



POLICING THE RIGHTS TO FREEDOM OF EXPRESSION, ASSEMBLY AND ASSOCIATION IN BOSNIA AND HERZEGOVINA

*RESOURCE MANUAL FOR
APPLYING HUMAN RIGHTS*

Strengthening justice

Further strengthening the treatment of
detained and sentenced persons in line
with European standards in Bosnia and
Herzegovina

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**POLICING THE RIGHTS TO FREEDOM
OF EXPRESSION, ASSEMBLY
AND ASSOCIATION
IN BOSNIA AND HERZEGOVINA:**

*RESOURCE MANUAL FOR
APPLYING HUMAN RIGHTS*

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All other correspondence concerning this document should be addressed to the Cooperation in Police and Deprivation of Liberty Division, Avenue de l'Europe F-67075 Strasbourg Cedex, France, Tel. +33 (0)3 88 41 20 00, E-mail: Horizontal.Facility@coe.int

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Notes

This material is part of the overall programme of professional skills' development with the emphasis on the human rights module. It is partly based on

- *Guidelines for the treatment of persons deprived of liberty in closed environment*
- resource manual *Human rights of persons deprived of liberty in police custody*

developed earlier within the joint programme between European Union and Council of Europe Horizontal Facility for the Western Balkans and Türkiye.

The languages in which the material is drafted are Bosnian, Serbian and Croatian, in accordance with individual preference of the authors. The script in which contributions were written – Latin and Cyrillic are also individual preference of the authors.

All references to officials or persons deprived of liberty in this material equally apply to women and men.

The definitions used in this material are not only definitions from the pieces of legislation but aware jointly agreed by the authors for the purpose of this material.

For the purpose of this material, operational procedure/protocol means a series of steps undertaken in sequential order with the purpose of responding to a particular situation prone to human rights violations.

The authors would in particular like to thank international consultant Erik Svanidze LL.M for his much-appreciated expert advice. They would also like to thank Vojislav Boljanić and Emir Muhić PhD for their professional help with the English interpretation. The police officers from the Federal Police Administration and Court Police of Republika Srpska, as well as the CoE-accredited human rights trainers Haris Bašanović, Jelena Biberdžić, Mile Mamić, Ivan Mihaljević and Slaven Šutalo, participated with their professional advice in the development of this material.

Administration and text layout: Nejla Sahačić

Authors (alphabetically): Dženan Avdibašić, Senad Čatić, Adnan Đerzić, Džafer Hrvat, Muhamed Imširović, Mišel Krajišnik, Slaviša Lučić, Željko Tanasić, Vladan Vasilić and Marica Bender.

Mistakes happen. When we learn of a mistake, we acknowledge it with a correction. If you spot an error, please let us know.

The original text was drafted in Serbian/Bosnian/Croatian, English translation is unofficial.

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What (is this resource manual)?

This material was prepared for the officers of the law enforcement agencies and prosecutors in Bosnia and Herzegovina within the joint programme between European Union and Council of Europe Horizontal Facility for the Western Balkans and Türkiye “Further strengthening the treatment of detained and sentenced persons in line with European standards in Bosnia and Herzegovina”.

Its purpose is to:

- record the good practice and emphasize professionalism of the local officials
- support the networking of the law enforcement in Bosnia and harmonise further the ways in which they apply international standards in daily practices
- further enrich institutional training programmes with recommendations of the European Committee for the prevention of torture, inhuman and degrading treatment or punishment (CPT) and other international bodies
- assist the law enforcement officials to, in their capacity of public officials,¹ understand their legal authorities and obligations and to respond preventively to possible human rights violations.

The right to freedom of gathering and assembly, as well as other adjacent human rights, in particular, freedom of expression, including receiving or imparting information or ideas collectively or individually in the format of assemblies or in public, are in the essence of democratic systems. It is closely related to other rights and freedoms that the State guarantees, enables and protects by policing and effective investigation, as well as through criminal procedure in case of human rights violations with elements of a criminal offence. Restrictions of freedom/right to publicly gather must be strictly necessary and directed towards enabling rights and freedoms of others.

International human rights standards clearly establish the obligation on the side of the State and its bodies, in this case police/law enforcement, to respect and protect human rights, including and, in particular, up to facilitating the enjoyment of the freedom of assembly.

¹ For the purpose of this resource manual, public officials are considered police officials who apply authorities on behalf of the State with respect to the right to publicly gather.

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Who (drafted it)?

The authors of this resource manual are police officers from Bosnia and Herzegovina's law enforcement agencies who are accredited to design, develop, deliver and evaluate training programmes based on human rights modules. As a result of the quality of their materials, this team has established and proven itself as a centre of excellence and a reference for good practice, as well as the leading provider of high-quality training and professional development focusing on human rights.

The advantage of designing and conducting training under the auspices of an inter-governmental agency such as the Council of Europe lends legitimacy to safeguards designed to prevent and protect from allegations of ill-treatment by police officers.

Thanks to the training delivery standards previously defined under the Council of Europe projects and the accreditation of the training team, the training programme would focus on practical work. The fact that there is a thin line between failing to perform an official duty and misconduct means that the only way to recognize and know this line before experiencing it in practice is through practical training.

Trainers are experienced senior police officers well-versed in operational procedures based on local legislation and existing good practice, but their knowledge is also enriched by international human rights standards and communication skills required for modern forms of knowledge transfer. They benefit from the contribution of experienced prosecutors who advised on thorough and sound investigation of ill-treatment allegations.

Cultural change is the most difficult to achieve - if activities on the strategic level are not accompanied by activities on the operational level, and especially by a proactive training programme.

In this case, the accredited training team can reliably translate challenges identified in practice and addressed in law into understandable and applicable operational procedures.

Why (now)?

The European Convention on Human Rights

The international standards, the rationale of the human rights-compliant policing of gatherings, puts emphasis on facilitation of enjoyment of the right in issue. In addition, they comprise the duty of effective investigation, disciplinary or criminal sanctions for the perpetrators of ill-treatment and other violations of human rights by police officers, if any.

Article 11

Freedom of assembly and association

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

The right to be protected from ill-treatment and the right to life are regulated in the two most prominent articles of the European Convention on Human Rights² that have direct implication and further restrict the police interventions in the context of public gatherings, if and when absolutely and strictly necessary under the grounds specified in para.2 of Article 11 of the ECHR

Article 2

Right to life

1. *Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
2. *Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:*
 - (a) *in defence of any person from unlawful violence;*
 - (b) *in order to effect a lawful arrest or to prevent the escape of a person lawfully-detained;*
 - (c) *in action lawfully taken for the purpose of quelling a riot or insurrection.*

Article 3³

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

2 Official translation courtesy of the ECtHR

3 This is the only absolute Convention right.

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If the State has both:

- positive obligation to engage in an activity to secure the effective enjoyment of a fundamental right, and
- negative obligation to abstain from inappropriate restricting or interfering in the exercise of human rights or violation thereof

why it is such a big challenge for police officers with the authorities vested in them by the State to protect these two rights during gatherings?

The real-life scenario

Individuals choose to group and gather outside in larger numbers for various reasons. They may wish to exercise their right to freedom of expression, by expressing their grievances, celebrating sport achievements of their favourite football club or fight for their rights if they feel that their rights have been infringed upon.

The rationale of securing the freedom of assembly and interrelated human rights should be the point of departure for steering a gathering and (made) clear for participants of the gathering and the police. As to denial or nonappreciation of these rights, it is going to become increasingly problematic if the police exercise authorities without regard to these considerations and their related safety and security. The participants might not necessarily appreciate that police is acting in such manner to protect the safety and security of others, bystanders and onlookers.

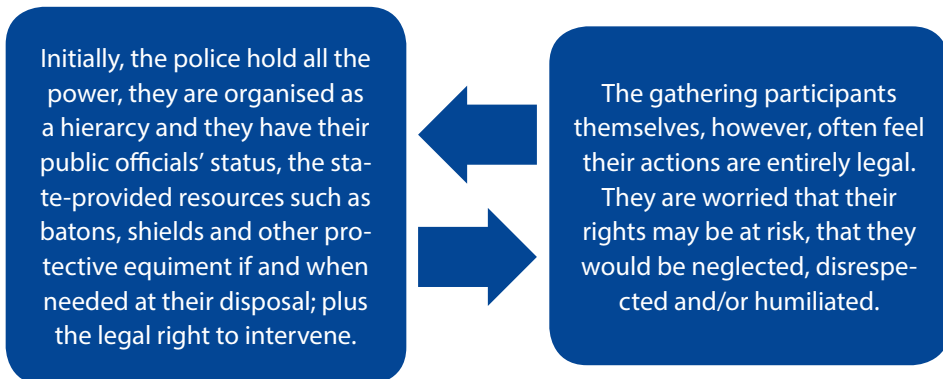
The two sides to everything

Such misunderstanding could lead to big parts of society (those exercising their right to publicly gather and express themselves) feel that restrictions of their right to freedom of expression is illegitimate or not based on legally vested authorities.

If police try to enforce the restriction of rights, that could increase individuals' perceptions of the illegitimacy or non-legality of policing.

And then - the individuals may breach public order.

If the police feel the participants in the gathering are breaking the law or putting other people's safety and security at risk and they are violent, they should opt for a proportionate response up to ordering the public gathering organiser and participants to disperse as a measure of last resort for addressing imminent risks of or serious violence and comparable consequences.



The views of the police and participants of what is (not) legitimate (are different and even opposite). Both groups believe the legitimacy and power are on their side.

The gathering participants start to see themselves as a group/unity/community who must challenge the police authorities to use force.

The police see what this group/unity/community is doing as illegitimate or even criminal or damaging to other persons who are not participating in the gathering.

The numbers on each side may vary, there may be more participants and fewer police officers or vice versa. Whichever group is smaller in size, it feels less powerful, even disempowered.

For example, if there are 15 police officers and a group of 100 participants, all of a sudden, the participants form a group and unite to challenge police. For the police officers, this is a very serious problem. Nevertheless they respond in good faith, including assessing the entire circumstances, including their disobeying individuals' and crowd control skills, equipment available

Where to go from here?

People in general, and individuals in particular, express their opinions and beliefs in many ways and forms.

They may intend to appear as peaceful as possible but change their ways somewhere along or may already come angry and upset and express themselves in such manner.

However they opt and choose to behave, the policing of the gathering must be carried out so to protect the basic human rights.

The police legitimacy and the individuals' human rights derive from the Constitution and from the European Convention on Human Rights. The police officers' response is what differentiates good from bad policing.

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Good policing of a public gathering takes account of the positive obligation to secure the relevant right and the risk arising for peaceful participants, other people, who may be there and who haven't done anything wrong, who haven't confronted the police, who suddenly find themselves being treated as if they have. What may follow in extreme cases is violation of public order or a public disorder.

This resource manual provides protocols contributing to good policing and protection of human rights.

Key terms/notions

Public gathering

presence of a number of individuals⁴ in a public place to collectively express their opinion(s) or other expressive purpose on matters of public interest or concern⁵.

According to the joint opinion of the Venice Commission and OSCE Office for democratic institutions and human rights public assembly encompasses „all forms of gathering for non commercial common expressive purpose“.

This resource manual does not deal with gatherings not protected by the right to the freedom of assembly. The table below is not exhaustive and a number of combinations is possible based on various elements (for ex. peaceful and static, spontaneous social, combined with isolated violent incidents, etc).

The authors have covered with the described procedures provisions of all pieces of legislation on gatherings at the entity and cantonal level in force at the moment of drafting of this resource manual.

GATHERING OR COUNTER-GATHERING							
format	location	mobility	lawfulness	notification	character	type, covered by the right to the freedom of assembly	type, not covered by the right to freedom of assembly
organised or planned	out in the open	static	Lawful	notified	peaceful	political	religious
unorganised or spontaneous	in closed environment	on-the-move	non-harmonised with law	unnotified	non-peaceful	social + non-commercial	commercial (public events, etc)
		combined			with isolated violent incidents	cultural-artistic	sport events

4 An individual exercising the right to freedom of expression in a publicly accessible place, formally not involving other person(s) is to be afforded the same conditions as those applicable under the right to peaceful assembly. We need to double check this sentence pls

5 The right to freedom of assembly, in principle and not other rights, including freedom of expression etc., does not extend to private meetings that have no public attributes; gatherings for purely entertainment or commercial purposes (for-profit sports, concerts etc.); or where gathering is incidental, not essential for its primary purpose. We need to double check/simplify this sentence pls

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Peaceful⁶

the importance of the right in issue requires a high degree of tolerance to deviations from the legal requirements, with unlawfulness of an assembly up to (risks of) isolated acts of or sporadic violence not to be treated as an automatic ground for interdicting and forcefully obstructing or fully forcefully dispersing it; the highest level of interference could be authorised if the assembly is not intended to be peaceful to the degree beyond risks of isolated and manageable in the circumstances violent incidents or there are proven relevant violent intentions of organisers and other less stringent means, including targeted use of force against individual violent participants are exhausted; if there is an escalation of violence from both the law-enforcement and participants, it matters who started or incited the violence.

Notification of gathering

written or verbal notification to the geographically competent police body about the intention to hold a gathering.

Venice Commission and OSCE Office for democratic institutions and human rights find that „*a prior notification*⁷ *requirement represents an interference with the right to freedom of assembly, and any such requirement should therefore be prescribed by law, necessary and proportionate*“

Body competent to receive the notification

Ministry of Internal Affairs, i.e., organisational units depending on the structure of the Ministry, as well as the scope or spatial coverage of the gathering.

Control and supervision

organiser's obligation to supervise holding of the gathering, as well as the obligation of the police body to control and supervise before and during the gathering.

Participant(s)

a group of individuals gathered around the common aim/idea to exercise legitimate aims of the gathering through the group action.

Venice Commission and OSCE Office for democratic institutions and human rights find that term „citizens“ might not be appropriate for various reasons and recommend to use the term „all persons within the territory“.

