



MONITORING
RIGHT TO
**FREE
ASSEMBLY**

**Country Report
2016-2017**

Serbia



Monitoring Right to Free Assembly

Serbia Country Report

2016-2017

Author: Lawyers' Committee for Human Rights YUCOM

December 2017

Copyright © 2017 by the European Center for Not-for-Profit Law and Lawyers' Committee for Human Rights YUCOM. All rights reserved.



This report is wholly financed by the Swedish International Development Cooperation Agency (Sida). Sida does not necessarily share the opinions here within expressed. The author bears the sole responsibility for the content.

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

Brief Description of the Initiative

There is an increased number and intensity of protests and violations around them in the Western Balkans and Eastern Partnership region. To ensure that freedom of assembly rights are better understood and advocacy efforts are strengthened, the European Center for Not-for-Profit Law (ECNL) works with local experts from nine countries (Albania, Armenia, Belarus, Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Kosovo, Serbia) on mapping the existing environment for assembly in their respective countries. This assessment is a brief overview of topical issues and recent developments related to freedom of assembly in **Serbia**.

Contents

Summary..... 4

Overview of the Right to Free Assembly in 2016-2017 5

 Legislation and Implementation..... 5

 Policing of Assemblies..... 7

 Media and Assemblies 9

 Social Media and Assemblies 9

 Responsibility of Organisers..... 10

 Detention and Prosecution..... 11

 Accountability..... 12

 Overall Assessment..... 13

Recommendations 14

SUMMARY

The Law on Public Assembly¹ adopted on January 26th 2016, does not meet the requirements set by the international standards on Right of peaceful assembly, nor does it conform to the Constitution of Serbia. The new Law on Public Assembly lacks a deadline for the Administrative court to reach its decision on bans of public assemblies, meaning that such a decision could be made long after the scheduled time of the public gathering has passed, thus leaving the organiser without an effective legal remedy. New Law also imposes very steep penalties that could have a chilling effect on organisers of public assemblies. Explicit banning of public assemblies in front of specific places such as schools was rendered meaningless during the election campaign in 2016, when political rallies were often held there by public officials under the auspices of reopening renovated schools.

Police has started to issue the decisions on the ban of gathering with broad explanations, which is positive step. However, some of the decisions are not in the line with international standards.

Holding of spontaneous gatherings not requiring previous registration was made possible by the Law, but in a very limited manner. Law limited spontaneous gatherings only to those without an invitation by the organisers, which is contrary to the OSCE Guidelines on Freedom of Peaceful Assembly, and also defeats the purpose of such gatherings, as an immediate reaction to a specific event.

Although police administers fairly politically neutrally public assemblies, the gaps in the legislation give the space for discriminatory practice in treating the participants of politically sensitive gatherings.

Insufficiently precise legal solutions of the term "public gathering" have resulted in the police officers arbitrarily interpreting the nature of the public gathering. There is endangered visibility of unwanted assemblies. By overprotection of police, the visibility of some assemblies is diminished.

There is endangered visibility of unwanted assemblies. By overprotection of police, the visibility of assemblies for recognition of Serbia war crimes (July, 2016; 2017) is diminished. During Pride Parade (June, 2017) the citizens could not take participation in the Pride Parade unless they legitimize themselves as participants.

¹Law on Public Assembly ("Official Gazette of RS", No. 6/2016)

OVERVIEW OF THE RIGHT TO FREE ASSEMBLY IN 2016-2017



Legislation and implementation

Have there been any changes (or proposals for change) to the law relating to freedom of assembly in the timeframe covered by this report?

Have there been any positive / negative developments in relation to how the law is administered (including policing of assemblies)?

The Law on Public Assembly² was finally adopted on January 26th 2016, after a 4-months long legal gap, during which the Right of Peaceful Assembly wasn't regulated by any Law. However, the adopted Law does not meet the requirements set by the international standards of the Right of peaceful assembly, nor does it conform to the Constitution of Serbia. It fell short of expectations, as the lawmaker failed to take in account the argumentation that Constitutional court made in declaring the former Law unconstitutional. The new Law on Public Assembly also lacks a deadline for the Administrative court to reach its decision on bans of public assemblies, meaning that such a decision could be made long after the scheduled time of the public gathering has passed, thus leaving the organiser without an effective legal remedy. YUCOM already has a constitutional appeal pending in the case of bans of assemblies organised by Falun Gong in June 2016. The new law also imposes very steep penalties that could have a chilling effect on organisers of public assemblies. Explicit banning of public assemblies in front of specific places such as schools was rendered meaningless during the election campaign in 2016, when political rallies were often held there by public officials under the auspices of reopening renovated schools. Holding of spontaneous gatherings not requiring previous registration was made possible by the Law, but in a very limited manner. The new law recognizes spontaneous gatherings without an organizer, as a direct reaction to a particular event for expressing opinions and attitudes regarding the event. The law limited spontaneous gatherings only to those without an invitation by the organisers, which is contrary with the OSCE Guidelines on Freedom of Peaceful Assembly and also defeats the purpose of such gatherings, as an immediate reaction to a specific event.

