceful assemblies**, the laws of the Bosnian-Podrinje Canton, Posavina Canton, and Srednja-Bosna Canton¹⁸ stipulate that if the assembly is not registered or is being held against the registration the police authority can terminate public gathering.¹⁹

Conversely, Zenica-Doboj Canton Assembly Law poses 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 notified to the police. Further on, the lack of any notification 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.²⁰

Unlike most of the laws regarding peaceful assembly in BiH, Laws in Posavina Canton, Canton 10, Una-Sana Canton, Tuzla Canton,

17 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

18 Srednja Bosna PA Law, Article 17; Law on Public Assemblies of the Bosna-Podrinje Canton, Article 13; Posavina Canton PA Law, Article 3

19 Refer to: http://ecnl.org/wp-content/uploads/2016/10/BiH_WBA-Project-Report-Bosnian.pdf

20 Ibid.

and Bosnian-Podrinje Canton **do not recognise the possibility of appealing a ban on assemblies.**²¹

Since the last Freedom of Assembly report, published in October 2017, Civil Rights Defenders has been following the initiative to adopt an over-arching law on freedom of assembly in the Federation BiH that intends to simplify the existing legislation burdening this entity. The Pre-Draft Freedom of Assembly Law for FBiH has been drafted by the Ministry of Interior Affairs of FBiH, in consultation with cantonal ministries. The OSCE Mission has observed the process, but no civil society organisation was consulted. This resulted in a Pre-Draft that was not in line with international standard on peaceful assemblies. Even though comments have been sent by local OSCE Mission members in coordination with Civil Rights Defenders, a need for an external body that would review this law was high. Therefore, in consultation with Civil Rights Defenders, the OSCE Mission in BiH invited OSCE/ODIHR to review the Pre-draft and provide its comments.

The summary of OSCE/ODIHR Comments on the draft law on Public Assembly in the Federation of Bosnia and Herzegovina, published in April 2018, noted:

“Generally, the draft law has a restrictive approach to FOPA and does not facilitate full enjoyment of this fundamental human right, as it places heavy burdens on organisers of assemblies; facilitating of FOPA is the responsibility of the state. Such

21 For the relevant analysis refer to http://ecnl.org/wp-content/uploads/2016/10/BiH_WBA-Project-Report-Bosnian.pdf

*burdens include an obligation to provide a detailed request for holding an assembly [par 34], to have a clear structure [par 58], maintain order [par 60], and placing strict duties on stewards [par 65]. The draft law needs to be substantially changed to be compliant with international standards.”*²²

The Comments were in line with Civil Rights Defenders’ analysis, underlining the issues of heavy burdens to organisers and restrictions on venue and manner of assemblies. Civil Rights Defenders participated in meetings with OSCE/ODIHR and government representatives for the presentation of comments.

The repeated analysis of existing laws and the Pre-Draft Law on Public Assemblies in Federation BiH has identified several areas of overlap with existing laws. Since the comments on the FBiH’s Pre-draft Law are relevant to existing laws, we will analyse the provisions in Canton Sarajevo Law that are not in accordance with the standards described in these comments.

Article 10 of the Canton Sarajevo Law, titled “obligation to announce the peaceful assembly” imposes exactly that - an obligation on the organiser to announce the assembly 5 days before the assembly is about to take place. Provision 4 of this Article states that only exceptionally request can be submitted 48h in advance. The comment no. 27 of the OSCE/ODIHR’s Comments

22 OSCE/ODIHR Comments on the draft law on Public Assembly in the Federation of Bosnia and Herzegovina; Warsaw, 24 April 2018, Opinion -Nr.: FOA-BiH/323/2018. Para 9. Pg. 24 Available at: <https://www.osce.org/odihr/388256?download=true> (Accessed on 23 January 2019).

on The Draft Law on Public Assembly in The Federation of Bosnia And Herzegovina clearly states that “There should never be a requirement to obtain permission to organise an assembly as this is a restriction and an obstacle for fully enjoying FOPA.”²³ Further on, the “OSCE/ODIHR recommends that the articles which use the word “request” or “application” be redrafted. See also next paragraph on “notification”. ”²⁵

Article 19 of the Sarajevo Canton Law determines responsibilities of the organiser. The first provision – 19(1) states that it is the responsibility of the organiser to ensure peace and order at the peaceful assembly. Such responsibilities cannot be transferred to the individuals, and individuals cannot be held accountable for failing to fulfil this obligation. This article goes even further, prescribing that it is the organiser’s duty to ensure sufficient number stewards, with a role to maintain peace and order; as well as “to undertake necessary measures for health protection and protection from fire.”²⁶ The Article 21 breaks-down all responsibilities of the steward, including the responsibility to protect the property, to hand over the person carrying the weapon to the competent authority, as well as to hand over information about the violent person.²⁷ At the same time, Article 20 imposes a request for a designated assembly leader,

23 FOPA – Freedom of Peaceful Assembly

24 OSCE/ODIHR’s Comments on The Draft Law on Public Assembly in The Federation of Bosnia and Herzegovina, Opinion-Nr.: FOA-BiH/323/2018. Warsaw, 24 April 2018. Comment no. 27, pg. 7.

25 Ibid.

26 Article 19(3) Law on Public Assemblies of Canton Sarajevo. (Dužnost organizatora je da osigura dovoljan broj lica za vršenje poslova održavanja reda i mira (u daljnjem tekstu: redar) na mirnom okupljanju i da preduzme odgovarajuće mjere medicinske zaštite i zaštite od požar)

27 Ibid. Article 21

whose obligation is, among others, ensuring peace and order at the peaceful assembly. In the view of the author of this report, these designations are not only not aligned with international recommendations but also redundant. Peaceful assemblies are peaceful at its intent and goals, and the need to further ensure peace and order should refer to non-peaceful assemblies.

Moreover, the level of financial fines for the organisers are the same, amounting to 9000BAM for the legal entity,²⁸ up to 1.500BAM for an individual responsible for, among other things, not registering the assembly, does not ensure peace and order, does not determine an assembly leader, or organises an assembly in places where peaceful assemblies are forbidden.

The police are the primary institution with a task of maintaining public peace and order, and the comment no. 60 of aforementioned OSCE/ODIHR recommendations states that “The responsibility to maintain law and order lies with the authorities.”²⁹ While comment number 64 elaborated on the role of the “leader” by saying “While it may be beneficial to have a leader to properly organise an assembly and to effectively communicate with authority, it is highly problematic that the leader is responsible for measures to ensure FOPA.”³⁰

ACCOUNTABILITY IN LAW MAKING

Even though BiH institutions are responsive

28 Law on Public Assemblies of Canton Sarajevo. Article 35

29 OSCE/ODIHR Comments on the draft law on Public Assembly in the Federation of Bosnia and Herzegovina; Warsaw, 24 April 2018, Opinion -Nr.: FOA-BiH/323/2018. Available at: <http://www.legislationline.org/> . Comment no. 60, pg. 19.

30 Ibid. Comment no. 64, pg. 20.

to international comments, they usually lack a willingness to understand international legislation in order to deliver best quality draft laws. In most cases, after the comments are issued by international bodies civil society prepares proposal of amendments and/or drafts of laws that are later adopted in some form by the Government. Unfortunately, civil society has not been part of the working group preparing the Federation BiH's Law on Peaceful Assemblies, even though certain efforts have been made. This may have had a negative impact on the presented draft-law.

The Institution of Ombudsman is a robust system composed of 3 ethnically nominated Ombuds-persons, a main office in Banja Luka and field offices are in Sarajevo, Mostar, Brčko and Livno. The Ombudsman's office is not thematically divided and besides Agencies for Gender Equality and the Republika Srpska's Ombudsman for Children, there are no other human rights institutions that would oversee specific human rights issues in Bosnia and Herzegovina. The Parliamentary Assembly is in charge of the Ombuds-person nomination procedure, while the House of Peoples of BiH and the House of Representatives appoint and dismiss Ombudsmen.³¹ The system is challenged to be inefficient due to the several factors, including the fact that all reports must be accepted unanimously by all three Ombuds-persons, meaning that there is no clear distribution of work among them; as well as appointment procedure that uses a vague language regarding the appointment, allowing that appointment focuses on ethnic

³¹ Law on Human Rights Ombudsman of Bosnia and Herzegovina - Zakon o izmjenama i dopunama Zakona o Ombudsmanu za ljudska prava Bosne i Hercegovine ("Službeni glasnik BiH", broj 32/06)

factor rather than the expertise of nominees.³²

So far, the Ombudsman office has issued three recommendations regarding right to freedom of assembly referring to LGBT assemblies and the regulation of traffic (more details below). At the same time, the Ombudsperson recommended that all relevant institutions, and in particular the Ministry of Internal Affairs of the Canton of Sarajevo, should take all necessary measures in order to secure that the announced protest takes place without incident.³³

On 30 December 2018, two Ombudsmans of Bosnia and Herzegovina, Ms. Nives Jukić and Prof. Dr. Ljubinko Mitrović urged citizens to be peaceful, and members of the police to be professional and protect the human rights of all citizens during the protests later that day in their statement.³⁴

In 2018, this Institution has also accepted investigation into the killing of David Dragičević in relation to the ongoing protest (see case-study below) and issued a press-release expressing their commitment to uncover the truth.³⁵ In addition to this, the office has issued a reaction to the police violence over women protesting in Kruščica.³⁶ Even though the Initiative for Monitoring of EU Integrations, composed of 30 human rights organisations in BiH, has pushed for it, no special report

³² Interview regarding the Initiative for changes in Ombudsman's Law BiH <http://eu-monitoring.ba/site/wp-content/uploads/2015/08/e-bdaily-3600-Sa%C5%A1a-intervju.pdf> (accessed on 12.12.2018)

³³ http://ombudsmen.gov.ba/documents/obudsmen_doc2018030810344228eng.pdf

³⁴ <http://ba.n1info.com/Vijesti/a306644/Obudsmeni-BiH-se-oglasili-povodom-vecerasnjeg-skupa-u-Banjaluci.html>

³⁵ Available at <http://www.ombudsmen.gov.ba/Novost.aspx?newsid=978&lang=EN> (Accessed on 14 December 2018)

³⁶ Available at http://ombudsmen.gov.ba/documents/obudsmen_doc2018030810344228eng.pdf (Accessed on 14 December 2018)

on the rights to peaceful assembly has not yet been issued by this institution. The OSCE Mission states, however, that this report will be prepared in 2019, with their support.

III. ADMINISTRATION OF FREEDOM OF ASSEMBLY



The assembly registration system in BiH is complex as it reflects the complicated administrative State apparatus. Additionally, the relevant administrative authorities still do not understand a difference in terminology, when it comes to registering or seeking for approvals for assemblies. The fact that some of the procedures are defined on different levels (for example the designated space for an assembly is sometimes elaborated in a law, sometimes in city or municipal acts, and sometimes in a document that is not public) leaves space for potential manipulations of the process, since organizers may not be aware of the exact procedure. Even though some provisions stipulated by law are not being used (such as aforementioned 30 day prison sentence), they still add to confusion of organizers when trying to register the assembly.

The **notification of assemblies** is done with the ministries of internal affairs, namely municipal police stations. In case of moving assemblies, or assemblies taking place in several municipalities (City of Sarajevo) the registration is made at a cantonal level, in the Federation BiH.³⁷

³⁷ Interview with Džafer Hrvat, Ministry of Internal Affairs of Canton Sarajevo.

According to the Ministry of Internal Affairs of Canton Sarajevo (hereinafter MIA KS) Commissioner, depending of the location of the assembly the policing operation may involve both the Cantonal Police and the Federal Ministry of Internal Affairs (hereinafter FIA). Specifically, the FIA is responsible for protecting buildings belonging to the Federation BiH Government. "In this case, there is a conditionally stated division of competences, the FIA protects the building, and the MIA is in charge of maintaining public peace and order in a public place/space."³⁸

From our monitoring missions and interviews with participants of assemblies, this is debatable. The engagement of FIA may entail the engagement of all relevant police forces from the territory of FBiH. Interviewees have noted the presence of police forces from different cantons in areas without any governmental buildings (highways and similar). Our research suggests that inter-cantonal police coordination, possibly done through FIA, is conducted in cases of bigger protests that are estimated by the local MIAs to pose a threat to stability. A recent example

³⁸ Ibid [U ovom slučaju ima uslovno rečeno podjela nadležnosti, FUP štiti zgradu, a MUP je zadužen za održavanje javnog reda i mira na javnom mjestu/prostoru.]



of this is has been the war veterans protests in Tuzla and Sarajevo. An interviewed protester from Tuzla Canton explained that when police used force during the blockade of main road next to Tuzla (see case studies), "This action was commanded by the FIA commissioner, Lukač ... I'm not sure whether it was a special unit of the FIA or Canton Sarajevo MIA. But the order came from the FIA and they were brutal."³⁹ It is unclear whether this level of coordination occurs for other types of assemblies, with invested specific interests, such as environmental issues.

