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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
(OSCE/ODIHR)

BOSNIA AND HERZEGOVINA

**DRAFT JOINT OPINION
ON THE LEGAL FRAMEWORK
GOVERNING THE FREEDOM OF PEACEFUL ASSEMBLY
IN BOSNIA AND HERZEGOVINA, IN ITS TWO ENTITIES
AND IN BRČKO DISTRICT**

On the basis of comments by

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I. Introduction

1. By letter of 22 May 2019, the Committee on the Honouring of Obligations and Commitments by Member States of the Parliamentary Assembly of the Council of Europe (Monitoring Committee) requested an opinion of the Venice Commission on the legal framework governing freedom of peaceful assembly in Bosnia and Herzegovina, its two entities and in the Brčko district.¹

2. Ms Claire Bazy-Malaurie (member, France), Mr Paolo Carozza (member, United States of America), Mr Nicolae Esanu (substitute member, Moldova) and Mr Jean-Claude Scholsem (substitute member, Belgium) acted as rapporteurs on behalf of the Venice Commission.

3. Mr David Goldberger, Mr Neil Jarman and Ms Milena Costas Trascasas, members of the OSCE/ODIHR Panel of experts on Freedom of Association and Assembly and Marta Achler, senior legal adviser, ECNL and expert on behalf of ODIHR, participated in the assessment on behalf of the OSCE/ODIHR.

4. On 4-5 November 2019, a joint delegation of the Venice Commission and OSCE/ODIHR visited Sarajevo and had meetings with the representatives of:

At the State level:

- Ministry of Human Rights and Refugees;
- Constitutional Court;
- Supreme Court;
- Ombudsman's Office;

At the level of the Federation of Bosnia and Herzegovina:

- Constitutional Court;
- Ministry of Interior,
- House of Representatives of Parliament;

At the level of the Republika Srpska:

- Supreme Court;
- Ministry of Interior;

At the level of the cantons of the Federation of Bosnia and Herzegovina and of Brčko district.

- Ministries of internal affairs.

And representatives of non-governmental organisations.

5. The Commission is grateful to the Bosnia and Herzegovina authorities for the organisation of this visit.

6. This joint opinion was drafted on the basis of comments by the rapporteurs and experts and the results of the visit to Sarajevo. It is based on unofficial English translations on the laws and draft laws examined in the present opinion. Inaccuracies may occur as a result of incorrect translations.

7. This joint opinion was examined by the sub-Commission on fundamental rights at its meeting on (...) and adopted by the Venice Commission at its ... Plenary Session (Venice, ...).

¹ CDL-REF(2019)037 Laws on Public Assembly of the Cantons of the Federation of Bosnia and Herzegovina, of the District of Brčko and the Law on Public Gatherings of the Republika Srpska. CDL-REF(2019)038 Pre-Draft Law on Public Assembly of the Federation of Bosnia and Herzegovina (as it stood in January 2018).

II. Background and Scope of the Opinion

8. By an initial letter of 12 April 2019, the Committee on the Honouring of Obligations and Commitments by Members States of the Council of Europe (Monitoring Committee) requested the opinion of the Venice Commission on the draft law on public gathering of Republika Srpska. However, in the meantime, this draft law was removed from the agenda of the parliament of this entity.

9. By a letter of 22 May 2019, the Monitoring Committee requested the Venice Commission to provide an overall assessment of the legal framework governing the right to freedom of assembly in Bosnia and Herzegovina, in its two entities and in the Brčko district.

10. Currently, legislation related to the right to freedom of assembly in Bosnia and Herzegovina has been enacted at a variety of different level of governance. Republika Srpska entity has a single act covering the entity, while in the Federation entity each of the ten Cantons has its own law. A further law regulates the freedom of peaceful assembly in Brčko district. Therefore, there are twelve separate laws governing the freedom of assembly in Bosnia and Herzegovina.²

11. These numerous pieces of legislation in Bosnia and Herzegovina have been introduced and, in some cases, amended since about 2000. In 2010, the Venice Commission and the OSCE/ODIHR jointly examined the Act on Public Assembly of the Sarajevo Canton.³ It is regrettable that when this Act was amended in April 2011 the recommendations made in this Joint Opinion were not followed; they are therefore still valid in the present context.

12. In a judgment delivered in January 2019 following an application introduced by an association that deals with promotion and protection of human rights of the LGBTI population, the Constitutional Court of Bosnia and Herzegovina found that the competent public authorities did not ensure the protection of the appellant against an attack motivated by homophobic prejudices that occurred during a festival and parade in Sarajevo in February 2014. The Court also found that the authorities failed to meet their positive obligations to conduct an effective investigation into the facts of the incident and in particular into the allegations of omissions by the authorities in securing the festival.

13. In January 2018, the Ministry of Interior of the Federation of Bosnia and Herzegovina prepared a pre-draft law on public assembly. This pre-draft was reviewed by the OSCE/ODIHR following a request from the OSCE Mission in Bosnia and Herzegovina.⁴ During the meetings in Sarajevo, the representatives of the Ministry of Interior of the Federation informed the delegation that the work on the pre-draft law was still ongoing in the ministry and that the text was being improved in the light of results of consultations and taking into account international standards. The Venice Commission and the OSCE/ODIHR welcome this information. In this joint opinion, however, they will review the initial version of the pre-draft law which is at their disposal.

14. During the meetings with the representatives of the Ministry of Interior of Republika Srpska, it was also explained to the delegation that although in their view the draft law of the Republika Srpska (which was the subject of the initial request for opinion of April 2019 of the

² See, for a comparative table prepared by the Secretariat of the Venice Commission: https://www.venice.coe.int/Files/2019_951_BIH_freedom_of_assembly.xlsx

³ CDL-AD(2010)016 Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina), 4 June 2010.

⁴ Opinion-Nr.: FOA-BiH/323/2018 Comments on the Draft Law on Public Assembly in the Federation of Bosnia and Herzegovina, 24 April 2018.

Monitoring Committee) was in line with international standards, the Ministry had decided to withdraw it and wait for a better political opportunity to introduce new legislation in this field. The decision was taken in view of the negative public perception and lack of public support to the draft resulting from consultations.

15. Despite this diversity of legislation, all twelve pieces of legislation currently in force in Bosnia and Herzegovina in the field of freedom of assembly appear to follow a similar pattern with relatively minor differences. Consequently, the present opinion will group together similar provisions from different laws under appropriate topic headings. It should be noted that although the laws contain similar problems, they do not have identical language or provisions and therefore the headings may not represent perfectly the provisions they address. In addition, because of the large number of laws to be assessed in the present joint opinion, if a law from a particular canton, entity or district is not cited in the relevant text, this does not automatically mean that the law is compliant with relevant international standards in its current state.

16. Although the request from the Monitoring Committee concerns the legal framework governing the right to freedom of assembly in Bosnia and Herzegovina and therefore covers the legislation in force, the Venice Commission and the OSCE/ODIHR will also take into account in the present joint opinion the text of the draft law of the Federation which is available to them (but which is being currently amended by the ministry) and the draft law on Public Assembly of Republika Srpska, although it has been withdrawn from the agenda of the entity parliament.

III. International Standards

17. The right to freedom of peaceful assembly protects the many ways in which people gather together in public and in private. It has been recognised as one of the foundations of a democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs can interact peacefully with one another. The right to freedom of peaceful assembly can thus help give voice to minority opinion and bring visibility to marginalised groups. Effective protection of the right to freedom of peaceful assembly can also help foster a culture of open democracy, enable non-violent participation in public affairs, and invigorate dialogue on issues of public interest. Public assemblies can help ensure the accountability of corporate entities, public bodies and government officials and thus promote good governance in accordance with the rule of law.

18. The right to freedom of peaceful assembly complements and intersects with other civil and political rights: the right to freedom of expression (art. 10 ECHR and Art. 19(2 ad 3) ICCPR), the right to freedom of association (Art. 11 ECHR and Art. 22 ICCPR), the right to participate in public affairs (Art. 25a) ICCPR) and the right to vote (Art. 3 of protocol No. 1 ECHR and Art. 25b) ICCPR). Moreover, the right to freedom of assembly may overlap with the right to manifest one's religion or belief in community with others.⁵ Recognising the interrelation and interdependence of these different rights is vital to ensuring that the right to freedom of peaceful assembly is afforded practical and effective protection.

19. At the European and international level, freedom of assembly is guaranteed by Article 11 of the European Convention on Human Rights (ECHR) and Article 21 of the International Covenant in Civil and Political Rights (ICCPR), together with the corresponding case law.

20. As the European Court of Human Rights has reiterated in the *Barankevich v. Russia* judgment, "*the right of peaceful assembly enshrined in Article 11 is a fundamental right in a democratic society and, like the right to freedom of thought, conscience and religion, one of*

⁵ See, *Barankevich v. Russia*, No. 10519/03, 26 July 2007, para. 24.

*the foundations of such a society (...). As has been stated many times in the Court's judgments, not only is democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only one compatible with it. By virtue of the wording of the second paragraph of Article 11 (...), the only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that may claim to spring from a "democratic society" (...). The right to freedom of assembly covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions; in addition, it can be exercised by individuals participants of the assembly and by those organising it (...). States must refrain from applying arbitrary measures capable of interfering with the right to assemble peacefully. (...)"*⁶

21. The OSCE/ODIHR and the Venice Commission have developed the 2019 Guidelines on Freedom of Peaceful Assembly⁷ which reflect the ECtHR case-law as well as the practice in other democratic countries adhering to the rule of law. These guidelines provide useful guidance for implementing national legislation on freedom of peaceful assembly in accordance with international standards and in particular Article 11 ECHR.

IV. Legal context and legislative competence

22. The right to freedom of assembly is guaranteed under Article II (3)i of the Constitution of Bosnia and Herzegovina (Dayton Constitution)⁸, Article 2 Chapter II (I) of the Constitution of Federation of Bosnia and Herzegovina⁹ and Article 30 of the Constitution of Republika Srpska.¹⁰

23. According to Article III (3)a of the Dayton Constitution "*All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.*" Article III (1) regulating the exclusive competence of Bosnia and Herzegovina institutions does not include any provision pertaining to the regulation of freedom of assembly. On the other hand, paragraph 2 of the same provision (Responsibilities of the Entities) provides that: "*the Entities shall provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognised standards and with respect for the internationally recognised human rights and fundamental freedoms referred to in Article II above, and by taking such other measures as appropriate.*"

24. In their 2010 Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina)¹¹, the Venice Commission and the OSCE/ODIHR concluded on the basis of these constitutional provisions that regulating the freedom of peaceful assembly primarily belongs to the Entities.

⁶ See also ECtHR, *Helsinki Committee of Armenia v. Armenia*, No. 59109/08, 31 March 2015, para. 45; *Nosov and others v. Russia*, No. 9117/04, 10441/04, 20 February 2014, para 55; *Djavit An v. Turkey*, No. 20652/92, para. 56; *Christian Democratic People's Party v. Moldova*, No. 28793/02, paras. 62 and 63.

⁷ CDL-AD(2019)017 Guidelines on Freedom of Peaceful Assembly (3rd edition).

⁸ "All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred in paragraph 2 above, these include: i) Freedom of peaceful assembly and freedom of association with others."

⁹ "The Federation will ensure the application of the highest level of internationally recognised rights and freedoms provided in the documents listed in the Annex to the Constitution. In particular: (...) freedom of assembly (...).

¹⁰ "Citizens shall have the right to peaceful assembly and public protest. The freedom of assembly may be restricted by law but only where this is necessary to protect the safety of people or property."

¹¹ CDL-AD(2010)016 Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina), para. 18.

