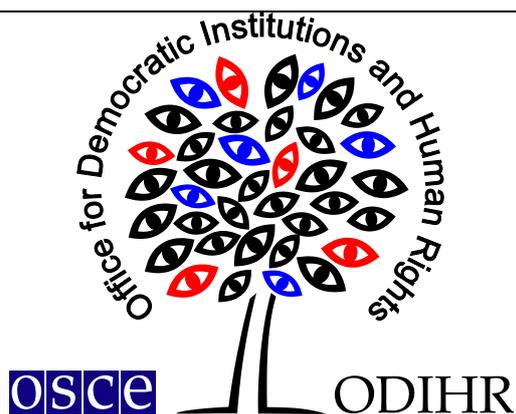


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## COMMENTS ON THE DRAFT LAW ON PUBLIC ASSEMBLY IN REPUBLIKA SRPSKA

**Based on an unofficial English translation of the draft amendments  
provided by the OSCE Mission to Bosnia and Herzegovina**

*These Comments have benefited from contributions made by members of the OSCE/ODIHR  
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*This Opinion is also available in Bosnian, however  
the English version remains the only official version of the document.*

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## **I. INTRODUCTION**

1. *On 27 February 2018, Ambassador Bruce G. Berton, Head of the OSCE Mission to Bosnia and Herzegovina sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for a legal review of the draft law (hereinafter “the draft law”) on Public Assembly in Republika Srpska (hereinafter RS), one of the two Entities of Bosnia and Herzegovina.*
2. *On 7 March 2019, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare legal comments on the compliance of these draft amendments with OSCE commitments and international human rights standards.*
3. *The Comments were prepared in response to the above request. The OSCE/ODIHR conducted this assessment within its mandate.<sup>1</sup>*

## **II. SCOPE OF REVIEW**

4. The scope of these Comments covers only the draft law, submitted for review. Thus limited, the Comments do not constitute a full and comprehensive review of the entire legal and institutional framework on Public Assembly in RS.
5. The Comments raise key issues and provides indications of areas of concern. In the interests of conciseness, the Comments focus more on those provisions that require improvements rather than on the positive aspects of the draft law. The ensuing recommendations are based on international standards and practices related to Public Assembly. The Comments will also seek to highlight, as appropriate, good practices from other OSCE participating States in this field.
6. These Comments are based on an unofficial English translation of the Draft Law provided by the OSCE Mission to Bosnia and Herzegovina, which is attached to this document as an Annex. Errors from translation may result. These Comments are also available in Serbian. However, the English version remains the only official version of the document.
7. In view of the above, the OSCE/ODIHR would like to mention that these Comments do not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation of RS that the OSCE/ODIHR may wish to make in the future.

## **III. EXECUTIVE SUMMARY**

8. Hereafter in these Comments “public assembly” will be referred to as “Freedom of Peaceful Assembly” (FoPA), as this is the term used in international standards.
9. Generally, the draft law has a restrictive approach to FoPA and does not facilitate for enjoyment of this fundamental human right, as it places heavy burdens on organisers of

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<sup>1</sup> Freedom of Assembly: The OSCE/ODIHR conducted this assessment within its mandate of the Human Dimension: OSCE participating States “confirm that they will respect each other’s right freely to choose and develop, in accordance with international human rights standards, their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law”. See Copenhagen Document 29 June 1990, Part I par (4).

assemblies, despite the fact that facilitating of FoPA is a clear responsibility of state, in particular of law enforcement authorities. Such undue burdens include an obligation to provide a detailed request for holding an assembly [pars 24-27], to have a clear structure [par 26], maintain order [pars 54], and placing strict duties on stewards [par 55]. Furthermore, the draft law contains too many restrictions and options for prohibiting or dispersing an assembly, making such restrictions and prohibitions the rule rather than an absolute exception and last resort. Overall, the draft law needs to be substantially changed to be compliant with international standards.

10. More specifically, and in addition to what was stated above, OSCE/ODIHR makes the following key recommendations to further enhance the draft law:
  - A. Restructure the draft law for clarity, in particular clearer sections regarding notifications and restrictions; [section 3.1 ]
  - B. Reformulate article 1 of the draft law to better reflect FoPA as a right, and to ensure regulations/limitations of this freedom are subject only to those exceptions which are exhaustively permitted under article 21 ICCPR and article 11 ECHR and only when they comply with the principles of necessity and proportionality; [par 19 ]
  - C. Delete Chapter III on “public events” from the draft law as income generating public events as this falls outside the scope of FoPA and should be dealt with in separate legislation; [par 18 ]
  - D. Remove the word “citizen” in Articles, 1, 3, 4, 9, 27, and 28 to ensure the full enjoyment of the right to freedom of peaceful assembly by everyone in BiH in order to respect the international commitments on non-discrimination. [par 20]
  - E. Employ a simpler legal definition of assemblies, in line with international standards, without listing many types of assemblies and the unclear distinction between public assemblies and public protest. This definition should also clearly include spontaneous assemblies; [par 22]
  - F. Remove the proposed systems of approval for assemblies that may cause traffic disruption [par 39]
  - G. Introduce rules emphasising that prohibition of assemblies is a means of last resort, as the authorities must consider less drastic measures first; [Section 5 ]
  - H. Ensure that restrictions on content must be linked to a risk of imminent violence and not solely the content itself; [par 32]
  - I. Remove absolute restrictions on the duration and time of assemblies as an assessment on the necessary duration must be assessed individually and comply with the principles of necessity and proportionality; [par 34]
  - J. Strengthening the freedom to choose the venue of the assembly, by removing the wording “public” and “appropriate” in article 4 of the draft law and instead emphasising that peaceful assemblies can take place and at the desired time and place, as well as in the desired manner, unless restrictions are absolutely necessary and proportionate (i.e. risk of violence) and delete Article 13 that prohibits assemblies in a wide range of places from the outset [section 4.3 ]
  - K. Delete Chapter V on penal provision of the draft law in its entirety and refer instead to penal provisions in other laws sanctioning individual acts as ordinary criminal offences not specifically linked to the holding of assemblies; [par 59]

- L. Clarify the rules for the appeals procedure against decisions regarding assemblies;  
[par 60-61 ]

*Additional Recommendations, highlighted in bold, are also included in the text of the Comments.*

#### **IV. ANALYSIS AND RECOMMENDATIONS**

##### **1. International Standards on Freedom of Peaceful Assembly**

11. FoPA as elaborated by human rights law is considered a fundamental democratic right in several core human rights documents, including article 20 (1) of the Universal Declaration on Human Rights (hereinafter UDHR)<sup>2</sup>, article 21 the International Covenant on Civil and Political Rights (ICCPR)<sup>3</sup>, article 11 of the European Convention on Human Rights (ECHR)<sup>4</sup> and article 15 par 1 of the Convention on the Rights of the Child (CRC)<sup>5</sup> and Articles 1 and 21 of the UN Convention on the Rights of Persons with Disabilities. It covers a wide range of different public gatherings, including, static assemblies (public meetings, mass actions and flash mobs), demonstrations, sit-ins, pickets and moving assemblies (parades, processions, funerals, pilgrimages etc.).<sup>6</sup> The right also covers individual pickets or sit-ins; even if they are not assemblies in the strict sense, they are covered by the same set of standards. There should be a presumption in favour of holding assemblies and these should be facilitated and enabled by the state. This should be clearly and explicitly established by applicable law.<sup>7</sup>
12. The country of Bosnia and Herzegovina (BiH) is a State Party to the said ICCPR<sup>8</sup>, the ECHR<sup>9</sup> and the CRC.<sup>10</sup> ECHR is particularly important as the Constitution of BiH clearly states that this Convention and its protocols are integral part of the Constitution shall apply directly in the Country and prevail over national laws.<sup>11</sup> ICCPR, CEDAW and CRC are also very relevant as they are specifically mentioned in Annex 1 of the Constitution. Furthermore, article 2 (1) (l) of the Constitution of FBiH also explicitly states that FoPA is a recognized right. This Constitution also clearly states in the Annex that ICCPR, CEDAW and CRC are integral parts.
13. BiH is a participating State of the OSCE, which is also committed to respecting the FoPA as stated in the Copenhagen Document, par 9.2.<sup>12</sup> Further OSCE commitments regarding the Right to Peaceful Assembly include the Paris 1990 Charter for a New Europe (A new

<sup>2</sup> Universal Declaration on Human Rights, adopted by (General Assembly resolution 217 A) on 10 December 1948.

<sup>3</sup> International Covenant on Civil and Political Rights (ICCPR), adopted by UN General Assembly Resolution 2200A (XXI) on 16 December 1966.

<sup>4</sup> *Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 11, signed on 4 November 1950, entered into force on 3 September 1953.

<sup>5</sup> Adopted by General Assembly resolution 44/25 of 20 November 1989.

<sup>6</sup> OSCE/Venice Commission Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edition (2010), par 17. Available here: <https://www.osce.org/odihr/73405?download=true>

<sup>7</sup> *Ibid*, par 30

<sup>8</sup> Bosnia and Herzegovina acceded as a State Party on 1 September 1993 by succession: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-4&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=en)

<sup>9</sup> Ratified by BiH on 12 July 2002 ([https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/009/signatures?p\\_auth=HPNHLYm4](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/009/signatures?p_auth=HPNHLYm4)).

<sup>10</sup> Bosnia and Herzegovina acceded as a State Party on 1 September 1993 by succession <http://indicators.ohchr.org/>

<sup>11</sup> Constitution of Bosnia and Herzegovina, Article II. 2.

<sup>12</sup> Copenhagen Document on the Human Dimension of the Conference of Security and Cooperation in Europe (CSCE), 29 June 1990.

era for Peace, Democracy, Peace and Unity)<sup>13</sup> and the Helsinki 2008 Statement from the Ministerial Council.<sup>14</sup> The OSCE/ODIHR is also promoting its work on FoPA through the Guidelines on Peaceful Assembly in collaboration with the Council of Europe (CoE).

14. BiH is also a potential candidate country for accession to the European Union (EU),<sup>15</sup> which will render it necessary to gradually approximate relevant state legislation to the EU *acquis communautaire*. When drafting new legislation, it is thus important to take into consideration EU primary legislation (the EU treaties and the EU Charter on Fundamental Rights). The latter explicitly contains the right to FoPA.<sup>16</sup>

## 2. Analysis of the draft law

15. The draft law contains 42 articles in six chapters. Most articles are referred to below. The Comments will focus on the main thematic issues relevant to FoPA legislation and not comment on the draft law article by article.
16. It is positive that legislation on FoPA is planned to be updated in RS, as updated legislation is often needed to clarify issues. It is also positive that there is a clear appeals procedure against decisions regarding assemblies, Article 16 (please see section 8 *infra*). However, OSCE/ODIHR is of the opinion that the draft law not only fails to address weaknesses of the existing legislation to implement international human rights law and standards on the right to FoPA; it even represents a setback compared to the current legislation in several areas, for instance, Article 4 (4) of the draft law introduces new restrictions on when an assembly can take place (please see below for further comparisons with the current law).
17. In general the draft law lacks the understanding that it is the duty of the authorities to facilitate the enjoyment of the rights to FoPA: It places massive obligations on organisers instead, such as an obligation to provide stewards, article 21, and that the organisers have a clear command structure, article 20. There is also no possibility for spontaneous assemblies, as the exceptions to the 48 hour rule for late submission of notification of the assembly are most limited, Articles 10 (4) and 12.
18. Section III of the draft law covers “Public Events”. It may be a translation issue, but the context shows that this aimed to regulate income-generating events. Pure income generating activities, such as entertainment performances, musical concerts and other cultural events do not have the same entitlement to public facilitation and should be governed by a different law. **Thus, OSCE/ODIHR suggests section III on “public events” be deleted as income generating public events from the draft law as this falls outside the scope of FoPA and should be dealt with in separate legislation.** It must be underscored that such legislation must not be used to restrict events covered by FoPA. Thus, there should be a wide definition of the type of public gatherings that fall under the scope of FoPA and which the authorities are obligated to facilitate, even when money is collected. This should include public assemblies that are organised for the purpose of expressing opinions, even when they have the form of a cultural event, such as a charity concert or a political play. While in such cases money may be charged or collected from the participants to fund a particular cause, this remains a non-profit activity, as the

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<sup>13</sup> Adopted by the meeting of heads of state or government of the CSCE, 21 November 1990 (preamble).