In terms of notifying or not, misunderstanding also comes from the understanding of what constitutes **spontaneous assemblies** in different municipalities. Often, this understanding is not prescribed by the law but it depends on local practices or individual understanding by the local commissioners. For example, the Commissioner with the Ministry of Internal Affairs of the Central-Bosna Canton defines spontaneous assemblies in a following manner: "There are public assemblies that do not have to be registered (e.g. school events held in schools, religious events - ceremonial funerals, etc.), other public assemblies of mass character must be reported. The competent police station is being notified."⁴⁰ From the point of view of international law, such an

39 Intervju with Fadil Walter, war veteran, Srebrenik October 2018. [Ova akcija je bila po naredbi komadantna FUP-a, Lukača. Oni su rekli da su oslobodili tu teritoriju od nas. Nisam siguran da li je bila specijalna jedinica FUP-a ili MUP-a KS. Ali naređenje je došlo od FUP-a i bili su brutalni.]

40 Interview with Faik Adilović, police Commissioner and Hajrudin Karahasanović, Head of Coordination Ministry of Internal Affairs of Central-Bosnia Canton. [Postoje javna okupljanja koja se ne moraju prijaviti (npr. školske manifestacije koje se održavaju u školama, vjerske manifestacije – povorke na sahranama, i sl.), ostala javna okupljanja masovnijeg karaktera se moraju prijaviti. Obavještava se nadležna policijska stanica.]

understanding of a spontaneous assembly is narrow, and deprives the notion of spontaneous assembly of a political message, reducing it only to ceremonies and events in closed spaces. Furthermore, it is clear that school events and funerals are not assemblies but events taking place in the area designed for their purpose, in a same way that a sitting session in the Government is not an assembly. This only demonstrates how broad the understanding of the assembly is, especially of a spontaneous one.

The time of advance notification of assemblies varies from 48 hours⁴¹, to 5 days⁴² to 7 days⁴³ before the assembly. The procedure is, however, more or less the same in all municipalities and the application should contain the place, time and purpose of the gathering, "as well as the measures that the organizer will undertake to maintain the order at the gathering."⁴⁴ In Tuzla, according to a local activist, the request contains not just information about organizers, and time and place, but also about so-called *leaders* and people who will assemble, number of possible guests, whether a private security agency is hired, whether medical support and firefighters are provided.⁴⁵ The situation

41 Central Bosnia Canton

42 The Commissioner of the Ministry of Internal Affairs of Canton Sarajevo has stated it is 72h, while the Law prescribes 5 days, as stated by the LGBT right defender.

43 Interview with Dajana, Youth Movement Revolt/Tuzla Open Centre. The deadline of 5 days is also in Gračanica according to the women protester.

44 Interview with Faik Adilović, police Commissioner and Hajrudin Karahasanović, Head of Coordination; Ministry of Internal Affairs of Srednja-Bosna Canton.

45 Interview with Dajana, Youth Movement Revolt/Tuzla Open Centre [Zahtjev sadrži podatke o organizatorima, voditeljima i redarima okupljanja, lokaciju/rutu, broj mogućih gostiju, da li je obezbijedena privatna zaštitarska agencija, hitna, vatrogasci]

is similar in Sarajevo, where organizers are required to notify firefighters and emergency medical assistance⁴⁶; while in Prijedor the names of 5 stewards need to be indicated in the notification.⁴⁷

In a written response submitted on our request for interview, the RS Commissioner explained: "The organizer of the peaceful assembly, or his representative, is obliged to submit a request for holding of a peaceful assembly, when this is required by the Law. The application shall be submitted to the competent organizational unit of the MIA of Republika Srpska not later than 5 days before the beginning of the peaceful assembly. Exceptionally, for particularly justified reasons, the application can be submitted no later than 48 hours before the beginning of the peaceful assembly, with the explanation of non-reporting within the deadline."⁴⁸

Throughout the research, we did not detect that any municipality has a specific individual or team that deals with assemblies.

The **availability of the procedure for notifying** assemblies online depends on the administrative unit where the assembly is organized. The form for registering assemblies is available online only on the on the web-pages of Tuzla Canton⁴⁹ and Bosna-Podrinje Canton MIA's⁵⁰. The Tuzla Canton form is

46 Intervju with Vladana Vasić, Sarajevo Open Centre

47 Interview with Branko Čulibrk, Centre for Youth "Kvart" [prijavu javnog skupa koju podnosi fizičko lice odgovorno za javno okupljanje, opisati tok dešavanja javnog skupa, navesti 5 redara.]

48 Written elaboration by the Commissioner of Ministry of Internal Affairs in Republika Srpska

49 Available at <http://www.vladatk.kim.ba/registar-administrativnih-postupaka-mup>. (accessed on 14 Dec 2018)

50 Available at <http://mup.bpkg.gov.ba/ministarstvo/797/zahtjevi-i-obraci> (accessed on 14 Dec 2018)

more complicated to find since the MIA does not have its own webpage. Rather, the website is integral to the Tuzla Government web. The OSCE Mission has noticed that none of the administrative units, though, offers a possibility of registering public assemblies online.

The procedures are not explained separately but are contained in the laws that are publically available. The procedures described in the law are not too complicated but they might require more attention from an average person. This is why our conclusion is that these laws are often not available to all citizens since often persons register assemblies are coming from vulnerable and marginalized groups, lacking adequate resources and capacity to access these procedures, also noted by the OSCE Mission staff. The use of internet and interpretation of laws are skills that many in BiH society do not possess, meaning that there might be assemblies organised by people who do not fully understand the law.

The Republika Srpska activists that protest every day for Justice for David noted how they have never received instructions from any institution about how and when notification of assemblies is done. "In fact, I think that informing citizens and non-governmental organisations of their rights is completely scarce not to say that it does not exist. People absolutely do not know what their options are and what is the prescribed code of conduct

in these situations.”⁵¹ This is to say that most of the citizens are unaware of where to find right procedures when exercising their right to assemble.

The legislation does not prescribe any obligation on the **authorities to meet with assembly organisers** to discuss concerns. However, there is a legal obligation on the police to estimate security risks relating to an assembly.⁵² As a part of security assessments, meeting with the assembly organisers is a practice in most municipalities with a high number of assemblies. The nature of such meetings is to evaluate actions undertaken by the organisers, where police notifies on what they have left out, “after which they are notified in writing (on what they need to do), and then they inform back whether they have eliminated those, let’s say defects.”⁵³ This may indicate that this communication is purely one way, the MIA expects organisers to share their plans, but this is not reciprocated by the police. A more reciprocal form of dialogue and exchange between the police and organisers could help to reduce tensions and improve trust.

51 Anonymous (Ne, ja sam čak predsjednik jedne humanitarne organizacije, nevezano za sve ovo, gdje imamo u svom statutu i organizovanje manifestacija. Nikada nismo dobili uputstvo od ijedne institucije kako i na koji način se to radi, da kada nam to bude zatrebalo u budućnosti da bismo znali kako trebamo postupati. Zapravo mislim da je obavještanja građana i nevladinih organizacija o njihovim pravima potpuno oskudno da ne kažem nikakvo. Ljudi apsolutno ne znaju koje su njihove mogućnosti ni koja su pravila ponašanja u tim situacijama.)

52 Interview with Džafer Hrvat, Ministry of Internal Affairs of Canton Sarajevo.

53 Ibid [Objektivno postoji potreba. Postoji zakonska obaveza da se procjenjuje situaciju i u slučaju potrebe nalažu se dodatne mjere sigurnosti. Pozoviva se organizator, on izloži šta je naumio da poduzme, onda mu se kaže šta je izostavio, pa mu se onda i pismeno naloži i onda on obavijesti da je otklonio te uslovno rečeno nedostatke i onda može krenuti u realizaciju održavanja javnog okupljanja.]

The Justice for David activists said that they have not met with the police in Banja Luka, and they believe that this should be introduced as a practice: “It would be useful to organize a meeting of representatives of all these institutions and organisers of the assembly so they would exchange previous experiences, also give advice on what could be improved, which locations require more attention, how to arrange the stewards. At the moment, there is an overall anarchy, everyone acts in their own way, no one cooperates with anyone, nobody knows who to address at a particular moment.”⁵⁴

Demands that civil authorities make to the organisers of assemblies vary. “According to the Law, there are several examples, such as stewards, fire insurance, etc.”⁵⁵ However, the organizers have also noticed other impositions such as need to **hire private security companies** and **pay additional fees for public medical assistance** (ambulance).⁵⁶ Special requirements in terms of assembly notification have been noted while registering LGBT+ events in Sarajevo, where the organizers are normally required to provide private security “which they interpret as stewards, although the law does not prescribe it. So, they are asking for a security agency to be hired, at least as far as LGBTI gatherings are concerned. But I think in Canton Sarajevo it is like that for all the gatherings.”⁵⁷ This refers also to events

54 Anonymous Interview in Banja Luka

55 Interview with Faik Adilović, police Commissioner and Hajrudin Karahasanović, Head of Coordination; Ministry of Internal Affairs of Srednja-Bosna Canton

56 Interview with Vladana Vasić, Advocacy Manager at Sarajevo Open Centre

57 Ibid. [što oni tumače kao redare, iako po zakonu to nije tako. Znači traže angažiranje zaštitarske agencije, barem što se tiče LGBTI okupljanja., ali mislim da je u KS za sva okupljanja tako.]

in private space, such as cafés, indoor festivals, and similar.

While Article 30 of the Law on Public Assemblies of Canton Sarajevo stipulates that additional security charges for organizing public events (javne priredbe) can be imposed, Article 25 of the same Chapter of this Law defines public events as “gatherings organised for the purpose of earning income within the registered activity, which, relative to the expected number of participants and the nature of the event, require the implementation of special security measures.”⁵⁸ Therefore, non-commercial events organized by non-profit organisations cannot be seen in light of these provisions.

In Gračanica, women protesting for their social rights have reported that they are **required to pay the request for the assemblies**: “we have to file a request to the police seven days earlier, this request costs 30KM.”⁵⁹ Charging for notification of assemblies is a unique practice that has only been identified in the municipality of Gračanica, Canton Tuzla.

On 1 May 2017 the Federation of Trade Unions of Republika Srpska organized a protest march in Banja Luka over labour legislation and dissatisfaction over the position of workers in the entity. The protesters were concerned for workers’ rights, higher wages, and better working conditions. Media reports

58 Law on Public Assemblies of Canton Srajevo, Službene novine 32/09. 2009. Article 25 and 30 <https://mup.ks.gov.ba/sites/mup.ks.gov.ba/files/Zakon%20o%20javnom%20okupljanju%20ks%2032.09.pdf> [okupljanja organizovana radi ostvarivanja prihoda u okviru registrovane djelatnosti koja, s obzirom na očekivani broj učesnika i prirodu priredbe zahtijevaju preduzimanje posebnih mjera sigurnosti.]

59 Interview with 8 former Fortuna workers demanding their social rights in Gračanica. [sedmicu dana ranije moramo predati zahtjev u policiju, taj zahtjev se plaća 30KM.]

that although the march organizers did not request police presence, they were required to pay the Ministry of the Interior over 3,000 KM in advance for police officers to cover the protest march and ensure the safety of over 1,500 participants. This is in accordance to the law which requires organizers to cover the extra costs of police presence for public gatherings.⁶⁰

These examples demonstrate that there is a clear misunderstanding on the role of the organisers, and the Pre-Draft Law described above treats assemblies as commercial events, organised for profit. This notion was reflected in the interview with the Commissioner at the Canton Sarajevo MIA: “My personal experience is that the role of the organizer is lightly understood, everyone wants to organize a public gathering, probably due to some kind of commercialization of this right to freedom of assembly. They are rather uneducated, ignorant and do not want to understand their role and responsibility, and it is simply more important to calculate how much of the tickets will be sold and [how much it will be] earned.”⁶¹

Bans and restrictions on assemblies differ depending on a canton, as described in the legal analysis above. In practice, bans occur

60 <http://www.6yka.com/novosti/u-banjaluci-protest-radnika-za-1-maj-donosimo-informacije-sa-terena-foto> and <https://www.rtvbn.com/3862913/danas-protest-sindikata-srpske> (last accessed on December 11th, 2018)

61 Interview with Džafer Hrvat, Ministry of Internal Affairs of Canton Sarajevo. [Moja lična iskustava su da se poprilično olako shvata uloga organizatora, svako je htio da organizuje javno okupljanje, vjerovatno zbog neke vrste komercijalizacije tog prava na slobodu javnog okupljanja. Pa su poprilično neupućeni, neuki i ne žele da shvate svoju ulogu i odgovornost i jednostavno bitnija je računica koliko će se od ulaznica zaraditi i prodaje.]

very rarely⁶², according to our interviews, and are mainly related to the security assessment by the police. Restrictions, however, are a bit more common and they mainly refer to **places of assemblies**, often depriving organizers of the “sight and sound” principle. These restrictions often limit place of assembly to one or two areas in the city or a municipality. For example in Banja Luka peaceful assemblies can only be organized on a main square and in a park near the square. Often, these decisions of a designated space for assemblies are not public. In the interview with the OSCE Mission representative, we have confirmed information received in 2016 that the decision of a City of Mostar designating a park in the outskirts of the city (Sjeverni logor)⁶³, is not publicly available on their website.