25. As for the division of competences between the Federation of Bosnia and Herzegovina and Cantons, the 2010 Joint Opinion, considering that according to Article 2 of Chapter III of the Constitution of the Federation of Bosnia and Herzegovina “*guaranteeing and enforcing human rights*” is a joint responsibility of the Federation and the Cantons, also found that “*arguably, legislating on public assemblies falls within such joint responsibilities*”¹². It added that the provision in Article 4 a) which attributes “establishing and controlling police forces to the exclusive competence of the Cantons” does not alter this conclusion, as the legislation on public assemblies does not pertain to establishing or controlling police forces but the powers and responsibilities of these forces.¹³

26. The Explanatory Memorandum attached to the pre-draft of the Federation of Bosnia and Herzegovina explains that the Federation is tasked with ensuring the application of the highest level of internationally recognised rights and freedoms and that all persons in the territory of the Federation enjoy the rights and basic freedoms including the right to freedom of assembly. The Explanatory Memorandum also explains that the Federal Government and Cantons are responsible for guaranteeing and enforcing human rights, including the freedom of assembly which must be ensured as binding in the territory of the Federation and that the federal authorities, in the preparation of the pre-draft have taken into account cantonal competencies, different situations in individual cantons and the need for flexible implementation. The Explanatory Memorandum states that the Federal Government has the right to establish policies and enact laws to guarantee and implement human rights. “

27. Concerning the consultation process conducted during the drafting process, the Explanatory Memorandum states that in accordance with the Decree on Rules for Participation of Interested Stakeholders in the Process of Preparation of Federal Legislation and Other Acts¹⁴ the Federal Ministry of Interior consulted, among other stakeholders, also the Cantonal Ministries of Interior. During the consultation process, however, a few cantons, namely the Cantons of Herzeg-Bosnia, Herzegovina Neretva and West Herzegovina claimed that regulating the right to freedom of assembly is exclusively within the competence of the cantons and that they do not consent that the said law be adopted by the Parliament of the Federation of Bosnia and Herzegovina. The Explanatory Memorandum states in this respect that “*after examining the content of the pre-draft law on public assembly, it can be clearly established that there is no transfer of jurisdiction relating to public assembly from the cantonal ministries to any federal administrative body, but that those activities remain within the jurisdiction of the cantonal ministries of interior (...). Therefore, “this Law, in the unique way, regulates the freedom of assembly (...) in the territory of the Federation, ensuring the highest level of internationally recognised citizens’ rights (...) which is the obligation of the Federation of Bosnia and Herzegovina.”*

28. Also during the meetings in Sarajevo, in particular during the meeting with the representatives of cantonal ministries of Interior, some interlocutors claimed that adopting legislation in the field of freedom of assembly is within the exclusive competence of the cantons and that the Federation Parliament does not have the power to adopt legislation in the field of freedom of assembly under the Constitution of the Federation.

29. The Venice Commission and the OSCE/ODIHR reiterate their findings in the 2010 Joint Opinion that in the context of joint responsibilities of the Federation and the cantons under Article III(3) of the Constitution which cover “*guaranteeing and enforcing human rights*”, the federal and cantonal powers “*may be exercised jointly or separately, or by the Cantons as coordinated by the Federal Government*”. Further, according to the same constitutional provision, “*in exercising these responsibilities (...) the Federation shall act with respect for Cantonal prerogatives, the*

¹² *Ibid.*, para. 19.

¹³ *Ibid.*

¹⁴ Official Gazette of the Federation No. 51/12.

diverse situations of the Cantons and the need for flexibility in implementation when enacting laws and regulations binding throughout the Federation.”

30. In the end, it is the duty of the Constitutional Court of the Federation of Bosnia and Herzegovina whose primary function under Article 10 of the Federation Constitution is to resolve disputes between any cantons and between any canton and the Federation Government, to decide on the distribution of legislative competences in this field, on the basis of constitutional provisions. From a more practical point of view, however, and taking into account the assessment of cantonal laws made in the present joint opinion, although there are substantial similarities in the laws of the Cantons, it is evident that the adoption of a law at the Federation level appears to be the most effective way of harmonising the various laws on the right to freedom of assembly in the Federation, leaving to the entities the procedures and administrative requirements, or other details within what could be considered as their margin of appreciation. After a law at the Federation level is adopted, the various cantonal laws would then have to be amended to conform to the Law of the Federation. This would also provide clarity and uniformity in the implementation.¹⁵

V. Analysis

A. Definitions of public assembly

1. Regulation of the right to freedom of assembly

31. In most laws and draft laws under consideration, the specific provisions providing the definition of public assembly are drafted from a perspective of the state's need to "regulate" public assemblies.¹⁶ The use of this wording gives the impression that assemblies are viewed and treated as issues to be regulated and managed, rather than as a right that should be facilitated.¹⁷ The Venice Commission and the OSCE/ODIHR reaffirm that the freedom of peaceful assembly is recognised as a fundamental right in a democratic society and should be enjoyed, as far as possible, without regulation.¹⁸ Moreover, defining an event as an 'assembly' does not, for that reason alone, justify State regulation. Assemblies must only be regulated to the extent that there is a pressing social need to do so within the permissible limits established in Article 11(2) ECHR and Article 21 ICCPR.¹⁹ The provisions of such a law can serve as a guide for sound decision-making by the relevant state authority by establishing clear standards that limit opportunities for arbitrary decisions. Therefore, in any process of reviewing/amending the current legislation or of drafting new legislation, it should be ensured that laws and their implementing legislation

¹⁵ See, FOA-BiH/323/2018 Comments on the Draft Law on Public Assembly in the Federation of Bosnia and Herzegovina, 24 April 2018, para. 17.

¹⁶ For example, Art. 1 of the Una-Sana Canton states that: "*This law shall regulate the manner of exercising and determining limitations of freedom of public assembly (...)*". See Article 1 of the Laws on Public Assembly of Brčko district, of Republika Srpska, Bosnian-Podrinje Canton Goražde Central Bosnia Canton; Herzeg-Bosnia Canton; Sarajevo Canton; Tuzla Canton; Zenica-Doboj Canton and Article 1 of the draft Laws of the Federation of Bosnia and Herzegovina and of Republika Srpska.

¹⁷ See, OSCE/Venice Commission 2019 Guidelines on Freedom of Assembly (3rd edition), para. 31. Some laws, in contrast, take a more positive approach and emphasise the right to peaceful assembly (See, for example, Article 1 of the Law on Public Assembly of Herzegovina-Neretva Canton, Posavina Canton, Western Herzegovina Canton.)

¹⁸ CDL-AD (2019)017, Guidelines on Freedom of Peaceful Assembly (3rd edition), para. 21. However, the measures taken by the authorities and interfering with the right to freedom of assembly should always have a legal basis under domestic law and the law should be accessible to the persons concerned and formulated with sufficient precision (*Vyerentsov v. Ukraine*, Application no. 20372/11, para. 52.)

¹⁹ *Ibid.*, para. 41.

effectively aim at facilitating and ensuring the protection of the right to freedom of assembly, rather than to inhibit the enjoyment of this right.²⁰

2. Types of public assemblies

32. The laws under examination and the draft laws of the Federation of Bosnia and Herzegovina and of Republika Srpska refer to three different types of public assemblies:

- Peaceful gatherings and public protests, defined, for Instance under Article 8(1) of the Law on Public Gatherings of Republika Srpska, as "*every organised gathering of citizens for the purpose of publicly expressing their political, social and other beliefs and interests*";

- Public events, defined, for Instance under Article 23(1) of the same Law, as "*every gathering organised for the purpose of obtaining income within the registered activity (...)*";

- Other public gatherings which include (according to Article 30) "*gathering of citizens for the purpose of realizing state, religious, humanitarian, cultural-artistic, sport and other interests, whose aim is not realizing an income*".

33. This tripartite division is provided in the cantonal laws on public assemblies under examination with very similar definitions²¹, as well as in the Law on Public Assembly of Brčko district²² and the draft Laws of the Republika Srpska²³ and of the Federation of Bosnia and Herzegovina²⁴. In practical terms, the Laws under consideration provide for different administrative requirements such as the deadline or content of prior notification or the responsibility of organisers and different rules as to the grounds for restriction and termination for different categories of assemblies.²⁵

34. In 2019 Guidelines on Freedom of Peaceful Assembly, the peaceful assembly is defined as "*the intentional gathering of a number of individuals in a publicly accessible place for a common expressive purpose*"²⁶ As the Venice Commission and the OSCE/ODIHR considered in their 2010 Joint Opinion on the Act on Public Assembly of Sarajevo Canton, this definition recognises that although particular forms of assembly may raise specific regulatory issues, all types of assembly deserve protection.

35. However, first, the division between the first and the third categories appears to be rather artificial. There is no justification for differential treatment of religious, humanitarian or cultural-artistic assemblies (third category) from political and social assemblies (first category), since the

²⁰ *Ibid.*, para. 94.

²¹ See, Article 2 of the Law on Public Gathering of Una-Sana Canton where public gathering and public protest is defined as "*an organized gathering of citizens held for the purpose of public expressing and promotion of political, social and other beliefs and interests*" (art. 2(3)); public event as "*gathering (...) organized for the purpose of generating a profit (...)*" (art. 2(4)) and other form of gathering defined as "*gathering whose purpose is expressing economic, religious, cultural, humanitarian, sport-related, entertaining and other interests with no aim to generate any profit.*" (art. 2(5)). For similar definitions of each of those types of assemblies, see Articles 8, 25 and 32 of the Law on Public Assembly of Posavina Canton; Articles 8, 29 and 35 of the Law on Public Assembly of Tuzla Canton; Articles 8, 30 and 36 of the Law on Public Assembly of Zenica-Doboj Canton; Articles 8, 24 and 27 of the Law on Public Assembly of Bosnian-Podrinje Canton Gorazde; Article 8, 23 and 30 of the Low on Public Assembly of Western Herzegovina Canton; Articles 8, 25 and 32 of the Act on Public Assembly of Sarajevo Canton.

²² Articles 9, 24 and 31.

²³ Articles 3(3) (4) and (5) of the Draft Law on Public Assembly.

²⁴ Articles 3(1), 37 and 44.

²⁵ Concerning for instance the content of the prior notification, see Articles 10 (peaceful gatherings and public protests) and 25(4) (public events) of the Law on Public Gathering of Republika Srpska.

²⁶ CDL-AD(2019)017, Guidelines on Freedom of Peaceful Assembly (3rd edition), para. 18.

criterion of "common expressive purpose" as provided in the definition given in the 2019 Guidelines, is present in both cases. In particular, the discretion recognised to the authorities, and notably to police authorities, as to how a given assembly should be defined under the terms of the Law, risks resulting in the practice in arbitrary and discriminatory treatment towards some categories of assemblies. Importantly, also, the possibility for the authorities to give differential treatment to assemblies, depending on the "message" of the protest creates the possibility of indirect interference with the content of the message which may only be restricted if there is an "imminent threat of violence". Authorities would have to decide what category the content of the message of the assembly falls into in order to facilitate it. Finally, in practice, some assemblies may be a mixture of various categories and would make it difficult to decide how each should be categorised and by whom.

36. Secondly, taking into account the element of "common expressive purpose" of assemblies, it should be stressed that "gatherings organised for the purpose of obtaining income" (second category) such as football matches or concerts, do not fall within the classical definition of public assemblies. Although these types of events may require in many cases specific security measures, they should be regulated in separate special laws as they are not protected by the right to freedom of assembly and may legitimately be subjected to state regulation. There is no international standard which obliges the national authorities to grant in practice the same protection to all gatherings; moreover, this is hardly possible and will inevitably lead to undue restrictions and conditions on assemblies organised for an expressive purpose.

