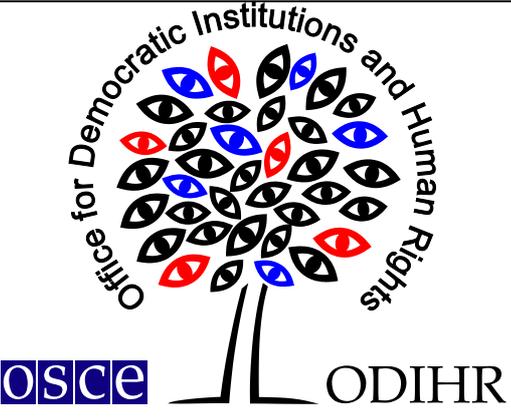


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**COMMENTS ON THE DRAFT LAW ON
PREVENTION OF VIOLENCE AND
MISBEHAVIOUR AT SPORTS EVENTS OF
THE FEDERATION OF BOSNIA AND
HERZEGOVINA**

**based on an unofficial English translation of the Draft Law
provided by the OSCE Mission to Bosnia and Herzegovina**

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**Annex: Draft Law on Prevention of Violence and Misbehaviour at Sports
Events**

I. INTRODUCTION

1. *On 1 June 2018, the OSCE Mission to Bosnia and Herzegovina sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for a legal review of the Draft Law on Prevention of Violence and Misbehaviour at Sports Events of the Federation of Bosnia and Herzegovina (hereinafter “the Draft Law”).*
2. *On 11 June 2018, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare legal comments on the compliance of the Draft Law with OSCE commitments and international human rights standards. This Opinion was prepared in response to the above request.*

II. SCOPE OF REVIEW

3. The scope of these Comments cover only the Draft Law submitted for review. Thus limited, the Comments do not constitute a full and comprehensive review of the entire legal and institutional framework governing the security of mass events, the prevention of and protection from violence at such events and the prosecution of perpetrators in the Federation of Bosnia and Herzegovina.
4. The Comments raise key issues and provide indications of areas of concern. In the interests of conciseness, the Comments focus more on those provisions that require improvements rather than on the positive aspects of the Draft Law. The ensuing recommendations are based on international standards and practices related to the area of prevention of violence at sports events. The Comments will also seek to highlight, as appropriate, good practices from other OSCE participating States in this field.
5. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women¹ (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, the Opinion analyses the potentially different impact of the Draft Law on women and men.²
6. This Opinion is based on an unofficial English translation of the Draft Law provided by the OSCE Mission to Bosnia and Herzegovina, which is attached to this document as an Annex. Errors from translation may result. This Opinion is also available in Bosnian. However, the English version remains the only official version of the document.

¹ *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Bosnia and Herzegovina is a State Party to this Convention since 1 September 1993.

² See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), available at <http://www.osce.org/mc/23295?download=true>.

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7. In view of the above, the OSCE/ODIHR would like to make mention that these Comments do not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation of Bosnia and Herzegovina that the OSCE/ODIHR may wish to make in the future.

III. EXECUTIVE SUMMARY

8. The Draft Law is an important tool in the prevention of violence at sports events and contains many aspects prescribed by international standards, recommendations and good practices. However, there are instances in which the Draft Law needs to be clearer and more accessible to ensure an effective and human rights-compliant approach to preventing and punishing violence at sports events.
9. More specifically, and in addition to what was stated above, OSCE/ODIHR makes the following recommendations to further enhance the Draft Law:
 - A. To remove all references to freedom of assembly from its explanation and operative clauses; [pars 14-19]
 - B. To clarify the wording of some of the alternatives of Articles 8 and 9 to ensure that the prescribed sanctions correspond to the severity of the offence in question; [par 23]
 - C. To ensure that the list in Article 8 (f) of the Draft Law remains non-exhaustive so that other forms of expression can be included; [par 25]
 - D. To evaluate whether the Draft Law is in line with the CC and the CPC, does not unnecessarily replicate what is already punishable under the Criminal Code and to ensure that all provisions are accessible, clear and foreseeable; [pars 27-33] and
 - E. To make sure that the Draft Law does not put undue burden on private actors and to adequately reflect State obligations in the prevention of and response to violence at sports events [par 38].