In the interview with the OSCE Mission representative, it was noted that there are more restrictions than previously detected by Civil Rights Defender, saying that Prijedor has 9 locations where public gatherings can take place, while Banja Luka has 2. It often happens that those sites where assemblies are allowed are places that are not in accordance to the sight and principle. The Mission further added that in the Central Bosnia Canton police, where every municipality decides for itself about only one place of the assembly.⁶⁴ The Amendments to Law in Canton Tuzla do not allow assemblies

62 Interview with Faik Adilović, police Commissioner and Hajrudin Karahasanović, Head of Coordination; Ministry of Internal Affairs of Srednja-Bosna Canton

63 Interview with OSCE in BiH representative, Nina Šeremet

64 Ibid. [U Prijedoru ima 9 lokacija na kojima se može održati javno okupljanje, u Banja Luci 2. Često se dešava da su te lokacije na kojim je dozvoljeno javno okupljanje mjesta koja su potpuno van sight and sound momenta, tako da nema ni razloga da se okuplja. Mi smo radili s policijom Srednjobosanskog kantona, tamo svaka opština za sebe donosi odluku i odlučuje o mjestu.

500m from the governmental building in the City of Tuzla.⁶⁵

Following a crackdown on peaceful protests of the “Justice for David” movement, Minister of Internal Affairs of Republika Srpska, Dragan Lukač, announced on 30 December 2018 a **complete ban** of assemblies in relation to the ‘Justice for David’, due to the disturbance of traffic and not respecting the designated places of assemblies.⁶⁶ This decision is in contrast to above elaborated international principles.

On 11 January 2019, one of the Human Rights Ombudsmans, Ljubinko Mitrović, confirmed that the Institution had opened six cases in connection with the killing of David Dragičević, and police behavior during the assemblies on 25 and 30 December 2018 and since.⁶⁷

The case of women workers’ protests demanding their social rights after the allegedly illegal bankruptcy of a shoe-factory, Fortuna in Gračanica (see case study), has revealed even further bans on places of assemblies in this Canton: “today we have been allowed to protest only within the factory (park), and that we can go to the commercial fair wearing t-shirts (with written demands) as citizens. However, this morning they came and said that we cannot go to the fair in T-shirts. (We can go) only if we cover them by something. We should not even think to take banners outside the factory circle. When we want to go

65 The Law on Amendments to the Law on Public Gatherings in Canton Tuzla is not anymore publically available, according to the intervju with Dajana, Revolt/TOC

66 <http://ba.n1info.com/Vijesti/a306829/MUP-RS-zabrani-nove-proteste-grupe-Pravda-za-Davida.html>

67 <https://www.klix.ba/vijesti/bih/ombudsmeni-otvorili-sest-predmeta-u-slucaju-dragicevic-medju-njima-i-one-ponasanju-policije/190111051>

to the toilet, we need to wear something over (the t-shirts).”⁶⁸ They have further elaborated how they have applied for a moving assembly, which was not allowed by the local police.

The **influence of politicians** on the administration of assemblies is unclear and not public, if existent. The war veterans state that during dialogue the local police admitted political pressure, explaining: “We think that the politics is involved in that, and we know because we had their acknowledgment that they were pressured by politicians.”⁶⁹ It is unclear though what kind of political pressure was exercised. The interviewed war veteran explained that on some occasions police officials do support war veterans and their demands, while on others they terminate their assemblies.

The possibility for political pressures stems from the fact that the respective Commissioners work under Ministries of Internal Affairs, where the Minister is a politically appointed person, while permission for the assemblies occupying public roads also need to be coordinated with the respective Ministry of Traffic, where again ministers are politically appointed. Some issues arise also from vague understanding of who affects MIAs decisions on assemblies. In the case of Sarajevo Open Centre’ performance on transgender issues, police have said that the activists need to obtain permission from the institution in

68 Interview with 8 former Fortuna workers demanding their social rights in Gračanica. [danas su nam odobrili proteste samo u krugu Fabrike, i da možemo izaći s majicama na sajam kao građani, međutim jutros su došli i rekli da ne možemo ni izaći na sajam u majicama, jedino da obučemo nešto preko. A transparente ne smijemo ni slučajno iznijeti izvan kruga. Kada hoćemo u wc, moramo obući nešto preko.]

69 Interview with Fadil Walter, war veteran from Srebrenik [Mislimo da je politika u to umješana, i znamo jer smo imali njihovo priznanje da su imali pritisak od političara.]

front of which the assembly is about to take place – in their case a shopping mall BBI and a National Theatre. Neither institution allowed the assembly to take place⁷⁰ and thus the police have not facilitated the gathering (the assembly did not take place).

In cases when civil authorities impose restrictions or ban an assembly, the organisers have an opportunity to appeal to the respective ministry within 7 days.⁷¹ According to all interviews, the decision-making process is not effective enough to deliver in time for the assemblies to occur.⁷²

70 Interview with Vladana Vasić, SOC

71 Interview with Faik Adilović, police Commissioner and Hajrudin Karahasanović, Head of Coordination; Ministry of Internal Affairs of Srednja-Bosna Canton

72 Interview with Vladana Vasić, SOC



IV. POLICING OF ASSEMBLIES

According to the relevant authorities, the **main responsibilities** of the police in relation to assemblies are: notifications and bans⁷³ and public peace and order.⁷⁴ The Canton Sarajevo MIA notes the existence of a Unit for securing public assemblies, within the Police Support Sector that was established some time ago, but became operational only in 2017. The Central-Bosnia Canton MIA explains that if there is a need, the Special-Force Unit joins other police units for the assemblies. When regulating assemblies, the police, through their respective Ministries of Internal Affairs, **collaborate** with other cantonal and entity institutions, such as Ministries of Traffic, Health and Economy (related to communal works, parks, e.g. putting concrete obstacles or removal of containers).⁷⁵

While the police in Canton Sarajevo enables and facilitates all assemblies without discrimination, according to the Commissioner, the Central-Bosnia Canton MIA facilitates all assemblies as long as they are not breaching public peace and order, except for peaceful assemblies that block public traffic, since they

⁷³ Intervju with Džafer Horvat, MIA Canton Sarajevo

⁷⁴ Interview with Faik Adilović, police Commissioner and Hajrudin Karahasanović, Head of Coordination; Ministry of Internal Affairs of Srednja-Bosna Canton

⁷⁵ Intervju with Džafer Horvat, MIA Canton Sarajevo

are not allowed to do so by the law.⁷⁶

According to the Commissioner in Canton Sarajevo, the **main issues and challenges faced when policing** an assembly are that “the organizer does not take seriously his role, the legal position, our role [i.e. the police]. Usually in some cases, a kind of connection with politics is manifested, in the form of pressure on the police to be a little more attentive, more lenient, etc. We never succumbed to pressures, we accept them and act legally, as the lawmaker instructed.”⁷⁷

Dialogue with the police during and after assemblies is a practice especially when there is some sort of conflict between the police and protesters (see Kruščica case study), according to the MIA of the Central-Bosnia Canton.⁷⁸ In Canton Sarajevo, the practice is to follow-up the preliminary meeting in order to confirm what

⁷⁶ Ibid.

⁷⁷ Glavni problem su: organizator ne shvata ozbiljno svoju ulogu, zakonsku poziciju, našu ulogu i obično u nekim slučajevima se manifestuje blago neka vrsta konekcije sa politikom, u vidu pritiska na policiju da bude malo obazrivija, popustljivija, itd. Mi nikad nismo podlegli pritiscima, mi ih akceptiramo i nalažemo zakonski što je zakonodavac dao.

⁷⁸ Interview with Faik Adilović, police Commissioner and Hajrudin Karahasanović, Head of Coordination; Ministry of Internal Affairs of Srednja-Bosna Canton.

Potential dialogue in Kruščica probably occurred only after violent break-down of protests, since other types of dialogue were not reported to us.

actions have been taken, as well as just before the assemblies (entrance, exit, evacuation, plans). "Of course, during public gathering, there is a constant contact between the police and the organizer, in many cases the organiser is present in our headquarters,"⁷⁹ according to the Commissioner of Canton Sarajevo MIA. The OSCE Mission representative elaborated: "Yes, I think they communicate all the time. These are not two separate units, when the police are already on the spot they are really there. The problem is that when registering public assembly, the police are asking to register the names of the stewards too, and then in some way, the stewards are expected to check who are people at the assembly, and in some way to do the job of the police. Sometimes communication in this direction goes so that the steward does their [police] job, but I think communication exists."⁸⁰ This is in line with the **notion that stewards are responsible for peace and order**, also emphasised by the Commissioner in the Republika Srpska in his written response to our request for an interview; and reflected in the Pre-Draft Law on Peaceful Assemblies of FBiH. Such kinds of requests are not in line with international standards, as explained in the chapter before.⁸¹

Assembly stewards should not be in charge of the peace and order. Paragraph 5.3 of the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly state that the work

79 Intervju with Džafer Horvat, MIA Canton Sarajevo

80 Da, mislim da sve vrijeme komuniciraju. Nisu to neke dvije odvojene cjeline, policija kad je već na licu mjesta zaista je tu. Problem je što policija traži pri registrowanju javnog okupljanja da se imenuju redari i onda na neki način od redara očekuje da provjeravaju ko su ljudi na skupu i na neki način radi posao policije. Nekada je komunikacija u tom smjeru da redar odradi njihov posao, ali ja mislim da komunikacija postoji.

81 Supra. Pg. 7

of the police would be guided by human rights principles and that "Law-enforcement officials must also protect participants of a peaceful assembly from any person or group (including agents provocateurs and counter-demonstrators) that attempts to disrupt or inhibit the assembly in any way"⁸².

Police officers do not undergo specific training for human rights policing of assemblies and this is one of the main **challenges stated by representatives of relevant authorities**. It has been emphasised that the training is needed because of the staff turnover as well as the decentralised system.⁸³ The challenge is to train police officers to react accordingly in situations where they need to individually assess whether the conditions have been met for measures that require use of force. According to the Commissioner at the Canton Sarajevo MIA, this is relevant for cases when there are individual, scattered, violent incidents. Training on human rights policing of assemblies is relevant both for police officers in the field and for their supervisors who analyse their decisions after a potential complaint has been made.

The **equipment or weapons** available to the police for daily needs and public gathering units are regular weapons such as batons, chemical gas and specially trained dogs.⁸⁴ According to the MUP KS Commissioner, they have planned to obtain a water cannon.

82 Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission. Study no. 581/2010. Strasbourg-Warsaw, 9 July 2010. Pg 11.

83 Ibid.

84 Intervju with Džafer Horvat, MIA Canton Sarajevo; and Interview with Faik Adilović, police Commissioner and Hajrudin Karahasanović, Head of Coordination; Ministry of Internal Affairs of Srednja-Bosna Canton

He further notes that this was postponed.⁸⁵ According to the Commissioner of the Central Bosnia Canton MIA, force is used only after all other means are exhausted. He further explains how the police do not use force but "physical strength."

The government representatives are aware that the police have an obligation to take injured persons to the **hospital**. However, in practice this service might not be for free in spite of the fact that these people are insured. Women in Kruščica reported how the emergency van was out of reach for them during the assembly, meaning outside the ring formed by the police, and once they were taken to the hospital, due to the lack of their health insurance cards, they were obliged to pay extra for examinations.

In Canton Sarajevo, reportedly, **undercover police** are used at assemblies, namely when detecting assembly can become violent and police need to take necessary actions, "for example they could block the traffic in that place, so we go out before."⁸⁶ In Central-Bosnia Canton, police officials were not aware of such engagements. Undercover police are widely used in Republika Srpska, according to Banja Luka activists.

In terms of **surveillance and** imagery collection the police use video and audio recordings with an aim of protecting the police and protesters,⁸⁷ as well as for gathering information about individuals participating in assemblies, identifying them and using the recordings in the court-proceedings.