37. In conclusion, the Venice Commission and the OSCE/ODIHR recommend that the laws and draft laws under consideration provide a single definition of "public assemblies" which would cover all forms of gathering for "non-commercial common expressive purposes". The regulation of income-generating "commercial" gatherings, which do not fall in the scope of the right to freedom of assembly, should be addressed by a separate law. In this respect, the freedom of assembly as basic right in a democratic society should not be mixed with other concepts unrelated to this basic right. It must be underscored that potential new legislation on "public events" must not be used to restrict events covered by the right to freedom of assembly.

B. Prior Notification of Assemblies

38. A prior notification requirement represents an interference with the right to freedom of assembly, and any such requirement should therefore be prescribed by law, necessary and proportionate.²⁷ Moreover, regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly. There may, however, be legitimate reasons for requiring advance notification of certain types of assembly depending on their size, nature and location, as prior notice provides the authorities with sufficient warning of a forthcoming assembly so that they are able to provide the appropriate resources to facilitate it and to better ensure the peaceful nature of an assembly.²⁸ This in turn means that the notification requirements should not be too onerous, bureaucratic or demand unnecessary information from the organisers.

1. Notification/authorisation

39. A few laws under consideration refer to the obligation to "submit an application to hold a peaceful assembly".²⁹ While the draft Law on Public Assembly of the Federation of Bosnia and Herzegovina refers to the obligation "*to announce the public assembly*" in its Article 10, Article 19

²⁷ See, CDL-AD(2019)017, Guidelines on Freedom of Assembly, para. 112.

²⁸ CDL-AD(2019)017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), paras. 112-113.

²⁹ This is the case in Article 10(1) of the Law on Public Assemblies of the Sarajevo Canton; in Article 10(1) of the Law on Public Gatherings of West Herzegovina Canton ("to file an application") and in Article 12(1) of the Law on Public Assembly of Bosnian-Podrinje Canton Gorazde ("to file the application").

of the same draft concerning "public assemblies on the move" speaks of the obligation "to submit a request" for holding a public assembly. Unless this is a translation issue,³⁰ this wording may imply that the organiser of an assembly is required to ask for an advanced *permission/authorisation* to hold an assembly and not simply to provide *notification*. The Venice Commission and the OSCE/ODIHR recall that, although systems of prior authorisation have never been declared by the ECtHR to be incompatible with the Convention, the 2019 Guidelines state that a notification regime is preferable to an authorisation regime because it is less intrusive into the right to freedom of peaceful assembly in view of the proportionality principle.³¹ During the meetings in Sarajevo, all the representatives of the authorities informed the delegation that each of the laws under examination provides for a prior notification and not a request for advance authorisation for holding an assembly and that in the practice, the relevant legislation was always interpreted as requiring a notification and not a request for permission. This explanation is welcomed. However, in view of the principle of legal certainty which implies the requirement of foreseeability of laws and which is a benchmark of the Rule of Law principle³², the provisions concerning the notification requirement should be formulated with sufficient precision and clarity to enable the organisers in particular to regulate their conduct as to the notification requirements in conformity with the laws and to avoid the risk that the notification procedure turns into a *de facto* authorisation procedure. It is therefore recommended that the laws and draft laws under consideration make it clear in their provisions that only a prior notification and not a request for permission is needed.³³ This is even more relevant in view of the potential sanctions that may be imposed on organisers failing to comply with the notification requirement.³⁴

2. Deadline for advance notifications

40. The deadline for advance notification in most of the laws under consideration varies from 5³⁵ to 7³⁶ days before the assembly takes place. This period is 72 hours in the draft Law on Public Assembly of the Federation and 48 hours in the Law on Public Assemblies of the Central Bosnia Canton.³⁷ The laws under consideration also provide for a procedure for late notification (48 hours before the commencement of the assembly) in case there are reasons for failure to submit

³⁰ The majority of the laws under consideration refers to the need to "report a peaceful gathering" (Article 7 of the Law on Public Gathering of Una-Sana Canton) or "to submit a notice" (Article 10 of the Law on Public Assembly of Posavina Canton; Article 10 of the Law on Public Assembly of Tuzla Canton; Article 10 of the Law on Public Assembly of Zenica-Doboj Canton; Article 3 of the Law on Public Assemblies of Central Bosnia Canton; Article 4 of the Law on Public Assembly of Herzegovina-Neretva Canton and Article 11 of the Law on Public Assembly of Brčko District).

³¹ CDL-AD(2019)017 Guidelines on Freedom of Peaceful Assembly (3rd Edition), paras. 115.

³² See CDL-AD(2016)007 Rule of Law Check List, paras. 58 and 59.

³³ See, also, CDL-AD(2010)016, para. 39. For a similar criticism in the context of the draft Law on Public Assembly of the Federation of Bosnia and Herzegovina, see OSCE/ODIHR, Comment on the Draft Law on Public Assembly in the Federation of Bosnia and Herzegovina (Opinion-Nr.: FOA-BiH/323/2018), para. 26.

³⁴ See for instance Article 31 of the Law on Public Gathering of the Republika Srpska; Article 38 of the Law on Public Assembly of Tuzla Canton; Article 39 of the Law on Public Assembly of Zenica-Doboj Canton.

³⁵ Article 9(2) of the Law on Public Gatherings of Republika Srpska; Article 7(2) of the Law on Public Gathering of Una-Sana Canton; Article 10(2) of the Law on Public Assembly of Posavina Canton; Article 11(2) of the Law on Public Assembly of Brčko district.

³⁶ Article 10(4) of the Law on Public Assembly of Tuzla Canton; Article 10(4) of the Law on Public Assembly of Zenica-Doboj Canton.

³⁷ According to Article 4 of the Law on Public Assembly of Central Bosnia Canton, in case the assembly is organised by a foreign natural or legal person, then the notification period is 5 days prior to the start of the public assembly.

notification before the expiry of the regular deadline.³⁸ As is indicated in the 2019 Guidelines, the required period of notice before an assembly should not be unnecessarily lengthy but should be long enough to provide the relevant State authorities with adequate time to plan and prepare for the event.³⁹ According to the 2019 Guidelines, the notification period should not be normally more than 5 days.⁴⁰ The notification periods in the laws are therefore mostly, but not all, in line with international standards⁴¹ and it is welcomed that Central Bosnian Canton has a 48 hours advance notification. The Venice Commission and the OSCE/ODIHR welcome that according to the information provided in Sarajevo, in case the organisers fail to provide the required information in the initial notification notice, they are required to submit the missing data no later than 48 hours before the planned assembly, without causing any delay to the scheduled timetable of the assembly.

3. Spontaneous assemblies

41. The provisions concerning prior notification are drafted in rather absolute terms and do not explicitly exempt spontaneous assemblies from prior notification requirements. The Venice Commission and the OSCE/ODIHR reiterate that the ability to respond peacefully and immediately (spontaneously) to some occurrence, incident, other assembly, or speech is an essential element of freedom of assembly. Spontaneous assemblies by definition are not notified in advance since they generally arise in response to some occurrence which could not have been reasonably anticipated. Spontaneous and urgent assemblies are protected by Article 11 ECHR.⁴²

42. The laws and draft laws under consideration provide a number of exceptions to the advance notification requirement of assemblies and public protests. Article 13 of the Public Assembly Law of Zenica-Doboj Canton for instance, exempts from notification requirements the regular meetings or seminars organised by associations and political parties and held in closed spaces as well as individual protests.⁴³ Under Article 11 of the draft Law of the Federation of Bosnia and Herzegovina, prior notification is not required for assemblies with less than 20 participants. However, those exceptions are not relevant to spontaneous assemblies which are not recognised as an exception to the notification requirement in the laws under consideration. Moreover, although Article 3(2) of the draft law of the Federation gives an accurate definition of spontaneous assemblies, the reference in this provision to Article 6 concerning the procedure of request for public assembly in the cantons makes the recognition of spontaneous assemblies wholly ineffective and meaningless.

43. It is positive that the Law on Public Assembly of Sarajevo Canton, in its Article 8(2) makes an explicit mention of “spontaneous assemblies”, but Article 12 of the same Law concerning the exception to the notification requirement does not explicitly refer to such assemblies. The same holds true concerning the draft Law on Public Assembly of the Federation, which, although it recognises in principle spontaneous assemblies in its Article 3(2), its Article 19 on the notification does not provide for spontaneous assemblies an exception to notification requirements.

³⁸ Article 11(3) of the Law on Public Assembly of Brčko district; Article 9(4) of the Law on Public Gatherings of Republika Srpska; Article 7(4) of the Law on Public Assembly of Una-Sana Canton; Article 10(5) of the Law on Public Assembly of Tuzla Canton.

³⁹ CDL-AD(2019)017, para. 120.

⁴⁰ *Ibid.*

⁴¹ Under Article 10(4) of the Law on Public Assembly of Tuzla Canton and Article 10(4) of the Law on Public Assembly of Zenica-Doboj Canton, the notice shall be submitted not later than seven days before the start of the assembly.

⁴² See, for instance, ECtHR, *Lashmankin and others vs. Russia*, no. 57818/09, 7 February 2017.

⁴³ See also, Article 12 of the Law on Public Assembly of Posavina Canton.

44. Moreover, although some of the laws under consideration make exceptions for spontaneous assemblies⁴⁴, they state that such assemblies may only be held in specific locations that are designated by the authorities and therefore provide only for a truncated protection for spontaneous assemblies which is at odds with international standards.

45. In conclusion, it is recommended to recognise “spontaneous assemblies” explicitly in the laws and to explicitly exempt them from the notification requirement.

4. Content of notification

46. It should be sufficient for the authorities to obtain information from the organisers in the form of notification concerning the programme, the venue, date, time and duration of the public assembly and information on the estimated number of participants and the contact details of the organisers.

47. However, the notification requirements as laid down in the laws and draft laws under consideration are not limited to this basic information and the organisers have also the obligation to provide information on the “personal data on the leader of the assembly”,⁴⁵ “list of stewards with their personal data”,⁴⁶ “the list of monitors with their personal data”,⁴⁷ “list of marshals”⁴⁸ etc. For the Venice Commission and the OSCE/ODIHR, these requirements are excessive and burdensome as they are not justified by the essential necessity to enable the authorities to make the arrangements to facilitate and protect the public assemblies and protests.

48. Moreover, the relevant provisions under consideration also require from the organiser information on the “measures taken by the organiser to keep peace and order”⁴⁹ or on “measures to be taken by the organiser to keep law and order.”⁵⁰ Nevertheless, keeping peace and order during a public assembly is one of the main duties of public authorities including the security forces and not primarily of the organisers.⁵¹ Although it would be reasonable to ask whether

⁴⁴ See, for instance, Article 8(2) of the Law on Public Assembly of Bosnian-Podrinje Canton Goražde; Article 8(2) of the Law on Public Assembly of Posavina Canton; Article 8(2) of the Law on Public Assembly of Tuzla Canton; Article 8(2) of Western Herzegovina Canton; Article 8(2) of the law on Public Assembly of Zenica Dobož Canton.

⁴⁵ Article 11(4) of the draft Law on Public Assembly of the Republika Srpska; see, also, Article 8(1)d of the Law on Public Gathering of Una-Sana Canton and Article 11(1)d of the Law on Public Assembly of Tuzla Canton. The leader, according for instance Article 23(2) of the Law on Public Assembly of Tuzla Canton is “a person who supervises a public assembly and directs the work of monitors.”

⁴⁶ Article 11(5) of the draft Law on Public Assembly of the Republika Srpska; Article 20(1)e of the draft Law on Public Assembly of the Federation of Bosnia and Herzegovina. Steward, according to Article 33 of the draft law of the Federation is a person designated by the organizer to perform tasks of keeping the undisturbed holding of the public assembly.