6 As per VC/OSCE/ODIGHR 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“

7 CDL-AD (2019)017, Guidelines on Freedom of Assembly

Headquarters/command/management

temporary/ad hoc body formed to plan and manage policing of the gathering.

Complaints/submissions/grievances against actions of the police officer

established standard procedure under which any dissatisfied individual, including organiser of the gathering, is enabled to submit a complaint or trigger relevant procedures via other avenues, including public statements or media, against the action(s)/inaction(s) of the police or its officer(s) at any moment.

Aim of the gathering

public expression of the opinion of a group of individuals.

Participant of the public gathering (protesters, persons demonstrating, observers, passers-by, agitators, orderlies)

individual who, in any way or role, participates in creating conditions for holding an assembly or publicly expressing opinion(s) of the group of individuals gathered in one place.

Space/location where the gathering is held

public space, accessible and appropriate for gathering of individuals whose number and identity is not necessarily known in advance and in which gathering of individuals does not lead to endangering of rights and freedoms of other individuals, health and safety of individuals and other legitimate interests.

Authorisation

legal means to undertake certain actions on behalf of someone.

Control

manner of police officers' conduct applied to:

- prevent the eruption/expansion of unrests
- diminish/eliminate their consequences and their effects on the safety of all participants in the gathering, as well as
- prevent interference by other individuals, including counter-assemblies.

De-escalation/control and restraint

actively decreasing tensions by taking different measures in combination with efficient communication.

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Dynamic security⁸

police officers maintaining communication with the participants as part of the policing tasks necessary to maintain the required level of safety and security. It contributes to the mutual trust between the police, organisers and participants, aimed at ensuring safe and secure holding of a gathering.

Organiser

natural or legal person who prepares, convenes, organises, maintains, monitors and supervises holding of the gathering.

Orderlies/stewards

person (or employees of the security agency) appointed by the organiser to maintain order and peace during the gathering.

Leader of the gathering

person appointed by the organiser who is in direct contact with police officers and who supervises holding of the gathering and coordinate work of the orderlies (organiser and leader can be the same person).

According to the joint opinion of the Venice Commission and OSCE Office for democratic institutions and human rights „*organiser does not need to appoint monitors nor leaders*“.

Incident

irregular and sudden occurrence, frequently of an unpleasant nature⁹.

Decision banning the gathering

legal decision with which the competent police body bans the gathering from holding.

Interruption or disabling the gathering from continuing

an invitation from the organiser to the participants to disperse, i.e. for the gathering to end at that moment. Also, either/or the police officers' intervention when there are legal reasons to interrupt the public gathering by applying various legal authorities, thereby disabling its further course.

8 Although this concept is more commonly used in the closed environment, it is also applicable in policing. It implies the knowledge of what is going on in the location concerned and creating safe conditions to act upon, maintaining rapport with the participants which strengthens the role and the authority of the police officer, as well as competence in performing policing tasks.

9 Unexpected event or a conflict. Reasons for incidents at protests can vary and can be complex. They can include political tensions, economic issues, citizens grievances, etc. Or conflicts between various groups with confronting opinions. Sometimes poor management or the lack of dialogue between the police and participants can lead to incidents.

For the purpose of describing human rights - protective policing procedures in this material, any group of people or individuals assembled in one location to exercise their freedom of expression will have been considered as participants in a gathering.

The authors are nevertheless aware of more generic terms used to depict large(er) number of people gathering in the same place, regardless of the nature of their gathering (political, religious, socioeconomic, etc) such as mentioned in this this non exhaustive list. Based on the Joint Opinion¹⁰ of the Venice Commission and OSCE Office for democratic institutions and human rights on the legal framework governing the freedom of peaceful assembly in BiH, in its two entities and in Brčko District *“particular forms of assembly may rise specific regulatory issues, but all types of assembly deserve protection”*.

Generally peaceful	Generally violent	Could be either
Peaceful gathering - bringing people together in one public space to form a peaceful group	Individuals' civil unrests - situation in which people are angry and likely to protest or fight	Public gathering - bringing people together in one public space to form a group
Peaceful protest - the peaceful expression of strong disagreement with or opposition to something	Public protest – the expression of strong disagreement with or opposition to something	Sports or other publicly important celebrations – a special event that people organise in order to celebrate something
Public assembly – a group of people who have been elected to meet together regularly and make decisions for a particular region or country	Public disorders - violent behaviour of large groups of people an outbreak of rioting and public disorder	Rally – a large public meeting to support a particular idea or political party
Public expressions-things that people say write or do in order to show their feelings, opinions and ideas (freedom of expression is freedom to say what you think and it is a basic human rights for example)	Riots – a situation in which a group of people behave in a violent way in a public place, often as a protest	Civil resistance – strong dislike of or opposition to a plan, an idea etc, refusal to obey
Protest march – to walk through the streets in a large group in order to express their dissatisfaction about something Protest camp- a physical camp that is set up by activists, to either provide a base for protest, or to delay, obstruct or prevent the focus of their protest by physically blocking it	Revolts – a protest against authority, especially that of a government, often involving violence, the action of protesting against authority Uprising – synonym to revolt	Sitting/standing/paint-throwing, etc protests – expressing strong dissatisfaction with or opposing something in the seating position or by throwing the paint (usually against public surfaces)
Demonstration- synonym to march an organised walk by many people from one place to another in order to protest about something or to express their opinions	Revolution- organising a larger group of people to express their dissatisfaction by extremely violent actions or behaviour, targeting authorities	Public processions – a line of people or vehicles that move along slowly, especially as a large public meeting to support a particular idea or political party of a ceremony, the act of moving in this was (to march in procession for example groups of unemployed people from all over the country marched in procession to the capital)

“I disapprove of what you say, but I will defend to the death your right to say it.” Voltaire

10 CDL-AD(2019)026, Opinion no 951/2019 ODIHR Opinion Nr.: FoA-BiH/360/2019

Legal framework

Freedom of gathering¹¹

“Everyone is entitled to the freedom of peaceful assembly and association with others. These rights shall not be restricted unless prescribed by the law and unless necessary in the democratic society in the interest of the national or public security, aimed at preventing disorder or crime, protection of health or moral or protection of freedom of others.”

Competence for the public gatherings’ legislation belongs jointly with the cantonal authorities in the Federation of BiH and Federation of BiH, Republika Srpska and Brčko District of BiH. At the time of drafting of this resource manual, laws were at different stages of drafting and adoption. The laws also pertain to different types of what qualifies as “gathering” in generic sense in this manual.

This chapter provides a definition of an assembly as used by the Institution of Ombudsman for Human Rights in BiH and also an overview of the current legal framework governing the issue of gatherings.

Freedom of assembly¹²

The right of peaceful assembly or the right of assembly (or freedom of peaceful assembly) is one of the human rights and freedoms that has a political dimension and is the foundation of modern democracy. It is a fundamental human right that can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies.

Assemblies may serve many purposes, including the expression of diverse, minority and unpopular opinions. The freedom of peaceful assembly can be an important strand in the maintenance and development of culture, and in the preservation of minority identities. The protection of the right to peacefully assembly is crucial to creating a tolerant and pluralistic society in which groups with different beliefs, practices, or policies can exist peacefully together.

The constitutional framework for freedom of assembly includes substantive and procedural provisions that are interpreted in accordance with international standards. In

11 Universal Declaration on Human Rights (1948) – Art 20, European Convention on Human Rights and Fundamental Freedoms (1950) – Art 11, Internatioonal Covenant on civil and political rights (1966) – Art 21.

12 Annual Report on results of the activities of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina for 2021, p. 72

Bosnia and Herzegovina, freedom of assembly is guaranteed by the Constitution of BiH¹³, the constitutions of the Republika Srpska and the Federation of BiH¹⁴, the Statute of the Brčko District of, and several laws and by-laws, primarily public assembly laws at the level of cantons, BiH Brčko District and Republika Srpska.

Freedom of assembly can be restricted by law only if that is necessary in the interest of the protection of public health or morals or the protection of the rights others or safety. Due to its importance and frequent violations, freedom of assembly is often the subject of proceedings before the Constitutional Court of Bosnia and Herzegovina.

13 Article II paragraph (3) i, Constitution of Bosnia and Herzegovina

14 Article II A.2. 1(1), Constitution of the Federation of Bosnia and Herzegovina, and Article 30 of the Constitution of Republika Srpska

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Overview of the local legal framework and international standards regulating public gatherings

Local legal framework				
	Federation of BiH	Republika Srpska	Brčko District BiH	Cantons in FBiH
Constitution	Article II A.2. 1(1)	Article 30		
The main pieces of legislation regulating public gatherings				
Law on Public Gathering	The main piece of legislation regulating citizens' public gatherings with the purpose of publicly expressing political, social and other opinions and interests, organisation of peaceful assemblies and public protests, public celebrations/ event and other types of gatherings. The rights deriving from this Law are free (sic!) and are exercised in accordance with this Law.			
Law on the basics of safety in traffic on the roads in BiH	Chapter VI	Chapter VII	Chapter VI	Chapter VI
Law on the basics of safety in traffic on the roads of Republika Srpska		Chapter VII		
Law on regulation of traffic in the area covered by Canton Sarajevo				Chapter X
Additional pieces of legislation regulating emergency situations during public gatherings arising from the breaches of substantial laws				
Law on the Prevention of Violence (and indecent behaviour) at Sports Events	Regulates in detail preventive policing in the sphere of public gatherings in sporting events.			
Criminal Code/Law	Protects every citizen's right to public gathering.			
Criminal Procedure Code/law	Guarantees rights of persons deprived of liberty in the proceedings to a lawyer, doctor, interpreter, notification of a family member or a third person of own choice in case of criminal liability.			

Law on misdemeanours against public order and peace	Regulates the procedure for organising celebrations/events such as fireworks, torch-use, etc.
Law on procurement, wearing and holding arms and ammunition /Law on arms and ammunition of Republika Srpska	Forbids wearing of arms in public gatherings.
Law on Police Officers/Law on police and internal Affairs of Republika Srpska	Defines authorities and exercise of police authorities also in the context of public gatherings/ Defines police authorities in the context of public gatherings
Law on Internal Affairs	Defines police authorities in the context of public gatherings.
Law on administrative procedures	Prescribes the approval procedure or ban on public gatherings and the right to effective legal remedy.
International standards	
UN Declaration of Human Rights	Article 20,21
International Covenant on Civil and Political Rights	Article 21
European Convention on Human Rights	Articles 11, 3, 5, 9, 10
Recommendation Rec 2001(10) of the Council of Europe Committee of Ministers to member states of the European Code of Police Ethics	IV Organisational structures of the police, paragraph 18 V Guidelines for police action/intervention, paragraph 37, paragraph 43, paragraph 45 VI Accountability and control of the police, paragraph 61

Rights guaranteed under the European convention on human rights that could be violated through police action in the course of policing gatherings

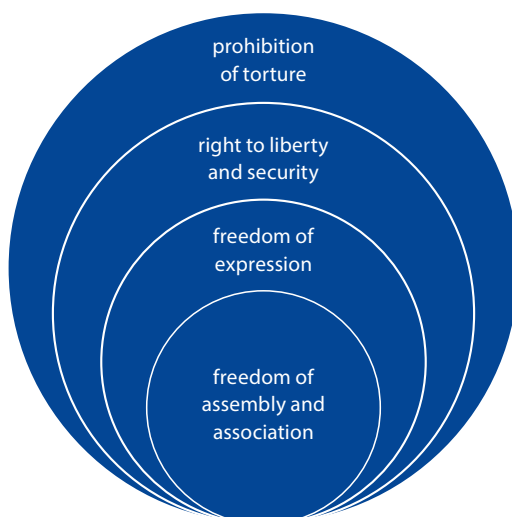
It is interesting that the European Convention on Human Rights, when defining freedom of expression (Art 10, para 2), states that:

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Nowhere else in the Convention does it make such a provision about any other right. It acknowledges how freedom of expression can be used in a threatening manner.

The police will need to ensure that the freedom of expression is not used to undermine or attack the freedoms of others or incite violence, discrimination or hatred against others on the grounds of race, religion, sexual orientation, etc. or seeks to undermine the principles of democracy.¹⁵

Graphic overview of the mutual interaction(s) between ECHR articles regulating gatherings



15 A brief introduction to policing public gatherings: A guide for practitioners, Michael Boyle and Jean-Claude Vullierme, Council of Europe, February 2021

Article 3
Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5
Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a) the lawful detention of a person after conviction by a competent court,
 - b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law,
 - c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so,
 - d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority,
 - e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants,
 - f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

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***Article 10
Freedom of expression***