85 Intervju with Džafer Horvat, MIA Canton Sarajevo

86 Ibid.

87 Interview with Faik Adilović, police Commissioner and Hajrudin Karahasanović, Head of Coordination; Ministry of Internal Affairs of Srednja-Bosna Canton

"We record most of the public gatherings, except for some involving children, walking or running."⁸⁸ In Canton Sarajevo, all the recordings are gathered in accordance to data protection and privacy laws, and police officers are allowed to record as long as they are identifiable. Assembly participants are allowed to record police actions. However, in the case of Fortuna and Kruščica (see case studies) protesters reported that the police attempted to confiscate video recordings of the police violence made by the protesters.⁸⁹

ACCOUNTABILITY OF THE PUBLIC OFFICIALS

Having in mind that Ministries of Internal Affairs on different levels are responsible for both administration and policing of peaceful assemblies, their accountability mechanism are same for both cases. The civil authorities can be held accountable for their actions regarding restrictions or bans, as well as use of force during assemblies through internal procedures, courts and administrative appeals. Most of the laws, except for Posavina Canton, Canton 10, Una-Sana Canton, Tuzla Canton, and Bosnian-Podrinje Canton⁹⁰, envisage a two-step resolution allowing the possibility of the appeal, and then litigation at the administrative courts if the appeal is not successful.⁹¹

There is a Public Complaints Office in the Central Bosnia Canton, where citizens can file complaints where they are subject

88 Intervju with Džafer Horvat, MIA Canton Sarajevo

89 Interview with Fortuna workers in Gračanica, 24th of April 2018

90 Supra. Pg 6.

91 Ibid. [Zakonodavac je predvidio dvostepenost u rješavanju. Predvidio je također mogućnost sudskog spora.]

to preliminarily examination. The Public Complaints Office can decide to further send complaints to the Internal Control Office, which is appointed by the Assembly of the Central Bosnia Canton, for the sake of independence.⁹² However, the procedure is the same both for complaints on the administration and for policing the assembly. Complaints relating to assembly administration as well as assembly policing are both submitted to the same body. "Usually the complaint is submitted to the same body, only to a higher degree hierarchically"⁹³ according to the OSCE Mission representative, Nina Šeremet. This means that both administration and policing of assemblies is done by the same body – the relevant Ministry of Internal Affairs, which on their own discretion, coordinates with other administrative units. Such practice does not develop trust in the regularity of the complaint procedure.

*"There is a possibility (of a complaint), but if we would complain we would be complaining to them. We have never complained (on the decisions) but we have held the protests in the way we want but know we can (by the law)."*⁹⁴

This translates into a fact that there have

92 Interview with Faik Adilović, police Commissioner and Hajrudin Karahasanović, Head of Coordination; Ministry of Internal Affairs of Srednja-Bosna Canton (U SBK postoji Ured za pritužbe javnosti kojem građani mogu podnijeti žalbe u koji ih razmatra. Nakon razmatranja može ih poslati Unutrašnjoj kontroli. Ovaj Ured imenuje Skupština SBK-a, radi nezavisnosti.)

93 Interview with OSCE Mission representative, Nina Šeremet

94 Intervju with Fadil Walter, war veteran from Srebrenik - Postoji mogućnost, ali kada bi se žalili, mi se njima žalimo. Mi se nikad nismo žalili nego smo održavali proteste onako kako mi to hoćemo, ali znamo da možemo.

been no further actions regarding complaints submitted for administering assemblies. As Central Bosnia Canton authorities state, "So far, there have been no court cases, there have been complaints only."⁹⁵ This means that there has not been a case when a body independent from the MIA has evaluated a decision on assemblies.

The Ombudsman does not have a direct role in the appeal process, and so far, the office has reacted only to individual complaints submitted by citizens: "We do not have direct cooperation with the Ombudsman, they have established themselves as controllers of the implementation of human rights. We give all the necessary information at their request that they evaluate whether it is ok or not."⁹⁶ Even though their role is not defined as an official part of the appeal process, making a complaint to the Institution of Ombudsman is highly recommended, as it "does not exclude any other procedure." Often, legal remedies of these actions are often not clear to regular citizens, who do not see any benefit of a recommendation issued by the Ombuds-Office. Nevertheless, if there is a discriminatory practice in the process of enjoyment of freedom of peaceful assembly of certain individual and/or groups compared to another, one of the mechanisms in accordance to the Law on Prohibition of Discrimination is

95 Interview with Džafer Hrvat, Ministry of Internal Affairs of Canton Sarajevo

96 S ombudsmenom nemamo direktnu saradnju, oni su se postavili kao kontrolori ostvarivanja ljudskih prava. Dajemo sve potrebne informacije na njihov zahtjev da oni procijene da li je uredno ili nije.

a lawsuit for discrimination.⁹⁷ These options are also not often used as many of those involved in protests either do not have trust such institutions or are not acquainted with all the possibilities the complex system in BiH offers.

In order to improve the work of the civil authorities in relation to freedom of assembly⁹⁸ the relevant **authorities should provide and publicly promote information** on how public protest is organised, what is the procedure, explained precisely in detail. Besides the fact that all respective ministries need to publish updated information on their websites, the authorities can additionally promote this information through conversations with assembly organisers, in cases of spontaneous assemblies, as suggested by one of the activists from Justice for David movement. This is needed so "that anyone who wants to organise (an assembly) does not wonder around. As well as to have an exact insight into what conditions they need to fulfil to organise an assembly; to whom and where to address the request, and finally when addressing one institution and obtaining a permit, the institution needs to be obliged to cooperate with all the other institutions that need to be involved so that the organisers would not

97 Interview with OSCE: Ukoliko bih pretpostavljala da postoji neki diskriminatorni razlog za šta bi trebao upoređivač (stvarni ili hipotetski) onda bih tužbu zbog diskriminaciju uvrstila. Sve su to opcije koje predviđa naš pravni sistem

98 Najveci izazovi s kojima se suočavaju su javna okupljanja u kojima postoje sukobljene strane. Npr. prilikom dešavanja u Kruščici prvo u htjeli sastancima riješiti situaciju, međutim kada to nije pomoglo i nakon svih preventivnih mjera iskoristili su fizičku snagu. Imali su seminar 'Problematika javnih okupljanja' s OHR-om, i nakon dešavanja u Kruščici došli su im predstavnici OHR-a (vladavine prava i ljudskih prava) koji su zaključili da su koristili fizičku snagu, srazmjernu i po zakonima.

have to go to 100 other places."⁹⁹ This suggest that legal provisions obligating organisers to ask for additional permits from Ministries of Traffic, arranging emergency vans and fire fighters is too burdening for the organisers, especially when they are not aware of these obligations, i.e. in places where these requests are not public.

The procedure for appealing administrative decisions by the MIA is the same when it comes to holding individual police officers accountable. According to the local commissioners, there is an **internal procedure** for complaints on disproportionate use of force: "On his (the police officer's) decision to use force, we give an opinion after he submits the report, which is submitted to the Commissioner. The commander is justifying it or not after the interview with the actors of the incident, after a statement was received from the person against whom the force was applied."¹⁰⁰ He further elaborates that there is no higher instance that would question the decision made by the Commissioner. However, if the Commissioner gives an opinion that the police officer has overstepped his authorization, the case is submitted to the Prosecution Office.

State officials have been **held to account for their actions** at assemblies, namely during 2014 clashes of police and protesters; on the lack of action during the attack against LGBT

99 Anonymous interview with Banja Luka activist, November 2018

100 Ibid. Policajac je sa više strana ograničen da napravi bilo kakvu grešku. Na njegovu odluku o upotrebi sile mi dajemo mišljenje, nakon što on podnese izvještaj, koji se podnosi komesaru. Komesar pravda ili ne Pravda nakon što je obavljen razgovor sa akterima incidenta, nakon što je uzeta izjava od lica prema kojem je primijenjena sile. Dakle, postoji procedura

festival Merlinka, in Sarajevo on March 2014¹⁰¹; as well as the case of violence against women protesting in Kruščica. However, according the information received through the interviews with state officials and activists none of these cases has been completed. Another case of court action regarding police action is in relation to the 2014 protests in Sarajevo, where clashes between police and protesters occurred after the protesters broken into the Cantonal Government building, as reported by the Commissioner of Canton Sarajevo's MIA. He further notes, however, that the Prosecutors Office has stopped investigation since no criminal offence has been established.

MEDIA AND ASSEMBLIES

All interviewees confirm that **mass media can follow assemblies** in general. However, in Republika Srpska one case of restriction regarding the biggest ever registered protest in this part of the country that occurred on the 5 October 2018, 2 days ahead of general elections. The protests was organised as a part of the Justice for David movement and largely seen as in opposition to the ruling party. Even though the protest was not registered, the police did not ban it but they prevented people coming from different cities to attend it (see case studies). A similar situation was noted in regards to the one opposition-driven media: "For the last assembly that was not registered, the BN television was banned (to record it). Then we appealed because of

the freedom of the media. We saw an official rejection document, but then after two days the City Administration issued a press release saying that they never said that they (BN TV) could not attend, even though we saw the document" a local activist in Banja Luka elaborated.

Journalists and their equipment have not been damaged by the police, nor journalists arrested for their reporting at assemblies. Some media, however, are not welcome by citizens, with the example of War Veteran protests in Sarajevo, in October 2018, when protesters attacked a photo journalist from the web portal Klix.ba, two other Al-Jazeera crew members were also attacked by participants. The photographer was violently dragged out of the assembly, after he was chased with a pointed flagpole. He managed to get free after two police officers helped him. It is important to note, however, that during the incident, none of the journalists had visible identification or Press Cards, nor did they identify themselves to the protesters before taking pictures.¹⁰²

Citizen journalists in the Republika Srpska report that there are pressures against their reporting with an aim to minimize the importance of their role in spreading objective information.¹⁰³ During "Justice for David" protest, one incident towards the Republika Srpska TV (hereinafter RTRS - a public broadcaster that was fined in March 2018 by Regulatory Agency for Communications "for

continuous and tendentious promotion of the interests of the ruling party"¹⁰⁴) was noted: "We had only one incident, at the very beginning, since we quickly became aware of the role of RTRS in these assemblies and their way of reporting. At one assembly, they just came, of course, every media house can come, and this caused a revolt of citizens. We then again appealed to the citizens that the freedom of the media must be respected, regardless of the fact that they are the regime media. The cameraman who was there was an ordinary worker and no one should express his or her aggressiveness and anger towards that media on a man, who is just an ordinary worker. There were never any restrictions imposed on the media by the police."

In September, in Banja Luka, a BNTV journalist was brutally attacked by local citizens after reporting about Justice for David protests, in front of his house. The attack is currently being treated as attempted murder by the local prosecution office. However, the journalist, Vladimir Kovačević, has accused the rhetoric of a politician, Milorad Dodik, as inciting the attack. Other activists understand that there is some connection to his work: "Kovačević is a journalist who is open and straightforward and has done a lot of reporting about topics that bother the politicians and government officials. He's a great critic. Whether they were bothered directly with him because of his reporting about this and if it was linked to the assemblies for David, we cannot confirm.

You know that the perpetrators fled. There are some indications and we got some information that this was even done by one of our people to show how the regime reacts. These are all the stories that circulate. We do not have any confirmed information" an anonymous activist in Banja Luka explained.

Social networks have been regularly used in relation to assemblies, as an independent journalist from Sarajevo explained "I do not know exactly whether they are used for organizing and coordinating, but to awaken awareness and thus attract attention certainly."¹⁰⁵ In Republika Srpska, the 2015 Public Peace and Order Law defined social networks as public space resulting in several detentions of returnees in this entity for posting criticism towards this entity president on their private Facebook accounts.¹⁰⁶ These persons were shortly released after a strong reaction by civil society and international community.¹⁰⁷ Subsequently, this definition has been deleted from the published document but having in mind that it was used in several instances before (we have registered 2 cases against returnees to this entity, unrelated to assemblies) there is still threat that it might be used.

An activist in Banja Luka involved in the "Justice for David" protests reported different pressures exerted through RTRS, the state media. Several reports have aimed to decrease support for the assemblies: "by marking people

101 Two police officers in charge of securing the event left their posts during the event. During their absence 14 young man attacked a panel discussing transgender rights. More info on <http://eu-monitoring.ba/en/press-release-of-the-initiative-for-monitoring-bihs-eu-integration-process-on-the-occasion-of-the-attack-on-participants-of-merlinka-queer-festival-in-sarajevo/>

102 Assembly monitoring by Ena Bavčić and Bojana Vasić, records.

103 Interview with Branko Ćulibrk, Kvart (Postoje određeni pritisci i prijetnje na građanske novinare kako bi se umanjio njihov značaj u iznošenju objektivnih informacija i povećala cenzura.)

104 Available at <http://mondo.ba/a791713/Info/BiH/RAK-kaznio-RTRS.html> (accessed on 13th December 2018) [Agencija je utvrdila kontinuirano i tendenciozno promovisanje interesa vladajuće stranke, favorizovanje pojedinaca ili subjekata u pozitivnom kontekstu, uz stalno prisutan kritički ton prema opozicionim strankama", piše u saopštenju.]