⁴⁷ Article 10(1)g of the Law on Public Gathering of the Republika Srpska; Article 11(1)e of the Law on Public Assembly of Posavina Canton. The monitor, under for instance Article 21(1) of the Law on Public Assembly of Posavina Canton, is the person appointed by the organizer to maintain public order at the public assembly. Article 15 of the Law on Public Assembly of Una-Sana Canton uses a different terminology (“marshal”) for the person in charge of maintaining public order. The Federation draft law uses the term “steward” for the same person.

⁴⁸ For instance, Article 8(1)e of the Law on Public Gathering of Una-Sana Canton.

⁴⁹ Article 10(1)f of the Law on Public assembly of the Republika Srpska; Article 20(1)f of the draft law on Public Assembly of the Federation of Bosnia and Herzegovina

⁵⁰ Article 8(1)f of the Law on Public Gathering of Una-Sana Canton.

⁵¹ As the 2019 Guidelines on Freedom of Assembly states “[w]hile organisers and stewards may provide assistance, states retain primary responsibility for the protection of public safety and security, have a positive obligation to provide adequately resourced policing arrangements and intervene when necessary. This duty should not be assigned or delegated to the organisers or stewards of an assembly.” (CDL-AD(2019)017, para. 138).

monitors will be present and whether they will wear identifying items⁵², they are not a substitute for law enforcement personnel and are not legally responsible for maintaining security.⁵³ Therefore, this additional information is unnecessary in view of the essential purpose of the notification procedure and should be repealed.

49. The provisions under consideration, in addition to information concerning the security of the assemblies, also require "*other data relevant for safe and secure holding of a public assembly*"⁵⁴ or "*other information of interest for safe and uninterrupted peaceful assembly*."⁵⁵ The Venice Commission and the OSCE/ODIHR reiterate that regulatory requirements, including procedures to inform authorities about an assembly should be clear and simple to follow.⁵⁶ The provisions concerning this additional security information are too vague and leave too much space for arbitrary interpretation in the practice and should be revoked.

50. The description of the purpose or goal of the assembly⁵⁷ should be only a brief statement. Otherwise, there might be a risk that focusing on such information might provide a rationale for discriminatory restrictions or censorship of specific assemblies.

51. Specifically, under Article 20(7) of the draft law of the Federation any modification of the content of the submitted request shall be considered as submission of a new request. This burdensome requirement seems to limit the ability of the organiser to make changes to accommodate requests from authorities and should be repealed.

52. Lastly, requirements that the notification list the items that participants may carry (banners, flags, musical instruments etc.) also place a heavy burden on the right to freedom of assembly⁵⁸ These items are usually carried to enable protected communication and are brought spontaneously by participants. With the exception of information about vehicles and pyrotechnics that might raise safety concerns, police do not need such information to prepare for an assembly.

5. Additional notification/authorisation obligations

53. Apart from the regular notification procedure, the laws under consideration also impose the obligation on the organisers to request "permission" from the competent body in case the assembly should "include a section of a road, due to which traffic needs to be interrupted or disturbed."⁵⁹ As a principle, excessively burdensome and unnecessary additional requirements may discourage potential organisers and could thus undermine freedom of peaceful assembly. The Venice Commission and the OSCE/ODIHR recall that participants in public assemblies have as much a claim to use such sites for a reasonable period as anyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as equally legitimate uses of public

⁵² See, for instance, Article 22 of the Law on Public Assembly of Zenica-Doboj Canton.

⁵³ Problematic provisions in this regard are, for instance, Article 28 of the Law on Public Assembly of Zenica Doboj Canton; Article 19 of the Law on Public Assembly of Sarajevo Canton.

⁵⁴ Article 11(1)8 of the draft Law on Public Assembly of the Republika Srpska.

⁵⁵ Article 11(1)h of the Law on Public Assembly of Posavina Canton.

⁵⁶ CDL-AD(2019)017 Guidelines on Freedom of Assembly, para. 118.

⁵⁷ For instance, Article 11(1)a of the Law on Public Assembly of Sarajevo Canton; Article 8(1)a of the Law on Public Assembly of Una-Sana Canton; Article 11(1)a of the Law on Public Assembly of Posavina Canton ("objectives"); Article 11(1)a of the Law on Public Assembly of Tuzla Canton ("reason and purpose"); Article 11(1)a of the Law on Public Assembly of Zenica-Doboj Canton.

⁵⁸ See, for instance, Article 4 of the Law on Public Assembly of Herzegovina Neretva Canton.

⁵⁹ Article 8(4) of the Law on Public gathering of Una-Sana Canton; Article 11(3) of the Law on Public Assembly of Posavina Canton, Article 11(3) of the Law on Public Assembly of Tuzla Canton, Article 11(3) of the Law on Public Assembly of Zenica-Doboj Canton, Article 14(4) of the Bosnian-Podrinje Canton Gorazde (which use the term "permit"), Article 11(4) of the Law on Public Assemblies of Sarajevo Canton ("permission") and Article 10(3) of the Law on Public Gathering of the Republika Srpska ("approval from the authorized body").

space as the more routine purposes for which public space is used (such as commercial activity or for pedestrian and vehicular traffic).⁶⁰ Therefore, it should be sufficient for the organisers to notify one single authority (not multiple authorities).⁶¹ As the Commission and the OSCE/ODIHR considered in their joint Opinion on the Act on Public Assemblies of the Sarajevo Canton, all decisions concerning assemblies should be left to one competent and experienced authority, which takes into account specific issues such as the obstruction of traffic and can react to them if necessary.⁶² The delegation was informed in Sarajevo that despite a similar provision in the Law on Public Assemblies of the district of Brčko (art. 12(3)), there is a practice in this district of establishing a "single point of contact" between the organisers and the authorities, which is a good and commendable practice for all levels of legislation in Bosnia and Herzegovina.

6. Other exemptions from notification

54. Some of the notification requirements in the laws under consideration contain exceptions based on the identity of the group organising the assembly (political parties and trade unions). In most cases the identity criteria for exemption is complemented with the requirement that the gathering is held indoors (location criteria). This is because the assembly is being held indoors there is no formal requirement to inform the authorities of such gatherings organised by political parties and trade unions.⁶³ However, there appears to be no reason to treat political parties and trade unions differently as the main purpose of advance notification of assemblies is to enable the State to better ensure the peaceful nature of the assembly, including those organised by trade unions and political parties.⁶⁴ Consequently, the exemptions from notification requirement should not be based on the identity of the group organising the assembly.

C. Location of an assembly

55. The location of an assembly is one of the key aspects of the freedom of assembly, together with the choice of the aims pursued and the time of the assembly. As the 2019 Guidelines on Freedom of Assembly indicate, people also have the right in principle to choose the location or route of an assembly in publicly accessible places.⁶⁵ Moreover, given the importance of freedom of assembly in a democratic society, assemblies should be regarded as an equally legitimate use of public space as other, more routine uses of such space, such as commercial activity or pedestrian and vehicular traffic.⁶⁶ Further, the freedom of assembly includes the right of the assembly to take place within "*sight and sound*" of its target object.⁶⁷

56. Already in their 2010 Joint Opinion on the Act on Public Assembly of the Sarajevo Canton, the Venice Commission and the OSCE/ODIHR criticised Article 2(1) of the Act which limited the location of public assemblies to "appropriate places" qualified as "*public location which is accessible and suitable for gathering of persons whose number and identity are not determined in advance, and in which the assembly of citizens does not cause threat to the rights and freedom of other persons, health, safety of persons and property and obstruction of public traffic.*" (Article

⁶⁰ In *Patyi and Others v. Hungary* (2008), paras.42-43, for example, the ECtHR rejected the Hungarian government's arguments relating to potential disruption to traffic and public transport (cf. *Eva Molnar v. Hungary*, 2008).

⁶¹ 2019 Guidelines, para. 118.

⁶² Para. 39.

⁶³ See, for instance, Article 13 of the Law on Public Assembly of Bosnian Podrinje Canton; Article 9 of the Law on Public Assembly of Una-Sana Canton; Article 12(1) of the Law on Public Assembly of Posavina Canton; Article 12 of the Law on Public Assembly of Tuzla Canton; Article 13 of the Law on Public Assembly of Zenica Doboje Canton.

⁶⁴ See, 2019 Guidelines on Freedom of Peaceful Assembly, para. 113.

⁶⁵ *Ibid.*, para. 61.

⁶⁶ *Ibid.*, para. 62.

⁶⁷ CDL-AD(2010)016 Joint Opinion on the Act on Public Assembly of the Sarajevo Canton, para. 31.

3(1)). The 2010 Joint Opinion considered that the terms “accessible” and “suitable” in this provision were vague and the criteria to ascertain their content was subject to discretion. However, the recommendation formulated in the 2010 Joint Opinion that the Act should abandon the specifications of location was not followed by the authorities as the Act still contains such vague criteria concerning the “appropriate locations” for assemblies. In addition, the Venice Commission and the OSCE/ODIHR observe that similar provisions restricting the location of an assembly also exist in other cantonal laws, the Law of Brčko district and the Law of Republika Srpska and the draft laws under consideration.⁶⁸ Indeed, many types of assemblies will naturally cause some form of disruption to public activities and that individuals have a right to use public space to make expressive acts, just as much as they have a right to use them for transportation purposes. Assemblies should not be banned only due to real or perceived danger of, for instance, disruption of public transportation and failure of police authorities to ensure “normal transport”. It should be presumed that open public spaces are considered generally suitable for assemblies, unless restrictions imposed are justified by a legitimate aim and are proportionate. Therefore, the reference to “suitable or appropriate” places in the laws under consideration should be repealed.

57. For the same reasons, the provisions in a number of laws⁶⁹ which require that the government bodies “shall determine the space where all assemblies may be held” are at odds with international standards as they indicate that there is to be a list of government approved forums that assemblies may be forced to use. In some cantons, however, the possibility of the authorities to designate space for assembly is limited to assemblies which do not require any notification.⁷⁰ The situation in these provisions are therefore different, as they do not impose on organisers the obligation to organise assemblies only in particularly designated places but rather provide an exception to the prior notification rule.

58. Further, many laws provide a list of places “where peaceful assemblies” cannot be held. Under Article 15 of the Law on Public Assembly of the Sarajevo Canton, for instance, public assemblies cannot be held “near hospitals, in the way to obstruct the approach of the ambulance and disturb patients” (art. 15(a)) or “near kindergartens, elementary and secondary schools while children are inside.” (art. 15(b)). Similar provisions with similar wording are also provided in the laws and draft laws under consideration.⁷¹ Such provisions may amount to blanket restrictions. While there may be legitimate grounds for concern about the potential disruption at some locations, such risks should always be considered on a case by case basis, rather than through a blanket approach and the authorities should always be expected to consider what steps they may take to facilitate an assembly in such locations while also mitigating any risk, rather than merely prohibiting any assembly in specific locations. In particular, neither the “undisturbed flow of traffic” (see, para. 53 above) nor “undisturbed movement and work of the larger number of

⁶⁸ See, Articles 2 and 3(1) of the Law on Public Assembly of the Republika Srpska; Articles 2(1) and 4(1) of the Law on Public Gathering of Una-Sana Canton; Articles 2(1) and 3(1) of the Law on Public assembly of Posavina Canton; Articles 2 and 3(1) of the Law on Public Assembly of Tuzla Canton; Articles 2 and 3(1) of Zenica Doboje Canton; Articles 2(1) and 3(1) of the Law on Public Assembly of Bosnian-Podrinje Canton; Article 2 of the Law on Public Assembly of Herzegovina-Neretva Canton; Articles 2 and 3(1) of the Law on Public Assembly of Western Herzegovina Canton; Article 7(1) of the Law on Public Assembly of Brčko district and Articles 3(1) and 4(1) of the draft Law on Public Assembly of the Federation of Bosnia and Herzegovina and Articles 3(1) and 4(1) of the draft Law on Public Assembly of Republika Srpska.