<sup>14</sup> Adopted by the sixteenth Helsinki Ministerial Meeting on 4 and 5 December 2008 (p. 5).

<sup>15</sup> [https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/bosnia-herzegovina\\_de](https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/bosnia-herzegovina_de)

<sup>16</sup> Charter of the Fundamental Rights of the European Union, (2000/C 364/01), Article 12 par 1.

organisers do not seek to have personal financial gains and the event should be granted the full protection under the right to FoPA.

## **2.1 General provisions of the draft law**

19. The “Subject of the law” is dealt with in Article 1 of the draft law. “Subject” seems rather imprecise. **Hence, it is recommended to change this to scope or aim of the law in order to better reflect the legal character of the document.** The draft law Article 1 also employs the word “regulate”<sup>17</sup>; this wording as well as the limiting approach which it carries with it, should not be used as international standards on FoPA states that the goal of the legislation should rather be to facilitate and protect FoPA.<sup>18</sup> Restrictions on this right may only be imposed if strictly necessary.<sup>19</sup> This is also a contradiction of Article 1 of the draft law itself as it is stated that the draft law aims to implement the Constitution of Bosnia and Herzegovina (hereinafter the Constitution) which in turn contains a list of international documents, including the ICCPR, and the CRC, it aims to fulfil directly applicable in BiH.<sup>20</sup> Furthermore Article II.1 of the Constitution stipulates that BiH and both Entities of the country shall ensure “the highest level of internationally recognized human rights and fundamental freedoms”. Additionally, as the ECHR is directly applicable in BiH and as Article II.3 of the Constitution also positively mentions FoPA (and Freedom of Association) as a right. Thus, as ECHR Article 11 and extensive case law of the ECtHR<sup>21</sup> recognise the right to FoPA and emphasises that only necessary restrictions may limit FoPA. **It is recommended that Article 1 of the draft law be reformulated to better reflect the FoPA as a right and that regulations/limitations of this freedom are subject only to those exceptions which are exhaustively permitted under Article 21 ICCPR and Article 11 ECHR and only to the extent that they are necessary and proportionate.**
20. It is positive that Article 2 of the draft law emphasises that “everyone has a right to organise public assemblies”. On the other hand, Article 1 of the draft law provides this right only to citizens. According to OSCE/ODIHR this contradicts the “Non-Discrimination” principle in the Constitution, Article II.4, which stipulates that the rights in Article II., and international agreements mentioned in the said Annex 1 extends to all persons, citizens, foreign residents and non-residents in BiH without discrimination on any ground, including nationality. The ECHR is as mentioned directly applicable as national law in BiH (see section 1 *supra*). Article 14, ECHR pronounces an explicit prohibition of discrimination based on nationality (and several other grounds). Other international standards such as article 26 of the ICCPR, (mentioned in the said Annex 1 of the Constitution) formulate a similar prohibition. The United Nations Human Rights Committee has stated that non-nationals must “receive the benefit of the right to peaceful assembly”.<sup>22</sup> The OSCE/ODIHR-Venice Commission Guidelines on Freedom of Assembly also clearly recognise the importance of non-nationals receiving the benefit of the right to freedom of assembly and recommend that such restrictions on non-nationals are limited to speech activities that “directly burden national security”.<sup>23</sup> **OSCE/ODIHR**

<sup>17</sup> The OSCE Mission in BiH has confirmed that the original uses the word “uređuje” which translates as “regulates” or “governs”

<sup>18</sup> *Op. cit.* footnote 6, par 11

<sup>19</sup> See in particular: ICCPR, Article 21 and European Convention on Human Rights, Article 11. See also: *OSCE/ODIHR-Venice Commission Joint Opinion (CDL-AD(2010)016) On the Act on Public assembly of the Sarajevo Canton (Bosnia and Herzegovina)*, pars 7 and 10, available here: [http://legislationline.org/download/action/download/id/2992/file/158\\_FoA%20-%20BiH\\_2010.pdf](http://legislationline.org/download/action/download/id/2992/file/158_FoA%20-%20BiH_2010.pdf)

<sup>20</sup> *Op. cit.* footnote 11, annex 1: <http://www.ccbh.ba/osnovni-akti/ustav/?title=clan-2>

<sup>21</sup> See for instance: ECtHR *Plattform “Ärzte für das Leben” v. Austria*, 5/1987/128/179 judgment 25 May 1988, par. 34.

<sup>22</sup> The United Nations Human Rights Committee, General Comment 15 on the ICCPR (The Position of Aliens under the Covenant).

<sup>23</sup> *Op. cit.* footnote 6, par 55.

**recommends that the wording of article 2 of the draft law be revised to include non-citizens in BiH. Articles 3, 4, 9, 27 and 28 of the draft law also contain references to only citizens and these references should be removed for the same reasons.**

21. It is also positive that, article 8 mentions that men and women are equal under this law, but the law is silent on non-discrimination. OSCE/ODIHR recommends introducing provisions not only protecting gender equality, but also to emphasize the obligations of the state, mentioned in section 1 *supra*. This entails obligations to protect the rights of national minorities, children, persons with disabilities and others.<sup>24</sup> This also includes an obligation to train authorities on the legal formalities and law enforcement personnel on how to protect assemblies with participants from such groups.<sup>25</sup> **OSCE/ODIHR recommends the introduction of provisions to advance the rights of the said groups and other groups in need of legal protection.**

### *2.1.1 Definitions in the draft law*

22. Article 3 (1) of the draft law defines public assembly as “every organized assembly of citizens which takes place in the space which is adequate for its purpose” Article 3 (2) of the draft law further defines public assembly as 1) “Peaceful assembly and public protest 2) Public even/performance and 3) other public assembly. These forms of assemblies are further explained in article 3 (3), refers to para (2) 1) “Peaceful assembly and public protest” are any organised assembly to “express any political social or other beliefs and interests”. Article 3 (4) refers to para (2) 2) which is an assembly “for the purpose of making an income”, and Article 3 (5) refers to para (2) 3) which is an assembly with a goal of accomplishing economic, religious, cultural, humanitarian, sports, entertainment and other interests” without the purpose of making a profit. As already pointed out in, para 18 *supra*, income-generating events should be regulated by separate legislation. Furthermore, the distinction between peaceful assemblies and public protest in article 3 (2) 1) and “other assemblies” in article 3 (2) 3) is unclear and not corresponding with international recommendations, as an assembly is an intentional and temporary presence of a number of individuals in a public space for a common expressive purpose.<sup>26</sup> Public protests are just one form of a peaceful assembly, while the distinction in Art. 3 (2)1 between “peaceful assembly” and “public protest” seems to imply that the key difference might lie in the peacefulness of the event with problematic conclusions that might be drawn by law enforcement authorities in what is considered a public protest rather than a peaceful assembly. In a similar vein, “Other assemblies” is thus superfluous and should be covered by the definition in article 3 (2) 1. **OSCE/ODIHR recommends this distinction in the draft law be removed and consequently also to remove Chapter 4 of the draft law.**

<sup>24</sup> *Ibid.*, Section A, par. 2.5. and pars 56-59, See also UN Convention on the Rights of Persons with Disabilities, article 21.

<sup>25</sup> *Ibid.*, par. 147.

<sup>26</sup> See Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (2nd edition) (Kehl: N.P Engel, 2005) p.373: ‘The term “assembly” is not defined but rather presumed in the Covenant. Therefore, it must be interpreted in conformity with the customary, generally accepted meaning in national legal systems, taking into account the object and purpose of this traditional right. It is beyond doubt that not every assembly of individuals requires special protection. Rather, only intentional, temporary gatherings of several persons for a specific purpose are afforded the protection of freedom of assembly.’ See Human Rights Committee Views (on the merits) *Kivenmaa v. Finland* (412/1990) 31 March 1994, CCPR/C/50/D/412/1990 para.7.6, where the Committee stated that “public assembly is understood to be the coming together of more than one person for a lawful purpose in a public place that others than those invited also have access to.” See also Human Rights Committee Views (on the merits) *Levinov v. Belarus* (1867/09) 19 July 2012, CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010, where the Committee declared inadmissible the author’s claim under Article 21 ICCPR because he ‘intended to conduct the ... pickets on his own’ (para 9.7) and the Committee instead considered his claim under Article 19 ICCPR.

### **3. Restrictions prior to the peaceful assembly**

23. Any restrictions to FoPA must be necessary and proportionate. The legitimate grounds for restrictions are prescribed in international and regional human rights instruments. These should not be supplemented by further restrictions in domestic legislation. Any restriction must be concise and clear.<sup>27</sup> This means that the imposed restrictions and actions shall be measured and not be more intrusive than necessary to avoid the identified problem.<sup>28</sup> OSCE/ODIHR and the Venice Commission have also outlined, “that the right to peaceful assembly should not be interpreted restrictively and any restrictions should be construed narrowly, and that in general, rights must be “practical and effective” not “theoretical or illusory”.”<sup>29</sup>

#### **3.1 Procedural matters**

##### **3.1.1 Notification**

24. Article 10 of the draft law imposes an obligation on the organiser to announce the assembly at least 5 days prior to the commencement of the assembly. There are no exceptions to this rule, apart from Article 10 (4) of the draft law (see par 25 *infra*). It is positive that Article 10 of the draft law establishes a notification regime and not an authorization regime; however the requirements for a proper notification are very burdensome.
25. Prior notification of an assembly is generally considered to comply with international standards as long as such a regime is established for the purpose to enable authorities to prepare for larger assemblies.<sup>30</sup> with a view to effectively facilitate an assembly. A notification regime should not serve for the purpose of imposing restrictions on the assembly or considering an assembly unlawful in the case there is a failure to notify. A 5-day notice deadline is technically in line with recommendations that state that “a few days” is generally sufficient, as this should allow enough time for the authorities to prepare.<sup>31</sup> The timeline limit should only be indicative and late submission does not mean that the assembly cannot take place.<sup>32</sup> The 48-hour “late-limit” in Article 10 (4) of the draft law is also problematic for the same reasons, since it places a burden of justification for the late notification on organisers and also seems to be an absolute limit for notifying of assemblies, which would preclude spontaneous assemblies. Spontaneous assemblies are important as they are often triggered by certain events requiring an immediate response and where a

<sup>27</sup> *Op. cit.* footnote 6, section A, par 3.1-3.5 and par. 102.

<sup>28</sup> See in particular: ICCPR, Article 21 and European Convention on Human Rights, Article 11.

<sup>29</sup> *Op. cit.* footnote 19 (*OSCE/ODIHR-Venice Commission Joint Opinion (CDL-AD(2010)016) On the Act on Public assembly of the Sarajevo Canton*), par 10.