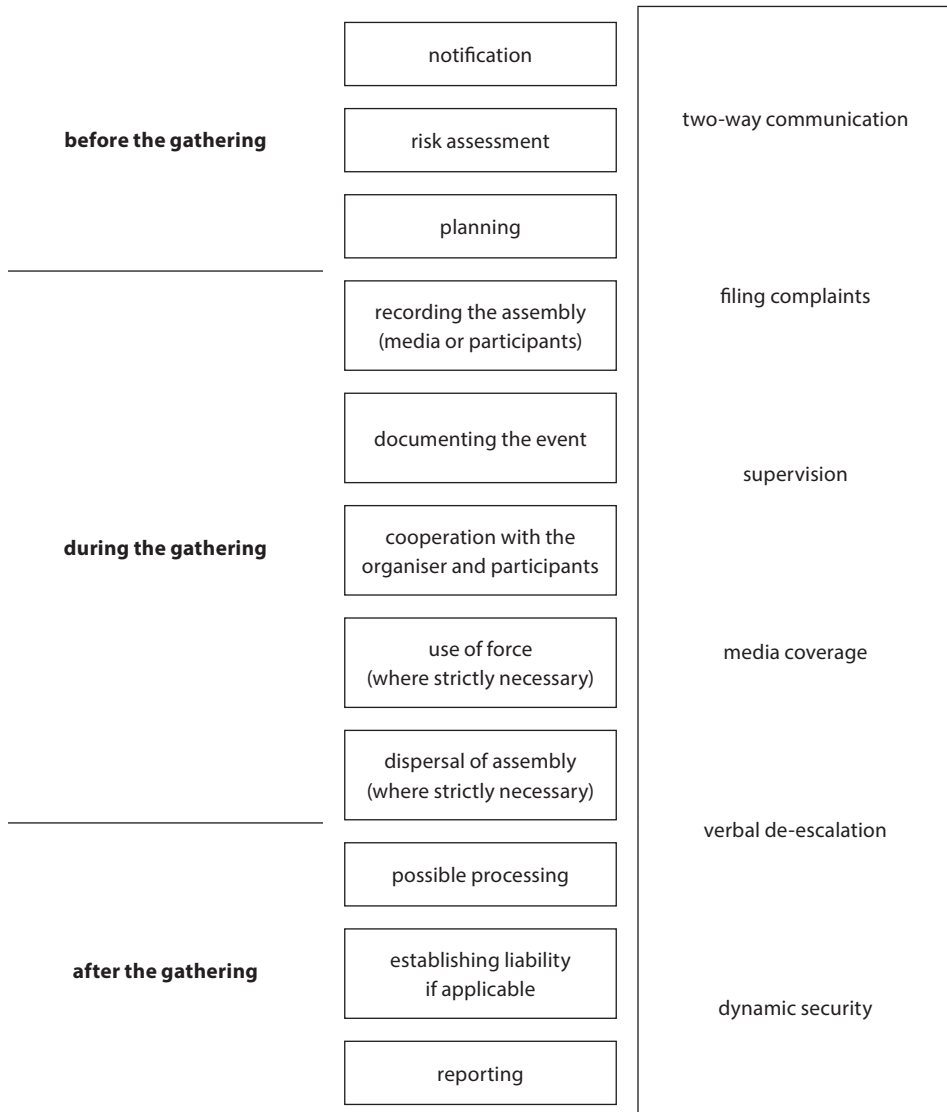
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

***Article 11
Freedom of assembly and association***

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Operational procedures for the protection of human rights during participation of individuals in gatherings or during policing of gatherings

Flowchart¹⁶ of the measures taken in the process of organising gatherings



16 Definition developed for the purpose of this Practitioner’s Guide: framework chronological plan or sequence of actions for an organised process

Before the gathering

Notification

Individuals:

1. Organisers of formal or informal gatherings notify the police agency of their intention to gather in a public space. This notification is important because it enables police officers to timely plan the protection of the rights of participants in the gathering, as well as the safety of other citizens.
2. Organisers of gatherings provide to the police agency information about motivation, interests, contact details and personal information, location, planned time of the gatherings.
3. In line with its legal authorities, the police agency may request other types of information necessary to assess the risk to the safety of the participants and the community or other citizens.
4. Organisers of gatherings have the right to request from police agencies any information that can be made available, if they do not compromise the event itself.
5. Type and scope of such information is assessed exclusively by the police agency based on legal provisions. The citizens have no right of complaint against the type and scope of the requested information.
6. The police agency can include organisers in the gathering's policing planning phase to jointly prepare a communication plan and strategy.

This practice is established in the interest of the safe and peaceful environment during the public gathering and the cooperation starts before, continues throughout and after the gathering.

Police officers:

1. The duty police officer in any police premises has an obligation to receive the notification of gathering.
2. S/he advises the individual verbally about her/his rights and obligations. The procedure remains the same in case of a notification submitted by the public gathering organiser. Providing this advice is important for the protection of individual's human rights and in particular the right to freely associate and gather, express thoughts, conscience and religious beliefs.
3. If the notification is complete (no legally required information is missing from it), the duty officer consults with the senior officer and transfers it to her/his competence. The individual/organizer who submitted the notification is being referred to the protocol to receive a confirmation thereof in writing. The

individual/organizer signs the receipt and receives a copy thereof or a confirmation of the submission received.

4. If the notification is incomplete or incorrectly filled in, the duty police officer refers the organiser to the senior officer who draws up an official note, listing the rights and obligations. The note enables the organiser to undertake measures within the legally prescribed deadlines.

This represents additional safeguard in the exercise of the right to gathering.

5. If the notification is received via regular post, procedures 2, 3, 4 apply (senior police officer).

Senior police officers:

1. Upon receipt of the notification, the senior police officer considers whether to approve or not to approve (based on the legal requirements and in line with the standards/considerations outlined herein) the gathering and supervises the risk assessment.

A thorough and transparent risk assessment is important for the protection of safety and security, which are protected also with the right to liberty and security of person.

2. S/he verbally informs the person who submitted the notification about the approval of the gathering. If the public gathering is not approved, the decision banning it is shared with the person who has submitted the notification in writing in legally prescribed deadline and with the reasons invoked and specified only if it is authorised by the legal requirements and standards (including as outlined herein).

It is important to deliver the decision banning the public gathering within the legally prescribed deadline and moreover to do so in writing with the reasons invoked and specified to enable exercise of the right to complaint.

3. The decision is handed over to the person who has submitted the notification, while s/he can file a complaint to the Ministry within the legally prescribed deadline or eventually challenge it in judicial procedures

The rights of police officers policing gatherings should not be:

- called derogatory names,
- subject to personal insults,
- spat on, physically assaulted and otherwise abused
- deliberately provoked.

They are public officials who exercise their legal authorities and follow the legal, professional requirements and standards in issue, including in terms of responding to these and other irregularities, if they occur. They are accountable for any violations accordingly. They are trained to act under such circumstances and their threshold needs to be higher but at the same time, they are entitled to all rights guaranteed by the European Convention as participants in gatherings and general public.

Police officers do not stop being human beings while on duty and therefore they are also protected by the European Convention on Human Rights!

Risk assessment and planning

Individuals:

1. Regardless of any previous negative experiences related to cooperation with police agencies, organisers of gatherings should show willingness to discuss and co-operate each subsequent time. This is important for achieving the very goal of the gathering. Co-operation is based on trust – it is hard to gain and easy to lose. Since police officers are the “extended arm of the state”, participants of gatherings and citizens bear their share of responsibility for effective co-operation. One negative occurrence or incident for which participants or organisers of gatherings are responsible can have adverse consequences for co-operation with the police agency.

*Trust arrives on foot and leaves on horseback.
Danish proverb*

2. Two-way communication is kept open throughout the gathering to avoid any “surprises” that might compromise the safety of participants or citizens. This means that citizens respond to the inquiries of police officers and vice versa. This enables dynamic security to be maintained during policing of the gathering.

This enables peaceful resolution of any disagreements with full respect of the participants’ right to gathering.

3. Effective communication with police officers includes polite conversation, without insults or harsh words, a calm demeanour and respect owed to a public official acting professionally - which police officers are. Communication is open and honest, and as such it is crucial for building trust.
4. Community leaders and those who can influence the exchange of information cooperate with police agencies in the same way as organisers of gatherings.

Effective communication in this case also enables police officers to protect the rights of participants, Individuals and community in general. Finally, this implies a peaceful course of the gathering.

Police officers:

1. Police officer(s) in the field checks and verifies all information to be addressed for securing the circumstances necessary for holding the assembly, safety and security threats that could possibly put the gathering in danger.

This is to protect rights of other participants in the gathering, or those who do not participate in it.

Senior police officers:

1. Senior police officer who makes a decision to allow holding of the gathering efficiently communicates with the gathering’s organiser, individuals and other relevant institutions to facilitate exercise of the right to gathering.

The manner of communication is described in the annex of this resource manual: two-way communication, active listening, etc.

2. Analyses information collected from her/his own and other agencies, approves the risk assessment for curing the circumstances necessary for holding the assembly, the safety of participants and onlookers and provides general guidelines for the development of the gathering policing plans.

The manager’s oversight of the gathering policing plan is very important especially because the well-developed and implementable plan reduces the need to make arbitrary decisions in the hat of the moment and prevents the possibilities to abuse the right to public gathering.

Co-operation with other police agencies, relevant institutions and individuals guarantees greater level of public security.

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3. Creates and issues instructions on the application of operational- preventive measures because of risk assessment (supervision, follow up, close monitoring) if this is about gathering of sport supporters at sporting events.

This protects individual rights of participants in gatherings and in general the public safety.

4. Signs off on/approves the roster/assignment plan for police officers (based on the types of security tasks to be implemented).

This is important to ensure uninterrupted regular activities and protection of help for other persons who do not necessarily directly participate in the gathering.

5. Issues decision on the number of police officers engaged in policing the event and the use of material-technical resources, including specialised equipment. The decision is proportionate to the level of the assessed risk (for ex., enough police officers per estimated number of participants, sufficient number of women officers, more officers assigned to police the event if counter-protests can be expected, etc.).

This reduces the possibility of ill-treatment allegations. Insufficient number of police officers increases the possibility of unplanned and hasty policing, which in consequences creates opportunities for greater violations of human rights of the participants and onlookers.

The police are not the only guarantee of human rights. For example, Ministries of Traffic (suspension of public transport or changes thereof) or Health (epidemiological measures, excessive pollution, etc.) issue a decision, while the Ministry of Interior is expected to implement it.

Case study – notified gatherings in which the rule “by the book!” does not apply...

Real-life scenario: a group of farmers announces a public gathering due to the price increase for wheat seeds. The protests are planned in three days’ time – Tuesday, 13 May at 14.00 hrs.

A group of about 100 farmers is expected to participate, all coming on their tractors. The road they intend to block is one of the main motorways: Sarajevo-Zenica. Their notification of the intention to organize a public gathering emphasizes the following: the aim is to lobby with the policy makers for the need to increase the Government’s subsidy in the wheat seeds price; personal data of the organiser; the expected number of participants and vehicles; information about the measures undertaken by the organiser to hold the gathering.

The organiser warns that s/he sought approval from the Ministry of Transport and Traffic to change the traffic regime, but no approval was attached to the notification.

However, the police authorities did not ban this gathering.

The role and duties of the police officer – the human rights checklist

Procedure before the gathering	Impacts/secures the following human rights
notification receipt	freedom of assembly, freedom of expression
collecting and verifying information	freedom of assembly
conducting interviews and making official notes	freedom of assembly, respect for privacy
Procedure during the gathering	
immediate policing	freedom of assembly
contact with the organiser and participants as needed (dynamic security)	freedom of assembly
communicating orders and enforcing possible decision on banning the gathering	freedom of assembly
reporting	freedom of assembly

The role and duties of the senior police officer – the human rights checklist

Procedure	Impacts/secures the following human rights
safety and security risk assessment	freedom of assembly, life, liberty and security, prohibition of ill-treatment
contact with the organiser	freedom of assembly
cooperation with other agencies or institutions (fire brigade, ambulance, etc)	freedom of assembly and association
decision on approving/banning the gathering	freedom of assembly
compiling the policing plan	freedom of assembly, freedom of expression
notifying the public	freedom of assembly, freedom of expression
enforcing the plan and controlling its implementation (administrative control)	freedom of assembly, life
assessment, review and reporting	freedom of assembly

Note: based on the majority of current laws on public or peaceful gatherings, the organiser has duty to facilitate uninterrupted passage for the ambulance, fire brigade vans, and public transportation vehicles in a gathering, so that they can carry out their legally prescribed tasks in timely and smooth manner. Their primary task is to protect the rights of other individuals: the right to life, not be tortured, freedom and safety of their person, and the right to property.

The police, as an instrument of the state for the protection of rights, must respond to the exercise of these rights, besides the right to freedom of assembly.

This means that it must apply police authorities, such as issuing orders and warnings, as well as use of force as the ultimate means in its work to prevent disorders and protect the rights and freedoms of everyone.

During the gathering

Recording, documenting, cooperation, use of force and suspending gatherings

Individuals:

1. Participants in gatherings or individuals/persons who are suspected of posing a security risk (carrying weapons or other objects that could be used in the commission of offences or violation of public peace and order) may be subject to regular or ad hoc check-up or stop and search.¹⁷ An individual may be subjected to a standard check-up (stop and search) outdoors and a detailed search¹⁸ indoors. The legal framework on grounds and procedures, including approval, of individual search are fully applicable in this context accordingly.
If being searched, person is searched by an officer of the same sex. Individuals can be asked to go through the arch metal detector when entering the location where gathering is organised or can be asked to be searched, including their belongings.
2. If the examination or search is conducted in public, the police officer must not do anything to embarrass the citizen or otherwise damage her/his self-esteem (remove their clothes, use derogatory words, make fun of their beliefs, etc.).
3. A participant in a gathering has the right to lodge a complaint if they believe their rights have been violated by the police officer (racial, ethnic, LGBTIQ+, young people of a specific background, etc.) A participant has the right to be treated in a civilised manner, with courtesy and dignity.
4. If an individual is a member of a nation that wears religious coverings, then they have the right to have their religious symbols treated with respect and for the police officer conducting the search to explain the reason for requiring the citizen to do something (for example, to remove their head covering). The police officer should seek the participant's consent to search religious symbols.
5. A participant of gathering or an onlooker can record everything that is happening in the public space, without restrictions. This also includes actions taken by individual police officers during the policing of the gathering.

17 Participant in the public gathering can be stopped and searched. Person deprived of liberty, as well as a perpetrator of criminal offence, can be both, stopped and searched or searched.

18 For operational procedures for standard and detailed search see Guidelines for dealing with persons deprived of liberty in closed environment, a practitioner's guide prepared under the Joint European Union and Council of Europe programme "Horizontal Facility for the Western Balkans and Türkiye".

It is important to emphasize that neither individuals nor police have the right to publish such recordings without due regard being paid to the right to respect for private life, privacy, personal data protection considerations.

6. Individuals processing personal data of other participants of the gathering (by recording it on their mobile phones or otherwise) must be aware that pointing a camera at an individual can, depending on how it is done and the circumstances under which it is done, be seen as intimidating or even threatening or, at best, can cause the person being recorded to feel that their privacy is violated. Although this person is a police officer, they as such also have the right to feel threatened, although they are subject to the high degree of transparency, which is a part of public control, save to the legitimate precautionary measures (including use of visible, however, coded signs etc.) against being intimidated or otherwise persecuted for performing their official duties.