⁶⁹ For instance, Article 3 of the Law on Public Assembly of Herzegovina Neretva Canton; Article 7(2) of the Law on Public Assembly of Brčko district; Article 3(3) of the Law on Public Assembly of Western Herzegovina Canton.

⁷⁰ Article 15 of the Law on Public Assembly of Tuzla Canton; Article 17 of the Law on Public Assembly of Zenica-Doboje Canton; Article 3 of the Law on Public Assembly of Herzeg Bosnia Canton.

⁷¹ Article 10 of the Law on Public gathering of Una-Sana Canton; Article 15 of the Law on Public Assembly of Posavina Canton; Article 14(1) of the Law on Public Assembly of Tuzla Canton; Article 16 of the Zenica Doboje Canton; Article 10(1) of Bosnian-Podrinje Canton; Article 14 of Western Herzegovina Canton; Article 14 of the Law on Public Assembly of Brčko district.

citizens⁷² can always be given the preference compared to assemblies. Moreover, the general character of the exclusion of “specially secured buildings”⁷³ is problematic as potentially a very broad number of buildings could be covered by it. A weighing of interests in each specific case is therefore required.

59. A number of laws under consideration refer to processions, or moving assemblies, insisting on the fact that they must involve an uninterrupted movement from start to finish.⁷⁴ This requirement is too restrictive and should be repealed as it may be reasonable for a moving assembly to involve a rally at the beginning or at the end of its route or pause to listen to a speaker somewhere along the route.

60. Lastly, the laws under consideration may also include indoor gatherings.⁷⁵ To the extent that such events are gatherings on private property or in indoor venues, they should not be combined with an assembly law that automatically impose procedural requirements on organisers of assemblies, such as the advance notice. Among other things, they are in private or enclosed spaces that do not automatically present traffic control and crowd control issues, which require advance police preparation. Such language seems to suggest that the definition of public assemblies goes beyond the established locations for assemblies in sites like streets, sidewalks and parks but may also include assemblies organised in buildings (privately or publicly owned). Although gatherings organised in buildings, such as publicly owned auditoriums, stadiums or open areas in public buildings are similarly protected by the rights to freedom of peaceful assembly⁷⁶, the State should not regulate or interfere with private assemblies that take place inside buildings by imposing, for instance, notification or authorisation requirements unless there is a strict necessity to do so for safety/security reasons.

D. Time of an assembly

61. Blanket restrictions on the time when an assembly may take place should not be imposed in law. Certain laws under consideration prohibit assemblies outside the hours provided therein.⁷⁷

⁷² Article 15 (e and f) of the Law on Public Assembly of the Sarajevo Canton; Article 10 (d and g) of the Law on Public Gathering of Una Sana Canton; Article 14 (c and f) of the Law on Public Assembly of Tuzla Canton; Article 16 (c and f) of the Law on Public Assembly of Zenica-Doboj Canton.

⁷³ See, for instance, Article 10(f) of the Law on Public Gathering of Una-Sana Canton; Article 16(g) of the Law on Public Assembly of Zenica Doboj Canton; Article 12(f) of the Law on Public Assembly of Republika Srpska, Article 14(e) of the Law on Public Assembly of Brčko district.

⁷⁴ Article 8(2) of the Law on Public Assembly of Brčko district; Article 4(2) of the Law on Public Assembly of Republika Srpska; Article 4(2) of the Law on Public Assembly of Bosnian-Podrinje Canton Gorazde; Article 4(2) of the Law on Public Assembly of Posavina Canton; Article 4(2) of the Law on Public Assembly of Tuzla Canton; Article 4(2) of the Law on Public Assembly of Zenica Doboj Canton; Article 5(2) of the Law on Public Gathering of Una-Sana Canton.

⁷⁵ See, for instance, Article 11 of the Law on Public Gatherings of the Republika Srpska; Article 2 of the Law on Public Assembly of Zenica Doboj Canton; Article 2(1) of the Bosnian-Podrinje Canton Gorazde; Article 2 of the Law on Public Assembly of Tuzla Canton.

⁷⁶ ECtHR, *Szel v. Hungary* Application No 44357/13, 16 September 2014; *Sergey Kuznetsov v. Russia* (Application No 10877/04, 23 October 2008), *Acik v. Turkey* Application No 31451/03, 13 January 2009; *Cisse v. France* (2002); *Barankevich v. Russia* Application No 10519/03, 26 July 2007, para. 25: “The right to freedom of assembly covers both private meetings and meetings in public thoroughfares (...)”. See also the discussion of ‘quasi-public space’ in the report by the UK Joint Committee on Human Rights, *Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest* (Volume 1) (London: HMSO, HL Paper 47-I; HC 320-I, 23 March 2009), pp.16-17; ‘Public and Private Space’. See further *Southeastern Promotions v. Conrad*, 420 U.S. 546 (1974) (stating that a municipality cannot selectively exclude an organization from the use of a public auditorium based on its objections to the message communicated).

⁷⁷ See, for instance, Article 10(2) of the Law on Public Assembly of the Bosnian-Podrinje Canton Gorazde which prohibits assemblies outside the hours of 8:00 and 20:00; Article 15 of the Law on Public Assembly of Zenica Doboj Canton which states that assemblies shall be held in the period from 8:00 to

Article 12 of the draft law of the Federation even requires the organiser to conclude the assembly within a maximum of 8 hours. As noted in relation to restrictions on location, blanket restrictions are liable to be disproportionate and there may well be occasions when it is important for an assembly to take place at an earlier or later time than those specified in the laws, or that to be able to continue for a longer duration. Therefore, the provisions imposing blanket restrictions on the time when an assembly can take place should be repealed.

E. Restrictions on private persons and entities to participate in and to organise an assembly

62. The laws and draft laws under consideration prohibit individuals and entities from organising or participating in assemblies where they are under court order not to participate in an assembly.⁷⁸ While there may be legitimate grounds for imposing such prohibitions, unless the legislation provides clear grounds and procedures and offers effective legal safeguards to challenge such a ban, it risks violating the right to freedom of assembly.

63. Non-citizen persons and legal entities should have the same rights to organise public assembly as all other persons/nationals.⁷⁹ Therefore, the reference in almost all the laws under review to “citizens” as beneficiaries of the right is in breach of international standards⁸⁰ and of the Constitution of the Federation of Bosnia and Herzegovina which provides in Article 2 of Chapter II that “[a]ll persons within the territory of the Federation shall enjoy the right to [freedom of assembly]. Therefore, in order to be in compliance with international standards and the constitutional provision, the word “citizens” should be replaced by “all persons within the territory”.⁸¹

64. In a number of laws, additional requirements are placed on foreign nationals and organisations to secure a “permit” from an authorised police body before they organise an assembly.⁸² Such requirements are discriminatory and disproportionate and should be repealed, in particular in light of the global nature of many protest actions, often made possible through the use of new technologies. In addition, given that the laws under consideration refer to “citizens” as the only beneficiaries of the right (Articles 1 of the Cantonal Laws), it is somehow incoherent to regulate the right of a foreigner to organise an assembly in which s/he cannot participate.

65. Lastly, the laws of all cantons include citizens as beneficiaries of the right and foreigners, without any reference to “stateless persons”. As the freedom of assembly should be enjoyed by

22:00. In Tuzla Canton, such restriction was introduced by an amendment adopted on 29 September 2015 (New Article 13 a) of the Law on Public Assembly of Tuzla Canton states that “A public assembly may take place in the period from 08:00 a.m. until 10:00 p.m.”)

⁷⁸ For instance, Article 5 of the Law on Public Assemblies of Central Bosnia Canton provides that “*Public assembly shall not be organised by a private person who is, by the court decision, banned from participating at public assemblies or publicly speak at public assemblies (...). A public assembly shall not be organised by a political organisation or association of citizens which work is prohibited. (...).*”

⁷⁹ 2019 Guidelines on Freedom of Peaceful Assembly states that “International human rights law does not link the guarantee of the right to freedom of assembly to citizenship. It is therefore essential that relevant legislation provides freedom of peaceful assembly not only to citizens, but that it also foresees the same right for stateless persons, refugees, foreign nationals, asylum seekers, and migrants.” (with reference to ECtHR, *Cisse v. France*, Application 51346/99, 9 April 2002), para 109.

⁸⁰ Articles 1 of the Laws on Public Assembly of Una-Sana Canton, Posavina Canton, Tuzla Canton, Zenica Doboje Canton, Bosnian-Podrinje Canton Goradže, Herzegovina Neretva Canton, Western Herzegovina Canton, Sarajevo Canton and Herzeg Bosnia Canton.

⁸¹ In the case of Republika Srpska, however, the Constitution itself adopts a restrictive approach as its Article 30 grants the right only to citizens.

⁸² See, Article 18(1) of the Law on Public Assembly of Posavina Canton; Article 12(1) of the Law on Public Assembly of Herzegovina-Neretva Canton; Article 18 of the Law on Public Assembly of Sarajevo Canton.

all persons within the territory, it is recommended to include also a reference to stateless persons as beneficiaries of this right.

F. Responsibility of organisers

66. The “organiser” of an assembly is “any legal or physical entity that (...) prepares, convenes, organises, holds, monitors and supervises the organisation of the peaceful gathering.”⁸³ The laws and draft laws under consideration include a number of provisions which impose a high level of responsibility on the organisers in relation to the conduct of the assembly. For instance, the Law on Public Gathering of Una Sana Canton includes, apart from the duty of notifying the assembly to competent authorities, the following responsibilities for the organiser: - to take measures to keep law and order during a gathering (art. 8(1)f) and art. 13(1)); - to undertake additional security measures (art. 8(2)); - to obtain permission from the competent traffic authority in case the assembly may cause disturbance to the traffic (art. 8(2)); - to inform the public of any decision taken by the authorities concerning the ban of an assembly (art. 12(4)) - to take necessary measures so that the participants are not armed (art. 13(2); - to secure the sufficient number of persons (marshals) for maintaining the laws and order (art. 13(3)); - to undertake appropriate measures of medical and fire protection (art. 13(3)); - to enable unhindered passage of police vehicles, ambulances and fire engines (art. 13(5)); - to maintain the law and order in the area located next to the place of holding the gathering (art. 13(6)); - to appoint the leader (i.e. person who monitors the assembly and directs the work of marshals) of the assembly (art. 14) – to appoint the marshal of the assembly (i.e. the person in charge of maintaining law and order) (art. 15). A similar range of responsibilities is included in other laws and draft laws under consideration.⁸⁴

67. For the Venice Commission and the OSCE/ODIHR, the roles required from organisers, monitors or marshals, in the terms expressed in the laws under review, seem to skew responsibility away from the public authorities and to delegate relevant aspects such as safety and peace to private parties who might not be able to exercise the effective control that police officers are trained to do.

68. The laws and draft laws under review require that organisers and monitors assume some form of police and government duties, including providing for fire and medical services.⁸⁵ Organisers and monitors are private persons exercising basic rights. They are not law enforcement officials and, therefore, cannot and should not be forced by statute to perform law enforcement duties.⁸⁶ Moreover, given the State’s duty to facilitate assemblies, and its general public order mandate, the State authorities may not levy charges on assembly organisers for providing relevant services, including medical services or health and safety provision and, most of all ordinary State obligations such as the provision of fencing and barricades or traffic signs. From this point of view, it is welcome that Article 22 of the draft law of the Federation entrusts the Federal Police and the cantonal ministries with the task of taking all necessary measures in order

⁸³ See, for instance, Article 6(1) of the Law on Public Gathering of Una-Sana Canton.