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

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards on prevention of violence at sports events

10. At its core, the reviewed Draft Law is a law on crime prevention which employs administrative measures to prevent crimes at sports events from occurring and prescribes penal sanctions in case of violent acts and misdemeanors. While the Draft Law seeks its justification, inter alia, from the right to freedom of peaceful assembly, commercial mass happenings like sport events are not usually protected by the freedom of assembly (see pars 14-19 infra) but instead regulated by the general provisions of criminal codes and criminal procedures codes as well as specialized legislation (such as this Draft Law) on mass events and gatherings.
11. On the international level, the United Nations Guidelines on the Prevention of Crime³ constitute an, albeit non-binding, guidance, together with the UN Action to promote effective crime prevention.⁴
12. On the regional level, the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches provides a framework within which States Parties shall seek to apply measures, including through enacting appropriate legislation, to prevent aimed at preventing and reducing spectator violence at sports events.⁵ Building up on this Convention is the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events of which Bosnia and Herzegovina is not yet a signatory.⁶ This Convention is complemented by Recommendation Rec (2015) of the Standing Committee on Safety, Security and Service at Football Matches and other Sports Events.⁷
13. While Bosnia and Herzegovina is not a member of the European Union, it has the status of a potential candidate. As such, several EU Council Recommendations and Resolution may be relevant to consider. These are Council Recommendation of 22 April 1996 on guidelines for preventing and restraining disorder connected with football matches,⁸ Council Resolution of 9 June 1997 on preventing and restraining football hooliganism through the exchange of experience, exclusion from stadiums and media policy,⁹ Council Resolution of 21 June 1999 concerning a handbook for international police cooperation and measures to prevent and control violence and disturbances in connection with international football matches¹⁰ and Council Resolution of 6

³ UN Guidelines on the Prevention of Crime UN ECOSOC Resolution 2002/13 (24 Jul 2002) Annex.

⁴ Action to promote effective crime prevention. UN ECOSOC Resolution 2005/22 (22 July 2005).

⁵ European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (adopted 19 August 1995, entered into force 1 November 1985) ETS No 120. Bosnia and Herzegovina acceded to the Convention by succession on 29 December 1994.

⁶ Convention is the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events (entered into force 1 November 2017) CTS No 218.

⁷ Recommendation Rec (2015) of the Standing Committee on Safety, Security and Service at Football Matches and other Sports Events (hereinafter "2015 Standing Committee Recommendation") <https://rm.coe.int/recommendation-rec-2015-1-of-the-standing-committee-on-safety-security/168072b9a2>.

⁸ Official Journal C 131 of 3.5.1996.

⁹ Official Journal C 193 of 24.6.1997.

¹⁰ Official Journal C 196 of 13.7.1999.

December 2001 concerning a handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension.¹¹

2. Sports Events and Freedom of Peaceful Assembly

14. Article 5 par 1 (a) of the Draft Law states: “Sports events are sports competitions and sports manifestations defined by the Law on Sports, as well as other public events and other forms of assembly in the sense of a law that prescribes the issue of public assemblies.” Similarly, the Explanation to the Draft Law cites, *inter alia*, freedom of assembly as the constitutional basis of the Draft Law, stating that “this law regulates the manner and procedure of exercising and conducting public assemblies at sports events which belongs to the right to freedom of assembly guaranteed by the FBiH Constitution and which is to be ensured by the FBiH”.¹² “Sports fields” are described as “as a special form of public assembly”.¹³
15. In line with this, Article 38 of the Draft Law on Public Assembly of the Federation of Bosnia and Herzegovina that OSCE/ODIHR previously commented on¹⁴ states: “Public events of sporting character i.e. the organizers of sport events shall organize those events in accordance with a special regulation, if the Law does not prescribe otherwise.”
16. However, it is essential to note that one of the objectives of freedom of peaceful assembly is the protection of personal opinions¹⁵ secured by the right to freedom of expression. The interrelationship of these rights (freedom of expression and freedom of peaceful assembly) has been emphasized in the case-law of the European Court of Human Rights (hereafter ‘ECtHR’).¹⁶ It has been recognized that freedom of assembly aims at protecting “the discussion or proclamation of information and ideas within the meaning of”¹⁷ freedom of expression and can therefore be understood as an “institutional form of freedom of expression.”¹⁸ This means that not every gathering of persons is protected by the freedom of peaceful assembly. Generally, assemblies are