It is important to mention that the person being recorded can oppose to the processing of her or his personal data. Otherwise, the person doing the recording is subject to liability in accordance with the BiH Law on protection of personal data and other pieces of legislation regulating personal data protection.

7. A video recording (made with a cell phone, drone, video camera, etc.) can be used in circumstances where potential misconduct of police officers is being proved. However, thoughtless sharing of such footage in the media or social networks, without due regard being paid to the right to respect for private life, privacy, personal data protection considerations with respect to police officers is not in the interest of the community in general. Participants or organisers of gatherings must make such footage available to law enforcement agencies if required.
8. Participants in gatherings or onlookers should be able to identify police officers (name tag or identification number). The police officers must carry her or his identity tag in a visible place. The obligation of identification also applies in the reverse case of citizen-police officer.
9. Individuals and participants in public gatherings understand police officers, when exercising their legal authorities, may have to use force where absolutely necessary and required to protect or defend other participants in gatherings or onlookers or in other circumstances where lives or property are under threat.

The right to life is an absolute right under the European Convention on Human Rights. This means that it is inalienable, except in cases prescribed by the law.

10. The use of force can lead a group/crowd of individuals to their reaction which may also be aggressive and cause a counter effect.

***Use of force in any case must be:
1. lawful 2. strictly necessary 3. proportionate***

11. Individuals and participants in gatherings are aware that justified force can be used against them. Verbal de-escalation as a rule of thumb precedes use of any force.
12. Justified force can be used only when and if verbal de-escalation was not successful. The use of force must be lawful, proportionate to the violence or otherwise illegal behaviour or resistance demonstrated by the individual that authorises use of force (for ex., absconding from the scene of criminal offence, breaching public law and order etc). Also, the use of justified force must only be strictly necessary, of necessary intensity and duration. Decision and authorisations for the use force are regulated by local laws.
13. The organiser draws participants' attention that security of the gathering, besides the police, is also maintained by the stewards/orderlies hired for this purpose by the organiser. If the orderlies cannot provide security at the gathering, the polices with its authorities takes over maintenance of the public peace and order.
14. No peaceful participant in a gathering may be subject to the use of force unless they behave in a way that provides police with the authorities to act. Police action is and must target only and exclusively "problematic" individuals to protect the right to public gathering of other participants or attending individuals.
15. If police officers must impose some restrictions during assemblies to protect the rights of others or to maintain safety in the community or public space, those restrictions are (to be) lawful, necessary, purposeful. Organizers and participants of assemblies must keep this in mind - that police officers only and exclusively perform their work and tasks that are entrusted to them by law and for which they have authority - for the proper implementation of which they are ultimately responsible.
16. Organizers, participants of assemblies and onlookers are aware that police agencies may apply restrictions on the assembly, even ban the gathering if there is a serious risk of violation of public peace and order that cannot be otherwise prevented.

But - the fear of the arising counter-protests alone is not a good enough reason to impose restrictions.
17. When deciding on and enforcing restrictions, police officers do not discriminate against groups or individual of an assembly on any basis – race, skin colour, sex, religion, political or other belief. The decisions and actions are not arbitrary, they are well-grounded, so not to be tainted by possible discriminatory motives or approaches.

This is prohibited by domestic laws and the European Convention on Human Rights. BiH joined the Convention in July 2002, and it has the strongest legal force in the country. Its provisions are applied directly, they have stronger force than the Constitution. Police officers are aware that they bear criminal responsibility for any discrimination resulting from the violation of the provisions of the Convention.

18. As a peaceful participant in an assembly, an individual may find him/herself in a situation that has elements of violence. It is essential that individuals communicate with police officers and follow their instructions to disperse or leave the scene.

This is in the interest of their and everyone's personal safety, and therefore individuals should follow the exit route from the scene recommended by the police officer.

Police officers:

Any police officer involved in policing the gathering has an obligation to visibly wear her/his badge or identification code at any time, including her/his name and surname tag. This enables the participants to enjoy protection from torture, inhuman or degrading treatment or punishment. These rights can be breached in case of the excessive use of force and inability to identify the police officer who has, based on the participants allegations, inflicted ill-treatment.

Police agencies have their own additional instruments (for ex. body cameras) to identify their officers to assist in the protection of citizens from ill-treatment.

1. Police officer(s) inspects the location or public premise intended for gathering and removes any illicit items. For private or otherwise protected premise, a consent or relevant, including judicial authorization, is to be obtained. The organizer takes over the premises "clear" of illicit items and signs off on it. His signature implies that s/he has also taken over the responsibilities for the premises.

This is important to keep the premise clear of items that could potentially be used for violating public peace and order or ill-treatment, i.e., to protect rights of those gathering in a public space.

2. Police officer(s) also seal off the premise or guard the location and arrange for any changes in the traffic running by the premise intended for the gathering.

These activities are important to protect the rights of participants but also to enable uninterrupted daily lives of other citizens.

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3. The premise is then being physically prepared for entry/exit control points (barricades, fences etc.), searching¹⁹ persons coming in the sealed off area intended for gathering. Additional police officers are deployed as necessary, based on the earlier agreed plan.

Deployment of additional police officers is important to protect the right to individuals who do not cause incidents to continue their gathering in that space.

4. Police officers do not impose any restrictions on the media representatives to record or report from the gathering, safe for security reasons.

This protects the life and rights of media representatives themselves. The free access of media to gatherings enables also the public to exercise their right to be fully informed about the gathering in timely manner.

5. In case of media representative interrupting the work of the police officer, s/he informs the direct supervisor, without leaving her/his post. At the same time, s/he applies legal authorities, starting from verbal de-escalation, verbal warning and finally use of force based on the law: proportionately, only to the extent made strictly necessary by the individual's conduct, including by respecting the pain and suffering threshold.

6. The police officers' presence in gathering primarily implies preventive supervision, i.e., monitoring situation and preventive measures/response to possible happenings.

Throughout the gathering, police officer is in constant contact with the organiser (dynamic security) to preempt violation of rights with potentially violent situations.

7. In possible incidents, the manager invites the organiser to undertake the following, but not exhaustive, measures:

- re-allocate orderlies/stewards and move them from one place to another,
- invite participants to continue with peaceful gathering,
- invite participants to suspend the gathering if instructed to do so by the police,
- isolate or remove persons who are inciting violent/incident situations, etc.

The aim of these measures is to enable the right to life, health, peaceful gathering as originally planned.

8. When incident situations do occur or if there are information suggesting the possibility thereof (by observing, learning from an informant, etc.), the police officer informs her/his manager and upon her/his instructions calls for back-up and deployment of additional officers (officers located nearby) to protect

¹⁹ For more details pls see manual Human rights of persons deprived of liberty in closed environment, EU/CoE joint programme Horizontal Facility for Western Balkans and Türkiye (2019-2022).

the right to gathering for other participants and to prevent escalation of the conflict.

9. Reaction of the police officer to the newly arisen situation is the use of authorities if the legal requirements allow for it (the number of participants to which the police response is aimed at). These authorities encompass verbal de-escalation. If her/his assessment is that the use of force is necessary, this force is applied legally, gradually, proportionately, by respecting the pain threshold, and only in the duration absolutely necessary. The police officer verbally warns about the imminent use of force and instructs participants to disperse and leave the area.

This is one of the methods of verbal de-escalation of conflicts. The use of force can lead the group of individuals to their reaction which can also be aggressive or cause a counter effect.

10. When a participant is injured, the police officer has an obligation to administer first aid to protect her/his life and health. Should the situation require, s/he also calls for ambulance and clears the corridor for it to access the injured participant. However, as a regular preparatory measure, it is advised to secure on-site presence of medical professionals as part of planning preparatory arrangements.
11. When the incident situation is ended and brought under control, police officer enables other participants to continue their gathering, by extension also enables them to continue exercising their rights to gathering. S/he also pays due attention to the safety and security of all present in the area by applying the originally foreseen policing measures.
12. Police officer records the whole event with the available audio/video equipment (drone, body cameras, etc.).

These recordings are necessary to evidence possible ill-treatment allegations, i.e., liability and responsibility of the participants and police officers as well.

13. Police officers have an obligation to give an accurate and honest report when assessing liability for the use of force, to file a report on the use of force – if used personally.
14. If the police officer was witnessing an excessive use of force by a colleague on the team, s/he has an obligation to report it without delay in accordance with protocols of her/his police agency.

This prevents impunity and enables the right to protection from ill-treatment.²⁰

²⁰ For more details pls see manual Human rights of persons deprived of liberty in closed environment, EU/CoE joint programme Horizontal Facility for Western Balkans and Türkiye (2019-2022).

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15. If the police officer receives a verbal complaint from a participant against her/his own or conduct of a colleague on the team, s/he refers the complainant to contact the Professional standards unit or her/his immediate supervisor, prosecutor office, Ombudsman office, etc. The police officer has a duty to give an accurate account and to fully cooperate with the prosecution authorities in the investigative proceedings if necessary.

This enables exercise of the right to complain.²¹

***Use of force in any case must be:
1. lawful 2. strictly necessary 3. proportionate***

Senior police officers:

1. The police manager's duty is to plan all necessary security measures and to perform active and permanent supervision over their implementation. In addition, managers maintain efficient communication with and co/operation with partners in providing security (communal services, court, prosecutor, ambulance, fire fighters, international observers, etc.).

Their active supervision prevents violation of human rights of participants in gathering.

2. The manager, together with the agency's press department, has authority to communicate with media and provide information about the routes, movement, alternative routes and directions. It is through this information that individuals exercise their right to be informed about the public gathering.

In the end, this enables the individuals to exercise their other rights, for example the right to health care in case of them needing access medical facility, educational institutions for students and pupils, etc.

3. Besides communicating with media, the police manager maintains constant and efficient direct communication with the organiser.

This is to enable more efficient and effective exercise of the right to gathering. Communicating with media alone is not enough, it is in the best interest of the community for the police manager to communicate also with natural and legal entities by giving timely and accurate information, advice and guidance.

This communication is important and necessary to enable normal functioning of the community and exercise of rights for other citizens (who do not participate in gathering).

21 Ibid.

4. When there are incidents, the manager invites the organiser to reinstate peace and order through their stewards and orderlies and verbal instructions to the gathering participants. When the organiser is not able to do as instructed by the police, s/he undertakes preventive measures such as isolating perpetrators of the disorder to enable the gathering to continue and, if there is no other option, suspension of the gathering.

This is necessary to protect the rights of other participants and individuals, the right to life, freedom and security and in the final also the right to gathering.

5. When there is a real danger to the health and life of people and property (serious disorders, mass violence, etc.,) that the organiser can no longer contain, the police manager authorises more force to be used or rather more officers to use force. The officer's duty in this case is to follow orders and use force in accordance with the law. The force can be used without an approval when life of the officer or other persons is endangered and if the conditions have been met, the gathering is allowed to continue.

This protects the right to safety and security of other participants.

6. The police manager decides on the deployment of additional police officers, should the already assigned officers not be sufficient to police the event. When consequences arise due to her/his decision in the form of human rights violations (life, security, continuation of the gathering, etc.), the manager is subject to liability (due to possible error of judgement when assessing the risk and during the planning phase).

In this sense, the police manager is no different than a police officer.

7. The police manager documents, research and forwards to the Professional Standards Unit or prosecution authorities or other competent authorities all necessary documentation. Also, s/he forwards accurate and reliable information needed to establish disciplinary and possibly criminal responsibility.

The responsibility is particularly great in case of serious human rights violations or other consequences, such as demolishing institutions or buildings, car burns, violating the right to property.

Act after thinking thoroughly thorough but react promptly. Respect and act on the information of the police officer to protect your life and safety, as well as safety and security of others in the public space!

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Case study – spontaneous gathering when the rule “by the book” does not apply....

Real life scenario: a group of individuals gathers spontaneously on the capital’s main square around 13,00 hrs. The reason for this gathering is the recent decision by the Government to increase the VAT for books.

At the beginning, the group had about 10 persons, but as time passes there are more and more people on the main square. Now there are about 50-ish persons at the square shouting paroles and trying to stop the traffic and attract even more people.

The group is noticed by a pair of officers patrolling the city as part of regular duties.

The role and duties of police officer - the human rights checklist

Procedure	Impacts/secures the following human rights
ensuring safety of individuals who are already at the square but do not participate in the gathering	freedom of assembly
conveying information to the senior police officer, without delay	freedom of assembly
collecting additional information from participants	freedom of assembly
maintaining public law and order	freedom of assembly, private life, prohibition of ill-treatment, freedom of expression
cooperation with the organiser	freedom of assembly

The role and duties of senior police officer – the human rights checklist

Procedure	Impacts/secures the following human rights
analysing information and risk assessment	freedom of assembly, (possibly) life/prohibition of ill-treatment
visiting the site of the gathering, without delay	freedom of assembly
assessing information collected up to that moment	freedom of assembly, life/prohibition of ill-treatment
engaging additional police officers	freedom of assembly in case of counter-gatherings, potentially life/prohibition of ill-treatment
decision approving or banning the gathering	freedom of assembly, freedom of expression, potentially life/prohibition of ill-treatment (including of members of public)
assessment of police conduct, cooperation with other agencies and services	freedom of assembly

Note: A number of gatherings was organised in the past which have not been notified in accordance with the law. All of them aimed at an interest, promotion of certain values, promoting changes in the society, protection of certain rights, pointing to certain deviations and occurrences in the society (for ex., personal ID number protests in front of the Parliament in 2013, protests for Selma and Edita in 2016, protests of citizens against cantonal authorities in 2014., etc.).

These protests, as a type of gathering, were not notified and they represented a great challenge for the Cantonal Ministries of Interior. The biggest priority was to establish balance between the exercise of rights of individuals to freedom of assembly and rights of other individuals guaranteed with the ECHR, Constitution and laws, primarily the right to freedom of movement and safety.