<sup>30</sup> The European Court of Human Rights has previously considered that “notification, and even authorisation procedures, for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly”. See, amongst other authorities, *Lashmankin and Others v. Russia*, (2017), (57818/09 and 14 others, judgment of 7 February 2017), para. 147. See also the Human Rights Committee’s Concluding Comments on Morocco [1999] UN doc. CCPR/C/79/Add.113, para. 24: “The Committee is concerned at the breadth of the requirement of notification for assemblies and that the requirement of a receipt of notification of an assembly is often abused, resulting in de facto limits of the right of assembly, ensured in Article 21 of the Covenant. The requirement of notification should be restricted to outdoor assemblies and procedures adopted to ensure the issue of a receipt in all cases.” European Commission on Human Rights: *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (Application no. 8191/78, decision of 10 October 1979), p. 119. “Such a procedure is in keeping with the requirements of Article 11 .1 (of ECHR (editor’s remark)), if only in order that the authorities may be in a position to ensure the peaceful nature of a meeting, and accordingly does not as such constitute interference with the exercise of the right”.

<sup>31</sup> *Op. cit.* footnote 6, par 116

<sup>32</sup> ECtHR *Kuznetsov v. Russia* (2008), application no 10877/04, judgement 23 October 2008 the Court held (in para.43), that “merely formal breaches of the notification time-limit [were] neither relevant nor a sufficient reason for imposing administrative liability”. In this case, late notification did not prevent the authorities from adequately preparing for the assembly.

delay may invalidate the message sought to be conveyed.<sup>33</sup> Such assemblies should be considered more specifically in the legislation and be explicitly exempt from a notification regime where such a regime is in place. With regard to the criteria of being “non-violent”, it is important to recall that the authorities have the burden of proof that the organisers and/or participants of the assembly have a violent intent. Furthermore, this needs to be based on clear evidence and not just some general concerns that there might be acts of violence. Moreover, as a rule, authorities are supposed to take the appropriate preparatory measures to handle any outbreak of violence, instead of restricting or even prohibiting assemblies from the outset. Furthermore, even in case of clear evidence of intent of violence by a few individuals, authorities are supposed to handle the situation of these individuals, without infringing the rights of others to hold the assembly in a peaceful manner.<sup>34</sup> Furthermore, it is also problematic that Article 11 (6) of the draft law stipulates that any new information added to a previous notification will be considered as new notification. This will make it even more difficult to respect deadlines as the new information may not be available till after the deadlines have passed. This is in reality a further restriction on FoPA. **In light of the above it is recommended to rewrite the rules on notification, avoiding absolute deadlines and providing an exception for spontaneous assemblies.**

26. The other requirements are excessive, as the notification requirements also presume that there is a leader of the assembly, which may not always be the case (see para 53 *infra*). The requirements indicate that the organisers are responsible for core state obligations, including the obligation to maintain order (see section 6.2 *infra*). According to Article 10 (3) the notification shall be submitted to the Ministry of Interior, normally the local police. This is practical, but it is recommended to have an easily accessible system in place to receive notifications, on which the draft law is silent. **There should be a possibility to notify via email or telephone. The police could also have an online service for such purposes.** Access to online resources in relation to freedom of assembly has also been recommended by the the Committee of Ministers of the Council of Europe.<sup>35</sup>
27. Article 12 of the draft law contains exceptions to the obligation to notify. Article 12 (1) of the draft law exempts meetings of political parties and trade unions etc. Such meetings should not be considered public assemblies, as they are not open to everyone. This follows from the text of the draft law that prescribes that they take place in “indoors”. Thus, they fall outside the scope of the draft law and should not be included in it. This Article could also contain provisions for small assemblies that do not require notification as the authorities would not need to prepare for them. **OSCE/ODIHR recommends this Article be revised.** Article 12 (2) and (3) on information is analysed under “content of notification”, in section 3.1.2 *infra*.

### ***3.1.2 Content of notification***

28. Article 11 of the draft law presents a long list of information needed in the request. While information to the authorities in a notification may be useful in order for the authorities to prepare, the required information seems very elaborate and excessive. **It is recommended**

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<sup>33</sup> See the judgment of the Hungarian Constitutional Court, *Decision 75/2008, (V.29) AB*, which established that the right of assembly recognized in Article 62 para. (1) of the Hungarian Constitution covers both the holding of peaceful spontaneous events (where the assembly can only be held shortly after the causing event) and assemblies held without prior organisation. The Court stated that “it is unconstitutional to prohibit merely on the basis of late notification the holding of peaceful assemblies that cannot be notified three days prior to the date of the planned assembly due to the causing event.”

<sup>34</sup> ECtHR *Christian Democratic People’s Party v. Moldova (no. 2)* (Application no. 25196/04, judgment of 2 February 2010) para 23; and *Frunkin v. Russia* (Application no. 74568/12, judgment of 5 January 2016), para 98;

<sup>35</sup> Recommendation of the Committee of Ministers of 13 April 2016: CM /Rec (2016)5, par 3, available here: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016806415fa](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415fa)

to at least change Article 11 (1) of the draft law to state that notification “**may**” contain and not “**shall**” contain. Due to the extensive information required, Article 11 of the draft law seems to imply that it concerns a large assembly, but it would according to Article 10 of the draft law, also apply to every assembly regardless of the number of participants. Such requirements would be a clear restriction of FoPA, as it places a heavy burden on organisers and an obstacle to organise an assembly.

29. Previous opinions on notification procedures clearly state that notification procedures should not be very burdensome as this may discourage the organisation of assemblies and subsequently mean a restriction of FoPA.<sup>36</sup> Information on venue/route, date, time and estimated duration as well as an estimate of number of participants should be largely sufficient, as the other information required would be very burdensome and should not be expected by an organiser.<sup>37</sup> **Thus, it is recommended to change the required content in the notification** (see also under obligation for the organiser section 6 *infra* and venue in section 4.3 *infra*).

### **3.2 Restrictions on who may organise assemblies**

30. Article 6 (2) of the draft law imposes restrictions on who can organise assemblies if banned by a court order to do so. While such a ban may be justified, there should also be reference to a clear legal procedure and on what legal grounds an such a ban may be established and for how long. OSCE/ODIHR recommends **the draft be amended accordingly**. A better approach would be to ban assemblies in situations when they have a clear violent intent or the assembly is aimed at destroying the rights of others<sup>38</sup>(see also sections on restrictions on content for comments on Article 6 (1) and (3)).

## **4. Restriction during assemblies**

31. Overall, restrictions should be only allowed in line with the criteria established in Article 21 ICCPR and Article 11 ECHR and under the strict respect for the principles of necessity and proportionality. The formulation in Article 6 of the draft law go beyond this, allowing for restrictions among others for the order set by the Constitution protection, which is very vague, as well as for the protection of property (which can be applied very broadly), and without establishing that such restrictions must be necessary and proportionate. It is suggested to align Article 6 (1) of the draft law with Articles 21 ICCPR and 11 ECHR.

### **4.1 Restrictions on content**

32. Articles 6 and 15 of the draft law contain rules for limiting the content of the assembly in cases of “protecting the order set by the Constitution, safety, and public moral, health of the

<sup>36</sup> OSCE/ODIHR-Venice Commission Joint Opinion (CDL-AD(2009)034) on the Draft Law on Assemblies of the Kyrgyz Republic, par 35, available here: <http://www.legislationline.org/documents/id/15512>; and OSCE/ODIHR Comments (FPA-BiH/323/2018) on the draft law on Public Assembly in the federation of Bosnia and Herzegovina, par 28 available here: [https://www.legislationline.org/download/action/download/id/7926/file/323\\_FAO\\_BiH\\_24Apr2018\\_en.pdf](https://www.legislationline.org/download/action/download/id/7926/file/323_FAO_BiH_24Apr2018_en.pdf)

<sup>37</sup> *Op. cit.* footnote 6, par 116.

<sup>38</sup> For example, UN Human Rights Committee, *Zvozskov v. Belarus* (Communication no. 1039/2001, 10 November 2006), par 7.2. See also: Armenia, Law on Freedom of Assemblies 2011, chapter 2, Article 18: Proposing condition or limitations on Conducting the Assembly [...]

“(5) Conducting another assembly, including a counter-assembly, at the time and place specified in an assembly notification is per se not a ground for imposing limitations on the assembly, unless there is an imminent danger of clash between their participants. Otherwise, the provisions of the paragraphs 1 and 2 of this Article shall be applied to the assembly notified later”.

people, property as well as for the protection of rights and freedom of others” (Article 6 (1) and “any reference and incitement to use of violence, national, racial, religious or other hatred and intolerance” (Article 6 (3) “endangering the constitutional order” (Article 15 (1) 1), “aims to commit criminal offence or incite to criminal offence” (Article 15 (1) 2) hate speech” and “incitement to violence” etc.<sup>39</sup> Speech and other forms of expression, including assemblies, enjoy protection under Article 19 of the ICCPR and Articles 10 and 11 of the ECHR.<sup>40</sup> Content based restrictions should face a high threshold and should only be imposed if there is a threat of an imminent violence. As the European Court of Human Rights has recently stated, it is unacceptable from the standpoint of Article 11 of the Convention that an interference with the right to freedom of assembly could be justified simply on the basis of the authorities’ own view of the merits of a particular protest.<sup>41</sup> Restrictions on content mentioned in the said passages in Articles 6 and 15 may give reason to impose restrictions on content, but there must be an evaluation whether the content in question gives reason to believe that there is or will be a risk of imminent violence during the assembly. In order not to restrict FoPA unduly such restrictions must also be interpreted narrowly. **Furthermore, the word “intolerance” is most vague and should in any case be deleted.**

33. Criticism of government policies or State officials’ actions should never, in itself, constitute a sufficient ground for imposing restrictions on freedom of peaceful assembly – the ECtHR has often held that the “limits of permissible criticism are wider with regard to the government than in relation to a private citizen. Thus, criticising the “constitutional order” or and in particular content in the realm of the vague term “public moral” must not be subject to a blanket ban.<sup>42</sup> **Consequently, it is recommended to clarify the need to assess the risk of violence in the said Articles.**

#### 4.2 Restriction on duration of assembly

34. It is positive that as a starting point there is no rule on when an assembly can take place. However, Article 4 (4) of the draft law limits the time span during which assemblies may be held if they are likely to interrupt traffic (Article 4 (2)) to the hours between 08:00 to 14:00 and from 18:00 to 23:00 and establishes furthermore a maximum duration of the assembly of 2 hours. Restrictions imposed on the time or duration of an assembly must be based on an assessment of the individual circumstances of each case,<sup>43</sup> and meet the principles of

<sup>39</sup> The OSCE mission in BiH has confirmed that there is an error in the translation of Article 9 and that “invitations” is to be interpreted as “incitement”.

<sup>40</sup> ECtHR *Hyde Park and others v. Moldova* (2009), Application (45095/06) judgement 31 March 2009, par 26: “The Court finds it unacceptable from the standpoint of Article 11 of the Convention that an interference with the right to freedom of assembly could be justified simply on the basis of the authorities’ own view of the merits of a particular protest”.

<sup>41</sup> *Ozgur Gundem v. Turkey*, Application No. 23144/93, 16 Mars 2000, para. 43.