¹¹ Official Journal C 22 of 24.1.2002.

¹² Explanation I – Constitutional Basis; Article 2(3)(i) of the Constitution of Bosnia and Herzegovina states “Freedom of peaceful assembly and freedom of association with others”

¹³ Explanation II - Reasons for Adoption of the Law in Urgent Procedure.

¹⁴ See OSCE/ODIHR Legal Comments on the draft law on Public Assembly in the Federation of Bosnia and Herzegovina (24 April 2018) available at https://www.legislationline.org/download/action/download/id/7926/file/323_FAO_BiH_24Apr2018_en.pdf.

¹⁵ In the case of *Gülçü v. Turkey* Judgment of 19 January 2016 (Application no. 17526/10) (Request for referral to the Grand Chamber pending) the ECtHR took the opportunity to reiterate: “110. The Court reiterates that the right to freedom of assembly is a fundamental right in a democratic society and is one of the foundations of such a society. This right, of which the protection of *personal opinion* is one of the objectives [...]”

¹⁶ *Ezelin v France*, Judgment of the European Court of Human Rights of 26 April 1991, (Application no. 11800/85) and *Young James and Webster v UK*, Judgment of 13 August 1981 (Application No. 7601/76). See also C Grabenwarter, *European Convention on Human Rights Commentary* 1st edition (2014).

¹⁷ Manfred Nowak *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd edition (2005), p 485.

¹⁸ *Ibid.*

defined as “the intentional, temporary gatherings of several persons for a specific purpose”¹⁹ or “the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose”.²⁰ In other words, “the right to assemble assumes that an assembly is for the purpose of conveying a message”.²¹

17. Sports events like the ones regulated in the Draft Law are usually commercial activities which do not seek to convey a message but which are attended for recreational purposes to see athletes or teams compete against each other. They do not fall under the definition of an assembly and are therefore not protected by the right to peaceful assembly under national or international law or practice. This was also acknowledged in the OSCE/ODIHR Legal Comments on the draft law on Public Assembly in the Federation of Bosnia and Herzegovina which stated that public assemblies are the expression of opinions and “would seldom generate income, even when they have the form of a cultural event, such as a charity concert or a political play, money may be charged or collected from the participants to fund a fund particular cause, but this is still a non-profit activity, as the organisers do not seek to have personal financial gains. There should be a wide definition of public gatherings that fall under the scope of freedom of peaceful assembly and which the authorities are obligated to facilitate, even when money is collected. Pure income generating activities, such as entertainment performances, musical concerts and other cultural events do not have the same entitlement to public facilitation and should be governed by a different law”.²² The Legal Comments recommended to delete the whole Section III of the draft law on Public Assembly which dealt with these types of commercial events.
18. A different conclusion could only be possible for sports events held to raise money for a specific political or other expressive group or cause. This means that when drafting legislation regulating commercial sports events, the drafters are not bound by the same limitations they had to adhere to if the event in question were to be qualified as an expressive assembly. In regulating non-assembly type of gatherings, lawmakers have wider discretion.
19. **The Draft Law should correctly address this by not citing the right to freedom of peaceful assembly as the basis for its existence and by removing references to freedom of peaceful assembly from its operative clauses.**

¹⁹ Ibid p 484.