105 Intervju with independent journalist from Sarajevo

106 <http://old.civilrightsdefenders.org/news/newly-adopted-legislation-threatens-freedom-of-expression/> (accessed on 13th December 2018)

107 <http://old.civilrightsdefenders.org/uncategorized/public-discussion-about-new-law-on-public-peace-and-order-in-republika-srpska/> (accessed on 13th December 2018)

at the Square as foreign mercenaries and terrorists they influenced on who will come to the assemblies. During the last assembly, they gave information to the citizens such as that the MIA RS had certain information about how many football fans of Željezničar club (based in Sarajevo) would come and make riots here. With this they intimidated citizens who may have wanted to come to the assembly, but at the end did not, because of the fear. That information came out a couple of days before the assembly on their website, I think it was a statement from the MIA RS, which the RTRS broadcast” according to a local activist. Consequently, during the big, unannounced assembly in Banja Luka on the 5 October 2018, when most of the people joined the Justice for David cause, our monitor recorded only one public broadcaster, FTV (Federation BiH TV station), and not RTRS (Republika Srpska TV station).¹⁰⁸

And indeed, other anonymous journalists reported that certain media have different relations with the local police: “There are a lot of media houses that willingly cooperate with the police in a way that journalist should not. On the other hand, there are those who behave differently. I also think it’s different in different environments. I think that in a larger city it’s very different and there is more freedom than there is in smaller areas. So, it’s very difficult for me to answer this question, but this is something my colleagues say to me, there’s a huge difference between small towns and Sarajevo, and even Banja Luka, I believe. In smaller towns there is much more pressure and it’s a lot harder to work.” This idea, of being more difficult to report objectively on

assemblies in smaller towns, where there is no public pressure has been confirmed by women protesting in Gračanica, who explained that many private media there have commercial interest with the factory they are protesting against.

In case of police brutality over “Justice for David” protesters in Banja Luka, the media was able to report freely. However, images and videos of police brutality that were published in social media were removed soon after they were published, and were not available on 23 January 2019, less than a month after they were first published.

¹⁰⁸ Assembly monitor by Milica Pralica, Banja Luka



V. CRIMINALIZATION OF PROTESTS



Preventive arrest prior to an assembly is not a practice according to the interviewed sample. There is however no knowledge of whether such practice is officially used in Republika Srpska, since we were not able to schedule an interview with the police forces in this entity. The interviews with activists demonstrate that there is a practice of arresting people in order to spread fear among protesters. Before the second big Justice for David assembly in Banja Luka, two persons have been arrested for some unrelated charges, they were part of the informal Justice for David group and present at sit-ins. "And the arrests of people who are in some way members of the group 'Justice for David', before the large assembly, have caused a lot of confusion. The journalist Miljan Kovač from Gradiška was arrested for cursing Prime Minister Željka Cvijanović. On the same day Neven Đurđica was arrested in Banja Luka, I do not know exactly why, but it was not connected to the assembly. However, it was immediately transferred to the citizens that this was because of the assembly that the

arrests began. That was on 5 July (2018)."¹⁰⁹

The offences that protesters are most frequently charged with are violence / disorder / rioting, refusing to obey police orders and in Central-Bosnia Canton blocking traffic, all offences defined in the Criminal Code and Public Peace and Order Law. These are mainly punishable through fines issued in the place of the event¹¹⁰ or after the event has finished.¹¹¹ These offences are dealt at administrative courts. The Draft Law of Central-Bosnia Canton prescribes criminal penalty of 30 days in prison, but the OSCE Mission representative states that they have been reported by this canton's MIA that such sentence has never been issued.¹¹²

¹⁰⁹ Anonymous interview with Banja Luka activist, November 2018 (Ali je izazvalo popriličnu pometnju da se hapse ljudi prije velikog skupa, da se hapse ljudi koji su na neki način članovi grupe Pravda za Davida. To je bilo hapšenje novinara Miljana Kovača iz Gradiške koji je uhapšen zbog neke psovke koju je rekao za tadašnju premijerku Željku Cvijanović. I isti dan je u Banja Luci uhapšen Neven Đurđica (tako nekako), ne znam tačno zbog čega ali nije povezano sa skupovima. Međutim odmah je to preneseno među građanima da je to zbog održavanja velikog skupa, da su počela hapšenja. To je bilo 05.07.)

¹¹⁰ Interview with Faik Adilović, police Commissioner and Hajrudin Karahasanović, Head of Coordination; Ministry of Internal Affairs of Srednja-Bosna Canton

¹¹¹ Practice detected in Sarajevo through observations and interviews with assembly participants.

¹¹² Interview with Nina Šeremet, OSCE Mission in BiH

The criminalization of protesters was taken to another level during Christmas and New Year 2018-19 in Banja Luka, when a number of persons,¹¹³ at least two journalists and one political opponent in this part of BiH were arrested, and assembly organizer, Davor Dragičević, was charged for posing a “serious threat to safety (of citizens) in Banja Luka.”¹¹⁴ Banja Luka police confirmed that they were looking for five people, with a suspicion of committing criminal and other offenses. One of them being Davor Dragičević.¹¹⁵ Those arrested the day before were released with a pending request for misdemeanor procedure.¹¹⁶

An opposition party member, Draško Stanivuković, was arrested at least 4 times for questioning regarding alleged criminal offences. The mother of the murdered boy, Suzana Radanović, is under investigation for unauthorized eavesdropping and voice recording.

On 15 January 2019, Police Department of Banja Luka submitted a report to the Public Prosecutor’s Office against three people on suspicion of having committed the criminal offense of calling for a violent change in the constitutional order of Republika Srpska.¹¹⁷ This was following the conviction of Aleksandar Gluvić was convicted by the Basic Court in Banja Luka for 20 days of imprisonment and

113 Exact number unknown as the response to Request for information has not reached us by the day of writing this report.

114 See case study below.

115 <http://ba.n1info.com/Vijesti/a306861/Majka-Davida-Dragicevica-najavila-U-18-sati-palim-svijecu.html>

116 <http://balkans.aljazeera.net/vijesti/davidova-majka-i-gradani-zapalili-svijecu-u-crkvu>

117 <https://www.oslobodjenje.ba/vijesti/bih/izvjestaj-protiv-stanivukovica-dragicevica-i-dabica-pozivanje-na-nasilnu-promjenu-ustavnog-uredenja-rs-a-425344>

a fine of 250 BAM in relation to the protests on 30th December. The stated violations are shouting and returning to the square after protests.¹¹⁸ Both of these charges are not a violation of right to peaceful protests under international standards. This is a first prison sentence in relation to peaceful assemblies in BiH.

Sentences can be appealed at a higher court.¹¹⁹ We have not received any information if appeals have ever been successful.

ACCOUNTABILITY OF COURTS

The High Judicial and Prosecutorial Council of BiH is established to oversee the actions of courts and prosecution offices, appoint judges and prosecutors. This body is not seen as an effective mechanism that holds the justice authorities to account, as it does not provide recommendations and documents that are publicly available. It is rather seen by the general public as a politically influenced body.

CASE STUDIES

In previous chapters we have elaborated certain demands that are being imposed to the organiser. These demands vary depending on a type of event. Sometimes these demands give an impression of deliberate impositions with an aim either to prevent assemblies or deter frequent assemblies of certain groups assembling for specific causes.

118 <http://ba.n1info.com/Vijesti/a308991/Pravda-za-Davida-o-kontaktu-sa-Dragicevicem.html>

119 Ibid. [Da, imaju tri instance. Ako policajac izrekne novčanu kaznu, postoji mogućnost priznavanja krivice i plaćanja kazne. U slučaju negiranja onda se ide na sud i onda kada sud donese rješenje postoji mogućnost žalbe kantonalnom sudu.]

Administrative Impediments to LGBT assemblies

Due to high security risks, a number of administrative demands were imposed to the LGBT organisations in Sarajevo, since most frequent LGBT activities occur in this city. During 2017 and 2018 the LGBT organisation, Sarajevo Open Centre (hereinafter SOC), has encountered several administrative impediments preventing full implementation of their right to assemble. SOC, in coordination with other local LGBT activists, had been planning to organise a march for of LGBT rights on 13 May 2017. The event was reported to the Ministry of Internal Affairs of Canton Sarajevo a month in advance (extending the deadline of 7 days as required by the law), providing sufficient time to determine security procedure having in mind that LGBT events in BiH are still seen as high security assemblies. The organiser applied for permission for changes in traffic to the Ministry of Transport, as according to the Canton Sarajevo’s Law on Public Assemblies. Due to the administrative silence on the first application, the request was repeated two times without an official answer from the authorities.

According to the BiH Traffic Safety Law, changes in traffic need to be communicated with the public 48h in advance. Failing to provide an answer on these requests prevented the organiser from fulfilling their legal obligations. Contrary to deadlines prescribed by the law, SOC’s application was not processed within due time, receiving confirmation from the Ministry of Transport only two days before the march. This delay caused the event to be cancelled as a two-day notice did not allow enough time to secure police protection for

the high-risk protest march. Because of the Ministry of Transport’s lack of timeliness and concern for the organization and potential risks and security precautions of the LGBTI march, organizers from SOC were denied their right to assembly.

According to Ms Bošnjak, the Executive Director of Sarajevo Open Centre, the communication from the Ministry of Transport indicated discriminatory treatment of the announced assembly. For example, on 8 May, when Ms Bošnjak contacted the Ministry for the fifth time, its representative indicated that the peaceful march against violence towards LGBT people constituted a “wish to terrorise citizens”.¹²⁰

In August 2017, The Institution of Human Rights Ombudsman of BiH, after considering the appeal of the Sarajevo Open Centre, issued a recommendation stating that the Ministry of Transport of Canton Sarajevo violated the right to freedom of peaceful assembly by preventing a protest march against violence against LGBTI persons to be held.

Again in March in 2018 Sarajevo Open Centre was denied the right to public assembly in a procedure that is not prescribed by the law or any other act known to the author. Namely, the organisation requested permission from the municipality to mark International Transgender Day of Visibility, celebrated annually on 31 March. The events were planned to take place on a square that belongs partly to the municipality and partly to the local, privately owned shopping mall, BBI Centre. Even though it is not publicly

120 <https://crd.org/2018/04/17/lgbt-people-in-bosnia-and-herzegovina-denied-freedom-of-assembly-again/>

available¹²¹, SOC states that the Municipality Centre's procedure requires approval of the private property owner/representative that the public event can take place. Following the request, the organiser received a emailed answer explaining that the event could not take place since there was another event already scheduled there, adding how **the BBI cannot approve "high-risk activities that require additional protection of the space as well as third parties."**¹²² The organiser further stated how they have already held events in this place without any security issues. Such decision can be seen as arbitrary also since SOC never received a specific explanation of the procedure for security assessment.

In order to avoid privately owned spaces that have no impediments for issuing such arbitrary decisions, SOC decided to submit a request for approval of the meeting on the public Susan Sontag Square, in front of the National Theatre. Following the same procedures, after contacting the Municipality Centre Sarajevo, the organiser was advised to contact the National Theatre and ask them for their permission. The requirement of asking a publicly owned institution for a permit has not been registered when it comes to public assemblies. Following this request, SOC received reply that **"the National Theatre gives permission only and exclusively for events in the field of culture and arts"** and

121 Neither the procedure for registering public assemblies, nor the Act determining places of assemblies of an "unknown organiser", determined in the Law are not available on the Municipalities' website, even though other documents such as Roma Action Plan are available. <http://www.centar.ba/stranica/dokumenti>

122 Reaction of the organiser, Sarajevo Open Centre available at <http://soc.ba/en/media-announcement-who-and-how-is-deciding-on-freedom-of-assembly-of-citizens-of-sarajevo/> (accessed on December 11, 2018)

that "the building of the National Theatre is a national monument and cannot approve events which require special security measures".¹²³ Article 15(d) exempts the cultural monuments from places of assemblies only in cases when such assemblies could "cause destruction or damage" to this protected monument, and not in cases of peaceful assemblies.

The discriminatory approach in reaching such decision was clear after a phone call of the organizer with the Theatre's Director, Marijela Hašimbegović. The organizer wanted to clarify that the performance is primarily peaceful and artistic, explaining that the organizers always take care of security, in agreement with MIA, by hiring a private security agency. The response of Ms, Hašimbegović was that **"It is not appropriate that performance like this one is held in front of the National Theatre, since banners you are planning to hold carry a negative connotation"**¹²⁴ **as reported in SOC's statement. The negative connotation refers to peaceful messages in favour of transgender and LGBT rights.**

These specific requirements and complications in registration of assemblies advocating rights of LGBT people indicate that there is a basis for a discriminatory approach when administering the right to peaceful assembly. Additionally, by transferring the responsibility of facilitation and evaluation of security risks related to the freedom of assembly to non-judicial institutions and legal entities, the Ministry of Internal Affairs violates procedures described by the Law on Public Assemblies. "With this practice, the Municipality Centre

123 Ibid.

124 Ibid.

Sarajevo enables individual institutions and legal entities to interpret the Law on Public Assembly of Sarajevo Canton on their own, outside of the scope of the provisions of that same Law, and to apply discriminatory criteria in assessing to what group of people to allow access to the public space that already belongs to the citizens"¹²⁵, as elaborated by the organisers. The practice that the Municipality Centre Sarajevo employs is based on the Law on the Temporary Use of Public Areas in the Canton Sarajevo, which, however, does not address assemblies or free access to public spaces, and as such is not applicable to public gatherings.