<sup>42</sup> ECtHR *Incal v. Turkey*, (case no. 41/1997/825/1031) judgment 9 June 1998, par 54: “The limits of permissible criticism are wider with regard to the government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. Furthermore, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries”, See also: OSCE/ODIHR-Venice Commission (and others) *Joint Opinion (CDL-AD(2010)031) on the Public Assembly Act in Serbia*, par 45. Available here: <http://www.legislationline.org/download/action/download/id/3118/file/Joint%20Opinion%20on%20the%20Public%20Assembly%20Act%20of%20Serbia%2018%20Oct%202010.pdf>

<sup>43</sup> See, for example, ECtHR, *Çiloğlu and Others v. Turkey* (Application no. (73333/01), judgment of 6 March 2007, par 51, French version), in which the ECtHR noted that unlawful weekly sit-ins (every Saturday morning for over three years) of around 60 people in front of a High School in Istanbul had become an almost permanent event which disrupted traffic and clearly caused a breach of the peace. It thus found that when dispersing the assembly, the authorities had reacted within the margin of appreciation afforded to States in such matters. Similarly, in ECtHR, *Cisse v. France* (Application no. 51346/99), judgment of 9 April 2002, pars. 39-40, the evacuation of a church in Paris which a group of 200 illegal immigrants had occupied for approximately two months was held to constitute an interference (albeit justified on public health grounds, para. 52) with the applicant’s right to freedom of peaceful assembly. Also worth noting is the UK case concerning ‘Aldermaston Women’s Peace Camp’ (AWPC) which, over the past 23 years, had established a camp on government owned land close to an Atomic Weapons

necessity and proportionality. The ECtHR has ruled that demonstrators ought to be given sufficient opportunity to manifest their views.<sup>44</sup> In some cases, the protracted duration of an assembly may itself be integral to the message that the assembly is attempting to convey or to the effective expression of that message. Disruption of traffic must be tolerated independently of the time of the assembly, since the use of public space for the holding of a public assembly is (at least) equally legitimate than the use for traffic and movement. (insert reference) Timing in itself, such as the time of day may also be of importance to convey the message (examples public officials may avoid these hours etc.<sup>45</sup>

35. There should therefore be neither any pre-determined time limit for assemblies which would imply a blanket bans on assemblies of longer duration nor any specific time brackets; rather, these should be assessed individually. There are now such restrictions in the current law and the text in the raft law as such represents a setback. **OSCE/ODIHR suggests that this restriction on time be removed from the draft law.**

### **4.3 Restrictions on venue of assemblies**

36. Freedom to choose the location of the assembly is often a key aspect of FoPA. The venue may be paramount for the message of the assembly to reach the target audience.<sup>46</sup> This is often described as being within “sight and sound” of the target of the assemblies. Furthermore, it must be accepted that the daily routine often carried out at the venue can be interrupted as assemblies are also a legitimate use of public space.<sup>47</sup> The venue may also be public buildings.<sup>48</sup>
37. It is welcome that Article 4 (1) of the draft law partially prescribes freedom of choice regarding the venue of the assembly. However, it is also stated that the venue must be “accessible and appropriate for gathering of people...”. Furthermore, according to Article 4 (3) of the draft law the venue must be decided “by a competent body of the local self-government”. This could present a possible restriction of FoPA. The use of the term “appropriate” is also problematic, as it is a very broad term open to many interpretations, which may present a possible restriction on FoPA.
38. The draft law does not distinguish between private and public property. It is important to include access privately owned venues which are widely accessible to the public, which may also be used for peaceful assemblies, both open air and buildings, such as parks and shopping

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Establishment. The women camped on the second weekend of every month during which time they held vigils, meetings and distributed leaflets. In the case of *Tabernacle v. Secretary of State for Defence* [2009], a 2007 by-law which attempted to prohibit camping in tents, caravans, trees or otherwise in ‘controlled areas’ was held to violate the appellant’s rights to freedom of expression and assembly. The court noted that the particular manner and form of this protest (the camp) had acquired symbolic significance inseparable from its message.

<sup>44</sup> ECtHR, *Patyi v. Hungary* (Application no. 5529/05, judgment of 7 October 2008), par 42, cf. ECtHR, *Éva Molnár v. Hungary* (Application no. 10346/05, judgment of 7 October 2008), par. 42, and ECtHR, *Barraco v. France*, (Application no. 31684/05, judgment of 5 March 2009, in French only), par 47. See also *Balcik and Others v. Turkey* (Application no. 25/02), judgement of 29 November 2007) par. 51: In finding a violation of Article 11 ECHR the ECtHR noted “that since the rally at issue in the case began at about noon and ended with the group’s arrest within half an hour at 12.30 p.m., it was “particularly struck by the authorities’ impatience in seeking to end the demonstration”. See also op. cit footnote 43 (*Cisse v. France*), par 47: the Court held that restriction of duration was justified as the duration of the assembly had provided the applicant with ample time to “set out her demands”. See also op. cit. footnote 6, par 18.

<sup>45</sup> *Helsinki Committee v. Armenia*, Application No 59109/08, 31 March 2015, para. 34: “[s]uch is the nature of democratic debate that the timing of public meetings held in order to voice certain opinions may be crucial for the political and social weight of such meetings. If a public assembly is organised after a given social issue loses its relevance or importance in a current social or political debate, the impact of the meeting may be seriously diminished. Freedom of assembly – if prevented from being exercised at a propitious time – can well be rendered meaningless”.

<sup>46</sup> *Op. cit.* footnote 6, par 3.5.

<sup>47</sup> *Op. cit.* footnote 42 (*OSCE/ODIHR-Venice Commission Joint Opinion on the Public Assembly Act in Serbia*), par 32, and *OSCE/ODIHR-Venice Commission (and others) Joint Opinion (CDL-AD(2010)033) on the Law on Peaceful Assemblies of Ukraine*, par 35.

<sup>48</sup> *OSCE/ODIHR-Venice Commission Interim Joint Opinion (CDL-AD(2010)049) on the Law on Assemblies of the Republic of Armenia*, pars 19-20 and *op. cit.* footnote 19 (*OSCE/ODIHR-Venice Commission Joint Opinion (CDL-AD(2010)016) on the Act on Public Assembly of the Sarajevo Canton*), par 34.

malls.<sup>49</sup> No restrictions should be placed on assemblies on privately owned property when the owner has granted permission to organise an assembly there. **OSCE/ODHIR recommends that the description of venue in the draft law be shifted to a free choice of venue. Any restrictions regarding the venue must be exceptional, decided for each individual assembly, based on the reasons established in Article 21 ICCPR and Article 11 ECHR and meet the principles of necessity and proportionality.**

39. Article 4 (1) of the draft law also restricts venues to areas which could be dangerous due to, for instance, health reasons. Such restrictions could be necessary as long as they are not used intentionally to restrict FoPA.<sup>50</sup> These restrictions should be equally applicable and necessary to protect other persons that would normally frequent the area, not only those who participate in an assembly, for instance school children if there is a school nearby and local residents.<sup>51</sup> This is also valid for Article 23 (4) of the draft law. However, Article 4 (1) of the draft law states that “public traffic” may be a reason to restrict the choice of venue. Furthermore, Article 11 (3) requires approval from the from the body competent on traffic safety in accordance with the “B&H Law on Traffic Safety and the Republika Srpska Law on Traffic Safety. This is a de facto authorization procedure for any assembly planned to take place where there is traffic. This will very often be the case. Disturbance of traffic as a reason to restrict an assembly is not in line with international recommendations and should be deleted.<sup>52</sup> As pointed out above, authorization procedures should not be established. **The draft law should first and foremost establish a duty of the authorities to facilitate for FoPA and to make the necessary arrangement regarding traffic diversion etc.**<sup>53</sup> This applies even if traffic disturbances are foreseen, as an assembly should be regarded as constituting a legitimate use of public space (just as vehicular traffic).<sup>54</sup> It is the responsibility of authorities to take the necessary measures to ensure the assembly can take place as intended, including, if necessary through the diversion of traffic. **The mentioning of public traffic should be removed from Art. 4 (1), Art. 4 (2) should be deleted as well as Art. 15 (4).**
40. **Article 5 of the draft law can be removed as “moving assemblies” should be covered by the same rules as static assemblies.** Venues for moving assemblies can be regulated similarly to static assemblies, regarding for instance disruption of traffic. Assemblies intended as moving assemblies should not be prohibited from stopping in between (Article 5 (2)).
41. Article 13 contains a long list of exceptions where assemblies cannot be held. These are in practice blanket bans on venues and therefore, a clear restriction on FoPA. There should instead be a case-by-case determination on the use of the venue for assemblies and the risk of violence, and in full respect of the principles of necessity and proportionality. It is reiterated that the authorities have a duty to facilitate FoPA.<sup>55</sup> **OSCE/ODIHR recommends deleting Article 13 of the draft law.**

<sup>49</sup> Venice Commission (CDL-AD(2006)034) on the Law on Freedom of Assembly in Azerbaijan, par 21. Available here: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2006\)034-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2006)034-e)

<sup>50</sup> *Op. cit.* footnote 42 (OSCE/ODIHR-Venice Commission Joint Opinion on the Public Assembly Act in Serbia), par 36.

<sup>51</sup> *Op. cit.* footnote 6, pars 76-77.

<sup>52</sup> *Ibid*, par 80.

<sup>53</sup> OSCE/ODIHR-Venice Commission Joint Opinion (CDL-AD(2010)033) on the Law on Peaceful Assemblies in Ukraine, par 43. “any such restriction must be based on factual concrete and objective grounds”.

<sup>54</sup> ECtHR *Oya Ataman v. Turkey*, (Application no. 74552/01), judgment 5 December 2006, pars 41 and 42, *Op. cit.* footnote 44 (*Balcik and Others v. Turkey*) and ECtHR *Ashughyan v. Armenia* (Application no. 33268/03) judgment of 17 July 2008 par. 90 “Furthermore, any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic, and where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance”

<sup>55</sup> *Op. cit.* footnote 6, par 8.

#### **4.4 Restriction of manner**

42. Article 19 (1) of the draft law prohibits the carrying of items suitable to cause bodily injuries. This is a very vague formulation, since almost any item, depending on how it is used, can cause bodily injury. The prohibition should be limited to the carrying of weapons with the likely intent to be used against people (thus exempting traditional weapons carried for symbolic reasons only). Article 19 (2) again uses the term “intolerance”, which is very vague and should be deleted.