²⁰ OSCE/Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition (2010), p 15, available at <https://www.osce.org/odihr/73405?download=true>; for a similar definition of freedom of assembly under Article 11 of the ECHR see for example Jens Mayer-Ladewig and others *EMRK Handkommentar*, 4th edition (2017) p 421.

²¹ OSCE Handbook on Monitoring Freedom of Peaceful Assembly (2011), available at <https://www.osce.org/odihr/82979?download=true> p. 11.

²² *Op. cit.* footnote 14 par 19 (OSCE/ODIHR Legal Comments April 2018).

3. General Comments

20. The Draft Law combines a large number of administrative, highly detailed and technical provisions with penal provisions. Both types of provisions are based on the definitions of “violence at sports events” (Article 8 of the Draft Law) and “misbehavior at sports events” (Article 9 of the Draft Law) which are at the core of the Draft Law.
21. The Draft Law describes a highly complex interaction of several institutions or bodies or parts of these bodies such as the police, sports associations, organizers, sports clubs, fan clubs, medical services etc. The Draft Law is silent on the size of the events it seeks to regulate. The large number of obligations for an organizer of a sports event to follow pursuant to the Draft Law including the forming of a coordinating body composed of “representatives of sports event organizers, police, medical service, fire department and other bodies for which presence there is a need” (Article 3 par 3 of the Draft Law) and the obligation to ensure presence of police and medical services at all events covered by the law (Article 17), seem to be more appropriate for **mass sports events such as large football tournaments. Organizers of smaller, local sports events will not have the resources or, rightly, see the need in having to ensure all of the obligations in the Draft Law being met. The Draft Law could clarify that the Draft Law is only applicable for sports events which are organized in stadiums or other venues that fit more than a set number of spectators.**

4. Definition of Violence and Misbehaviour

22. Article 8 of the Draft Law defines violence as one of nine alternatives ranging from physical assault to destruction of property to disruption of a sports event (Article 8 (h) of the Draft Law) to entering the facility with flags or banners displaying certain symbols or signs (Article 8 (f). According to the 1985 Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches States Parties undertake to ensure “to apply or, if need be, to adopt legislation which provides for those found guilty of offences related to violence or misbehaviour by spectators to receive appropriate penalties or, as the case may be, appropriate administrative measures.”
23. Given the discrepancy between relatively lenient fines for “misbehaviour” and the comparatively harsher sanctions for “violence” it might be necessary to differentiate between the two more carefully. While it is understandable that the display, e.g. of symbols which could stoke racist violence, could be subsumed under term “violence”, it might be harder to justify in the case of simply entering the venue in the possession of a certain symbol or with the intention to “disrupt” the event. **It is recommended that the lawmakers clarify the wording of some of the alternatives of Articles 8 and 9 to ensure that the prescribed sanctions correspond to the severity of the offence in question.**

24. Art. 8 (f) of the Draft Law refers to the promotion of ‘hatred and ‘violence’, but it does not refer to incitement to discrimination. Article 20 of the ICCPR prohibits “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. **Therefore, the lawmakers could consider including incitement to discrimination into the ambit of Article 8 (f).** It is also recommended that the last part of the Article 8 (f) “... which is offensive or indecent” is dropped as it is assumed that any hatred or violence of national, racial or religious grounds can be labelled as offensive.
25. Article 8 (f) of the Draft Law refers to “symbols, banners, flags or other things containing a text, image, sign or other features, or exclaiming slogans that are expressing or inciting hatred or violence based on racial, national or religious affiliation or any other specificity, whose content is offensive or indecent”, but it does not refer to other forms of expression which can be inflammatory at sports events such as songs and salutes/hand gestures. **The draft should include these and ensure that the list in Article 8 (f) remains non-exhaustive so that further things or actions could also be subsumed under it.**
26. In general, the inclusion of actions described in Article 8 (f) of the Draft Law under the heading “violence” seems illogical. It is understandable and welcomed that the drafters recognize the importance of countering and prohibiting the actions described in Article 8 (f) and it is positive that they are not described as misbehavior or mere misdemeanors. **However, it would be preferable if this were reflected in the wording of Article 8 and its heading and if a different term would be found to categorize the acts listed under Article 8 as “violence” which requires physical force to be displayed.**²³