⁸⁴ Concerning the Law on Public Assembly of Sarajevo Canton, for instance, see Articles 19-23; Articles 10, 11 and 20 of the Law on Public Assembly of Tuzla Canton; Articles 10, 18 and 19 of the Law on Public Assembly of the Republika Srpska.

⁸⁵ See, for instance, Articles 8, 10, 11, 13 and 14 of the Law on Public Assembly of Central Bosnia Canton; Articles 4(c), 8, 9 and 10 of the Law on Public Assembly of Herzegovina Neretva Canton; Articles 16, 17, 20, 21 and 24 of the Law on Public Assembly of Tuzla Canton; Article 19 of the Law on Public Assembly of Sarajevo Canton; Article 19 of the Law on Public Assembly od Posavina Canton; Article 22 of the Law on Public Assembly of Zenica Doboje Canton; Article 17 of the Law on Public Assembly of Brčko district.

⁸⁶ For instance, Article 24 of the Law on Public Assembly of Tuzla Canton provides that the monitor of an assembly shall have the right to conduct search of persons entering the assembly space and remove the person who disrupts public order, which are in fact law enforcement duties. See also, Article 24(4) of the Law on Public Assembly of Zenica-Doboje Canton.

to have the public assembly carried out in accordance with its goal and gives therefore the major responsibility to the law enforcement personnel in case of risks presented by the presence of counter demonstrators and actual sudden disorders of this kind.

69. Further, the laws contain multiple provisions imposing legal requirements on the internal management of assemblies. Examples include the legal requirement that organisers designate leaders, monitors and monitoring supervisors to maintain order.⁸⁷ Internal management of an assembly including designation of monitors is governed by the right to freedom of assembly and should not have detailed rules imposed upon them by law. Although the presence of monitors might be helpful and wise as a form of assistance to the organiser, the participants and organisers of an assembly have even the right to decide not to establish any formal structure for holding the assembly. Designating monitors should therefore not be an obligation but rather a discretionary option for the organisers and participants.

70. The same holds true concerning the legal requirement that the organiser appoints a leader of the assembly and specifies his/her duties.⁸⁸ These provisions are especially problematic in the current context of a growing number of assemblies that do not have specified or elected organisers or leaders.⁸⁹

71. The laws governing the right to freedom of assembly should not make organisers liable for the damage caused by the participants of an assembly. Article 6 of the Law on Public Assembly of Herzeg-Bosnia Canton, for instance, even imposes “strict liability” on organisers for harm done by the participants in an assembly. Article 6 of the Law on Public Assembly of Sarajevo Canton provides that the organiser is responsible for any damage caused by the participants of the public assembly “according to the rules of objective responsibility”.⁹⁰ These forms of vicarious liability raise serious due process problems by authorising punishment of one person for the criminal acts of another. Organizers and stewards usually make reasonable efforts to ensure that their assemblies are peaceful. However, they should not be held liable for the failure to ensure the peaceful character of their assemblies in cases where they are not individually responsible, e.g. where property damage or disorder, or violent acts are caused by assembly participants or onlookers acting independently.⁹¹ Liability for damages should always be personal. The current

⁸⁷ Articles 20 and 21 of the Law on Public Assembly of Posavina Canton; Articles 23 and 24 of the Law on Public Assembly of Tuzla Canton; Articles 25 and 26 of the Law on Public Assembly of Zenica Dobož Canton; Articles 20 and 21 of the Law on Public Assembly of Bosnian Podrinje Canton Goražde; Article 9 of the Law on Public Assembly of Central Bosnia Canton (only the monitor must be designated); Articles 6 and 7 of the Law on Public Assembly of Herzegovina Neretva Canton; Articles 18 and 19 of Western Herzegovina Canton; Articles 20 and 21 of the Law on Public Assembly of Sarajevo Canton; Articles 22 and 23 of Herzeg Bosnia Canton; Articles 20 and 21 of the Law on Public Assembly of Brčko district; Article 18 and 19 of the law on Public Assembly of the Republika Srpska; Articles 32 and 33 of the draft law of the Federation of Bosnia and Herzegovina.

⁸⁸ See, for instance, Article 23 of the Law on Public Assembly of Tuzla Canton; Article 9(2) of the Law on Public Assembly of Herzeg Bosnia Canton.

⁸⁹ Examples are the leaderless Occupy Wall Street protests and the leaderless assemblies currently occurring in Hong Kong.

⁹⁰ Article 6 of the Law on Public Assembly of Posavina Canton speaks of the liability of the organiser in accordance with the provisions of the Law on Obligations; see also, Article 6 of the Law on Public Assembly of Tuzla Canton (“objective responsibility”); Article 6 of the Law on Public Assembly of Zenica-Dobož Canton (“strict liability”); Article 6 of the Law on Public Assembly of the Bosnian-Podrinje Canton Goražde (“strict liability”); Article 6 of the Law on Public Assembly of the Western Herzegovina Canton (“objective responsibility”); Article 22 of the Law on Public Gathering of the Una-Sana Canton (“objective responsibility”).

⁹¹ Joint report of the UN Special Rapporteur (2016), A/HRC/31/66, *op. cit.*, note 52, 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

provisions could unduly inhibit public assembly due to the hesitations and concerns of organisers on whom such responsibilities are imposed.

72. Many of the laws impose a requirement on the organisers to undertake responsibility for cleaning activities and for charges to be imposed if they fail to do so.⁹² Demonstrators have no greater duty to clean up a public site than other citizens using it. Indeed, the cleaning of routine litter is the duty of the authorities.⁹³ The right to engage in a public assembly is a basic human right and should not be burdened with charges more than other activities in a park or street than less protected activities. This requirement should therefore be repealed.

G. Prohibition of an assembly

73. One point of concern across all the laws and draft laws under consideration is the possibility of authorities⁹⁴ to suspend, intervene in, and prohibit assemblies, including peaceful assemblies, which in many cases allow security officers in charge to discretionally decide to stop these assemblies according to vague and uncertain criteria. Most of the laws under consideration regulate “prohibition”⁹⁵ and “suspension”⁹⁶ of assemblies in separate provisions but provide for the same grounds for both measures.⁹⁷ It is more reasonable to regulate both measures, prohibition and suspension, in a single provision. In any case, the following considerations are applicable in both cases.

74. A hypothetical risk, or even a hostile audience is not a good enough reason for dispersal of an assembly neither are individual acts of violence.⁹⁸ Certainly, legitimate reasons might exist for such intervention and dispersal, and police intervention could be necessary in certain events, but the criteria for making such interventions need to be reasonable, foreseeable, and well specified within applicable laws.

75. The laws and draft laws under review include a number of provisions that broadly allow for prohibition and termination of a peaceful assembly including cases that are not limited to incitement of unlawful conduct or creation of a clear and present danger of violence or other comparable unlawful conduct, such as:

organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights.”

⁹² See, for instance, Article 19 and 22 of the Law on Public Assembly of Tuzla Canton which respectively state that the “organiser of the public assembly shall clean the assembly space within 24 hours (...) and that “within 30 days of the entry into force of this Law, the Minister of Interior shall issue a price list for services for events (...)” See, also, Article 19 of the Law on Public Assembly of Central Bosnia Canton (the organiser shall clean the assembly space within 24 hours.)

⁹³ 2019 Guidelines on Freedom of Peaceful Assembly states that “[g]iven the State’s duty to facilitate assemblies, and its general public order mandate, the State authorities may not levy charges on assembly organizers for providing relevant services, including adequate and appropriate policing, medical services or health and safety provision, such as street cleansing. Nor may it make facilitation of an assembly contingent on the payment of any such charges. Imposing such charges on assembly organisers may constitute a disproportionate prior restraint and may dissuade people from holding assemblies.” (para. 89).

⁹⁴ According to laws under consideration, the order on prohibition of an assembly shall be issued by the police station, i.e. the Police Administration (see, for instance, Article 20 of the Law on Public Assembly of Zenica-Doboj Canton; Article 18 of the Law on Public Assembly of Tuzla Canton; Article 16 of the Law on Public Assembly of Posavina Canton (“a competent police station”); Article 11(1) of the Law on Public Gatherings of Una-Sana Canton (“competent police body”).

⁹⁵ Prohibition is imposed before the start of an assembly.

⁹⁶ Dispersal of an ongoing assembly.

⁹⁷ See, for instance, Articles 11 and 16 of the Law on Public Assemblies of Una-Sana Canton; Articles 16 and 23 of the Law on Public Assembly of Posavina Canton; Articles 17 and 26 of the Law on Public Assembly of Tuzla Canton.

⁹⁸ ECtHR, *Ezelin v. France* (1991) and *Ziliberberg v. Moldova* (2004).

- The notice of intention to hold a public event is not submitted duly and in timely manner⁹⁹;
- The organizer has not undertaken additional safety measures in a timely manner¹⁰⁰;
- Monitors fail to maintain public order¹⁰¹;
- Space is not designated or unsuitable for the public event/reported to be held in prohibited locations¹⁰²;
- The assembly is held outside the authorised time frame¹⁰³;
- There is a real risk the public event violates public morality¹⁰⁴;
- The public assembly poses a threat to the Constitutional order¹⁰⁵;
- Compromising the independence or territorial integrity¹⁰⁶;
- It is organized by a political party, association of citizens or an organization prohibited to operate by a court's decision¹⁰⁷;
- It is organized by a private person who is, by a court's decision, banned from visiting specific places or areas and participating at public assemblies for the duration of the measure/ Public speech of a person who is publicly speak by a final court's decision¹⁰⁸;

⁹⁹ Article 13(b) of the Law on Public Assembly of Republika Srpska; Article 11(1)c of the Law on Public Assembly of Una-Sana Canton; Article 16(1)c of the Law on Public Assembly of Posavina Canton; Article 17(1)d of the Law on Public Assembly of Tuzla Canton; Article 19(d) of the Law on Public Assembly of Zenica-Doboj Canton; Article 15(1)c of the Law on Public Gatherings of West Herzegovina Canton; Article 23(1)e of the Law on Public Assembly of Brčko district; Article 28(1)c of the Draft Law of the Federation of Bosnia and Herzegovina.

¹⁰⁰ Article 11(1)g of the Law on Public Assembly of Una-Sana Canton; Article 16(1)g of the Law on Public Assembly of Posavina Canton; Article 17(1)g of the Law on Public Assembly of Tuzla Canton; Article 19(g) of the Law on Public Assembly of Zenica-Doboj Canton; Article 15(1)g of the Law on Public Gatherings of Western Herzegovina Canton; Article 28(1)g of the Draft Law of the Federation of Bosnia and Herzegovina.

¹⁰¹ Article 22(j) of the Law on Public Assembly of Bosnian-Podrinje Canton Goražde; Article 23(1)g of the Law on Public Assembly of Brčko district.

¹⁰² Article 13(c) of the Law on Public Assembly of Republika Srpska; Article 11(1)d of the Law on Public Assembly of Una-Sana Canton; Article 16(1)d of the Law on Public Assembly of Posavina Canton; Article 17(1)c of the Law on Public Assembly of Tuzla Canton; Article 19(c) of the Law on Public Assembly of Zenica-Doboj Canton; Article 22(f) of the Law on Public Assembly of Bosnian-Podrinje Canton Goražde; Article 15(1)d of the Law on Public Gatherings of West Herzegovina Canton; Article 23(1)f of the Law on Public Assembly of Brčko district; Article 28(1)c of the Draft Law of the Federation of Bosnia and Herzegovina.