#### **4.5 Restriction on photographing and recording**

43. Even if strictly outside the scope of these Comments, OSCE/ODIHR has been informed of a draft amendments to the Law on Public Peace and Order in Republika Srpska, which proposes punishment for persons who “by unauthorized photographing or recording distracts officials while carrying out their duties” (Article 24 of the draft amendments). This may subsequently restrict the work of the media when reporting on assemblies and monitors and thus impede the public debate,<sup>56</sup> such as human rights activists and civil society overall. The definition of “distract” is most vague and may be abused to introduce more restrictions. Furthermore, the prescribed penalty of up to 60 days is severe. **OSCE/ODIHR recommends adopting legislation which fully respects the rights to report on and monitor assemblies.**

#### **4.6 Termination and dispersal of assemblies**

43. It is generally accepted that dispersal of assemblies should be a measure of last resort, when all other measures are (likely to be) ineffective, as it severely curtails FoPA.<sup>57</sup> Furthermore, dispersal may increase tensions and the risk of escalating the situation. The reasons for dispersing assemblies should be narrowed down to situations when there is a threat to public safety or danger of imminent violence that cannot be contained otherwise. Law enforcement authorities should not disperse assemblies unless they have taken measures to protect the assembly and there is still a risk of imminent violence.<sup>58</sup>
44. Article 23 of the draft law has a list of situations when assemblies can be “discontinued”. The positive element of the Article is that the obligation is clearly placed with the police and not the organisers/stewards who have been assigned duties that are clear state obligations (see section 6 *infra*). However, the draft law also contains a clear expectation that stewards should “uphold peace and order” (Article 23 (6)). Furthermore, the list is quite broad. **Instead of having a list, the draft law should narrow the possibility of dispersal to situations where there is an imminent risk of danger and violence, as not all violations of the law will justify a termination and dispersal.**<sup>59</sup> **The OSCE/ODIHR recommends Article 23 (6) should be deleted.** There could be situations where

<sup>56</sup> *Op. cit.* footnote 6, par 199. See also : <https://www.osce.org/representative-on-freedom-of-media/416381> (OSCE representative on Freedom of the Media and the OSCE Mission in BiH express concern about the draft amendments of the Draft Law on Public Order in Republika Srpska and impact on media and other stakeholders),

<sup>57</sup> *Ibid.* pars 165-166. See also *Op. cit.* footnote 19 (*OSCE/ODIHR-Venice Commission Joint Opinion on the Act on Public Assembly of the Sarajevo Canton*), pars 47 and 51, and *Op. cit.* footnote 42 (*OSCE/ODIHR-Venice Commission Joint Opinion on the Public Assembly Act in Serbia*), par 44.

<sup>58</sup> *Op. cit.* footnote 19 (*OSCE/ODIHR-Venice Commission Joint Opinion on the Act on Public Assembly of the Sarajevo Canton*), par 5, and *Op. cit.* footnote 42 (*OSCE/ODIHR-Venice Commission Joint Opinion on the Public Assembly Act in Serbia*), pars 44 - 45.

<sup>59</sup> *Venice Commission CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation*, par 44

assemblies “aimed at endangering the constitutional order” (Article 23 (1) and when “participants are called on or incited to armed conflict or violence etc. (Article 23 (2) may justify dispersal, but the principle of proportionality applies also in this context and this should be emphasised in the law.<sup>60</sup> **Therefore, it is recommended that a general rule on risk of imminent violence be formulated instead.**

45. The situation described in Article 23 (5) should not justify termination/dispersal as it would limit FoPA disproportionately. It has been commented under section 3.1.1 *supra* that an authorization system, which is de facto installed for the venue itself in this draft law (see section 4.3 *supra*). The ECtHR has ruled that peaceful assemblies that take place without prior notification/authorization should not be stopped, as it is not a necessary restriction in a democratic society.<sup>61</sup> **OSCE/ODIHR recommends Article 23 (6) of the draft law be deleted.**
46. A positive element of Article 24 of the draft law is encouraging peaceful dispersal/termination of the assembly when needed. However, this is a clear responsibility of the police not the organisers as prescribed in Article 24 (2). **There should, however, be a greater emphasis on that such action is the last resort as per the comments on Article 23 of the draft law. The reference to leader of the assembly should be deleted as per section 6 *infra*.**
47. Article 25 (1) authorizes police to impede or break up an assembly that is prohibited or not registered. This goes against international standards: as long as an assembly remains peaceful, law enforcement authorities should facilitate an assembly even if administrative proceedings were not followed. It even goes against the police duty to maintain peace and order, since the breaking up of a peaceful assembly might rather cause disorder and violence than upholding peace and order. Article 25 (3) allows police to take “appropriate measures” to break up the assembly. This unrestricted and vague provision opens the door to excessive use of force by police. All measures – the decision to terminate an assembly, as well as the measures to implement the termination – must respect the principles of necessity and proportionality. Therefore, as a rule, police should not terminate a peaceful assembly and not take any measures to that end. **Article 25 should be deleted.**

## **5. Prohibition on holding assemblies**

48. According to international standards, prohibiting assemblies should be a measure of last resort, i.e. when all other measures to address the problem are clearly ineffective, as this is a serious limitation of FoPA in terms of, procedural matters, content and location.<sup>62</sup> Authorities have other, less intrusive, actions at hand before resorting to prohibition.
49. Article 15 of the draft law contains a long list of situations when organising assemblies can be prohibited by the “competent authority”. Such provisions are problematic as it is the duty of the authorities to facilitate FoPA. In line with the principles of presumption in favour of holding assemblies<sup>63</sup> and proportionality<sup>64</sup>, each assembly should be reviewed on a case-by-case basis to assess the risk of violence.

<sup>60</sup> *Op. cit.* footnote 42 (*OSCE/ODIHR-Venice Commission Joint Opinion on the Public Assembly Act in Serbia*), par 13.

<sup>61</sup> ECtHR *Bukta and others v. Hungary*, Application 25691/04 judgment 17 July 2007, par. 36.

<sup>62</sup> *Op. cit.* footnote 6, pars 40-41, see also for instance: *op. cit.* footnote 47 (*OSCE/ODIHR-Venice Commission (and others) Joint Opinion (CDL-AD(2010)033) on the Law on Peaceful Assemblies of Ukraine*, par 74.

<sup>63</sup> *Op. cit.* footnote 6, par 30, “As a basic and fundamental right, freedom of assembly should be enjoyed without regulation insofar as is possible.

<sup>64</sup> *Op. cit.* footnote 32, (*Rassemblement Jurassien Unité Jurassienne v. Switzerland* (Application no. 8191/78, decision of 10 October 1979), par 119.

50. Some of the situations listed, such as Article 15 (1) 1), 2), 5) and partially 6), of the draft law, may give the authorities justified reasons for concern. However, the principles of necessity and proportionality on restrictions continues to apply even in such situations, also when “national security”- issues may be relevant<sup>65</sup> and authorities are obliged to take all available measures allowing to solve the related problems without pronouncing a prohibition of an assembly. **Hence, it is recommended to revise the said provisions accordingly, and not install an outright ban on such assemblies** (See also section 4.1 *supra* on content).
51. Article 15 (1) paras. 3) and 4) of the draft law are overly restrictive as the provisions: Par. 3 establishes an outright ban on assemblies not following strict bureaucratic procedures. It has already been explained above that absolute deadlines for notification (section 3.1.1 *supra*) should not be established as they render the holding of assemblies more difficult, and consequently present undue and excessive restrictions on FoPA.<sup>66</sup> Blanket bans on venues should also not be established as these violate the principle of “sight and sound”, that is, that the assembly should be able to reach its target audience,<sup>67</sup> (see also section 4.3 *supra*). Furthermore, not notifying of an assembly should not lead to automatically rendering this assembly an unlawful one with the possibility to “discontinue” it. The purpose of notification should only be to provide for better facilitation, and should never serve as a pre-requisite for assessing the legality of an assembly. Therefore, the approach proposed by Article 15. paras 3) and 4) of the draft law is clearly not compatible with the principles of presumption in favour of holding assemblies and proportionality.<sup>68</sup> **OSCE/ODIHR recommends these provisions be deleted.**
52. Article 14 (1) and Article 15 (1) 7) of the draft law draw the consequences of the excessive responsibility put on organisers to maintain peace and order (Article 11 (1) para.7, as well as Articles 17 and 18). As already stated (par. 26 *supra*), the maintenance of peace and order is the responsibility of the law enforcement authorities and not of the organisers. Article 14 (1), (2) of the draft law reverses the obligation of the State to provide for FoPA and places the burden on the organiser by providing information in the request and to ensure security. Furthermore, when an assembly has been notified, it should be the obligation of the state, not the assembly organisers, to assess the situation on a case-by-case basis, and facilitate for an assembly to take place (see section 3 *supra*). The obligation to facilitate assemblies also applies in situations when there are conflicting interests between private individuals, such as participants in two different assemblies.<sup>69</sup> Article 14 of the draft law also functions as a means to possibly prohibit assemblies as stipulated in Article 15 (1) 7. However, the absence of measures taken by the organisers, when they fall under the exclusive responsibility of the state, may not justify the prohibition of an assembly,<sup>70</sup> (see also section 6 *infra*). **OSCE/ODIHR recommends Articles 14 and 15 (1) 7 (as well as Articles 17 and 18) be deleted.**

<sup>65</sup> OSCE/ODIHR-Venice Commission Joint Opinion (CDL-AD(2011)031) on the Law on Peaceful Assemblies in Ukraine, par 38, available here: [http://www.legislationline.org/download/action/download/id/3547/file/Ukraine\\_Joint\\_ODIHR\\_VC\\_Opinion\\_on\\_draft\\_law\\_on\\_freedom\\_of\\_peaceful\\_assembly\\_of\\_Ukraine\\_17%20Oct%202011\\_en.pdf](http://www.legislationline.org/download/action/download/id/3547/file/Ukraine_Joint_ODIHR_VC_Opinion_on_draft_law_on_freedom_of_peaceful_assembly_of_Ukraine_17%20Oct%202011_en.pdf)

<sup>66</sup> *Op. cit.* footnote 32

<sup>67</sup> *Op. cit.* footnote 6, section A, par 3.5.

<sup>68</sup> *Ibid.*, par 30

<sup>69</sup> *Op. cit.* footnote 21, par. 32 and *Promo Lex and Others v Moldova* (app no 42757/09) judgment 24 Feb 2015, par 22: “A demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be.”

<sup>70</sup> *Ibid.*, pars 31-34, and *Op. cit.* footnote 21, par. 32, and *Op. cit.* footnote 44 (*Balcik and Others v. Turkey*) par. 49. See further: CoE, Committee of Ministers The European Code on Police Ethics Standards, p. 20 and 36, available here: <https://www.dcaf.ch/sites/default/files/publications/documents/CoE.pdf>

## 6. Obligations for the organiser

### 6.1 Structure of the organiser

53. Article 20 of the draft law implies that there must be a clearly defined organiser behind the assembly. It may be an advantage that, for planning purposes, this is known. However, the formulation as an obligatory pre-requirement as in the current draft law would mean an excessive restriction on FoPA, as spontaneous assemblies and/or assemblies organised online or without a clear structure would not be lawful. This is contrary to the principle that FoPA should not be interpreted restrictively and the right should be “practical and effective” and “not theoretical and illusory”.<sup>71</sup> **OSCE/ODIHR recommends deleting Article 20 of the draft law.**

### 6.2 Obligation to maintain order

54. The responsibility to maintain law and order lies with the authorities.<sup>72</sup> Article 17 however, places this responsibility on the organisers which is contrary to international human rights law and standards. Furthermore, preventing participants from carrying weapons and from causing damage, ensuring a safe passage for police, ambulance and fire brigade vehicles (Article 18) are a clear police responsibility. In a similar vein, Article 21 (1)-(5) of the draft law places considerable responsibility on the organiser to maintain order, including protecting participants (Article 21 (1) and property Article 21 (2)). Screening participants and removing persons from the assemblies are clear police duties (Article 21 (5)). These Articles are clearly incompatible with the principle that it is the responsibility of the authorities to facilitate for FoPA (see section 1 *supra*). **Consequently, it is recommended that Articles 17 and 18 as well as Article 21 (1)-(5) be deleted.** The primary purpose of stewards is to guide assembly participants to find their place in the assembly and assist in facilitating the assembly.<sup>73</sup>
55. The work of stewards should be entirely voluntary and not lead to strict legal obligations for them.<sup>74</sup> This provision also, seems to apply to all kinds of assemblies, which is not feasible. Stewards may be very useful for instance if a very large assembly has been notified. Furthermore, stewards may serve an important role and can co-operate with authorities on providing information and notify of escalating situations,<sup>75</sup> as indicated in Article 21 (3) and 4) of the draft law (i.e. notify of persons with weapons). However, the obligations such as to protect participants (Article 21 (2) of the draft law and “remove” (Article 21 (5) 4) and “hand over persons” (Article 21 (5) 5) are clearly core state obligations<sup>76</sup>, as indicated in section 3 *supra*. **Consequently, OSCE/ODIHR recommends rewriting Article 21 of the draft law, to ensure that the role of stewards is clearly distinct from law enforcement officials and emphasises the core state obligation to uphold law and order**

<sup>71</sup> *Op. cit.* footnote 48 (*OSCE/ODIHR-Venice Commission Interim Joint Opinion on the Law on Assemblies of the Republic of Armenia*), par 40 and *Op. cit.* footnote 19 (*OSCE/ODIHR-Venice Commission Joint Opinion (CDL-AD(2010)016) on the Act on Public Assembly of the Sarajevo Canton*), par 10 (exact quote from latter source only).