5. Sanctions

27. Articles 40-42 of the Draft Law mirror, to an extent, Articles 8 and 9 of the Draft Law and prescribe fines and sanctions ranging up to five years of imprisonment for behavior which is described as “violence” or misbehavior. Article 40 of the Draft Law makes committing and inciting violence individually or as part of a group a crime punishable by up to five years of imprisonment. Article 41 and 44 of the Draft Law spell out fines for misdemeanors of legal persons while Article 42 spells out fines for natural persons and Article 43 deals with fines for sports federations. Additionally, Article 40 par 4 of the Draft Law stipulates the possibility of “a protection measure of prohibition to attend certain sports events for a period of two to three year”.

²³ See the definition of “violence” in the Oxford English Dictionary which describes violence as “behavior involving physical force intended to hurt, damage or kill someone or something” and in the context of law, “violence” is “the unlawful exercise of physical force or intimidation by the exhibition of such force” <https://en.oxforddictionaries.com/definition/violence>

28. At the outset, it is not entirely clear whether the operative language specifying the criminal offense is in the early articles of the draft or in the penalty provisions of Articles 40-42. While Articles 8-9 and 40-42 mirror each other to some extent, they are not identical, which makes it impossible for a person to align his or her behavior with the law and gravely complicates the work of those applying and implementing the law.
29. Additionally, parts of Articles 8-9 and Articles 40-42 are too vague. For example, the failure to cooperate with authorities (Art. 3 par 1 of the Draft Law) is not clearly defined in Art. 41 par 1 (a) which punishes failure to “ensure cooperation with regard to taking of measures and actions for the protection of participants. . . .” Similarly, failure to “ensure the safe holding of [a] sports event” (Art. 41 par 1 (c) gives no indication as to what specific conduct is allowed or forbidden.
30. It is crucial to ensure the necessity of the sanctions in the Draft Law and to warrant that provisions not duplicate criminal provisions (e.g. for assault or possession of certain dangerous substances) that are already punishable under the Criminal Code of the Federation of Bosnia and Herzegovina (hereinafter “CC”).²⁴ The principle of legal certainty requires legislation to be accessible, clear and foreseeable, in order for an individual to know which behavior is permissible, and which is not. When it comes to punishment by means of criminal law, States are additionally bound by the principle *nullum crimen, nulla poena sine lege* (no crime, no punishment without law) which contains enhanced requirements on the accessibility, specificity and foreseeability of criminal provisions. This principle is reflected in Article 15 of the ICCPR and Article 7 of the ECHR. This also means that the law should not be contradictory and discretionary interpretation of the law should be avoided. As a consequence, adding criminal provisions in a law outside the Criminal Code which, at least to an extent, mirror already existing criminal provisions, could be problematic.
31. **The drafters should carefully evaluate whether the CC and the Criminal Procedure Code (“CPC”) would need to be amended in order to guarantee that, for example, general sentencing provisions and procedural rights also fully apply to the penal provisions of the Draft Law. In line with what has been stated in pars 27-29 *supra*, it is recommended that the lawmakers revert back to the Draft Law to make sure that it is in line with the CC, does not unnecessarily replicate what is already punishable under the Criminal Code and to ensure that all provisions are accessible, clear and foreseeable.**
32. The problems that the approach of adding penal provisions outside the CC could potentially bring can be exemplified by Article 2 (11) of the CC. It states “[h]ate crime is any criminal offence committed for reasons of race, colour, religious belief, national or ethnic origin, language, disability, sex, sexual orientation or gender. Such an act shall be considered an aggravating

²⁴ Criminal Code of the Federation of Bosnia and Herzegovina, as amended 2016, available at <https://www.legislationline.org/countries/country/40/Bosnia%20and%20Herzegovina/show>

circumstance unless this Code expressly provides for a more severe punishment for the aggravated form of the crime committed out of hatred.”²⁵ This means that a general penalty enhancement can be considered by a court for any criminal base offence an offender is found guilty of.²⁶ Additionally, there are also specific penalty enhancements for criminal offences such as murder (166 of the CC), grievous bodily harm (172 of the CC), rape (Article 203 of the CC and malicious mischief (Article 293 of the CC).