This is the core duty of the police as the instrument of the state to protect the rights – care for every individual in its competence.

After the gathering

Complaints

Individuals:

1. Organisers, participants or observers of gatherings have the right and opportunity to file a complaint about the actions of any police officer or public official at any time, especially after the end of the gathering if they believe that their rights have been violated by police action.
2. Participants of the gathering submit the complaint verbally or in writing on the spot to the senior police officer managing security at the public gathering or duty officer in the Professional Standards Unit. The complaint can also be written later and left in the complaints box on any police premises. It can also be addressed through email or means of a postal letter.

Whichever form the complaint may be addressed in, it is processed in the same manner within the designated procedure.

Police officers:

1. Police officer draws up a written report (official note, note, etc.) about its actions and tasks completed during the gathering. This report is sent to the immediate manager, without delay.

This is important to prevent impunity. The police officer, with this report on his/her own activities with audio or video recording, defends herself/himself in case of ill-treatment allegations.
2. Each use of force is documented in the same manner and for the same reasons.
3. Police officer who has received an oral complaint from a gathering participant against her/his colleague on the team, draws up an official note after the gatherings, without delay, and processes it based on the protocols of the police agency.
4. When disciplinary or criminal proceedings on the account of alleged ill-treatment have been lodged, police officer has an obligation to give an accurate and honest account with all information at her/his disposal, if s/he was a witness to ill-treatment or other type of violation of human rights. The same applies to the case when the police officer herself/himself has been subject of the ill-treatment allegations.

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Senior police officers:

1. Based on the collected individual reports filed by police officers and information gathered from the individuals, complaints collected from the organiser or individuals, etc., the manager analyses course of the gathering together with the whole team and other services included in the organisation thereof. These would be the fire department team, the ambulance team, etc. This analysis is done without delay, i.e. as soon as the situation allows.

Quick reaction in this case is very important so to learn from lessons from this event and be better able to uphold human rights during all subsequent gatherings.

2. When assessing the need to use of force, the manger provides her/his opinion. However, to make this process as impartial as possible and to protect the right to be protected from ill-treatment, her/his opinion is shared with the Professional Standards Unit or other competent unit. The PSU or other competent unit reviews the documentation (desk research) and as necessary requests additional information from the manager. The purpose is to assess the situation in as unbiased manner as possible and provide her/his opinion to the highest-ranking managing officer.

As an additional human rights safeguard and in case when the use of force needs to be justified or not, review of the decision is possible in case of new facts becoming known.

3. When allegations of ill-treatment are received, the manager informs the PSU or other competent unit without delay or Sector of crim police as necessary. This unit delivers all available documentation to the prosecutor office. Internal disciplinary hearing can take place in parallel with the consent from the prosecutor office.

Such thorough procedure represents the twofold human rights safeguard.

4. When the review suggests that there has been a violation of human rights, the manager informs the PSU or other competent unit, prosecutor office and other competent authorities to establish whether there is any disciplinary or criminal liability. The same applies to a police officer who learns about or has evidence about ill-treatment or inappropriate individuals' behavior towards other police officers – s/he is obliged to give an accurate and full account.

The role of the manager is the key one in preventing impunity. The manger exercises her/his managerial, instructive and supervisory role- all in one.

5. Through media or social media, the manager in co-operation with public relations department, informs the citizens about the course of the gathering and policing thereof so that public could exercise their right to be informed.

Case scenario – gathering with social cause when the rule “by the book” does not apply....

Real-life scenario: a group of pensioners and elderly persons, about 50 of them, gather in front of the Government building. They are blocking the entrance to the part of the building where the Government’s session should be held later today. Their intention is to express their dissatisfaction with the influence of inflation on the level of monthly pensions and with the risk this represent to their livelihoods.

Seemingly, no one appear to have taken on the role of the organiser. Communication with the persons gathering is even more difficult because of the ongoing traffic and specific health and physical needs of elderly population (slow movements, weak hearing, weak sight, difficulties with promptly processing police officers’ instructions and information, etc).

The police officer securing the building informs the competent police administration (territorial competence).

The role and duties of the police officer- the human rights checklist

Procedure	Impacts/secure the following human rights
receiving information	freedom of assembly, freedom of expression
arrival to the site of the gathering	freedom of assembly, freedom of expression
securing the site, maintaining safety and security	freedom of assembly, freedom of expression
collecting information about the event and participants	freedom of assembly, freedom of expression
communication with participants (dynamic security)	freedom of assembly, freedom of expression
finding out about alternative entrances in cooperation with other officers	freedom of assembly, freedom of expression

The role and duties of the senior police officer – the human rights checklist

Procedure	Impacts/secure the following human rights
sending patrol and informing senior officers	freedom of assembly
visiting the site of the gathering and assessing current situation	freedom of assembly
gathering accepted without the notification, in light of the vulnerability of this category of population	freedom of assembly, freedom of expression
issuing concrete tasks	freedom of assembly
possible engagement of additional officers, emergency services, etc	freedom of assembly
assessing effects of the gathered group on the rights of other individuals (work, freedom of movement, etc)	freedom of assembly, freedom of expression
meeting specific needs of the vulnerable category (food, water, medical assistance)	freedom of assembly
assessment of police conduct, cooperation with other agencies and services	freedom of assembly

Note: Article 11, para 2, ECHR says:

„No restrictions shall be placed on the exercise of these rights other than such as are prescribed by the law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.“

However, the blockade of the institutions of the legislative, executive or judicial authorities cannot be the practice which would lead to or exercise rights of certain categories or population, because it directly violates the rights and freedoms of others. The professional and proper policing during gatherings prevents disorders or anarchy in democratic societies.

Annexes

Annex 1: Outline of international standards and best practices on cooperation with prosecutors' offices on processing ill-treatment allegations concerned with policing of gatherings

Annex 2: Frequently asked questions

Annex 3: Verbal de-escalation of conflicts

Annex 1: Outline of international standards and best practices on cooperation with prosecutors' offices on processing ill-treatment allegations concerned with policing of public gatherings

Introduction

1. The Outline complements the Resource Manual on Policing of Public Gatherings (the Manual)²² that, upon the international consultant's inputs,²³ has already included a set of points concerned with the human rights and relevant standards, including as to use of force, ill-treatment-related allegations/complaints or other relevant indications that might occur during or in the context in issue.
2. In this vein, in addition to the points suggested in the Manual, the Outline invokes international requirements and some best (national) practices concerned with the safeguards against ill-treatment and handling indications of it, when policing public gatherings. The Outline is to be considered as support material for the Manual, accordingly.
3. The Outline is to be read with another deliverable produced by the consultant under the Project, namely the Outline of international standards and best practices on cooperation with prosecutors' offices in investigating ill-treatment (hereinafter referred to as the General Outline). In view of this, and in order to avoid repetition, the current Outline skips reiterating the former. Instead, it suggests relevant references to it, where appropriate.

Most important points suggested in this Outline are accentuated in *italics*.

22 For the sake of simplicity of the wording used, the terms 'police', 'policing' are used herein as comprising other law-enforcement agencies and relevant interventions carried out by them, as well as entire government (representatives (agents) engaged in performing the functions concerned.

23 The author of the Outline acted as an international consultant supporting the development of the Draft Manual. Erik Svanidze is a former prosecutor/head of department at the Prosecutor General's Office of Georgia, deputy Minister of Justice of Georgia, member/expert of the European Committee for the Prevention of Torture, leading a number of Council of Europe, EU-funded country-specific and regional projects in Turkey, Moldova, Armenia, Ukraine, and Balkans, author of relevant CoE publications concerned with effective investigation of ill-treatment, as well as of the CoE HELP Course of the Prohibition of Ill-Treatment. He holds LLM in International Human Rights from the University of Lund, Sweden.

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Key overall standards and considerations

4. The substantial and related procedural norms and obligations concerned with the use of force and other intrusive policing interventions at the public gatherings, including crowd control operations, primarily stem out of *the prohibition of ill-treatment* and, in the ECHR-based system, its Article 3 accordingly.²⁴ The overall procedural obligations engaged are summarised in Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies (the Guidelines).²⁵
5. Although the standards concerning the use of *lethal and non-lethal* force, means, equipment and firearms apply similar principles, the former are *based on a different human right* and related nuanced requirements, namely the right to life (in the ECHR system protected under Articles 2).²⁶ Due to the indicated variations and related specifics of investigation of the use of lethal force / lethal use of force, it exceeds the scope of this Outline.
6. The human rights compliant policing of public gatherings and (exceptional) use of non-lethal force in this context is, in addition, specifically governed by the *right to freedom of assembly*, in particular, the relevant limb of Article 11 of the ECHR. Its standards are significantly intertwined with and immediately determinate appropriateness of the use of force against persons exercising this right or concerned by related police interventions. At the same time, due to its immediate scope, the Outline, which focuses on cooperation / interaction the police and prosecution as to allegations/indications of ill-treatment by in the course of public gatherings, it suggests just some references as to requirements and standards to be addressed by investigations of incidents is issue, including dispersal of manifestations, which is the ultimate interference with the right of (peaceful) assembly. Article 11 of the ECHR offers much wider range of standards on management of public gatherings, facilitation of the human right in issue, which, however, do not relate to indications of ill-treatment or use of force.

24 The Outline skips elaborating on the substantial and other parameters of the prohibition of ill-treatment and other human rights concerned, as well as the duty to combat impunity and effectively investigate serious human rights violations, since they are amply addressed in other methodological and capacity building instruments, including the Outline of international standards and best practices on cooperation with prosecutors' offices in investigating ill-treatment referenced in para.3 above.

25 Available at: <https://rm.coe.int/1680695d6e>

26 According to ECtHR case-law the situations, where it is permitted to use firearms and other means that put human life at immediate risk even as an unintended outcome, fall under Article 2 of the ECHR irrespective of their actual outcome, i.e. when their use do not lead to actual loss of life of the person(s) concerned. See *Makaratzis v. Greece*, ECtHR judgment of 20 December 2004, application no. 50385/99.

7. As to other human rights, almost all of them could be engaged by law-enforcement interventions leading to or involving use of force, when handling public gatherings, and are of relevance for interaction with the prosecution for the purposes of investigation of the incidents concerned. Although they do not provide for immediate rules as to the use of force in this regard and in general, they are to be taken into account, when assessing the circumstances of law-enforcement interventions involving or leading to the use of force or ill-treatment. The most relevant of them are:
- *The right to liberty and security of person* (Article 5 of the ECHR) that provides for some additional requirements and safeguards as to the specifics of the use of force against persons apprehended at the public gatherings, rules authorising apprehension of persons suspected in crimes and further, including procedural safeguards applicable to them;
 - *The right to respect for private and family life* (Article 8 of the ECHR), in particular, its limb that is often engaged when the use of force is combined with searches or applied for overcoming resistance to carry them out, as well as some other intrusive policing activities, which is to be taken into account in the context of relevant incidents, their effective investigation and securing accountability for violations, if any;
 - There are not so infrequent instances, when use of force, eventual investigations are concerned with and require consideration of the standards applicable under *the right to freedom of expression* (Article 10 of the ECHR), as well as *freedom of thought, conscience and religion* (Article 9 of the ECHR).
8. The *right not to be discriminated* with regard to the enjoyment of rights and freedoms set forth in the Convention and (domestic) law, as well as by any public authority, as specified in Article 14 of the ECHR and Article 1 of Protocol no. 12 to it, have particular standing as a key cross-cutting principle of policing, including the exceptional use of force in the course of public gatherings. The motives or other discriminatory factors could be decisive for constituting ill-treatment or, even, torture, or for exacerbating other human rights violations.
9. It is to be highlighted that apart from particular care in probing possible racial or other discriminatory motives that may aggravate ill-treatment (excessive use of force), *a failure to hold an adequate investigation into ill-treatment potentially involving discrimination* can itself constitute a substantive violation of Article 14 of the ECHR.²⁷ In terms of cooperation between the police and prosecution for the purposes of reacting to excessive use of force or other indications of ill-treatment that occur in relation to policing public gatherings, this, first of all means their equal appropriate treatment irrespective of political affiliation of the (alleged/potential) victims, their gender, age, religious or other attributes.

27 See *Cobzaru v. Romania*, ECtHR judgment of 26 July 2007, application no. 48254/99, paras. 96-101.

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10. The overall *duty to effectively investigate* alleged or otherwise invoked or indicated excessive use of force and other ill-treatment is based on the relevant procedural obligations inbuilt in the prohibition of ill-treatment and Article 3 of the ECHR, as well as the overall obligation to eradicate impunity for serious human rights violations. The system and avenues of cooperation between the police and prosecution in this regard, therefore, are to *reconcile, itemise the effective investigation requirements*, with the crucial importance attributed to the independence, promptness and thoroughness, as well as adequacy/sufficiency of competence from one side²⁸ and *particularities of and specific guarantees to be secured under the right to freedom of assembly* on another end.
11. In view of the overall similarity of the standards, required institutional and procedural arrangements of cooperation of the police (various law-enforcement and related agencies) with the prosecution, other bodies comprising a system responsible for investigation of serious human violations under national jurisdiction, the public gatherings-related grievances of ill-treatment can and could be addressed by the same system and measures. To put it differently, addressing complaints or other indications of ill-treatment and excessive use of force occurring during or in the context of policing of public gatherings are normally dealt with by a system introduced for combatting them in general. Appropriate interaction, cooperation of police, law-enforcement agencies with prosecution or other designated body/ies ('interaction between the police and prosecution) is a key prerequisite for securing compliance with their effective investigation and related positive procedural duties.
12. At the same time, the specifics of incidents, factual and evidential particularities are to be addressed by advanced reporting obligations and other cooperation avenues and arrangements, as well as particularities of human rights-based further requirements that are applicable under the right to assembly. The structure of the Outline further focuses on the main blocks of standards that determine *specific cooperation features between the police and prosecution in handling the indications of and more widely for preventing ill-treatment, excessive use of force and coercive measures, when policing public gatherings*. These dimensions include:
 - Notification requirements, remitting information as to (possible) ill-treatment to the prosecution (relevant investigative agency²⁹) in view of the use of force standards and specifics of the right to freedom of (peaceful) assembly;
 - Identification of the officers engaged in policing the assemblies;

28 *Supra* note 4, with further references.