<sup>72</sup> *Op. cit.* footnote 6, par 31

<sup>73</sup> *Ibid.*, par 191

<sup>74</sup> *Ibid.*, par 192.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

**as the responsibility of the authorities, including by clarifying the stewarding of assemblies as a voluntary measure only.**

56. Article 22 of the draft law makes it mandatory for steward to wear “fluorescent vests” which are classified as a uniform in the Article’s headline. While it is generally recommended that stewards are identifiable by their clothing, arm band or similar objects<sup>77</sup>, this should not be formulated as an obligation nor should the type of clothing be prescribed in law.

### **6.3 Responsibility for damage**

57. Article 7 of the draft law places the responsibility for damage inflicted by the participants during the assembly with the organiser. This is problematic as it makes a potential organiser responsible to the actions of all participants. The ECtHR has ruled that an individual is only responsible for his/her own actions.<sup>78</sup> Consequently, the organisers cannot be responsible for actions of individual participants. The provision is clearly contrary to international recommendations, as it could mean a significant obstacle to FoPA as fear of financial responsibility could hold people back from organising assemblies. Organisers should not be responsible for acts of individuals at their assembly as they cannot foresee in detail exactly who will participate, in particular spoilers, and know their intentions. It is the responsibility of the law enforcement forces to uphold law and order during the assembly.<sup>79</sup> Intentional unlawful acts can be punished individually, but would then normally be covered by other laws, as causing intentional damage would be unlawful both during assemblies and at other times.<sup>80</sup> Furthermore, cleaning up after the assembly is also the responsibility of the authorities.<sup>81</sup> **Hence, it is recommended to delete Article 7 of the draft law** (see also section 7 *infra* on penal provisions).

## **7. Penal provisions**

58. Chapter V of the draft law contains many penal provisions aimed at punishing leaders, stewards and other participants in public assemblies. Overall, the level of fines proposed in the draft law remains high as already stipulated in the current Law on Public Assembly.<sup>82</sup> Generally, the provisions are severe and disproportionate for the prescribed infringements of the draft law. Such legal provisions could serve as a means to dissuade people from participating in assemblies and thus a restriction on FoPA.<sup>83</sup> For instance the fines prescribed in Article 35 of the draft law are up to 9,000 BAM, which is about six times the average monthly salary in BiH.<sup>84</sup>
59. Liability should be based on individual culpability and must be supported by compelling evidence. Organisers and stewards are obliged to make reasonable efforts to comply with

<sup>77</sup> *Ibid*, par 194

<sup>78</sup> ECtHR *Ezelin v France* Application 11800/85 judgment 26 April 1991, par. 53: “The Court considers, however, that the freedom to take part in a peaceful assembly in this instance a demonstration that had not been prohibited is of such importance that it cannot be restricted in any way, even for an avocat, so long as the person concerned does not himself commit any reprehensible act on such an occasion”

<sup>79</sup> *Op. cit.* footnote 42 (*OSCE/ODIHR-Venice Commission Joint Opinion on the Public Assembly Act in Serbia*), par 16.

<sup>80</sup> *Op. cit.* footnote 6, par 198

<sup>81</sup> *Op. cit.* footnote 42 (*OSCE/ODIHR-Venice Commission Joint Opinion on the Public Assembly Act in Serbia*), par 27.

<sup>82</sup> Law on Public Assembly (the Republika Srpska Official Gazette, number 111/08), Section V.

<sup>83</sup> See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.34.4 (English translation): “If too great a responsibility before the activity, during it or even after the activity is laid on the organiser of the activity ... then at other time these persons will abstain from using their rights, fearing the potential punishment and additional responsibilities”.

<sup>84</sup> <https://tradingeconomics.com/bosnia-and-herzegovina/wages>

legal requirements and to ensure that their assemblies are peaceful. However, they should not be held liable for the actions and behaviour of others.<sup>85</sup> Liability will only exist where organisers or stewards have personally and intentionally incited to, caused or participated in actual damage or disorder. Individual liability will arise for any steward or participant if he or she intentionally, or with gross negligence, commits an offence during an assembly or intentionally fails to follow the lawful directions of law enforcement officials. As pointed out in par 55 *supra* the work of stewards should be entirely voluntary and not lead to additional legal obligations for them. At the same time, if an assembly degenerates into serious public disorder, it is the responsibility of the State – not the organiser, representative, or event stewards – to limit the damage caused and to protect the assembly (see section 6.3 *supra*). **OSCE/ODIHR recommends that Chapter V of the draft law be deleted in its entirety and that the draft law instead refers to penal provisions in other laws sanctioning individual acts established as an offence.**

## 8. Appeals against decisions

60. Those exercising, or seeking to exercise the right to freedom of peaceful assembly should have recourse to an effective remedy against decisions disproportionately, arbitrarily or illegally restricting or prohibiting assemblies. This includes being able to access independent and impartial administrative and judicial appeals mechanisms. The availability of effective administrative review can both reduce the burden on courts and help build a more constructive relationship between the authorities, the organisers, and the public in general. In administrative and court proceedings, the burden of proof should be on the relevant state authority to prove that the restrictions imposed are justified.<sup>86</sup>
61. OSCE/ODIHR deems it positive that Article 16 of the draft law contains rules for an appeals procedure against decisions regarding Article 15 of the draft law, and also for Article 10 (4). In general the appeals procedure should be a general procedure for any decision rendered according to the provisions of the draft law. Such provisions should entail an effective procedure that can rule timely on relevant issues.<sup>87</sup> While it is positive that the decision on an appeal must be rendered swiftly due to the urgent nature of the matter (Article 16 (4) The concerns regarding absolute deadlines for notification have been raised above (see section 3.1.1. *supra*). Furthermore, the appeals procedures are vague in terms of the actual proceedings and what the appeals authority should consider. There should also be a right for the organisers/relevant participants to be present during such proceedings. **OSCE/ODIHR recommends that the appeals procedure be modified to comply with these recommendations.** Additionally, Article 16 (6) again places excessive burden on the organiser. In case an assembly is definitively prohibited, it is up to the authorities to inform the public accordingly. Furthermore, this may be unrealistic time wise. If the assembly cannot take place, material may be removed, but it may not be realistic to do so immediately

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<sup>85</sup> *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, : A/HRC/31/66, 4 February 2016, para. 26: “While organizers should make reasonable efforts to comply with the law and to encourage peaceful conduct of an assembly, organizers should not be held responsible for the unlawful behaviour of others. To do so would violate the principle of individual liability, weaken trust and cooperation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights.”

<sup>86</sup> OSCE/ODIHR-Venice Commission Joint Opinion (CDL-AD(2010)050) *Opinion on the Draft Law on Peaceful Assemblies in the Kyrgyz Republic*, par 8. Available here: <http://legislationline.org/download/action/download/id/3229/file/Joint%20Opinion%20on%20the%20draft%20Law%20on%20Peaceful%20Assemblies%2022%20Dec%202010.pdf>

<sup>87</sup> *Op. cit.* footnote 42 (OSCE/ODIHR-Venice Commission Joint Opinion on the Public Assembly Act in Serbia), par 51.1

after a decision on the appeal has been rendered. **OSCE/ODIHR recommends that Article 16 (6) be deleted.**

#### **9. Other forms of assembly**

62. Section IV of the draft law concerns other forms of public assemblies. This section seems unnecessary as all “non-income generating assemblies” should be governed by the same legal provisions. **It is recommended to merge the articles in the said section of the draft law in to relevant sections elsewhere (see also section 2.1.1 *supra*).**

#### **10. Final Comments**

63. OSCE commitments require participating States to adopt legislation “as the result of an open process reflecting the will of the people, either directly or through their elected representatives”.<sup>88</sup> As a consequence the draft law should undergo additional extensive consultation processes throughout the further drafting and adoption process, to ensure that human rights organisations, other civil society organisations, and the general public, are fully informed in a timely manner and able to submit their views prior to adoption.

*[END OF TEXT]*

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<sup>88</sup> See par 18.1 of the Moscow Document on the Human Dimension of the CSCE (1991), available at <http://www.osce.org/fr/odihr/elections/14310>

**ANNEX:**

**Draft Law  
On Public Assembly in Republika Srpska**

**Chapter I  
GENERAL PROVISIONS**

Subject of the Law  
Article 1

This Law shall regulate the manner of exercising the right to public assembly of citizens guaranteed by the Constitution, in order to publicly express their political, social and other beliefs and interests, the manner of organizing peaceful assembly and public protests, public events and other public assemblies.

The manner of exercising the right to freedom of public assembly  
Article 2

- (1) Everyone has the right to freedom of public assembly in the manner prescribed by this Law.
- (2) Public assembly is free and shall be exercised in the manner prescribed by this Law.

The term and types of public assembly  
Article 3

- (1) Public assembly of citizens, in the sense of this Law, is every organized assembly of citizens which takes place in the space which is adequate for this purpose.
- (2) Public assembly (hereinafter: public assembly), in the sense of this Law, can be:
  - 1) Peaceful assembly and public protest
  - 2) Public event/performance and
  - 3) Other public assembly.
- (3) Peaceful assembly and public protest from paragraph 2 (1) of this Article is any organised assembly of citizens which takes place in order to publically express any political, social or other beliefs and interests.
- (4) Public event/performance from paragraph 2 (2) of this Article is an assembly organised for the purpose of making an income within a registered business activity, which given the expected number of participants or the nature of the public assembly, calls for additional security measures.
- (5) Other public assembly from paragraph 2 (3) of this article is an assembly with a goal of accomplishing economic, religious, cultural, humanitarian, sports, entertainment and other interests, which has no purpose of making an income.

Adequate space for public assembly  
Article 4

- (1) Space where a public assembly may be organised is a public venue which is accessible and appropriate for gathering of people whose number and identity is not predetermined and where gathering of citizens shall not jeopardise the rights and freedoms of other people, public moral, and public health, safety of people and

property, and public traffic.

(2) Space appropriate for public assembly is also space designated for public traffic when it is possible to arrange for temporary alternation to the traffic regime through some additional measures, as well as protection of health and safety of people and property.

(3) A decision by a competent body of local self-government shall regulate the venue from paragraph (1) of this Article.

(4) Public assembly may take place in the space from paragraph 2 of this article from 8.00 to 14.00 hrs and from 18.00 to 23.00 hrs and may last two hours maximum.

(5) Exceptionally, if a public assembly is of sports nature and is expected to last longer in accordance with accepted standards, a public assembly of sports nature may be held without any time restrictions outlined in paragraph 4 of this Article.