33. As Article 40 of the Draft Law is a penal provision, it is assumed that the penalty enhancements can also be considered by a court when assessing conduct which falls under Article 40 of the Draft Law. However, **it is recommended that the general penalty enhancements are either referred to or explicitly included in Article 40 of the Draft Law to ensure that a court considers whether the crime in question was motivated by bias and emphasize the significance of these crimes as hate “message” crimes.**
34. The Draft Law does not contain the possibility of gradual sanctions,²⁷ **ranging from higher fines to the prohibition of organizing mass events for a certain amount of time²⁸. The draft could be amended accordingly. Any sanctions, including monetary fines, need to be adequate, proportionate and dissuasive. However, any measures taken against associations must not be used as a tool to reproach or stifle associations, their establishment and their operation.²⁹**
35. Finally, Article 46 of the Draft Law states “[t]he misdemeanor court may impose on the perpetrator of misdemeanor referred to in Article 42 of this Law, along with the fine and besides the protection measures prescribed by the Law on misdemeanors, the following protection measures defined by this Law:
 - a) prohibition of attendance at certain sports events in the FBiH territory with the obligation to report to the police station,
 - b) prohibition of attendance at certain sports events in the FBiH with the obligation to stay at the police station,
 - c) prohibition of attendance at certain sports events abroad where national teams participate of BiH or sports clubs with the obligation to report to the police station and the obligation to surrender a travel document.”

²⁵ Ibid.

²⁶ See eg OSCE/ODIHR Hate Crime Laws (2009) available at <https://www.osce.org/odihr/36426?download=true> par 33.

²⁷ The term “gradual sanctions” in this context refers to sanctions of increasing severity for a violation which is not rectified.

²⁸ The ECHR has even ruled that laws permitting the dissolutions of associations as a collective measure might be proportional and the dissolution of an association promoting a specific football club can be justified by “a pressing social need” in order to prevent disorder and crime. The Court also argued that the margin of appreciation of States was particularly broad in the case of incitement of violence and that given that associations such as promoting football clubs were of lesser importance in a democratic society compared to, e.g. political parties the dissolution did not violate Article 11 (see See ECHR *Les Authentiks and Supras Auteuil 91 v France* and *Association Nouvelle Des Boulogne Boys v. France*, Judgement of 27 January 2017 (Applications No 4696/11 and 4703/11), available at <http://hudoc.echr.coe.int/eng?i=001-168394>). However, the drafters also need to take into account that involuntary dissolution of an association is a measure of last resort which may only occur following the decision of an independent and impartial court of law; See eg OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association available at <https://www.osce.org/odihr/132371?download=true>, par 244;

²⁹ Ibid par 252.

36. Banning certain persons from certain events when they have “caused or contributed to violence and disorder”³⁰ is in line with Article 10 par 2 of the Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events. However, to increase the effectiveness of a ban, **the Draft Law could include the possibility for the organizer of the sports event to prevent certain individuals from attending the sports event at a relevant location (club) even without a criminal conviction, in line with common practice in other countries (the so-called “club stadium ban”).**³¹ The practice should then be regulated through appropriate procedures in by-laws and guidelines and banned persons should be provided with the possibility to have their ban reviewed after a certain amount of time.