29 While in BiH it is the prosecution, in other jurisdictions it could be a different body, depending on the system of investigation of ill-treatment, other serious human rights violations. See the General Outline.

- Cooperation in the course of investigation of the incidents concerned/ assembling specific evidence;
 - Securing appropriate synchronisation/synergy between the disciplinary procedures/ managerial inquiries processed by the police (relevant hierarchical/Ministry of Internal Affairs structures) and criminal procedures handled by the prosecution.
13. The institutional and procedural measures in issue, are to be supplemented and reinforced by methodological and capacity building interventions accordingly.

Basic Standards and Criteria as to the Use of Force and Notification Requirements

14. The basic rule set out and confirmed in the ECtHR case law that is immediately applicable for policing of public gatherings and is to be addressed by the investigative and related police and prosecution notification and other cooperation arrangements could be summarised in the following stipulation (formula): *a recourse to physical force (special means) that has not been made strictly necessary (including in terms of being indispensable) by the person's conduct, which is confronted with law-enforcement officers or concerned by their coercive measures, as a minimum diminishes human dignity. If and when it results in infliction of more serious physical pain and related mental suffering, it amounts to inhuman treatment and constitutes a relevant violation of Article 3 of the ECHR.*
15. It is to be noted that, the degrading effect of excessive, disproportionate use of force can exceed the proscribed level of (mental) suffering and amount to ill-treatment *irrespective of any physical injuries or considerable pain being inflicted.* The ECtHR (its Grand Chamber) has confirmed that even a slap in the context of heightened emotions and tension between the victim and police officer(s), which, however, was not strictly necessary, diminishes human dignity of the victim and violates the prohibition of ill-treatment.³⁰
16. In addition to the 'strict necessity' test, there are *further specific standards* introduced for ensuring that any use of force or special means does not breach the prohibition of ill-treatment. They involve the following *groups of requirements and safeguards*, which are to be ensured and verified/investigated accordingly.

³⁰ See *Bouyid v. Belgium*, ECtHR [GC] judgment of 28 September 2015, application N 23380/09, paras. 81-113.

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Further Requirements and Safeguards				
Lawfulness³¹	Mitigation of consequences³²	Training³³	Reporting³⁴	Identification³⁵
Compliance with both national legal framework and the ECHR standards	Assistance and (on-site/ immediate) <i>medical aid</i> (pre-arranged, where possible)	Officers to be instructed and trained on the use of force / special means, including their specifics	Dedicated formalised (template) individual reporting procedure.	Visible individual name tags or coded signs (for subsequent identification)
Regulations must be accessible and foreseeable, i.e. sufficiently clear and precision that minimizes risks of arbitrariness	Immediate subsequent <i>medical screening</i> ³⁶		Hierarchical review and assessment.	Assignment of special means to individual officers / relevant record keeping

31 See the ECtHR case-law, including *Izci v. Turkey*, Judgement of 23.07.2013, appl. N 42606/05, paras.85-86.

32 The ECtHR considers that a lack of appropriate medical treatment in good time following infliction of bodily injuries or other traces resulting from use of force or special means contributes to or constitutes a violation of Article 3 of the ECHR. *Shamayev and others v. Georgia and Russia*.

33 In *Davydov and others v. Ukraine* and subsequent judgments the ECtHR asserted that Article 3 of the Convention establishes a positive obligation on the State to train its law enforcement officials in such a manner as to ensure their high level of competence in their professional conduct so that no-one is subjected to torture or treatment that runs contrary to that provision.

34 See paras. 17-22 below.

35 See paras. 23-24 below.

36 Besides access to a doctor and medical screening, which is a general safeguard against ill-treatment and the outlined mitigating arrangement comprising timely medical assistance requirement in case of use of force and special means, *Yusiv v. Lithuania*, *Muradova v. Azerbaijan* and the entire ECtHR case law is indicative in terms of absence and importance of proper reporting by the officers or other state agents engaged in relevant incidents. See the relevant section of the SoP below.

17. In view of the high risks of ill-treatment, related accountability and preventive considerations, the basic use of force standards, as a minimum, require that where injury [or death] is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors.³⁷ However, in combination with the procedural obligations, in particular the effective investigation requirements, as to initiation of investigations, securing their immediate independence and promptness, have advanced it to the automatic (immediate) notification requirement.³⁸
18. The relevant provisions introduced in legal frameworks could be illustrated by the Law on Police of Ukraine, which in Articles 44 (Part 2) and 45 (Part 6) provides for the mandatory written notification requirements in case of the use of respectively force and special means against a person. The use of force is to be notified by the police officer concerned to the superior(s) in case of causing injuries with the further obligation of the latter to inform the [competent] prosecutors accordingly. As to any use of special means by the police officers, they are to be reported (in writing) regardless of any further consequences to the superior(s) and immediately reported to the prosecutor in case of causing injuries. These provisions are further advanced in the bylaws. For example, the Rules on the Use of Special Means by the National Guard of Ukraine³⁹ approved on 20.12.2017 by Decree N1024 of the Cabinet of Ministers of Ukraine.⁴⁰
19. However, taking into account the advancement of the ECtHR case law as to the use of force and ill-treatment,⁴¹ and overall trend in terms of enhancement of police accountability mechanisms, relevant procedural obligations, it is to be highlighted that the limitation of reporting arrangements to use of force incidents involving injuries or other grave consequences is to be reviewed so that any instance of use of force and special means is formally reported within the hierarchical (or special external monitoring) system. As to notification of the competent investigative body, prosecution, it is to be adjusted to the discussed effective investigation requirements.

37 See *United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, paras. 6, 22.

38 *Supra* note 4, with further references.

39 Equivalent of Gendarmery.

40 Similar reporting obligations are provided for by the Law on Police of the Republic of Armenia (Article 29).

41 See para 15 above.

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20. As far as best practices with regard to the expansion of the notification arrangements the Scottish system of filling the Use of Force Form is worth highlighting. It is manually completed by officers / staff following an incident where the use of force is applied.⁴²
21. Bearing in mind the particular significance of the right to freedom of assembly and resultant stipulation that any coercive measures interfering with it (and the right to freedom of expression) other than in cases of violence or incitement to it, do a disservice to democracy and often even endanger it. In view of this, forceful disruption, dispersal of manifestations, public gatherings, as well as arrest of participants, use of physical force, special means is subject to even higher limitations with regard to the strict proportionality principle. Use of force in this context may only be justifiable on specific and confirmed substantive grounds involving real and not abstract risks.⁴³ If the force used is unnecessary and excessive and thus contrary to Article 3 of the Convention, it leads to a conclusion that it was “not necessary in a democratic society” within the meaning of Article 11 § 2 of the ECHR and its simultaneous violation. The cumulative effects of the violations concerned require that any use of force (not to mention straightforward ill-treatment, which is covered by the general standards) in the context of public gatherings is to be subject to mandatory formal reporting and scrutiny.
22. The corresponding provision of the Law on Police of Georgia, which echoes these considerations, could be invoked in this regard. Its Articles 32 (Para. 3) and 33 (Para 5) comprise specific norm(s) as to the obligation of a senior official to inform his/her immediate superior and the prosecutor if force or special equipment is used against an unspecified number of people.⁴⁴

Identification of the officers engaged in policing the assemblies

23. Another specific set of additional requirements concerned with the use of force and, in particular, policing the public gatherings that is of crucial importance for complying with the duty of effective investigation and combatting impunity is concerned with the *identification of the police officers engaged, as well as removing formal legal or other practical obstacles impeding the procedure and holding those liable fully responsible for ill-treatment.*

42 See <https://www.scotland.police.uk/about-us/how-we-do-it/use-of-force/>

43 See *Navalnyy v. Russia*, ECtHR [GC] judgment of 15.11.2018, apps. N 29580/12 and 4 others, para. 137; *Zakharov and Varzhabetyan v. Russia*, ECtHR judgment of 13.10.2020, apps. N . 35880/14, 75926/17, para. 90 with further references.

44 It is to be mentioned that the failure to follow this norm has constituted one of the breaches of the procedural obligations established by the ECtHR in *Tsaava and Others v. Georgia*. See para. 221 of the judgment of 7 May 2024.

24. In addition to the removal of public interest immunity certificates or other legislative measures preventing identification of the police (law-enforcement) staff from being identified, including for the accountability purposes,⁴⁵ there are important requirements as to the disclosure of the identities of the police officers, members of special squads that are to be resolved under their cooperation with the prosecution.⁴⁶ The difficulty in securing definite identifications, when police officers operate with *arrangements protecting their identity or making impossible to trace it due to the helmets, gear or other protective equipment used without relevant marking arrangements*, and the lack of police cooperation during the preliminary investigations lead to violation of procedural imperatives concerned with the prohibition of ill-treatment.⁴⁷
25. In terms of remedying the deficiencies and lack of cooperation with regard to the deficiencies concerned, the measures reported by the Italian Government under the execution of the ECtHR judgments framework could be of interest. The identify of police officers carrying out law-enforcement operations is to be ensured through the display of alphanumeric codes on their uniforms and helmets and the use of body cameras.⁴⁸ The Italian Government has reported that in the specific respect of the identification of the policeman involved in a case, it's highlighted that, as reported in the Privacy Guarantor Advice on the use of bodycam, the mechanism of these devices are conceived to track the possible responsibilities by a so called watermarking system: the serial number of the camera is associated to the identification number of the officer wearing it; moreover, the non-disputability of the records is guaranteed by means of the insertion of the officers' CIP on the videorecord and the overlay of the identification number of whoever accedes and displays the videorecords concerned.⁴⁹

Cooperation in the course of investigation of the incidents concerned/ assembling specific evidence

26. Investigations of intentional ill-treatment against the participants of manifestations or other public gatherings do not significantly differ from their overall requisites.⁵⁰ The cooperation between police and prosecution is to be fine-tu-

45 See *Hugh Jordan v. the UK*, ECtHR Judgement of 04.05.2001, appl. N 24746/94, paras. 135-145.

46 CPT's Report on the visit to Albania carried out from 13 to 18 July 2003, CPT/Inf (2006) 22, para. 44.

47 *Baranin and Vukčević v. Montenegro*, ECtHR judgment of 11 March 2021, applications NN 24655/18 24656/18, para.121; *Cestaro v. Italy*, ECtHR Judgement 07.04.2015, appl. N 6884/11, paras. 214-217.

48 See CM/Notes/1483/H46-18, 1483rd meeting, 5-7 December 2023 (DH).

49 See Communication from the authorities (29/06/2023) concerning the case of *CESTARO v. Italy* (Application No. 6884/11), DH-DD(2023)800.

50 *Supra* note 4.

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ned as far the instances of *use of force (and special means) for policing the public gatherings is concerned*. It requires taking into account the combination of the standards protecting both from ill-treatment and violation of the right to freedom of assembly.⁵¹ Against this background the Outline further dwells upon essentials deriving from the effective investigation standards in this regard.

27. Besides the formal reporting, internal scrutiny and information of prosecutors/ competent investigative bodies (discussed above), some jurisdictions have introduced *hotline arrangements for their immediate notification of the relevant incidents*. This could be exemplified by the cooperation between the police and the Special Investigation Service (the competent body in charge of investigation of cases of ill-treatment attributable to the police/ other law-enforcement agencies) and resultant practice (statistics) of notifications. It is indicative that 58% of such notifications in 2022 were made by the General Inspection of the Ministry of Internal Affairs, i.e. the police authority itself.⁵² This format of early and immediate cooperation is to extend over the excessive use of force when policing the public gatherings.
28. The standards of independence and promptness require that *all the procedures, potential evidence and materials are obtained and assembled by the prosecution (competent body) and not the police authorities*. For the purposes and pending actual engagement of the competent body/prosecution the police should, however, without (undue) delay take action that:⁵³
 - *a potential crime scene (location of the gathering / use of force) is secured by means of guarding it without interference;*
 - *reports on use of force / special means (as/where applicable) and related materials are secured pending their seizure by the investigation or submitted to the prosecutor in charge;*
 - *special means, used gas canisters etc. (as/where applicable) are stored without any further interference;*
 - *CCTV, body-cameras video or other recordings are stored without any further interference;*
 - *registers, including electronic data, secured;*
 - *other necessary potential evidence or materials secured.*

50 Supra note 4.

51 See para. 21 above.

52 See Special Investigation Service 2022 Annual Activity Report, p. 68. <https://sis.gov.ge/Statistics-and-reports>

53 For the international practice and measures taken in the light of ECtHR judgments see *Ramsahai and Others v. the Netherlands*, ECtHR [GC] Judgment of 15 May 2007, application no. 52391/99, paras. 333-341. See supra note 4 with further references.

29. In parallel, *the prosecution should ensure that investigations concerned with (excessive) use of force or direct ill-treatment at the public gatherings are to comply with the independence and overall standards and requirements of effective investigation, regular methods and tactics.* At the same time, they are to follow and take into account the specifics of the category of cases, evidence to be assembled, proportionality and other requirements.⁵⁴

Independence

30. Investigation should *avoid delegating investigative, operative, verification or support activities or otherwise assembling and providing (potential) evidence* to the police/other law-enforcement agencies concerned. Requests as to provision of (copies of/extracts from) registers, other documents, video or other records and electronic data, as well as special means used or other real (material) evidence, summoning of witnesses and their other engagement is to be carefully weighed against possible loss of (potential) evidence, undermining their genuineness and admissibility or promptness considerations and requirements. *As a matter of principle, they should be obtained (assembled) by means of seizure, search or other investigative activities (as appropriate) carried out/immediately led by the prosecutors.*
31. The investigations should comply with *the (practical) independence* requirement in terms of reliance of the prosecution on *its own findings and assessment* and not solely on materials provided by the police, law-enforcement agencies, including the reports on use of force/special means and decisions taken by their management in this regard. Neither statements or versions put forward by them should be accepted at face value and are to be critically assessed against the circumstances established and evidence obtained. This should apply to all the specifics of policing public gatherings, including with regard to management and interaction with the organisers, participants, the planning of interventions/use of force (if not spontaneous), use of the coercive measures, their scale/intensity and other parameters.