#### Moving public assembly

##### Article 5

(1) Public assembly can be registered to run as a movement of public assembly participants in a certain area (hereinafter: a moving public assembly).

(2) A moving public assembly within the area referred to in Article 4, paragraph (2) of this Law may be carried out only by continuous movement, except at the place of departure and completion.

#### Safety of public assembly

##### Article 6

(1) Some restrictions may be imposed on freedom of assembly by this Law for the protection of the order set by the Constitution, safety and public moral, health of people, property, as well as for the protection of rights and freedoms of others.

(2) Public assembly can neither be organised nor run by a person who was sentenced by a court decision and banned from taking part in public assembly.

(3) Freedom of speech and public expression at a public assembly is restricted by the prohibition of any reference and incitement to the use of violence, national, racial, religious or other hatred or intolerance.

#### Responsibility for damage

##### Article 7

The organiser of public assembly shall be responsible for damage caused by participants of public assembly, in accordance with the Law.

#### Gender equality

##### Article 8

Grammatical terms used in this Law referring to both masculine and feminine gender shall apply to both sexes.

## Chapter II

### PEACEFUL ASSEMBLY AND PUBLIC PROTESTS

#### Organiser of peaceful assembly and public protest

##### Article 9

(1) The organizer of the peaceful assembly and public protest (hereinafter: peaceful assembly) is a legal or natural person (hereinafter: the organizer) who, in accordance with this law, prepares, convenes, organises, monitors, and supervises the holding of the peaceful assembly.

(2) When a peaceful assembly is organized by a group of citizens or by several legal persons, the organizer is obliged to appoint a representative.

The obligation to report a peaceful assembly  
Article 10

(1) The organizer, i.e. their common representative, shall submit a notification for the holding of public assembly.

(2) The notification referred to paragraph (1) of this Article shall be submitted five days before the beginning of the peaceful assembly at the latest.

(3) The notification shall be submitted to the Ministry of Interior – Police Station, i.e. police administration in the territory where the peaceful assembly is intended to take place (hereinafter: the responsible authority).

(4) Exceptionally from paragraph (2) of this Article, for particularly justified reasons, the notification may be submitted no later than 48 hours before the beginning of peaceful assembly, with a justified explanation as to why it cannot be registered within the deadline referred to in paragraph (2) of this Article.

Content of the notification  
Article 11

(1) Notification from Article 10 (1) of this Law shall contain:

- 1) program and objectives of the peaceful assembly,
- 2) information about the venue, date, time and duration of the peaceful assembly,
- 3) name and headquarters of the organiser and personal information of the responsible person, i.e. common representative, if the organiser is several people or a group of citizens, as well as personal data if the organiser is a natural person,
- 4) personal information of the leader of peaceful assembly,
- 5) list of stewards with their personal data,
- 6) estimated number of participants,
- 7) information on the measures taken by the organizer to keep peace and order,
- 8) Other data relevant for safe and secure holding of a public assembly.

(2) Notification on a moving public assembly has to contain a detailed route, the place of departure and the place of finish, as well as the manner of moving (on foot, by vehicles, or combined).

(3) If a peaceful assembly takes place on a road surface, which could halt or disrupt traffic, the organiser is obliged to attach the approval issued by a competent body in accordance with the B&H Law on Traffic Safety and the Republika Srpska Law on Traffic Safety.

(4) When the notification does not contain information or documentation from paragraph (1) and (2) of this Article, the responsible authority shall issue a written warning to the organiser and set a deadline for them to supply the missing documents.

(5) In the circumstances from paragraph 3 of this Article a public assembly shall be deemed duly reported by submitting a full notification.

(6) Any changes to the content of the submitted notification shall be regarded as a new notification.

Exceptions to the obligation to submit notification of peaceful assembly  
Article 12

(1) Exceptionally to the provisions of Article 10 (1) of this Law, for meetings, rallies, roundtables or assemblies of registered political parties, trade unions and other associations or organizations, which are being held indoors, notification may not be

required.

(2) Any assembly from paragraph 1 of this Article, in circumstances where some additional security measures on public roads are required, the organiser i.e. the common representative, shall notify the responsible authority.

(3) In addition to the notification from paragraph 2 of this Article, the organiser i.e. the common representative, in line with Article 11 (3) of this Law, shall also enclose the approval of the competent authority in line with the Republika Srpska Traffic Safety Law.

#### Exceptions

##### Article 13

Peaceful assembly and public protests shall not be held:

- 1) in the vicinity of hospitals, in a way that impedes the access for ambulances and disrupts the peace of patients,
- 2) in the vicinity of kindergartens, primary and secondary schools, while children and pupils are staying there,
- 3) in national parks and protected nature parks, except for peaceful assemblies aimed at promoting and popularizing the protection of nature and environment, as well as marking of significant historical dates,
- 4) near cultural monuments, if this could cause destruction or damage to the protected values,
- 5) on highways, regional and local roads, in a way which may disrupt the flow of traffic,
- 6) in the vicinity of a border crossing
- 7) at a distance of at least 50 meters from the facilities that are specially secured, apart from a moving assembly whose route shall be determined by the competent authority, and
- 8) at other venues if, given the time, number of participants or nature of assembly, it could significantly disrupt movement and work of a number of citizens.

#### Additional security measures

##### Article 14

(1) If security measures devised by the organizer are deemed insufficient by the competent authority, the competent authority shall instruct the organizer in writing to take some additional security measures, within a timeframe not shorter than 24 hrs.

(2) If the organizer does not act accordingly and timely in line with the instructed measures from paragraph 1 of this Article, the competent authority shall proceed in line with provisions of Article 15 (1) ((7)) of this Law.

#### Prohibition on holding peaceful assemblies

##### Article 15

(1) The competent authority shall issue a decision prohibiting holding a peaceful assembly if:

- 1) it aims at endangering the constitutional order,
- 2) it aims to commit criminal offence or incite to criminal offence,
- 3) it is not timely and duly reported to authorities when the reporting is mandatory,
- 4) it is reported and requested to take place where, in accordance with this Law, the public assembly cannot be held,
- 5) the goals are aimed at calling for violence and inciting to violence, violating guaranteed human rights and freedoms, or inciting to national, racial, religious or other hatred or intolerance ,

6) there is a real danger that holding the peaceful assembly would endanger the security of people and property, or that it would create a real danger of violence or disturbance of public peace and order at a larger scale or if it would offend public moral,

7) the competent authorities assess that the organiser failed to take instructed additional security measures, and

8) it is necessary to prevent any damage to public health, at the request of the state administration body in charge of health affairs.

(2) The decision referred to in paragraph (1) of this Article shall be issued 48 hours before the announced start of the peaceful assembly at the latest, or 24 hours before the announced start under the circumstances described in Article 10 (4) of this Law, unless the assembly was not registered and in that case the decision shall be issued immediately.

#### Appeals against decisions

##### Article 16

(1) The organizer or a common representative may appeal against the decision referred to in Article 15 of this Law to the Minister of the Interior (hereinafter: the Minister), through the competent authority from Article 10 (3) of this Law 24 hours at the latest after having received the decision, and exceptionally, in case of circumstances described in Article 10 (4) of this Law within 12 hours after having received the decision.

(2) The competent authority from Article 10, paragraph (3) of this Law, shall immediately forward the appeal and its associated files to the Minister.

(3) The appeal from paragraph (1) of this Article shall not delay the execution of the decision.

(4) The appeal proceedings are urgent, and a decision has to be issued and delivered to the appellant within 24 hours after the submission of an appeal, and exceptionally, in case of circumstances described in Article 10 (4) of this Law within 12 hours after the submission of an appeal.

(5) If the Minister fails to issue a decision within the determined deadline, the peaceful assembly may be held.

(6) The organizer shall inform the public about prohibition of peaceful assembly immediately after receiving the final corresponding decision, and shall remove all publicly displayed information on convening the peaceful assembly.

(7) An administrative dispute before the competent court may be initiated against the decision referred to in paragraph (4) of this Article.

#### Keeping order and peace at a peaceful assembly

##### Article 17

(1) The organizer is obliged to uphold order and peace during a peaceful assembly.

(2) The duty of the organizer is to ensure there is a sufficient number of persons for upholding peace and order (hereinafter: stewards) at a peaceful assembly and to undertake appropriate measures for medical and fire protection.

(3) The organizer can entrust the agency for protection of people and property with the task of keeping peace and order.

(4) The task of keeping peace and order in the area immediately adjacent to the place of holding the peaceful assembly shall be carried out by police officers of the responsible authority.

(5) The responsible authority shall prevent the disturbing of, or averting, a peaceful

assembly taking place in conformity with this Law.

Taking measures and ensuring safe passage

Article 18

- (1) The organizer shall take all necessary measures to ensure that the participants in a peaceful assembly do not carry any weapons and do not inflict damage.
- (2) The organizer shall enable an undisturbed passage for the police, ambulance and fire brigade vehicles.

Prohibition of alcohol and carrying certain items

Article 19

- (1) Participants in the peaceful assembly, as well as people moving towards the venue of peaceful assembly, are prohibited from carrying alcoholic beverages and items suitable to cause bodily injuries.
- (2) Participants in the peaceful assembly shall not wear uniforms, parts of uniforms, clothing or other signs which invite or encourage armed conflicts or the usage of violence, national, racial, religious or other hatred or intolerance.

Leader of the peaceful assembly

Article 20

- (1) The organizer shall appoint the leader of peaceful assembly.
- (2) The leader of the peaceful assembly shall be the person to supervise the holding of the peaceful assembly and direct the work of stewards.
- (3) The leader of the peaceful assembly shall take all necessary measures for upholding peace and order during the peaceful assembly.
- (4) The duty of the leader of the peaceful assembly is to interrupt the peaceful assembly if there is a real and imminent threat to safety of participants, other people and property.
- (5) The leader of peaceful assembly can resume the interrupted peaceful assembly if, in the meantime, all circumstances referred to in the paragraph (4) of this Article have been removed.

Stewards

Article 21

- (1) The organizer shall designate a steward to perform tasks of upholding public peace and order during the peaceful assembly.
- (2) The steward is obliged to protect the participants in the peaceful assembly and the property located in the area where the public assembly is held.
- (3) The duty of the steward is to promptly notify a police officer about participants in the peaceful assembly carrying weapons or items which might cause bodily injuries.
- (4) The steward shall inform a police officer about a person who has violated peace and order.
- (5) While performing his duties from paragraph (1) of this Article the steward is obliged to:
  - 1) Screen persons entering the area where the peaceful assembly is being held,
  - 2) Ban persons from entering the assembly venue if he/she makes an informed assessment that such persons could disrupt peace and order, especially persons who are visibly intoxicated,
  - 3) Direct the movement of participants in peaceful assembly,
  - 4) Remove persons violating peace and order during the peaceful assembly, and

5) Immediately hand over to police officers the persons who seriously disrupt peace and order.

#### Stewards' uniforms

##### Article 22

- (1) While performing his/her duties, the steward shall wear a fluorescent vest with a visible sign "STEWARD".
- (2) The steward shall not carry any weapons or items which might inflict bodily injuries, uniform, parts of uniform, clothing or other signs which invite or encourage armed conflicts or the usage of violence, national, racial, religious or other hatred or intolerance.