¹⁰³ Article 22(g) of the Law on Public Assembly of Bosnian-Podrinje Canton Goražde.

¹⁰⁴ Article 22(b) of the Law on Public Assembly of Bosnian-Podrinje Canton Goražde (transgression of public morality); Article 16 of the Law on Public Assembly of Central Bosnia Canton.

¹⁰⁵ Article 13(a) of the Law on Public Assembly of Republika Srpska (threatening the order defined by the Constitution); Article 11(1)a of the Law on Public Assembly of Una-Sana Canton (undermining the constitutional order); Article 22(a) of the Law on Public Assembly of Bosnian-Podrinje Canton Goražde (threatening the constitutional order); Article 16(1) of the Law on Public Assembly of Central Bosnia Canton (destruction of the basis of the democratic organisation (...) or unlawful change of socio-political or socio-economic organisation); Article 16(3) of the Law on Public Assembly of Herzegovina Neretva Canton (threats to the constitutional order); Article 15(1)a of the Law on Public Assembly of Brčko district.

¹⁰⁶ Article 16(3) of the Law on Public Assembly of Central Bosnia Canton.

¹⁰⁷ Article 11(1)i of the Law on Public Assembly of Una-Sana Canton; Article 16(1)i of the Law on Public Assembly of Posavina Canton; Article 17(1)h of the Law on Public Assembly of Tuzla Canton; Article 16(2) of the Law on Public Assembly of Herzegovina Neretva Canton.

¹⁰⁸ Article 11(1)j of the Law on Public Assembly of Una-Sana Canton; Article 17(1) i of the Law on Public Assembly of Tuzla Canton; Article 19(h and i) of the Law on Public Assembly of Zenica-Doboj Canton; Article 16(1) of the Law on Public Assembly of Herzegovina Neretva Canton; Article 15(1)i of the Law on Public Gatherings of West Herzegovina Canton.

- the public event poses a serious threat to health of people and the environment.¹⁰⁹

76. The Venice Commission and the OSCE/ODIHR recall that assemblies are held for a common expressive purpose and thus aim to convey a message. Therefore, restrictions on the visual and audible content of any message should face a high threshold of justification and should only be imposed if there is an imminent threat of violence.¹¹⁰ Article 11 ECHR inherently protects the expressive aspects of freedom of assembly, including speech which is also protected under Article 10 ECHR. In principle, therefore, any restrictions on assemblies should not be based on the content of the message(s) that they seek to communicate. Moreover, criticism of government policies or State officials' actions should never, of itself, constitute a sufficient ground for imposing restrictions on freedom of peaceful assembly. It is therefore "unacceptable from the standpoint of Article 11 ECHR that an interference with the right to freedom of peaceful assembly could be justified simply on the basis of the authorities' own view of the merits of a particular protest."¹¹¹ Similar considerations apply with regard to imparting information or ideas contesting the established order or advocating for a peaceful change of the Constitution or legislation by non-violent means.¹¹² In principle, therefore, any restrictions on assemblies should not be based on the content they wish to communicate and restrictions on content should only occur if there is an imminent risk of violence.

77. Some grounds for prohibition of assemblies provided in the laws under consideration are indeed limited to cases where there is imminent risk of violence or the message conveyed by the assembly constitutes an incitement to violence or to unlawful conduct. For instance, Article 16(1)a of the Law on Public Assembly of Posavina Canton speaks of "*violent* change of constitutional order" as a ground for prohibition of assemblies. Under Article 17(1)a of the Law on Public Assembly of Herzeg-Bosnia Canton, an assembly shall be prohibited if it is aimed at "*violently* threatening the constitutional order." Similarly, under Article 19(e) of the Law on Public Assembly of Zenica Dobož Canton, an assembly shall be prohibited if "it aims to call for and incite *armed conflict* or to use *violence* (...) or national, racial, religious or other *hatred or intolerance*."¹¹³ Indeed, hate speech or incitement to war, violence, religious, national, or ethnic hatred may be legitimate grounds for imposing a content-based restriction/prohibition on assemblies. Nevertheless, there must be an evaluation by the law enforcement authorities in the concrete circumstances of each case on whether the content in question gives reason to believe that there is indeed a risk of imminent violence during the assembly and whether the prohibition of the assembly in question is a proportionate measure.

78. On the other hand, some laws under consideration allow for prohibiting an assembly on the ground that "it poses a threat to constitutional order"¹¹⁴ or that it compromises "the independence

¹⁰⁹ Article 1(f) of the Law on Public Assembly of Republika Srpska; Article 11(1)h of the Law on Public Assembly of Una-Sana Canton; Article 16(1)h of the Law on Public Assembly of Posavina Canton; Article 17(1)f of the Law on Public Assembly of Tuzla Canton; Article 19(f) of the Law on Public Assembly of Zenica-Dobož Canton; Article 22(d) of the Law on Public Assembly of Bosnian-Podrinje Canton Goražde; Article 16(4) of the law on Public Assembly of Herzegovina Neretva Canton; Article 23(1)d of the Law on Public Assembly of Brčko district (real or imminent threat to health); Article 28(1)h of the Draft Law of the Federation of Bosnia and Herzegovina (endangerment of health of people).

¹¹⁰ CDL-AD(2010)020, Joint Guidelines on Freedom of Peaceful Assembly (2nd edition), p. 9.

¹¹¹ ECtHR, Hyde Park and others v. Moldova (no. 3), No. 45095/06, 31 March 2009, para. 26.

¹¹² CDL-AD(2019)017, Joint Guidelines on Freedom of Peaceful Assembly (3rd edition), p. 58.

¹¹³ For other provisions which include the element of "incitement to violence, hatred or armed conflict", see Article 28 (a, b and e) of the draft law of the Federation of Bosnia and Herzegovina (violent endangerment of the constitutional order; incitement to the commission of criminal offences, encouraging armed conflict); Article 13 (a, d and e) of the Law on Public Assembly of the Republika Srpska (violent endangerment of constitutional order; encouraging violence; creating a real danger of violence).

¹¹⁴ See, for instance, Article 15(1)a of the Law on Public Assembly of Brčko district.

of territorial integrity or this activity jeopardises peace and equal international cooperation”¹¹⁵ which are not limited to actual incitement of unlawful conduct. Similarly, prohibiting an assembly that creates a “danger that [the assembly] would pose a threat to safety (...) or would significantly disturb the peace”¹¹⁶ is not limited to incitement of unlawful conduct or causing an imminent danger of violent or other comparable unlawful conduct. Moreover, language used in the assembly laws concerning the prohibition of an assembly where disruption of public order or endangerment of lives and safety of people and property is “reasonably expected”¹¹⁷ or where a ban is considered necessary “to prevent threats to the health of people”¹¹⁸ are far too broad and ambiguous. Referring merely to a hypothetical threat to safety or health should never be enough to justify a prohibition.

79. All the laws and draft laws under consideration contain content restrictions on communications at assemblies that are overly broad and authorise censorship. The Venice Commission and the OSCE/ODIHR reiterate that restrictions on content should only occur if there is an imminent risk of violence or an incitement to violence. Prohibitions against advocacy of (or “activity focused on”) unlawful change of the government structure¹¹⁹ or “compromising the independence or territorial integrity”¹²⁰ without incitement to recourse to violence or violent overthrow of the constitutional order are in breach of the right to freedom of speech and assembly because the prohibition is not limited to advocacy that incites serious unlawful conduct or creates a clear and present danger of serious law violation. Furthermore, the use of formulations such as change of “socio-political or social economic organisation of the Federation” as a ground for prohibition are utterly problematic as they constitute vague and unjustified grounds for restriction.

80. The limitation on “hate speech or incitement to war, violence, religious, national or ethnic hatred and discrimination” which is contained in most of the laws reviewed may be a valid ground to impose content-based restrictions on assemblies provided that the prohibition is a proportionate and necessary measure in the concrete circumstances of each case.

81. Prohibition of an assembly that has been held without proper notification (not duly notified in a timely manner) or that has been held in a different location from that indicated in the notification is not a proportionate measure if the assembly remains peaceful: this prohibition should be repealed¹²¹ The authorities must take reasonable and appropriate measures to facilitate assemblies that are convened at short notice or in response to an urgent and emerging situation (including spontaneous assemblies, flash mobs and non-notified assemblies)¹²² as long as they are peaceful in intent and execution. The ECtHR has stated that “*a decision to disband assemblies solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction of freedom of peaceful assembly.*”¹²³ Dispersal or use of force by law enforcement authorities in the case of non-notified assemblies may cause confusion, lead to violence and would be unjustified. Administrative charges for

¹¹⁵ Article 16(3) of the Law on Public Assembly of Central Bosnia Canton.

¹¹⁶ Article 15(1)e of the Law on Public Assembly of Brčko district.

¹¹⁷ Article 16 of the Law on Public Assembly of Central Bosnia Canton.

¹¹⁸ Article 15(g) of the Law on Public Assembly of Western Herzegovina Canton; Article 15(1)f of the Law on Public Assembly of Brčko district.

¹¹⁹ See, for instance, Article 16 of the Law on Public Assembly of Central Bosnia Canton; Article 11(1)a of the Law on Public Assembly of Una-Sana Canton.

¹²⁰ Article 16 of the Law on Public Assembly of Central Bosnia Canton.

¹²¹ See, for instance, Article 19(d) of the Law on Public Assembly of Zenica-Doboj Canton; Article 15(1)c of the Law on Public Gatherings of West Herzegovina Canton; Article 23(1)e of the Law on Public Assembly of Brčko district; Article 28(1)c of the Draft Law of the Federation of Bosnia and Herzegovina.

¹²² See, Title II.B.3 of the present opinion on spontaneous assemblies.

¹²³ *Bukta and Others v. Hungary* (2007), *op. cit.*, note 46, para.36. See also the subsequent decision of the Hungarian Constitutional Court, *Decision 75/2008, (V.29.) AB*, finding that “[I]t 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.

conducting a peaceful, but unlawful assembly (for lack of notification) can best be imposed after the assembly is over.¹²⁴

82. Similarly, the possibility to prohibit an assembly on the ground that the organiser failed to undertake the additional security measures¹²⁵ or that monitors fail to maintain public order¹²⁶ is not in conformity with international standards and should be repealed. As previously stated, the obligation to ensure public order during an assembly lies with the state authorities and not with the organisers or monitors.

83. Public morals is included in some of the cantonal laws as grounds for restricting public assemblies.¹²⁷ Public morals can be used as a legitimate ground of restriction as long as it follows the line of Article 11(2) ECHR, where it is listed as one of the possible grounds for restricting freedom of assembly as long as it is not used with discriminatory intent and not used as synonymous to the moral views of the holders of political power.¹²⁸

84. Lastly, provisions that permit public officials to delay notifying organisers of an order on prohibition of the assembly until 48 to 24 hours before the scheduled time of the assembly burden the right to freedom of assembly.¹²⁹ If there are convincing grounds that assembly needs to be banned, the authorities should be under the obligation to inform the organisers about the ban as soon as these grounds are identified. It would be an abuse of power if officials wait until shortly before the assembly to announce a prohibition which would limit the opportunities for appeal against the prohibition order and interfere with the preparations of an assembly. In all cases, the authorities should be required to respond to a notice promptly after it is filed. In other words, the laws should place the burden of prompt decision making on officials rather than permitting officials to impose burdens on organisers by delays in informing organisers about the ban or restrictions.