Promptness

32. Undelayable investigative activities are particularly important for the first of the two-fold of promptness requirements that is concerned with *assembling evidence in a timely manner for averting their loss and securing their probative value.* The specifics of the incidents in issue suggest the following (non-exhaustive) considerations to be taken into account with regard to:

54 Could be specifically exemplified by the deliberations suggested by the ECtHR in *Tsaava and Others v. Georgia*, paras. 213-235, supra note 23, *Baranin and Vukčević v. Montenegro*, paras.142-149, supra note 26.

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- *Crime scene investigations* (to be performed with engagement of forensic specialists, where appropriate) being particularly important for identifying, where significant in the context of incidents in question, the location / dynamics of movement specific victim(s)/persons, officers concerned, force and, in particular, relevant special means or other implements used, by retrieving or positioning the traces, residues of blood / body fluids/fibers, belongings and other items/objects relevant for the incidents concerned; projectiles, rubber bullets, sprays etc. or other real evidence of the relevant special means used etc.;
 - *Questioning of the (alleged) victims and (eye)witnesses* for getting fresh and accurate accounts as to the factors, circumstances, parameters and other circumstances significant for assessing the compliance with the conditions and proportionality of the use of force and special means, management of and planning of the public gatherings;
 - *Questioning of the implicated (i.e. those who immediately used force or special means or otherwise involved) officers* for the same purposes;
 - *Forensic medical examination of the (alleged) victims and officers* (if injuries reported), in particular, since even light physical (rapidly healing) injuries could be a significant evidence and factors could be decisive for purposes in issue;
 - *Retrieving (seizing) video/audio recordings/footages* (including taken by CCTV, body cameras, auto video-recorders and other devices used by the police/agency concerned and other, including private, systems) *and other electronic data stored* prior to expiration of their storage times, possible erasure or in order to avert their alteration.
33. As to the procedural (overall) promptness of investigations, which are to be carried out with *particular intensity*, i.e. without unreasonable / unnecessary periods of inactivity that negatively affect its perspectives and could undermine confidence in measures taken, their appropriate and proactive support / contribution from the police authorities, including with regard to identification of those implicated, suspension from their duties etc. are of crucial importance.⁵⁵

Thoroughness

34. Although the circumstances of the use of force or same special means against or in the context of public gatherings are in general identical, the incidents, particular situations differ and it would be *impossible to exhaustively outline the investigative interventions*, activities required for complying with the thoroughness requirement. Investigation(s) should accordingly comprise all the

55 See in particular *Tsaava and Others v. Georgia*, para. 232 with further references, *supra* note 23

reasonable steps and genuine efforts for establishing the circumstances and crime(s), if committed, identification of those responsible. These standards would require exhaustive, *meticulous verification of the allegations and versions suggested by the (potential) victims* and relevant attention paid to the contentions of the police/law enforcement officers and institutions concerned.

35. The regular (most typical) *typical inventory of required investigative measures and evidence* to assemble includes:
- detailed and exhaustive statements of (alleged) victims obtained with an appropriate degree of sensitivity;
 - appropriate questioning and, where necessary, use of identification parades and other special investigative measures designed to identify those responsible;
 - confidential and accurate medical (forensic) physical and psychological examinations of alleged victims, capable of identifying the causes of injuries and their consistency;
 - other medical evidence, including records from places of detention and health care institutions;
 - appropriate witness statements, possibly including eye-witnesses, members of the public, attending / other participating officers, including superiors and in command;
 - examination of the scene for material evidence; examinations and other relevant investigative activities should involve the use of forensic and other specialists able to secure and examine the evidence, create appropriate sketches, and/or reconstruct the circumstances/particular events;
 - seizure of special means and related equipment, projectiles, rubber-bullets, used or sample canisters/containers, for chemical substances, etc. (as appropriate), records of their distribution and return;
 - seizure of the reports on the use of force / special means and decisions taken by the management of this case files and other documentation custody and other records (where applicable) related to the relevant incident.
36. The investigative activities should specifically focus and address (in various combination) *proportionality factors and circumstances specific for the use of force in the course of policing of public gatherings*:
- particular factors and circumstances authorising use of force in the context of crowd control operations and assemblies, *with the particular legal regime to be observed and the right to freedom of assembly and adjacent human right(s) respected*, including with regard to a high degree tolerance towards irregularities, differentiating between *unlawful and violent assemblies*, addressing *individual violent act(s) and massive violence*, as the

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- ground for dispersal of an assembly; the use of other less intrusive means and tactics to comply with the proportionality principle envisaged by the international standards;
- if the police is involved in or otherwise by its actions/inaction incites violence during public gatherings, it is necessary *to examine who started the violence*;⁵⁶
 - particularities of the *grounds/reasons for and types of force / special means used (applied)*, including applied for apprehension of violent participants; violent or aggressive persons (with specific restrictions of the use of force and special means in closed premises, against persons under control); prevention of attempted destruction of possessions, property etc.;
 - *persons concerned*: targeted or affected by the use of force/special means (age, immediate or known behaviour, their numbers etc.);
 - risks (to be) averted and values at stake, their imminency, and other related circumstances, including in terms of handling *the counter demonstrations*;
 - *warnings and other preventive measures*, gradual forceful interventions, whenever appropriate, and the means available;
 - *specific contexts of spontaneous use of force/special means*, including possibility to and actual assessment the factors and situation;
 - *planning and preparation of arranged interventions*, their adequacy in terms of anticipating the developments, resources and tactics deployed, taking precautionary measures, including provision of ready medical assistance, etc. so to secure strict proportionality and other requirements;
 - *lawfulness* in terms of the clarity of the regulations, failures to remedy the deficiencies, including by means of planning (see above), as well as use of the special means, their exact sort and items officially certified, obtained registered by the authorised authority;
 - (targeted) *training of the officers*, including with regard to using the specific types of force, special means, grounds for their use, proportionality assessment skills;
 - compliance with the *identification arrangements* (use of visible codes/insignia etc., where necessary to protect the officers engaged);
 - strict observance of the *individual and formal reporting framework* as to the use of force and special means, its adequacy as to securing accountability of the police/law enforcement agencies/officer;
 - indications of *discriminatory motives or attitudes*.

56 See in particular *Primov and Others v. Russia*, ECtHR Judgment of 12.06.2014, appl. N 17391/06, para. 157. *Cestaro v. Italy*, para. 227, supra note 26.

37. Particular attention is to be paid to the *conformity with the procedural rules in assembling and processing evidence and conduct of investigations*, including in terms of standards of evidence and fair trial guarantees. It is to be kept in mind that procedural failures that contribute to the collapse of subsequent legal proceedings amount to a failure to carry out an effective investigation.

Use of Full Range of Managerial Prerogatives and Disciplinary Procedures

38. The police and prosecutors are to advance their cooperation with regard to making best (full) use the powers and prerogatives with regard to:
- *suspending from service or from particular duties* of the officer(s) against whom prosecution is initiated and indictments are issued, including;
 - where necessary, this is to be considered prior to the relevant procedural steps and decisions are taken by triggering (requesting / seeking) relevant disciplinary or managerial interventions from the disciplinary bodies and police hierarchy.
39. It is to be highlighted that this compliance with this requirement is specifically scrutinised by the ECtHR. For example, it has singled out specific para. on this issue in its *Cestaro v. Italy* landmark judgment concerned with the human rights violations in the course of policing the public gatherings, manifestations. It highlighted that the authorities failed to make sure that those responsible for the acts of torture suffered by the applicant and the other related offences were *suspended from their duties during the criminal proceedings*. Moreover, it paid attention to the omission with regard to a progress of their careers during the criminal proceedings.⁵⁷
40. As a result, the Italian legal framework has comprised procedural suspension, which does not preclude, pending the criminal proceedings, the imposition of the compulsory precautionary suspension from service when officers are accused of ill-treatment. Moreover, the procedural suspension does not prevent the dismissal of the officer once the criminal proceedings have been concluded.⁵⁸
41. Besides that, this⁵⁹ and other judgments of the ECtHR⁶⁰ underline and suggest the particular importance to be attributed to securing that violations are properly addressed including *through the disciplinary procedures and responsibility* measures in combination and are to be synchronised with the criminal

57 *Cestaro v. Italy*, para. 227, supra note 26.

58 *Supra* note 28.

59 *Supra* note 36.

60 See, inter alia, *Baranin and Vukčević v. Montenegro*, para.119, supra note 26.

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responsibility. The deficiencies in this regard are often related to the statute of limitations under disciplinary framework. Italy provided an example of general measures that has been specified in response to the ECtHR adverse judgments. In particular, disciplinary proceedings against police agents are suspended when criminal proceedings against the same agents for the same facts are pending. However, the relevant disciplinary body may decide to adopt disciplinary measures against the agents involved during criminal proceedings (i.e. suspension in case of particularly severe offences) and to dismiss them if they are convicted.⁶¹

61 Supra note 27.

Annex 2: Frequently asked questions

Frequently asked questions by individuals who want to *participate* in an assembly

1. Where and how can I find out official information about the character and type of a notified assembly?

Information can be obtained through media, social media or other appropriate communication channels.

2. Will orderlies/stewards be present at the public assembly; can I address them if I notice anything unusual?

Yes, there are orderlies and stewards and you can refer to them if you notice anything unusual. The organiser appoints stewards or orderlies but can also choose to entrust the safety and security to a privately owned security agency.

3. Am I allowed to bring a bottle of water to an assembly, what am I allowed to bring in my bag/backpack?

Yes, plastic bottles of water can be brought to the gathering. The bag cannot contain items that pose risk to the safety of others such as knives, baseball bats etc. There are exceptions of course such as orthopedic and other pieces of aid equipment to remain in possession of the persons that need them. Introducing items to sport events, commercial gatherings and similar manifestations is not allowed. The items are confiscated at the entry point of the fenced off area.

4. Will I be searched if I just want to peacefully participate in an assembly? The police officer cannot arbitrarily decide and search the participants of an assembly without a valid reason, if there are no grounds for suspicion of a criminal offence.

There is an exception in Art 1 Protocol 12 with Art 14 of the European Convention on Human Rights. The domestic law obliges the organiser to maintain the public peace and order in the gathering. The same applies to the stewards and orderlies who have an obligation to and right to search persons entering the premise in which the gathering takes place.

5. Can I bring my child to a gathering?

Yes, the law does limit the participants' age.

6. What is the protocol if I get accidentally or intentionally hurt?

If you get hurt unintentionally, consult a medical doctor.

If you get hurt intentionally, inform the steward/orderly, police officer, medical officer, etc.

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7. What should I do if my personal safety is threatened and I want to leave the public space where an assembly is organized?

Your best and safest choice is to follow instructions given by the stewards/orderlies and police officers. Their right and duty is to direct movements of the gathering's participants.

8. If there is an escalation of violence during an assembly in which I did not directly participate, for which misdemeanours or criminal offenses can I be charged?

You cannot be charged with any criminal offence or misdemeanour if you have not directly participated in violence.

Everyone is individually responsible for the act s/he committed. The organiser is responsible for the damage done by the gathering's participants, following the principle of impartial responsibility.

9. What are my rights if I am deprived of liberty during an assembly?

Everyone who is deprived of her or his liberty shall be informed without delay - promptly, in the language which s/he understands, of the reasons for her/his deprivation of liberty based on Article 5 of ECHR. Also, immediately after the deprivation of liberty, the person must be offered medical assistance, access to a lawyer, as well as the possibility to inform a family member or a third person of their choice about their deprivation of liberty.

10. What does it mean that I have the right to liberty and security of person under Article 5 of ECHR in case of participation in an assembly?

The right to liberty and security of person in the context of Article 5 of the ECHR and assembly means that no one can be deprived of their liberty during an assembly, except in case of non-compliance with the law or reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent her/his commission of an offence or fleeing after having done so.

Frequently asked questions by individuals who wish to organise an assembly

1. Article 10 of the ECHR guarantees my right to freedom of expression. Does this mean that I have the right to gather a large number of like-minded people and is this considered an assembly?

According to Article 10 of the ECHR, the right to freedom of expression includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority. If a number of people hold similar opinions they want to impart among themselves or to the wider community, this does represent a public assembly and falls under the protection of Article 10 of the ECHR.

According to Article 20 of the UN Universal Declaration of Human Rights, everyone has the right to freedom of peaceful assembly and association.

2. Who and when should be notified of my intention to organise an assembly?

You have an obligation to notify police authorities about the intention to organise a gathering at least five days before the scheduled gathering.

The notification is submitted to the territorially competent police administration. In case the place of the gathering falls into the competence of two or more police administrations/stations, the notification is submitted to the Ministry of Interior.

3. How long does the procedure for approving a request to hold an assembly take?

If the notification has all the necessary information based on which decision can be made to approve holding of the gathering, the organiser can immediately be advised about the decision approving the gathering to be held.

4. What should be enclosed with the request to hold an assembly?

Notification for a gathering is submitted on a standardised form, available from the competent police station/administration. In principle, no documentation is attached to the request.

In exceptional cases, the police authority advises on the need to submit additional documentation.

5. How much does it cost to organize an event, do I as an organiser need to pay for fire brigade/department, ambulance, etc.?

It is the duty of the organiser to ensure the fire department and ambulance, i.e. bear the costs of their potential assistance in sport manifestations or commercial gatherings.

6. On what grounds can an application to hold an assembly be rejected and with whom can I file a complaint?

According to Article 11 of the ECHR, no restrictions shall be placed on peaceful assembly other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. However, lawful restrictions on the exercise of this right may be imposed by members the police or of the administration of the State, and by members of the armed forces.