#### Termination and dispersal of peaceful assembly

##### Article 23

Police officers of the responsible authority are authorised to impede or terminate the public assembly if:

- (1) it is aimed at endangering the constitutional order,
- (2) participants are called on or incited to armed conflict or violence, violation of guaranteed human rights and freedoms, national, racial, religious or other hatred or intolerance,
- (3) there is a real or imminent threat of violence or other forms of disturbance of public peace and order,
- (4) there is an actual or imminent danger to public health of the participants in the peaceful assembly or other people,
- (5) it is held at a venue that is not stated in the application, and
- (6) the stewards cannot uphold peace and order.

#### Measures aimed at termination of peaceful assembly

##### Article 24

- (1) Police officers of the competent authority shall communicate the order to terminate the peaceful assembly as stipulated in Article 23 of this Law to the leader of peaceful assembly.
- (2) Under circumstances referred to in paragraph (1) of this Article, the leader of peaceful assembly shall ask the participants in the peaceful assembly to disperse peacefully.
- (3) If the leader or participants in the peaceful assembly fail to comply with the order referred to in paragraph (1) of this Article, police officers of the competent authority shall take the necessary measures to disperse the participants in the peaceful assembly and terminate the peaceful assembly.

#### Termination of unregistered or prohibited peaceful assembly

##### Article 25

- (1) Police officers of the competent authority are authorised to impede or break up a peaceful assembly if there is a ban in place on holding the assembly or if it is not duly and timely registered, when it is mandatory to register it.
- (2) Police officers of the competent authority shall issue an order to prohibit and break up the holding of public assembly or of a gathering which was not registered or which is prohibited.
- (3) Police officers of the competent authority shall take appropriate measures to break up the assembly and disperse the participants.
- (4) Participants in the public assembly referred to in paragraph (1) of this Article are

obliged to abide by the warnings or orders of police officers, and disperse from the venue.

### **CHAPTER III PUBLIC EVENTS**

#### Organization of public events

##### Article 26

Public events can be organized in an open space intended or suitable for this purpose, or indoors.

#### Organizer of public event

##### Article 27

- (1) The organizer of a public event is a legal or natural person who, in accordance with this Law, organizes a public event.
- (2) When a public event is organised by a group of citizens or several legal persons, they shall nominate a joint/common representative.

#### Notification of public event

##### Article 28

- (1) The organizer of a public event, i.e. a joint representative, shall submit the notification for holding the public event.
- (2) Public event shall be registered not later than seven days prior to the beginning of the event.
- (3) The notification referred to in the paragraph (1) of this Article shall be submitted to the competent authority referred to in Article 10, paragraph (3) of this Law.
- (4) The notification for holding a public event shall contain:
  - 1) Information on the goal, venue, date and time of holding the public event,
  - 2) Name and seat of the organizer and personal data of a responsible person or a common representative if the organizer represents several legal entities or groups of citizens, as well as the personal data of the organiser if the organizer is a physical entity,
  - 3) Information about the leader of a public event,
  - 4) The list of stewards with their personal data,
  - 5) Information about the measures taken by the organizer in order to maintain peace and order,
  - 6) Estimated number of participants, and
  - 7) Other information relevant for safe and undisturbed holding of a public event.
- (5) The venue for a public assembly, in line with this Article, shall be understood to mean a place where the public event is taking place, as well as the access roads and space (adjacent and wider) in the vicinity of the venue.
- (6) If a public event is held on the road surface, which would consequently cause the traffic delays or congestions, the organizer shall submit the approval of the competent authority in accordance with the BiH Law on Traffic Safety, as well as the Republika Srpska Law on Traffic Safety.

#### Prohibition to sell, pour out and offer alcoholic beverages

##### Article 29

- (1) Prohibition to sell, pour out and offer alcoholic beverages shall remain in effect before, during, and after a sports event.

(2) The organizer of a sports event shall take all necessary measures to enforce the prohibition referred to in paragraph (1) of this Article.

#### Article 30

(1) The competent authority shall prohibit holding a public event by a decision if:

- 1) It is not timely and duly registered,
- 2) The organizer does not implement the measures referred to in Article 14 of this Law,
- 3) It is requested to take place in the space which is unintended or unsuitable for holding public events,
- 4) There is a real danger that holding a public event would endanger the safety of persons and property, significantly violate public peace and order, severely violate public morals or seriously endanger public health and environment, and
- 5) It assesses that there are some other impediments referred to in Article 15 (1) of this Law.

(2) The decision referred to in the paragraph (1) of this Article shall be issued not later than 48 hours prior to the beginning of the public event.

#### Responsibility for damage to facilities or space

##### Article 31

Besides responsibility for damage under article 7 of this Law, the organiser of a public event shall be held responsible for damage inflicted by the participants in the public event to facilities or space under Article 26 of this Law.

#### Application of legal provisions to public events

##### Article 32

Provisions from Articles 14 through 25 of this Law shall be applied to public events.

### **CHAPTER IV OTHER TYPES OF PUBLIC ASSEMBLIES**

#### Notification of holding other public assemblies

##### Article 33

- (1) Other types of public assemblies shall not be registered.
- (2) Notwithstanding paragraph (1) of this Article, the organizer shall also submit notification for other public assemblies if the character or expected number of participants in the public assembly requires undertaking some security measures which fall out of the scope of regular performance of police duties.
- (3) The notification for the public assembly referred to in paragraph (2) of this Article shall contain information from Article 11 of this Law and be submitted not later than five days prior to beginning of the public assembly to the responsible authority.
- (4) Provisions from Article 31 of this Law shall apply to public assemblies from paragraph (2) of this Article.

#### Application of legal provisions to other public assemblies

##### Article 34

Provisions from Articles 14 through 25 of this Law shall be applied to other public assemblies, referred to in Article 33 (2) of this Law.

## **CHAPTER V PENAL PROVISIONS**

### Fines for organisers of public assemblies

#### Article 35

- (1) A fine in the amount from 3,000 BAM to 9,000 BAM shall be imposed to a legal person, the organiser of a public assembly, if:
- 1) he/she fails to prepare, call, organise, hold, monitor and supervise a peaceful assembly (Article 9 (1)),
  - 2) holds a public assembly without notification, if the notification was mandatory (Article 10 (1), Article 28 (1), and Article 33 (2)),
  - 3) holds a public assembly in contravention of the notification regarding the goals, venue, and time of assembly (Article 11 (1), Article 28 (4), and Article 33 (3)),
  - 4) fails to inform the responsible authority that some additional security measures have to be taken on public roads (Article 12 (2)),
  - 5) holds a peaceful assembly in venues where it cannot be held,
  - 6) fails to comply with ordered security measures imposed by the responsible authority (Article 14 (1)),
  - 7) holds the peaceful assembly contrary to a decision of the responsible authority on the prohibition of holding the assembly (Article 15 (1)),
  - 8) fails to inform public about the prohibition of holding the public assembly and fails to remove publically displayed notices on organising the assembly (Article 16, (6) and Article 32 and Article 34),
  - 9) fails to provide peace and order at the public assembly (Article 17,(1), and Article 32 and Article 34),
  - 10) fails to provide a sufficient number of stewards and fails to undertake corresponding measures to ensure medical and fire protection (Article 17, (2) and Article 32 and Article 34),
  - 11) fails to undertake all necessary measures so that participants in the peaceful assembly are unarmed and do not cause any damage (Article 18 (1)),
  - 12) fails to provide for an undisturbed passage of police vehicles, ambulances, and fire brigade vehicles (Article 18, paragraph (2), and Article 32 and Article 34),
  - 13) fails to assign a leader of the public assembly (Article 20 (1), and Article 32 and Article 34),
  - 14) fails to undertake all necessary measures, three hours before and after, as well in the course of an assembly, ensuring the prohibition to sell, pour out and offer alcoholic beverages (Article 29 (2)),
  - 15) holds a public event or another type of assembly contrary to a decision of the responsible authority on the prohibition of holding the assembly (Article 30, (1), and Article 34),
- (2) The responsible person of the legal person, the organiser of the assembly, shall be fined from 1,000 BAM to 1,500 BAM for the offence from paragraph (1) of this Article.
- (3) The natural person, the organiser of the assembly, shall be fined from 1,000 BAM to 1,500 BAM for the offence from paragraph (1) of this Article.

### Fines for leaders of the public assembly

#### Article 36

The leader of the assembly shall be fined from 750 BAM to 1,500 BAM for the misdemeanor offence if he/she:

- 1) fails to take all necessary measures to ensure peace and order at the public assembly (Article 20 (3), and Article 32 and Article 34),
- 2) fails to terminate the public assembly when real and imminent danger occurs threatening

the participants in the assembly and property (Article 20 (4), and Article 32 and Article 34),  
3) resumes the interrupted public assembly without having cleared the real and imminent danger threatening the participants in the assembly and property (Article 20 (5), and Article 32 and Article 34),

4) fails to inform the participants in the public assembly that the assembly has been terminated and that they should disperse (Article 24 (2), and Article 32 and Article 34).

#### Fines for stewards

##### Article 37

A fine in the amount from 500 BAM to 1,500 BAM shall be imposed to a steward at a public assembly if he/she:

- 1) fails to take the measures stipulated by Article 21 (2), (3) and (4), Article 32 and Article 34 of this law,
- 2) acts contrary to Article 21 (5), and Article 33 and Article 35 of this Law,
- 3) fails to wear a fluorescent vest with a visible sign "STEWARD" (Article 22 (1))
- 4) carries any weapons or items which might inflict bodily injuries, uniform, parts of uniform, clothing or other signs which invite or encourage armed conflicts or the usage of violence, national, racial, religious or other hatred or intolerance (Article 22 (2), Article 32 and Article 34).

#### Fines for natural persons

##### Article 38

A fine in the amount from 500 BAM to 1,500 BAM shall be imposed to a natural person if they:

- 1) as participants in the peaceful assembly, as well as people moving towards the venue of peaceful assembly, carry alcoholic beverages and items suitable to cause bodily injuries (Article 19 (1), and Article 32 and Article 34),
- 2) as participants in the peaceful assembly wear uniforms, parts of uniforms, clothing or other signs which invite or encourage armed conflicts or the usage of violence, national, racial, religious or other hatred or intolerance (Article 19 (2), and Article 32 and Article 34),
- 3) as participants in the peaceful assembly, which was banned by a decision of a responsible authority or which was not timely and duly registered, fail to comply with orders of police officers and disperse (Article 25 (3), and Article 32 and Article 34).

#### Pronouncement of protective measures

##### Article 39

(1) A legal person, responsible person in legal or natural entity, organiser of public assembly, leader of public assembly, steward and physical participant in a public assembly may be pronounced with protective measures for misdemeanour offences regulated by this Law – prohibition to organise and attend public assemblies for up to two years.

(2) Protective measure from paragraph (1) of this Article shall be pronounced to a person referred to in paragraph (1) who in the last two years was pronounced with final sentence for a misdemeanour offence prescribed by this Law.

#### Lack of enforcement of protective measures

##### Article 40

A person who committed a misdemeanour offence, but who acts contrary to the pronounced protective measure imposed by the responsible authority for a misdemeanour offence prescribed by this Law shall be fined from 1,000 BAM to 3,000 BAM, or up to 30 days imprisonment.

**CHAPTER VI  
FINAL PROVISIONS**

Cessation of application of the Law

Article 41

When this Law enters into force, the Law on Public Assembly (the Republika Srpska Official Gazette, number 118/08) shall cease to have effect.

Entry into force and the beginning of application of the Law

Article 42

This Law shall enter into force on the eighth day from the date of its publication in the "Official Gazette of the Republika Srpska".

Ref. No: \_\_\_\_\_

Date: \_\_\_\_\_

Speaker of the National Assembly

Nedeljko Čubrilović