At the session held on December 19th, 2019, the Constitutional Court of Bosnia and Herzegovina adopted the appeal of the Sarajevo Open Centre and others, confirming that the Canton Sarajevo's public authorities have violated the right to freedom of assembly of LGBT persons by failing protect the participants of the Queer festival "Merlinka" in March 2014. The verdict is ruled that the public authorities both failed to protect the participants, as well as to conduct a thorough investigation and sanction the attackers who have physically injured 3 and attempted to injure 7 other individuals.¹²⁶

Use of Force and Penalizing Protesters

In the reporting period, several cases of use of force were noted. The most brutal ones, though, were reported in cases when women composed the majority of the protesters, including both worker's protests and environmental protests.

125 Ibid.

126 <http://soc.ba/en/press-release-responsible-institutions-have-violated-the-freedom-of-the-lgbt-community-gathering-without-protecting-the-merlinka-festival/>

The later have attracted more attention by the independent institutions such as Institution of the Ombudsman and Agency for Gender Equality, both condemning disproportionate use of force by the police, as well as providing recommendations.

Even though there were other examples of the use of force by the police during peaceful assemblies, as mentioned in previous chapters, these examples were chosen because they highlight ongoing issues. All protests discussed below are ongoing, since their demands have not been fulfilled.

War Veterans

Protests of veterans took place in cities across Bosnia and Herzegovina throughout 2016 and into 2017. Veterans protested in support of monthly pensions, for a single registry of veterans in the country, for the creation of an umbrella organization for veterans, and against the repeal of funding for veterans' associations. The protests in 2016 and 2017 mainly focused on adopting a Government Resolution on Veterans with their stated demands and against previous 2013 amendments to the Law on Retirement Benefits which radically reduced the rights and benefits of veterans. The biggest protest events occurred in May 2016, April 2017, and June 2017. Veterans protested at local government buildings, with many traveling to Sarajevo in order to protest in front of the Federation government building. In addition, several protests blocked roads and border crossings in order to gain the attention of the government and put veteran rights on the parliamentary agenda.

On 4 April 2018, a major war veterans' protest

occurred in Tuzla Canton, blocking the traffic on Sicka loop for three days. Their demands were to address the government to adopt the registry, introducing allowances and abolishing funding of 1,603 war veterans' associations. The police engaged in dialogue, trying to convince veterans to leave, however, since none of the demands was fulfilled, the protesters refused to leave. What followed was a forceful removal of the protesters, as reported by the local media and later confirmed through interviews.

*"The Tuzla's special unit refused to act physically against the war veterans. Special Forces from Sarajevo came on the fourth day and used raw physical force. They were brutal, they struck us with batons, (their) feet, they were even beating (already) tied veterans. We did not file a lawsuit. A special unit of one Canton cannot participate in the police action in another Canton unless they have an approval, and unless the unit from that Canton participates (the action). When this happened at the loop, they made a compromise so the unit from the Tuzla Canton accepted to arrest and transported them (the veterans)."*¹²⁷

127 Interview with Fadil Walter, war veteran, Srebrenik October 2018. [Tuzlanska specijalna jedinica je odbila da djeluje fizički protiv boraca. Četvrti dan su došli specijalci iz Sarajeva i upotrijebili su surovu fizičku silu. Brutalni su bili, udarali su nas palicama, nogama, čak su vezane borce udarali. Nismo pokretali tužbu. Specijalna jedinica jednog kantona ne može učestvovati u policijskoj akciji u drugom kantonu, ako nemaju odobrenje i ako ne učestvuje i jedinica iz toga kantona. Kada se dešavalo ovo na petlji oni su našli neki kompromis između sebe, tako da je jedinica iz Tuzlanskog kantona prihvatala uhapšene i odvozila ih.]

The protesters have not unfortunately offered medical evidence since they have decided not to complain to the police's internal control due to the lack of trust in the procedure. The interviewee explains that they were also pressured not to mention physical violence: "That day I was at the Police Station in Tuzla and they told me not to declare that they were brutal, so there was pressure."¹²⁸

Due to dissatisfaction with the work of the federal authorities, war veterans held another series of protests. On July 7 2018 they protested in front of the Federation of BiH Parliament building during an extraordinary session of the House of Representatives of the Parliament of the Federation of BiH, at which the Proposal of the Law on the Rights of Demobilized Soldiers and Members of Their Families by Urgent Procedure and the Proposal of the Law on Veteran Associations of Special Social Importance was discussed. Another protest was scheduled on 27 July in front of the Parliament building of the Federation of BiH, at the same time as the session of the House of Peoples. The protest escalated when veterans blocked the main intersection in the city and created a traffic jam.

On 9 August, veterans protested at the border Bihać with Croatia in order to gain attention and pressure the government to fulfil their requirements. Only after five hours of negotiation with the government, the veterans withdrew from the borderline.

However, the most brutal police reaction occurred on the 5 September 2018, when veterans peacefully protested in Sarajevo.

128 Ibid. [Ja sam taj dan bio u Policijskoj stanici u Tuzli i govorili su mi da ne izjavljujemo više da su bili brutalni, znači bilo je pritiska.]

Veterans claim they had informed the police of their route so that they could coordinate and stop the traffic in time and that the police allowed the abruption in traffic, stopping it at the beginning of the assembly. As they closed the road in front of the Parliamentary building, at one point of the route, the police started to violently push the protesters to the sidewalk, and brutally beat some of the protesters and also used pepper spray.

*"We went by (the river) Miljacka to the City Hall and as soon as we started the traffic was stopped, there were no cars, so we did not bother anyone. They immediately began to hit fighters and to push them on the sidewalk alongside Miljacka regardless of the width of the street. First they started to beat us with batons and their feet, then they used what we call a battle poison (spray). We have tested what they sprayed us with - it is used against wild dogs and bears. They used it at us, this was liquid and the spray could reach up to 10-20 meters."*¹²⁹

Case of Kruščica

On 24 August 2017, around 250 police officers violently dispersed a peaceful assembly of a group gathered to protest against the construction of a mini hydropower plant in

129 Ibid. [Išli smo pored Miljacke prema Vijećnici i čim smo krenuli saobraćaj je bio obustavljen, nije bilo nijednog auta, nikome nismo smetali. Oni su odmah počeli udarati borce i sklanjati ih na trotoar uz samu Miljacku bez obzira na širinu ulice. Prvo se krenuli palicama i nogama udarati, onda su upotrijebili, mi to kažemo, bojni otrov. Mi smo dali na ispitivanje ono čime su nas prskali, to se koristi protiv bijesnih pasa i medvjeda. Oni su to iskoristili na nas, ovo je bilo tečno i mlaz je mogao doseći 10-20 metara.]

Kruščica, a village in the municipality of Vitez in Central Bosnia and Herzegovina. The group consisted of approximately 50 people, the majority of whom were female local citizens of the village.

The owner of the permission to build and operate a small hydropower plant in the village of Kruščica in Central Bosnia obtained an initial permit in 2012 and all other necessary permits in 2016, but without informing the public. The local residents believe that the Kruščica river should be a protected nature reserve. They assert that corruption is behind adjustments in the municipal plan, which was changed in order to enable the construction of a previously unauthorized hydropower plant. When residents discovered the start date of construction, they began protesting by blocking the access to the intended construction site of the hydropower plant.

In August 2017, workers tried to enter the construction site several times but were stopped by the protestors. The situation escalated in the morning of 24 August, when the police removed a group of women who held a peaceful protest on a bridge over the river Kruščica.

Around 100 local police officers and 150 members of special police unit blocked the area, dispersed the protests, stripped women of their clothes and personal belongings, and violently dragged protestors into busses, according to the testimonies of local women. Use of excessive force caused several injuries and ruined the protestors' personal belongings and clothes. The police blocked the area around bridge and did not allow other residents at the site to witness what was happening after they had heard the protestors' screams for help.

One of the women passed out while the police dragged her to the bus. As her son rushed to help her, he was stopped by the police and, according to witnesses, the commander-in-chief told two police officers that "he is yours all the way to the station". The young man was subsequently pushed to the ground and severely beaten by the police. The violence later continued in the vehicle taking the young man to the police station.¹³⁰

Observers, mainly family members of the peaceful protestors, were prevented from following the protests and helping. Furthermore, in attempts to confiscate video recordings, the police chased the observers across near-by fields.

27 protestors were injured and 23 were detained and interrogated.¹³¹ Those who were arrested were sent to a trial, but were released by the Travnik Municipal Court because of insufficient evidence. The authorities and local police have continued to pressure the protesting villagers by issuing financial fines of 125 Euros. Moreover, Muris Đelilović has been accused of being the organiser of the protests, despite the fact that all villagers claim that the protest was a spontaneous assembly. The 23 people who were arrested were scheduled for trial on 6 November 2017.

After this incident workers, with the assistance of the police, tried to start construction work couple of times more but protests and guarding the bridge was continued from local residents. The Institution of Human Rights Ombudsman of Bosnia and Herzegovina have opened an ex officio investigation into the violent police

130 Interview with women protesting in Kruščica, November 2017

131 Medical statements and police registers in the Annex.

intervention and also into how the permit for the hydropower plant was obtained.

Women Workers' Protests – The Case of Fortuna

In Gračanica, a city in Canton of Tuzla in BiH, former workers of the shoe factory Fortuna have been protesting against the factory's bankruptcy process, saying it is illegal and demanding that their social contributions are paid retroactively. Former workers have tried several times to prevent the bankruptcy trustee from entering the premises of the company. They constantly protest by organising sit-ins in front of the entrance where they sleep in tents even during the winter.

The situation escalated in the November 2017, when women entered the premises of the factory because of the cold. After initial kindness, the police pushed them out of the office.¹³² After this, protestors came back, forming a chain in front of the factory, when they were pushed back again by some 15 police officers (against some 20 protestors), as activist recall in the interview:

"We went to the office that day because it was cold here. Two policemen came to tell us: you have our number, call us, we will come if someone is touches you. However, after less than half an hour, it was reported to the police that we entered (the office) violently, and we didn't. So we stood in chain in front of the door preventing the bankruptcy trustee to pass through. The bankruptcy

132 Video available at <https://www.facebook.com/168272913268416/videos/1487081491387545/> (accessed on 14.12.2018)

*trustee went back, but they (the police) again used force."*¹³³

Before charging at the protestors, police warned them by saying "back off"¹³⁴ in the local language, as reported by the protestors and also seen in the videos. This command is stated in a very imperative tone, and does not provide option for communication. Out of 20 women who were forming a human chain in front of the factory, 3 received medical assistance where mild injuries were established. Charges were pressed against thirteen of them who received fines of 150 BAM that need to be paid in case they committed similar violations within 6 months period. The charges were allegedly made against women who were recording police actions on that day:

"We were standing in the chain, at the door. We were 20 and more. I had a video recording, but I destroyed it because they threatened me, they wanted to take my phone, saying that I cannot record. That's why I was among the list of those 13 at the trial, because I was recording. They asked for my phone, I said that I did not record with my own, so they asked me to say who gave it to me. I said that I do not know, someone from the crowd, and that I returned it to someone in the

133 Interview with Fortuna workers in Gračanica, 24th of April 2018, [Mi smo taj dan bile ušle dole u kancelariju, jer je ovdje hladno. Došla su dva policajca i kažu nam ako vas neko bude dirao znate naš broj, pozovite nas, mi ćemo doći. Međutim nije prošlo pola sata, i došla je dojava u policiju da smo nasilno ušle, a nismo. I mi smo se pred vratima povezale da ne prođe stečajni upravnik. Stečajni upravnik se vratio, ali su oni opet silu upotrijebili.]

134 Odbij

*crowd. And that's how it ended, eventually in court. I received a fine of 150 KM and if I do not make any similar character within 6 months, I am free from payment provided that I do not do anything similar within next 6 months."*¹³⁵

Following the use of force, the women in Gračanica reported pressures against them and their family members in terms of restricting the right to assembly, threats of law-suits, fines for breaching public peace and order, threat of fines for posters (copyright rules) and similar. Reported threats for organisers of Justice for David protests are similar and somewhat more precarious, ranging from being followed, tampering with vehicles (flat tires), threats to safety and security.