Complaints against the decision banning the gathering can be filed with the second instance body cited in the decision banning the gathering.

7. Where is it allowed to hold an assembly (park, square, street, etc.)?

Gathering can be organized in any place in which the gathering of individuals does not lead to the risk against rights and freedoms of other individuals, people's health, safety of people and their property and disruptions of public traffic.

8. Where can I post information about my intention to organize a gathering and how many people can I invite, what if more participants show up than expected?

Information is published in media outlets, social media, publicly displayed written notifications or other appropriate means of communication.

If a larger number of individuals than originally planned shows up for the gathering, the organiser increases the number of stewards and orderlies.

Annex 3: Verbal de-escalation of confrontation and preventing potentially conflict situations

Definition of the term

De-escalation means a set of non-violent measures and procedures directed at an individual or a group of persons in a potentially conflicting situation with a view to preventing violence and protecting civil and human rights.

Verbal de-escalation, therefore, involves preventing or de-escalating a potential conflict by using appropriate vocabulary, manner of speech and physical gestures.

Communication, not confrontation is the key.

Communication is a social skill and implies transmission and understanding of information and messages, ideas and feelings, and exchange of experience through interaction with one or more persons. To communicate means to mutually understand each other in a spoken, written manner, or by signs, with or without the use of technical means and methods of communication (telephone, fax, internet, etc.).

Communication usually gives answers to the questions: who, what, where, when, how, whom and why.

The basic elements of communication are speech, tone of voice, body language, observation, and listening.

The communication can be:

Verbal communication that includes not only speech but active listening as well.

Nonverbal communication that implies observation, interpretation, and response to emotional and interpersonal signals, and includes a series of means such as: facial expression, way of looking, position of the body and arms.

Communication environment significantly affects communication processes. It is common that people often adapt their attitudes and opinions and assume the attitudes and opinions of others under the influence of the environment and adopt the ways of communication and behavioural models of the environment in which they find themselves.

Communication processes during public assemblies between police officers and protesters or demonstrators are often more complicated than in other environments due to limitations in communication between these two groups imposed by the environment in which they find themselves (open space, uproar, heightened tensions, nervousness, media pressure, etc.). Communication in this environment is especially challenging due to the usual hierarchical way of communication between police officers and citizens.

**Only one police officer communicates / talks with the representatives
of the group of citizens.**

Active listening as part of verbal communication

Active listening helps you hear and detect warning signals while they are still in the verbal stage, where necessary preventive measures can be taken before the situation escalates. Listening helps the police officer to hear and accurately recall all important words uttered by the interlocutor (protester or demonstrator).

1. If you actively listen to someone, it means that **you hear and understand what the other person is saying**. At the same time, you listen with interest and attention and **are not showing signs of boredom or repulsion**. You keep your **facial expression as neutral as possible**.
2. You allow the interlocutor to express his/her emotions. Meanwhile, **you think how to respond** to what the interlocutor is saying **in a calm and composed manner**.
3. You give your interlocutor sufficient time, **you do not interrupt him/her and do not emphasize your opinion or your experiences**. This is not the time for "I" messages because they can further irritate the interlocutor. Considering that it is a public gathering and that a large number of people are present, by doing that you show your professionalism.
4. During the conversation, always have in mind that **your role is to listen and solve the problem** or to forward it to the ones that can solve it. **Look the interlocutor in the eyes** in order to show that you are listening and paying attention to the said.
5. **Confirm that you are listening** by occasional nodding, mimic, or **simple words like "I understand", "yes"**. If the interlocutor is very agitated, advise him/her to take a deep breath and count to 10 and back in order to calm down if he/she has not been able to talk.
6. **Ask for a feedback to gain time. repeat or rephrase occasionally what you have heard and ask questions in order to clarify to yourself, it shows that you understand what was said and helps a person explain the situation to himself/herself, so that that the conversation could go in the**

right direction. Clarify your communication with corresponding examples, comparisons, and explanations, without superfluous statements. Repeat the messages in other words in order to be understandable, if the interlocutor does not understand or respond to what you are saying.

The skill of active listening is achieved using the “step by step” technique, where it is important to:

- a. Leave your prejudice aside:** Active listening means to set your own prejudice aside to be able to hear what is really being said. Although it can be difficult to set aside prejudice about protestors/demonstrators, especially since police officers may personally agree or disagree with the purpose of the public gathering, police officers as public officials must be able to judge a person by his/her current behaviour, not by the type of public gathering they are participating in. Also, it is sometimes difficult to set prejudice aside in routine, daily situations in which it is usual that in most cases the participants of public gatherings complain about something and express their disagreement.

If you, as a police officer, do not set aside your preconceptions and prejudice, you will never be able to “hear” the actual, verbal signals that you need to hear to prevent danger or help someone.

- b. Pay attention to keywords:** There are some keywords that you should always pay attention to such as “knife”, “will see”, “stay away from me”, “will pay for this”, etc. Of course, you should always take into account everything that is seen and heard, and the context in which something is said.

Never ignore statements such as: “I’m ready to make someone pay for this”, “I’ll show everyone”, “depressing” or derogatory words directed at someone saying that they are an “insidious element”.

- c. Determine the intensity of the statement, i.e. what is being said:** the intensity, i.e. the tone of the voice used to say something can be high, moderate or low. The more emotional and loud the statement, the greater the intensity. At the same time, emotions are not the same as the loudness of the statement. Variation in the tone of voice, for example, suggests intense emotions although it doesn’t have to be said very loudly. In general, if the statement is loud or emotional, but not both at the same time, the intensity is moderate. A statement that is not loud and has no emotion is generally of low intensity.

If someone makes threats even in a very calm voice and without emotion, they should be taken seriously. Generally speaking, high intensity statements are warning signs.

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- d. Pay attention to interlocutor's mood (positive, negative, normal, usual, abnormal, unusual) and the reasons for such mood:** mood in this context simply means how the interlocutor is feeling. You can determine the mood if you ask yourself the question: What feelings did the interlocutor express or hint at? Is his mood common or not for the given time and place? etc. While listening, it is important to notice any deviations in interlocutor's mood or any other signs.

An experienced police officer always listens to objections and complaints, and recognizes when there is an indication of a new tone in the usual complaints or when the objection comes from a seemingly quiet interlocutor.

Non-verbal communication

The table below provides a rough overview of positive and negative reactions to non-verbal elements of communication: facial expression, body posture, eye contact and tone of voice.

	Defensive body language	Aggressiveness	Impatience, boredom or discomfort	Not understanding interlocutor	Openness	Enthusiasm
Facial expression	lips tight	teeth clenched, neck veins bulged	foot tapping, knuckle cracking	forehead wrinkled, eyebrow raised, forced nod	smile	smile
Eye contact and gaze	looking away with minimal contact, eyes narrowed	intense eye contact	eye rolling	expressionless look, with unstable eye contact	direct eye contact, but without staring, and head nodding	eyes wide open
Distance, orientation and body posture	body stiffness, arms and legs tightly crossed, fists clenched	approaching and entering intimate space (approx. 30 cm) sudden and threatening leaning towards the interlocutor shoulder shrugging, hand gestures - inappropriate, rude or humiliating gestures	finger tapping, foot swinging, body directed towards the exit, looking at the clock and objects in the environment hand gestures - inappropriate, rude or humiliating gestures		flexible open attitude, arms open, moving closer to the interlocutor, arms and legs uncrossed	upright body posture
Tone of voice	flat tone of voice	raised tone of voice	even tone of voice, accelerated speech		even tone of voice	well-modulated tone of voice

Verbal de-escalation of potential conflicts during public assemblies

International standards and **good practice of European police agencies in policing public assemblies require** thorough and consistent attempts to **verbally de-escalate a conflict before a police officer decides to proportionally and gradually escalate to the use of force** to restrain potentially violent persons at public assemblies.

Verbal conflict de-escalation is, in the simplest terms, a calm way of communicating or responding to a potentially “inflammable situation” – an attempt to use words, posture and body language to calm down the interlocutor and avoid further escalation of a verbal conflict verbal conflict that can turn into a physical confrontation.

In other words, before any use of force, in order to avoid misunderstandings, calm down and reduce tensions and pressure, police officers are advised to always listen to the message addressed to him when communicating with a protester or demonstrator and to:

- Be polite and courteous with the citizen/protestant/demonstrator;
- Carefully (to the extent possible considering the environment and atmosphere prevailing during the public assembly) listen to their message or request;
- Acknowledge that they understand what has been said (by nodding, “I understand”, “good”, “OK”);
- Clarify something if they don’t understand;
- Control their emotions;
- Speak slowly, clearly and in a calm tone;
- Do not threaten or behave in a threatening manner;
- Be aware of their body language (keep their hands where they can be seen, reduce movements to a minimum and avoid sudden movements);
- Stand at a certain distance from the interlocutor;
- Do not clench their teeth and jaw;
- Do not shake their head and roll their eyes;
- Do not point their index finger or a clenched fist;
- If they are upset, count to 10 and back again, take a deep breath, focus on relaxing thoughts, and suppress negative thoughts

Examples of verbal de-escalation of direct conflict with demonstrators or protestors

Example 1 - verbal provocations: Someone from the crowd: *"If the minister does not come, we'll break into the building!"*

Good response

"That is illegal, it doesn't do anyone any good."

Bad response

"Just dare, you won't fare well."

Example 2 – verbal provocations: Someone from the crowd: *"You are protecting criminals, not us"*

Good response

"We are protecting the law and public peace and order!"

Bad response

"Yeah, you know who we're protecting!"

Example 3 - protesters want to change the agreed route of movement:

Good response

Kindly show the right direction of movement with your hand

Bad response

Pushing, yelling and in a manner.

Example 4 – physical aggression or assault on police officers:

Good response

Proportionate force, containment, apprehension.

Bad response

Non-selective force directed towards all participants.

Principles of verbal de-escalation of conflicts⁶²

1. Personal response

Self-calming to keep your fight-or-flight response at bay:

- Focus on the breathing for 3 breaths
- Relax body
- Soften gaze

Body language:

- Relaxed, open stance
- Body turned slightly
- Hands open
- Good eye contact
- Concerned look

Self-talk about this being an escalating situation:

- You have the skills to manage this
- The person is obviously feeling scared, out of control, powerless, or disrespected and you have the ability to help

62 Adapted from the original version of Vanderbilt University Medical Centre, <https://www.vumc.org/wpvp/11-steps-verbal-de-escalation>

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2. Personal Space

- Anxiety increases a person's personal space bubble
- Move slowly and ask to enter space, even if you think it is assumed, (e.g. a person under your jurisdiction)
- Steer clear of legs and arms
- Sometimes the distance of 1 m (average length of personal space, out-stretched arm's length) is close enough
- Ask permission before touching personal belongings

3. Establish Verbal Contact

- Pleasant greeting to everyone
- Address individuals, not the group

4. Be Concise

- Because the tensions are high, it may take extra time and effort for the person to process information
- Use few words and repeat the same words; do not change your words

5. Identify Wants & Feelings

- Sometimes the story a person tells us has little to do with the emotion they're feeling
- Really listen for the emotion, not the story
- Listen for fear, disrespect, or loss of control

6. Active Listening

- Allow silence
- Let the person vent
- Ask clarification questions
- Give validation surrounding the emotion

7. Set Limits

State the inappropriate behaviour that is occurring:

- Be direct and firm but unemotional – tell the person to stop the behaviour if it is dangerous or inappropriate
- It is important that you appear very indifferent
- Maintain a quiet voice and calm demeanour

When-then statements:

- "When [positive behaviour change happens], then [positive outcome] can happen"

Example: *"When you stop yelling, then you can leave this place."*

- State as if you are on the person's side and you know how they are feeling and you know they will be able to change. You are rooting for their outcome. The "then" has to be beneficial to the person; the change must be good for the person.

If-then statements:

- If [negative behaviour does not change], then [negative outcome] will occur
Example: *"If you don't stop yelling and cursing, then we can't continue the conversation and will deprive you of liberty."*
- This is a statement of consequence
- Consequences must be clearly stated
- There can be no tone of authority or control when making this statement.

Remember, this is a verbal de-escalation of the conflict where you are trying to prevent a situation where you will have to use force and the tone of authority.

8. Agree or Agree to Disagree

- Agree with the emotion
- Give information, answer questions if related to that particular situation or event
- Do not reinforce negative or potentially false statements
- Do not argue or defend
- Disregard lewd comments or cursing – continue setting limits to control situation
- **TAKE ALL THREATS SERIOUSLY** – if threatened, follow protocols

Relaxation techniques⁶³

Relaxation techniques are a great way to help with stress management. Relaxation isn't only about peace of mind or enjoying a hobby. It's a process that decreases the stress effects on your mind and body. Relaxation techniques can help you cope with everyday stress, but also with various diseases. Proposed quick relaxation techniques are free, not time consuming, pose little risk of injury, and can be done nearly anywhere.

These skills won't have a long-lasting effect, but they are a great way to lift your mood in stressful times.

Repeating a prayer or a mantra

Slowly or quietly repeat a short prayer, affirmation while practicing breathing. This method is especially suitable for people who value spirituality or religion.

Focusing on breathing

In this simple but powerful technique, you take long, slow and deep breaths. The technique is also known as belly breathing or abdominal breathing. As you breathe, you gently separate your mind from thoughts and feelings that disturb you.

Mona Lisa smile

Slightly turn up the corners of your mouth - as if you about to smile, but it's not a full smile.

How can half-smiling help?

Emotions are partly controlled by facial expressions. Emotions are partially controlled by facial expressions. By adopting a half-smile – a serene, accepting face - people can control their emotions somewhat. They can feel more accepting if their faces express acceptance.

Remember that relaxation techniques are skills. As with any or most of the skills, your ability to relax improves with practice.

Be patient with yourself. Don't let your effort to practice relaxation techniques become yet another stressor.

63 Based on the resource manual „From admission to release: Comprehensive forensic treatment planning“, 1st edition, 2021, Joint EU/CoE Programme Horizontal Facility for Western Balkans and Türkiye.

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