H. Other restrictions

85. In most of the laws under review, participants in public assemblies as well as persons moving towards the location of the assembly are banned from carrying “weapons or objects intended for or suitable for causing injury”.¹³⁰ Such overbroad restrictions may in practice lead to misuses as they can be interpreted to cover the sticks or poles that protest signs are normally attached to (or even to water bottles that can be thrown). These bans also cover expressive symbols such as Sikh kirpans or small daggers that are symbols of religious belief in the form of weapons. According to the 2019 Guidelines, authorities may check whether participants carry weapons only

¹²⁴ See, ECtHR, *Skiba v. Poland* (dec.), no. 10659/03, 7 July 2009.

¹²⁵ Article 11(1)g of the Law on Public Assembly of Una-Sana Canton; Article 16(1)g of the Law on Public Assembly of Posavina Canton; Article 17(1)g of the Law on Public Assembly of Tuzla Canton; Article 19(g) of the Law on Public Assembly of Zenica-Doboj Canton; Article 15(1)g of the Law on Public Gathering of Western Herzegovina Canton; Article 16 of the Law on Public Assembly of Sarajevo Canton; Article 17 of the Law on Public Assembly of Herzeg Bosnia Canton; Article 28(1)g of the Draft Law of the Federation of Bosnia and Herzegovina; Article 15 of the Law on Public Assembly of Republika Srpska.

¹²⁶ Article 22(j) of the Law on Public Assembly of Bosnian-Podrinje Canton Goražde; Article 23(1)g of the Law on Public Assembly of Brčko district.

¹²⁷ Art 16(3) of the Law on Public Assembly of Herzegovina-Neretva Canton; Art 16 of the Law on Public Assembly of Central Bosnia Canton; Art 5 of the Law on Public Assembly of Republika Srpska; Art 5 (1) of the Law on Public Assembly of Bosnian-Podrinje Canton Goražde.

¹²⁸ UNHCR, General Comment No. 34, para. 32. See also, ECtHR, *Norris v. Ireland*, Application No 10581/83, 26 October 1988, paras. 44-46.

¹²⁹ See, for instance, Article 18(2) of the Law on Public Assembly of Tuzla Canton; Article 18 of the Law on Public Assembly of Central Bosnia Canton.

¹³⁰ Article 6 of the Law on Public Assembly of Central Bosnia Canton; Article 14 of the Law on Public Assembly of Herzegovina Neretva Canton; Article 22 of the Law on Public Assembly of Tuzla Canton; Article 19 of the Law on Public Assembly of Brčko district; Article 19 of the Law on Public Assembly of Bosnian-Podrinje Canton Goražde.

when there is sufficient evidence. They may do so based on an individualized suspicion, without treating everyone attending the assembly as suspects, as this might have a chilling effect on those who want to exercise their right to assemble peacefully. A distinction between items that are generally recognized as weapons and objects not normally considered as weapons, but which may in some contexts be used as such must be always made. Therefore, such restrictions should be addressed on a case-by-case basis rather than categorically.¹³¹ They should be limited to non-symbolic weapons including things like items intended for use as weapons.

86. Under Article 31(9) of the draft law of the Federation of Bosnia and Herzegovina participants in a public assembly shall not wear uniforms, parts of uniforms, clothing or other signs which invite or encourage armed conflicts or use of violence, national, racial or other hatred. Indeed, in cases where the wearing of uniforms is understood as an excuse for violence in the concrete circumstances of the case, it may be a legitimate ground for restriction. However, in cases where wearing uniforms is intended to make a statement (for expressive purposes) or if, for instance, the public assembly is organised by groups that commonly wear uniforms, such as veterans, without any intention to justify violence or armed conflict, then the prohibition should not apply.¹³²

I. Appeal

87. A number of laws under review state that appeals against a prohibition order or restriction on an assembly must be filed within 24 hours after the receipt of the order by the organiser.¹³³ This time-limit applies even if the order on prohibition or restriction is issued several weeks before the assembly takes place. This results in limited opportunities for such appeals. Assemblies are planned by unpaid volunteers and their organisation is usually informal and do not operate like associations with professional staff. Therefore, decision making regarding appeals and finding to sources for appeals are often cumbersome tasks and may not happen swiftly. Thus, there should be no specific time limits other than for instance “appeals should be introduced without undue delay”. Consideration needs to be given in the laws under review to ensure that there is sufficient time between the submission of notification, its consideration by the authorities, the announcement of any restrictions and the filing of appeal against those orders.

88. It is positive that some laws, such as Article 19 of the Public Assembly Law of Tuzla Canton, mandate prompt review by the authorities (“shall be expeditious”) – 24 hours, and exceptionally (in cases of late notice) no later than 12 hours from the receipt of the appeal. The laws should also add a provision that if the authorities do not publicly respond to a notification, or do not announce any restrictions within a specified time frame then it should be presumed that the assembly will take place as notified by the organisers.¹³⁴

¹³¹ See, CDL-AD(2019)017, para. 154.

¹³² According to 2019 Guidelines on Freedom of Peaceful Assembly: “Display of symbols such as flags, insignia, and other expressive items is protected communication that is entitled to the same freedom of speech and assembly protections as other forms of communication. Even where the insignia, uniforms, costumes, emblems, music, flags, signs or banners played or displayed during an assembly conjure memories of a painful historical past, this in general should not of itself be a reason to interfere with the right to freedom of peaceful assembly (para. 152 and the ECtHR case-law cited in footnote 306 of the 2019 Guidelines).

¹³³ See, for instance, Article 19(1) of the Law on Public Assembly of Tuzla Canton; Article 17 of the Law on Public Assembly of Sarajevo Canton.

¹³⁴ According to 2019 Guidelines on Freedom of Peaceful Assembly: “[Failure to notify assembly organizers or representatives of restrictions.] In the event of a failure on the part of the authorities to inform organizers about restrictions to an assembly, the organisers should be able to proceed with their activities according to the terms set out in the notice. This also applies to cases where the authorities did not inform organizers or representatives about such restrictions within the timeframe established by law.” (para. 123).

J. Penalty provisions

89. The penalties for violations of the assembly ordinances impose heavy burdens on the right to freedom of assembly.¹³⁵ Provisions aimed at punishing leaders, stewards and other participants in the texts under consideration are severe, likely disproportionate, and in many cases unnecessary. All penalty provisions reviewed impose mandatory minimum fines without regard to the circumstances of each case. For example, Article 20 of the Law on Public Assembly of Central Bosnia Canton imposes a fine of 100 to 600 BAM (equivalent to 50-300 euros) or a prison sentence of up to 30 days for a range of relatively trivial offenses such as holding a public assembly without prior notice.

90. In the laws on public assembly of the Republika Srpska and Zenica-Doboj Canton, for example, fines for an organiser range from 3,000-9,000 BAM (equivalent to 1500-4500 euros) for what are largely failures to comply with administrative procedures, while somewhat lesser fines may be imposed on leaders, monitors or participants / private persons for 'offences' committed at an assembly. Substantial mandatory penalties that may be imposed for failure to submit a notice with the result that a person claimed to be an organizer of a spontaneous assembly may face a significant fine or jail sentence.¹³⁶ This will have the effect of deterring spontaneous assemblies because outspoken participants run the risk of being tagged as leaders by police simply because they are visible than other participants. Finally, the penalty provisions are used to enforce substantive provisions of the assembly laws that risk violating the right of assembly and other basic rights. All these provisions should be reconsidered and substantively amended.

VI. Conclusion

91. The legislation related to the freedom of assembly in Bosnia and Herzegovina has been enacted at different levels of governance. The Republika Srpska entity has a single act covering the entity, while in the Federation entity each of the ten Cantons has its own law. A further law regulates the freedom of peaceful assembly in Brčko district. Therefore, the present joint opinion examined twelve separate laws in addition to the draft law of the Federation of Bosnia and Herzegovina and the draft law of Republika Srpska (withdrawn from the agenda of the entity parliament).

92. Overall, the cantonal laws and the law of Brčko district present significant similarities, even to the point that some cantons seem to have used a model or replicated what was included in the laws of other cantons. The Federation draft law seems to try to incorporate aspects from all other cantons using the structure of the Republika Srpska Law, resulting in a law that in certain aspects can be repetitive and disorganised. Nevertheless, it is evident that the adoption of a law at the level of the Federation which respects the cantonal prerogatives and particularities and promotes flexibility in the implementation appears to be the most appropriate solution for the harmonisation of the legal framework and implementation of the right to freedom of assembly in the Federation.

93. It should also be underlined that in terms of compliance with international standards, the interpretation of the legal provisions and their practical implementation by law enforcement authorities is of great significance. The Venice Commission and the OSCE/ODIHR recall that the

¹³⁵ 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 these persons will abstain in the future from using their rights, fearing the potential punishment and additional responsibilities".

¹³⁶ According to 2019 Guidelines, "Offences such as the failure to provide advance notice of an assembly or the failure to comply with route, time and place restrictions imposed on an assembly should not be punishable with prison sentences, or heavy fines", para. 36.

right to peaceful assembly should not be interpreted restrictively and any restrictions should be construed narrowly, in particular in the conduct and policing of assemblies. This would require appropriate awareness-raising measures and adequate training for the law enforcement authorities. In this respect, the absence of a general legal framework at the level of the Federation may lead to a great fragmentation and confusion when it comes to the interpretation and the implementation of the standards.

94. The Venice Commission and the OSCE/ODIHR reiterate their main recommendations in the 2010 Opinion on the Law on Public Assembly of Sarajevo Canton, which are still valid in the assessment of the current legal framework, that the national legislation governing freedom of assembly should clearly articulate three main principles: - the presumption in favour of holding assemblies; - the state's duty to protect peaceful assembly and – proportionality.

95. The laws and draft laws under consideration lack consistency and cover also gatherings that are not held for a common expressive purpose and that do not for this reason fall within the classical definition of public assemblies. The laws have a regulatory rather than facilitating approach to the freedom of assembly. They heavily burden the organisers, holding them personally liable for breaches of public order during assemblies, financial burdens and impose too broad grounds to restrict, prohibit and terminate peaceful protests. Apart from the cumbersome notification requirements, in particular concerning unnecessarily detailed information required from the organisers in the notification procedure, the blanket restrictions imposed on the location or time of assemblies are particularly problematic as they do not allow the implementing authorities to make a proportionality assessment of the restrictions to their legitimate aim in the concrete circumstances of each case.

96. In conclusion, the following main recommendations are made:

- The laws and draft laws under consideration should provide a single definition of "public assemblies" which would cover all forms of gathering for "non-commercial common expressive purposes". The regulation of income-generating "commercial" gatherings, which do not fall in the scope of the right to freedom of assembly, should be excluded and be addressed in a separate law; Spontaneous assemblies, as a means of immediately responding to some incidents should be explicitly recognised in the laws and a clear exception should be provided for this type of assemblies concerning the notification requirement;
- The requirements as to the content of prior notification of assemblies are excessively detailed and cumbersome. The required information should be limited only to those justified with the essential necessity to enable the authorities to make the arrangements to facilitate and protect the public assemblies and protests; and it should be sufficient for the organisers to notify one single authority (not multiple authorities);
- The responsibility of the organisers should be limited. In particular, the provisions which require the organisers and monitors to assume some form of law enforcement duties, such as ensuring the security, should be reconsidered. The organisers should not be held liable for the damage caused by the participants of an assembly;
- The content-related prohibition grounds which are not limited to actual incitement of unlawful conduct, violence or armed conflict and which interfere with the expressive purpose of assemblies should be excluded; the prohibition of an assembly that has been held without proper notification should be excluded. Blanket restrictions on the location and time of assemblies should be removed;
- The provisions on penalties for violations of the assembly ordinances should be reconsidered and substantively amended.

97. The Venice Commission and the OSCE/ODIHR remain at the disposal of the Parliamentary Assembly and the authorities for further assistance in this matter.

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