135 Ibid. [Stajale smo u lancu, na vratima. Bilo nas je 20ak i više. Ja sam imala snimak, ali sam ga uništila jer su mi zaprijetili, tražili su mi telefon, kao ne smijem snimati. Zato sam i bila među spiskom tih 13 na suđenju, zbog toga što sam snimala. Tražili su mi telefon, rekla sam da nisam snimala sa svojim, pa su tražili da kažem ko mi je dao. Rekla sam da ne znam, neko iz mase, i da sam vratila nekome iz mase. I tako se to završilo, na kraju na sudu. Dobila sam kaznu od 150 KM i ako u roku od 6 mjeseci ne napravim ništa sličnog karaktera oslobađam se plaćanja. Pod uvjetom sam faktički 6 mjeseci.]

Justice for David

During 2016 and 2017, two major events which resulted in the deaths of three young Bosnian citizens sparked protests against slow and inept judiciary processes and a lack of security in Bosnia and Herzegovina.

On February 15, 2016, 22-year old Dženan Memić died from injuries sustained during an attack under unclear circumstances. After the event was ruled a car accident, the family Memić took to the streets accusing prosecutors of failing to properly investigate the death as an attack and murder and seeking truth and justice for Dženan Memić. Protests, which consisted of peaceful marches through Sarajevo and to the site of the attack in Ilidža, were organized in April and May 2016, as well as in February 2017. The protests focused on the Sarajevo Canton Judiciary and Sarajevo Canton Prosecutor's Office for failing to properly investigate the death. All through 2017 and 2018, protests, mainly peaceful marches, were organized through Sarajevo and other cities in BiH. The focus of protests continues to be the improper investigation of the death. The protesters demand from the authorities to investigate the case properly and discover the perpetrator.

In March 2018, the body of 21-year old David Dragičević was discovered in a small river in Banja Luka. Police initially said the death was caused by drowning but now it is treated as murder. David's father Davor Dragičević claims his son was tortured and killed and that police are hiding the perpetrators. A series of protests were organized in Banja Luka and other cities in BiH. Citizens formed a group named Justice for David which is receiving a lot of attention and support from media, politicians and

citizens from all parts of BiH and demanding a thorough investigation of David's death.

Besides daily sit-ins by David's father, Davor Dragičević, at the Banja Luka's main square, a large mobilisation of the opposition and activists in this part of the country occurred. This resulted with several large protests that were organised throughout the year, making this movement the biggest protest ever recorded in this part of the country.

On 19 September, a group of protesters moved the protests from the main square (a designated place for assemblies in Banja Luka), to the area in front of the Police Department in Banja Luka. Later that night, the Police Department issued a public statement saying that all participants to that assembly will receive administrative penalty since they were protesting in an area that was not designated for peaceful assemblies.¹³⁶

On the 5 October, Justice for David organized the largest assembly of this kind recorded in BiH, in the centre of Banja Luka demanding arrests of persons who participated in the murder of David (At the same time in Sarajevo, a protest under the name of Justice for Dženan Memić was organized). Civil Rights Defenders monitors reported that there were some 25.000 participants (40.000 reported by the media and assembly organizers). The assembly organisers did not notify the police. The police forces surrounded the assembly from the distance, but in positions where they could close the streets. The presence of a special police unit was observed next to the National Assembly of Republika Srpska, closing the main road,

¹³⁶ Available at https://bimojgrad.com/prekrsajne-prijave-zbog-protesta-pred-policijom/?fbclid=IwAR3BpxlIkZk4Jry-EGQEn8LshDh7160RUhSvNSP32UGf_sA6KJHC_oRE (Accessed on 14th December 2018)

i.e., Kralja Petra I Karađorđevića Street close to the buildings of the Government of RS and RTRS. The police did not try to stop or disturb the assembly. However, they did not allow buses that were not regular public transport to enter the city, and the citizens who came by the car were asked what kind of gathering they were going, since there was a parallel pre-election assembly by the Republika Srpska's ruling party SNSD. Many citizens stopped by the police decided to go to Banja Luka by foot in support to Davor.¹³⁷ After the SNSD's final meeting finished on the Square of the Republika Srpska (in front of the building of the Republika Srpska's TV station RTRS) the police suggested that citizens should avoid the city centre.

Even though the assembly itself was not banned a number of pressures against organisers were recorded, mainly done through local and entity TV and other media. On the 2 October, three days before the protests, the Minister of Internal Affairs of the RS, Dragan Lukač said he was unsure whether the assembly will take place on 5 October since the police had not been notified. He also announced that football-fan groups from the Federation BiH were expected at the gathering. This was done in order to deter locals from attending the protests in fear of violence, as local football fans have reacted to this statement as well. Throughout September 2018, Mr. Lukač has made several public appearances at the RTRS, saying how protests are not legitimate mean

¹³⁷ <https://slobodanvaskovic.blogspot.com/2018/10/novi-grad-narod-krenuo-pjeske-u.html?m=1&fbclid=IwAR3FBI21BCqOnJmUS2pFtxlUK2-sjppqA5hwzSX6k8eaiRsR9gFP8Ry4tKSM>

to counter election results.¹³⁸ Politicians of this entity's ruling party have made several appearances were directly referring to Justice for David Group,¹³⁹ while then RS president, and now one of the BiH's presidents, Milorad Dodik, stated that Davor can protest on the 5 October, but that he "he will not be there anymore on the 8 (of October)"¹⁴⁰ just a day after elections.

The activists of the Justice for David group report also other kinds of pressures, such as the fact that they are constantly followed by anti-terrorist units, that their conversations are tapped and that they receive threats through media:

"What is perhaps the biggest problem in terms of police pressure on citizens is that tracking. We are physically aware of that monitoring and even their own people from the MIA itself have provided us with such information, and which vehicles are following us, what number of people is involved in this monitoring and how they control our phone calls, our locations and everything else. It's a horrible feeling of losing your personal identity when in the morning you have a feeling that you are drinking coffee with 15

¹³⁸ https://lat.rtrs.tv/sv/pusti.php?id=792383&fbclid=IwARQj2QHE_PIEpLxpTksDWA5-25bYqIWPBkgOL1hdK2VY8j2aJK_FZ9CQ (Accessed on 13.09.2018)

¹³⁹ https://lat.rtrs.tv/vijesti/vijest.php?id=310308&fbclid=IwAR2HYE_r060Ptz5Ex9t1qzao-5j1Ghe2VpauKNI7CWZ10mnvMlBBmzYzC7DDQ (Accessed on 14.12.2018)

¹⁴⁰ Quote found at <https://youtu.be/vteLCAYhsM?i=30> (Accessed on 14.12.2018)

people.”¹⁴¹

Following the elections large assemblies have not occurred. However, during the inauguration of the new Republika Srpska entity president, Mrs Željka Cvijanović, two young persons were arrested: a 15-year-old girl who was chanting “Justice for David”¹⁴², and a 19-year-old boy trying to place a sticker with the same message.¹⁴³ Video of the boy’s arrest went viral, and the excessive use of force is visible. He later testified to the media how he was mistreated during the detention, and that he did not have a right to call an attorney.¹⁴⁴ More details about the girl are unknown, but the police in Banja Luka issued a statement saying that she was carrying a knife in a threatening manner.¹⁴⁵ Unfortunately, nobody is able to reach the minor girl to confirm this, and the police do not want to share her information due to the privacy protection laws.

141 Anonymous interview with Justice for David activist, October 2018. (Ono što je možda najveći problem u smislu pritiska policije na građane jeste to praćenje. Mi smo toga praćenja fizički svjesni i čak od njihovih ljudi iz samog MUP-a imamo informacije koje su nam dostavljene i koja vozila nas prate i koji broj ljudi je uključen u to praćenje i na koji način nam kontrolišu telefonske pozive, lokacije naše i sve ostalo. To je grozan osjećaj gubitka ličnog identiteta da vi ujutro imate osjećaj da pijete kafu s 15 ljudi.)

142 <https://www.klix.ba/vijesti/bih/uhapsena-djevojka-jer-je-uzvikivala-ko-je-ubio-davida-ucio-inauguracije-cvijanovic/181119136?fbclid=IwAR0yTq7sqLXYTUvZf6lmXDPYR1P0KCNUE4CpKVYVSa6c1U3j2qraXghA1c> (Accessed on 14.12.2018)

143 http://www.6yka.com/novosti/pogledajte-hapsenje-dvoje-ljudi-juce-u-banjaluci-tokom-svecane-inauguracije?fbclid=IwAR05HCQ_syomhYtUq5yEkEsZZ452mi0meQBRRESaqiebO6fivLziMYUf9I (Accessed on 14.12.2018)

144 http://www.6yka.com/novosti/ispovijest-davida-kniete-je-banjaluka-sinoc-sam-dozivio-da-me-uhapse-na-najbrutalniji-nacin?fbclid=IwAR29py7qoWUn98gUv9Fn8B8rDL9ic2ppoGURa_hvftpyQVfQG9E_8x53a5Ck (Accessed on 14.12.2018)

145 http://mendo.ba/a840522/Info/Hronika/Banjaluka-Vitala-nozem-ispred-Palate.html?fbclid=IwAR2d6hL0PJ6UPNYPRuVQASr6yAp3wV0cXWZoxNsB3Hc_sbn2JdkFk (Accessed on 14.12.2018)

On 21 December 2018 a request for initiation of a misdemeanor procedure was submitted to the competent court against twenty participants, members of the group “Justice for David”, which were found to have acted contrary to the Law on Public Assembly and the Law on Public Order and Peace on 17 December.¹⁴⁶ The police stated that the gathering of citizens was not held in accordance with the Law on Public Assembly since it was held in the place not designated for assemblies in Banja Luka.¹⁴⁷

Holiday crackdown on peaceful protests

In the morning on 25 December 2018, the situation escalated when members of the Republika Srpska MIA arrested Davor Dragičević, father of David Dragičević for allegedly not responding to calls for a hearing.¹⁴⁸ His lawyer confirmed that he was hurt and was taken to the hospital¹⁴⁹, but that the calls have not reached Davor. The MIA stated that Dragičević was detained in Banja Luka for the purpose of documenting the crime of “jeopardizing citizens’ safety”.¹⁵⁰

After Davor’s arrest, a spontaneous gathering of citizens began at the Krajina Square.¹⁵¹

146 <http://ban1info.com/Vijesti/a304953/Prekrasne-prijave-protiv-20-clanova-grupe-Pravda-za-Davida.html> (Accessed on 19 January 2019)

147 <https://www.klix.ba/vijesti/bih/protiv-davora-dragicevica-i-draško-stanivukovica-podnesene-prijave-zbog-okupljanja-ispred-msr-a/181221073> (Accessed on 19 January 2019)

148 <http://ban1info.com/Vijesti/a305624/Policija-privela-Davora-Dragicevica.html> (Accessed on 19 January 2019)

149 <http://ban1info.com/Vijesti/a305642/Advokat-Davor-Dragicevic-povrijedan-prilikom-privodjenja.html> (Accessed on 19 January 2019)

150 <http://ban1info.com/Vijesti/a305626/Policija-se-oglasila-o-hapsenju-Davora-Dragicevica.html> (Accessed on 19 January 2019)

151 <http://ban1info.com/Vijesti/a305632/Nakon-Davora-Dragicevica-privedeno-jos-nekoliko-clanova-grupe-Pravda-za-Davida.html> (Accessed on 19 January 2019)

Several other members gathered around the Justice for David group, including David’s mother, Suzana Radanović, were arrested as well. A journalist Vladimir Šušak was brought to the police station for questioning,¹⁵² after he had photographed Davor Dragičević in the ambulance taking him to the hospital from the police station.

After the hearing, Radanović was released and members of the group announced the holding of a major assembly in the center of Banja Luka at 18.00h that day. During the assembly at the Krajina Square there were some altercations between the citizens and the police. One of the police officers sustained some injuries when the citizens tried to stop the arrest of one person.¹⁵³

The same day, authorities removed Davor Dragičević’s car as well as an improvised memorial of candles for his son from Krajina Square.¹⁵⁴ Citizens protested peacefully during the detachment of the memorial, without incidents and made a new monument for David a few meters from its previous location.¹⁵⁵ However, the members of the MIA then pushed back citizens and broke the new memorial, injuring at least 10 persons. In the meantime Draško Stanivuković, representative in the National Assembly of Republika Srpska, who had been arrested earlier, was released

152 <http://ban1info.com/Vijesti/a305660/Na-informativni-razgovor-priveden-i-novinar-Vladimir-Susak.html> (Accessed on 19 January 2019)

153 <http://ban1info.com/Vijesti/a305670/Uhapseni-Stanivukovic-Borenovic-i-Mijatovic-VIDEO.html> (Accessed on 19.01.2019)

154 <http://ban1info.com/Vijesti/a305684/Uklonjen-automobil-Davora-Dragicevica-s-Trga-Krajine-FOTO.html> (Accessed on 19 January 2019)

155 <http://ban1info.com/Vijesti/a305697/Uklonjeno-Davidovo-srce-sa-Trga-Krajine-u-Banjaluci-VIDEO.html> (Accessed on 19.01.2019)

and joined the citizens at the Krajina Square. Around 15.00h he was arrested again and charged for allegedly damaging a police vehicle. The police used excessive force but videos and images of this that were shared on social media are not available in time of writing this report (less than a month after the event).¹⁵⁶

Members of the Police Support Unit, equipped with body armour and shields pushed the crowd from Krajina Square injuring several individuals,¹⁵⁷ including an elderly woman who was protecting a child.¹⁵⁸ After the police intervention citizens started peacefully gathering again across the Krajina Square in the Petar Kočić Park, another place where assemblies in Banja Luka are allowed.¹⁵⁹ Before 18.00h, the police pushed the citizens from the park as well and asked the citizens not to assemble because they did not have the necessary permits. Some people then went to the frontyard of the Orthodox Church in the center of Banja Luka, assuming that the police would not charge against them.