6. Other Issues

6.1 Preventive Measures

37. A large part of the Draft Law deals with preventive measures. This is welcome as these measures are crucial to providing a “safe, secure and welcoming environment at football matches and other sports events”.³² It is also laudable that the Draft Law applies a multi-agency approach involving public and private agencies and actors in preventing violence at sports events, as is the cornerstone of the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events.³³ This is also in line with Recommendation Rec (2015) 1 of the Standing Committee of Safety, Security and Service at Football Matches and other Sports Events which stresses the importance of a “government-led national co-ordination arrangements [...] to ensure that a coherent and integrated safety, security and service strategy is developed, refined as necessary in the light of experience (good and bad) and implemented effectively at international, national and local level”.³⁴
38. However, the Draft Law seems to put a disproportionate burden for preventive measures on organizers and other private actors and away from the state institutions which should be primarily responsible for the prevention of and response to violence. **It is recommended that the lawmakers make sure**

³⁰ Recommendation Rec (2015) 1 of the Standing Committee on Safety, Security and Service at Football Matches and other Sports Events par 20.

³¹ For example, at NFL games, event patrons or guests who display any of the following behaviour can be ejected and denied tickets for future games: “Behavior that is unruly, disruptive, or illegal in nature; Intoxication or other signs of alcohol impairment that results in irresponsible behaviour; Foul or abusive language or obscene gestures; Interference with the progress of the game (including throwing objects onto the field); Failing to follow instructions of stadium personnel; Verbal or physical harassment of opposing team fans, available at <http://www.nfl.com/news/story/09000d5d809c28f9/article/nfl-teams-implement-fan-code-of-conduct>. In case a stadium ban is declared, the banned person has to attend a fan-conduct awareness class and subsequently apply for the ban to be lifted. If a fan is banned from one stadium, he or she is also barred from attending games in other FL stadiums; see also Article 14 of the Act on Mass Events Safety of Poland (2009).

³² Article 2 of the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events.

³³ Ibid. See Article 2 (a) and (b).

³⁴ *Op. cit.* footnote 7, par 9 (2015 Standing Committee Recommendation).

that the Draft Law does not put undue burden on private actors and that any responsibility put on actors like organizers, football associations or fan clubs is carried out within a legal framework which acknowledges that, while multiple actors need to be involved in this process, preventing of and responding to violence is first and foremost a State obligation.

39. **Moreover, the legislation should encourage the formulation of strategies tackling issues such as violence and discrimination and codes of conduct on the local level, including sports clubs, with the participation of various stakeholders, including civil society,** in line with good practice promoted, eg, by the Council of Europe. The relevant code of conduct could be displayed prominently in the area of the sports club and its provisions should be communicated in other ways too, e.g. printed on tickets and match programs in line with common international practice. As a standard, major clubs display the codes of conduct, the principles of non-discrimination etc. in their stadiums, match programmes, tickets, etc., e.g. at the Champions League games.

40. Article 36 of the Draft Law states: “[i]n cooperation with the sports clubs participating in sports event and clubs of their supporters, the organizer of sports event shall ensure the keeping of records on the identity of persons to whom the tickets are sold i.e. given through the clubs of supporters”. It is unclear whether this provision indicates that persons who receive their tickets through “clubs of supporters” are a special category of ticket holders subject to a different degree of data disclosure. Additionally the provision is incomplete in light of data protection. **At a minimum, the law should state that persons have a right to access the data that is recorded on them, the right to rectify mistakes in the data and, subject to exemptions, delete the data, the right to object to restrict or object to certain type of processing of the data and the right to share the data with a third party in an electronic format, upon request.**³⁵

6.2 Steward Services

41. Articles 13-16 of the Draft Law spell out the rights and duties of the steward service. Article 14 establishes that the steward service is established by the sports event organizer. Article 14 outlines the rights as stewards in the logistics and security operation before during and after a match. Pursuant to Article 15 of the Draft Law, spectators are obliged to follow the instructions of stewards. Finally, Article 16 spells out the circumstances under which stewards are allowed to use physical force. Article 13 of the Draft Law could introduce and specify the role of “Supporters Liaison Officer” and “Anti-Discrimination Officer” in each sports club, in line with contemporary European good practice.³⁶

³⁵ See e.g. Football Association of Ireland, Data Protection Policy (2018) <http://www.fai.ie/sites/default/files/atoms/files/FAI%20Data%20Protection%20Policy.pdf>