On 26 December Davor Dragičević and Draško Stanivuković were released after having spent the night in the detention unit in Banja Luka.¹⁶⁰ All the others arrested the previous day were released that day as well. Early in the morning Davor Dragičević was handed over to the District Prosecutor’s Office in Banja Luka, which announced that there was no legal

156 https://www.youtube.com/watch?time_continue=5&v=fwK_bZbNBSs (Accessed on 19.01.2019)

157 <http://ban1info.com/Vijesti/a305733/Novi-namiri-u-Banjaluci-napravljen-kordon.html> (Accessed on 19.01.2019)

158 Photo in the Appendix

159 <http://ban1info.com/Vijesti/a305753/Boruka-Davidove-majke-u-Banjaluci.html>

160 <http://ban1info.com/Vijesti/a305829/Davor-Dragicevic-i-Draško-Stanivukovic-u-pritvorskoj-jedinici.html>

basis for his detention. Lawyers believe that there was excessive use of force during the arrest of Davor. When Draško Stanivuković was released he claimed that the police had used excessive force and that he had been abused physically and mentally. The police denied the allegations. A protest that had been announced to police was held the same day without incident, as well as further protest walks over the next three days. The police had, however, blocked access to the Square completely.

On 30 December, citizens gathered at around 18.00h at Krajina Square, with the media reporting that there were a few thousand participants.¹⁶¹ During the protest participants went to the Palace of Republika Srpska, and then to the building where the pathologist who worked on David Dragičević's case lives.¹⁶² Several members of the group 'Justice for David' were arrested that night, the police confirmed, although the number of arrested has not been published, and the Republika Srpska MIA has not yet answered our request for information.¹⁶³ The reason given for the arrests was that the "legal deadline" for gathering had expired.¹⁶⁴ After the participants were forced to leave, authorities once again removed the improvised memorial for David Dragičević.

On 31 December 2018 Ministry of Internal

161 <http://ba.n1info.com/Foto/a306710/Skup-Pravda-za-Davida-u-Banjaluci.html>.

162 <http://ba.n1info.com/Vijesti/a306735/Orkazan-koncert-Harisa-Dzinovica-zbog-protesta-upitan-i-dozek-Nove-godine.html>.

163 <https://avaz.ba/vijesti/bih/444865/pu-banja-luka-privedeno-vise-osoba-zbog-visestrukih-prekrsjaja-davor-nije-uhapsen>

164 <http://ba.n1info.com/Vijesti/a306739/Nekoliko-osoba-uhapjeno-u-Banjaluci-specijalni-ogjerali-gradjane-sa-Tiga-VIDEO.html>.

Affairs of Republika Srpska published a statement saying that people had been arrested the night before for committing violations under the Law on Public Order and Peace, the Law on Public Assembly and the Law, for violating safety on roads, and there were grounds for suspecting that certain criminal offenses had been committed. They stated that the organizer of the public assembly had not respected their obligations and had not held the assembly in line with their request submitted earlier that day. The Minister of Internal Affairs, Dragan Lukač, announced that any further gathering of the group 'Justice for David' was prohibited because of the frequent violation of public peace and order, prevention of traffic and for not respecting the designated places of assemblies and declared that any further gathering would be prevented and interrupted in accordance with the Law on Public Assembly.¹⁶⁵

The police also stated that Davor Dragičević had not been arrested the night before,¹⁶⁶ although his lawyer and his ex-wife (mother of David) said they hadn't talked to him and did not know where he was. The police did confirm that they were looking for five people, with a suspicion of committing criminal and other offenses, with one of them being Davor Dragičević.¹⁶⁷ Those arrested the day before were released with a pending request for misdemeanor procedure.¹⁶⁸

165 <http://ba.n1info.com/Vijesti/a306829/MUP-RS-zabranilo-nove-proteste-grupe-Pravda-za-Davida.html>.

166 <http://ba.n1info.com/Vijesti/a306743/MUP-RS-Davor-Dragicevic-nije-uhapsen.html>

167 <http://ba.n1info.com/Vijesti/a306861/Majka-Davida-Dragicevica-najavila-U-18-sati-palim-svjecu.html>.

168 <http://balkans.aljazeera.net/vijesti/davidova-majka-i-gradani-zapalili-svjecu-u-crkvi>.

The criminalization of peaceful protesters reached its peak in January, when a local MIA initiated several investigations under the Criminal Code. There is no evidence that any of the allegations had taken place or that they were in contrast with international standards for peaceful assembly.

On 1 January 2019, police officers of the Banja Luka Police Department reported to the District Public Prosecutor's Office against four people for committing five criminal offenses, two crimes in relation to compromising security and three threats to security related to incitement.¹⁶⁹ Draško Stanivuković was arrested under the suspicion that he committed several offenses and crimes on 30 December 2018 in Banja Luka.

Again on 2 January citizens gathered in front of the church in the center of Banja Luka to show support to the members of the group 'Justice for David' and light candles with David's mother.¹⁷⁰ Police entered the courtyard and forced the participants to leave saying that they were protecting safety of citizens.¹⁷¹ Draško Stanivuković, an opposition member, was sent in the District Public Prosecutor's Office Banja Luka, because of the report about the committed criminal act of "provoking disorder".¹⁷²

Suzana Radanović had to report to the police on criminal charges for unauthorized eavesdropping and voice recording. She

169 <https://www.oslobodjenje.ba/vijesti/bih/banjalucka-policija-podnijela-izvjestaj-protiv-davora-dragicevica-i-jos-ti-osoba-421666>.

170 <http://ba.n1info.com/Vijesti/a307159/Podrska-za-grupu-Pravda-za-Davida.html>.

171 <http://ba.n1info.com/Vijesti/a307161/Policija-rastjenuje-gradjane-okupljene-ispred-Hrama.html>.

172 <https://www.index.ba/drasko-stanivukovic-sproveden-u-okružno-tužilaštvo-banja-luka/>.

possessed an audio recording of the main pathologist who had worked on her son's case as well as of a President Milorad Dodik. Suzana claims that she did not make the recording.¹⁷³ A request for initiation of a misdemeanor procedure against the organizer of the public assembly "Justice Support for David" was filed by the Banja Luka police.¹⁷⁴

On 11 January, Aleksandar Gluvić was convicted by the Basic Court in Banja Luka for 20 days of imprisonment and a fine of 250 BAM for violations during the protests on 30 December. He was convicted for returning to the square after the assembly, and shouting "Justice for David", "murderers", and similar slogans. Gluvić accepted the responsibility for rejecting the police order, but denied that he was shouting.¹⁷⁵

On 15 January, the Police Department of Banja Luka filed a report to the Public Prosecutor's Office against three people under criminal charges for inciting the attack against Republika Srpska's constitutionality. Unofficially, the media reports that those people are: Davor Dragičević, Draško Stanivuković and one more member of the group 'Justice for David'.¹⁷⁶

The members of Republika Srpska government coming from opposition parties published that the ruling party plans to introduce changes to the Criminal Code to tighten sanctions over non-compliance with decisions and organs of Republika Srpska. They have also announced

173 <https://avaz.ba/vijesti/bih/445736/suzana-radanovic-pozvana-u-sektor-kriminalisticko-policije-mup-a-rs>.

174 <https://www.slobodnaevropa.org/a/29691459.html>.

175 <http://ba.n1info.com/Vijesti/a308991/Pravda-za-Davida-iz-kontaktu-sa-Dragicevicem.html>.

176 <https://www.oslobodjenje.ba/vijesti/bih/izvjestaj-protiv-stanivukovica-dragicevica-i-dabica-pozivanje-na-nasilnu-promjenu-ustavnog-uredenja-rs-a-425344>.

the possibility that more severe prison sentences for people who do not respect officials, such as police, will be introduced as well. However, these changes have not yet been put in the official procedure.¹⁷⁷

Citizens continued to gather in the Church's courtyard every day at 18.00h, however, on 21 January 2019, around 30 citizens decided to go to Krajina Square and walk in circles. The police came and ordered them to leave, arresting two men.¹⁷⁸

Six civil society organizations, including Civil Rights Defenders, have officially requested that the Institution of Ombudsman for Human Rights in BiH examines the claims of excessive use of force by the police during assemblies 25 December 2018.¹⁷⁹ Transparency International in BiH filed a criminal complaint against several police officers in the District Public Prosecutor's Office in Banja Luka for the excessive use of force, committing several criminal offenses.¹⁸⁰

177 <http://ba.n1info.com/Vijesti/a309895/Najava-postravenja-sankcija-u-RS-u.html>.

178 <http://www.etrifka.net/drustvo/64705/nova-privodenja-u-banjaluci-dvanaest-policijaca-na-dvije-zene/>.

179 <http://ba.n1info.com/Vijesti/a306390/Traze-hitno-sastanak-zbog-prijava-na-policijsku-torturu.html>.

180 <http://ba.n1info.com/Vijesti/a306444/Prijava-protiv-policijaca-u-Banjaluci-zbog-prekomjerne-upotrebe-sile.html>.





VI. RECOMMENDATIONS

Recommendations in terms of law-making

- When drafting freedom of assembly laws, the legislator should bear in mind human rights perspective of this right. All new drafts and laws should take into consideration OSCE/ODIHR and Venice Commission Guidelines for Peaceful Assembly, as well as OSCE/ODIHR recommendations on a Pre-Draft FBiH FoPA Law.
- The group drafting FoPA laws should not be limited to representatives of the Ministries of Internal Affairs, but needs to include representatives of different competent ministries, including Ministry for Human rights and Refugees, Ministry of Justice, as well as Institution of Ombudsman and key stakeholders within civil society.
- The state and the delegated authorities should aim to enable the right to peaceful assembly. 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 responsibilities and liabilities 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 in terms of administration of assemblies

- Respective MIAs should consider forming special groups in charge of assembly administration, that would serve as a more independent and resourceful mechanism for registering assemblies. Members of these groups should be specialised

to apply rights-based approach when administering assemblies.

- Information regarding the registration procedure needs to be publicly available, on accessible places, written in a simple and understandable language. When appropriate the respective administrative offices should approach assembly organisers to inform them about their rights.

Recommendations Regarding Institutions:

- The role of the Institution of Ombudsman should be enhanced and strengthened in regards to the freedom of assembly. A Special Report on FoPA should be issued, the Ombuds-persons should be empowered to monitor public assemblies and mediate between the law enforcement authorities and assembly organisers. The Institution should be included in the development of the Standard Operating Protocols for policing the assemblies.
- The high Judicial and Prosecutorial Body in BiH should ensure that the Prosecutors Offices as well as local and higher courts operate with respect of human rights' principles and work independently of political influences when investigating and forming charges against assembly organisers, leaders, stewards and other participants.

Recommendations Regarding the Police:

- The police at all levels should undergo training for the use of human rights methods for policing of assemblies. Training should be held for existing police officers, as well as integrated into the police academy curricula.

- The use of special equipment to secure peaceful assemblies should always be justified in line with the international standards and communicated with the protesters and public. The principle of proportionality should always be implemented.
- An independent external body should be established to supervise all aspects of police work to ensure that is in line with international human rights standards.
- The internal control mechanisms of the police should be reinforced and developed so as the citizens are more aware of their effectiveness:
 - Internal police protocols, determining their jurisdiction should be available to public.
 - External, objective monitoring body that evaluates complaints together with the Commissioner should be established.
 - The results of internal control should be available to public.

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The right to free assembly is an indispensable element of democracy and a healthy civil society. Recent years have seen a new era of mass protests, but also a significant increase in practical restrictions on the right in Western Balkan and Eastern Partnership countries. The European Center for Not-for-Profit Law (ECNL) supports its network of local partners (in Albania, Armenia, Belarus, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Montenegro, Kosovo, Serbia and Ukraine) to monitor local laws, observe protests, report challenges and engage in the legal reform process to protect and promote this fundamental right.

This year's monitoring reports build on previous efforts and explore issues that are of relevance for all the participating countries. Accordingly, beyond the legal framework, the reports also look at the role of civil administration, policing, criminalization of protesters, as well as the overarching issue of accountability manifesting in all of these aspects.



 **#right2freeassembly**