³⁶ As an example, under UEFA’s Club Licensing and Financial Fair Play Regulations all clubs applying for a UEFA licence have been obliged to appoint a supporter liaison officer (SLO) since 2012. The SLOs often deal with issues of violence

42. **In light of the broad responsibility borne by members of the steward service, it is recommended for the Draft Law to clarify, in Article 13 par 4 of the Draft Law, that the regulation of the federal ministry outlining the manner and programme for the training of stewards needs to be developed in parallel with the Draft Law. It should also be clarified who should be responsible for delivering this training.** An adequate training for stewards and other personnel involved in the organization of the sports event should include both theoretical background (including knowledge of the law and prohibited symbolism and behaviour at sport events) and practical instructions on reacting to problematic situations.

6.3 Policing at Sports Events

43. Policing is an essential element of all mass events, including sports events. The Draft Law recognizes this in Article 18 which states “[b]ased on the application of organizers to hold a sports event and the assessment of the relevant elements relating the risks from endangering the safety situation as well as measures that had been undertaken by the organizer, the Cantonal Ministry determines a number and manner of undertaking of actions of police officers to ensure public peace and order at a certain sports event.” The OSCE Guidebook on Democratic Policing outlines basic principles which should underpin all type of policing, namely pursuing objectives of democratic policing, upholding the rule of law, police ethics and human rights, police accountability and transparency and police organization and management issues.³⁷
44. Additionally, even as sports events usually are not protected by the right to freedom of peaceful assembly (see pars14-19 supra) some of the key principles of policing assemblies can nevertheless be helpful in the context of the Draft Law. Mass events, such as large sports events, are at particular need of controlled, sensible policing. This has been demonstrated starkly by instances of mass panic such as the Hillsborough disaster of 1989 which resulted in 96 fatalities and 766 injuries. The Taylor Inquiry following the event concluded that “the main reason for the disaster was the failure of Police control”.³⁸ The four key principles highlighted by the OSCE Handbook on Policing Assemblies - knowledge, facilitation, communication and differentiation – can provide guidance for the effective and human rights-based policing also in the case of sports events.³⁹

and discrimination (e.g. prevention of discriminatory displays). Such work is strongly linked with stewarding, but it could also be seen as an element of a broader prevention strategy.

³⁷ See OSCE Guidebook on Democratic Policing (2008), available at <https://www.osce.org/spmu/23804?download=true>; see also OSCE Handbook on Policing Assemblies (2016) available at <https://www.osce.org/odihr/226981?download=true>, p 22-23; both the Guidebook and the Handbook are available in Bosnian/Croatian/Serbian language.

³⁸ Hillsborough Stadium Inquiry (1989), available at <https://web.archive.org/web/20130619160223/http://www.southyorks.police.uk/sites/default/files/Taylor%20Interim%20Report.pdf> p 49.

³⁹ Op. cit. footnote 37 pp 24-17 (OSCE Handbook on Policing Assemblies).

6.4 Sports Events of Increased Risk

45. Articles 19-23 of the Draft Law deal with “sports events of increased risk” such as major international tournaments. Paragraph 2 of Article 20 states “[t]he sports event organizer, in cooperation with a police officer referred to in Article 19 paragraph (2) of this Law, may interrupt a sports event and order emptying of a part or the complete auditorium in the event of mass manifestation of racial, religious, national or other intolerance or hatred.” **In the event of such manifestations occurring, the Draft Law should also provide for the possibility to suspend the event completely.**
46. A Misdemeanor Judge needs to be on standby according to Article 23 of the Draft Law during the sports event, either at the location of the sports event or at a facility nearby. This suggests that a person accused of a misdemeanor can be tried during the event or immediately after. This seems problematic in several respects that might impact the fairness of the proceedings and there seems to be no reason to treat a criminal act or misdemeanor committed at a sports event differently from any such act committed somewhere else. **An accused person should have time to prepare his or her defense and, if he or she so wishes, should be represented by a counsel of his or her choice. It is therefore recommended to delete this article.**

[END OF TEXT]