Police has started to issue the decisions on the ban of gathering with broad explanations, which is a positive step. However, some of the decisions are not in the line with international standards.

²Law on Public Assembly ("Official Gazette of RS", No. 6/2016)

By Decision 03/16/17/2 No: 212-332/16 dated 13 June 2016, the Savski venac Police Station **banned the public assembly** convened by the association *FDH Serbian-Chinese Friendship Society*, notified to be held at the street address of Užička 25, across the Embassy of the PR of China, on 18 June 2016, starting at 11.30 and ending at 13.00. On 14 June 2016, the association *FDH Serbian-Chinese Friendship Society* lodged an appeal against the first-instance Decision.

By the final Decision of the Ministry of the Interior of the RS, General Police Directorate, Police Department 03/4 No: 212-2089/16-6 dated 16 June 2016, "the appeal of the public assembly organiser – *FDH Serbian-Chinese Friendship Society* of Belgrade, having its address at Pančićeveva 20, represented by President Dejan Marković, against the Decision of the Ministry of the Interior of the Republic of Serbia, City of Belgrade Police Department, banning the public assembly, [was] dismissed as unfounded".

On 17 June 2016 at 07.30, the association *FDH Serbian-Chinese Friendship Society* lodged a petition initiating an administrative dispute, designated as urgent, with the Administrative Court of Serbia. The Appellant submitted a notification of the assembly and legal remedies against the decisions of the competent first- and second-instance authorities in a timely manner. Also, the first- and second-instance authorities issued their decisions within the time limits stipulated by the Law on Public Assembly. Although the Law does not specify time limits for the delivery of first- and second-instance authorities' decisions, these were, nevertheless, delivered within the time limits for the issuing of decisions by the competent authorities.

In contrast with the timely actions of the first- and second-instance authorities, the Administrative Court failed to issue its decision within a reasonable time that would enable the organiser to hold the public assembly. Thus, by inaction in the case at hand, the Administrative Court violated not only Art. 36, para. 2 of the Constitution with reference to Art. 54, but also Art. 198, para. 2 of the Constitution of the RS, which guarantees the review of lawfulness of final specific legal instruments whereby decisions are made on the rights, obligations or legally grounded interests before courts in administrative disputes, unless another form of judicial protection is foreseen by the law in the case concerned. In *Bączkowski and Others v. Poland* (Application No 1543/06, ECtHR Judgment dated 3 May 2007), the European Court of Human Rights took the stance that, for the effective enjoyment of freedom of assembly, it was essential to legally stipulate the time limits within which competent authorities should issue their decisions, and reiterated this position in *Alekseyev v. Russia* and in *Genderdoc-M v. Moldova* (Application No 9106/06, ECtHR Judgment dated 12 June 2012). Conversely, if there is no obligation to issue a final decision prior to the planned date of assembly, the remedies available to the appellant cannot be considered to provide adequate protection against restriction of freedom of assembly, in view of their *post hoc* character.

The Administrative Court has not developed the practice of urgent processing the cases on the ban of freedom assembly. The Administrative Court does not take this cases by priority,

which means that by the time Court brings decision it is already too late for assembly (Administrative Court took 3 months to decide on YUCOM's appeal in Falun Dafa case).

However, misdemeanour procedures are also sometimes used as a way for political pressure on opposition parties or activists advocating for human rights protection. At this moment, there are around 20 different misdemeanour procedures, mostly related to public assemblies, initiated over the past year against the activists of the popular movement "Let's not drown Belgrade" so named in response to the controversial "Belgrade Waterfront" development project. This is a serious setback from the policy of tolerating spontaneous public assemblies practiced by the Ministry of Interior in the past, when such assemblies weren't regulated by Law. Spontaneous gatherings are tolerated as long as they do not jeopardize the ruling political structure.



Policing of Assemblies

Do the police usually engage in forms of dialogue/communication with organisers before, or during an assembly?

Do the police generally facilitate and enable spontaneous / non-notified assemblies; simultaneous assemblies; counter protests; peaceful assemblies that block roads / traffic; sit-ins or occupations of buildings?

Do the police ever use force at assemblies? What is the range of weapons and the types of other equipment used? Is there generally medical assistance available to people who might need it?

Are undercover police ever used at assemblies?

What types of surveillance & imagery collection do the police use at assemblies? Do the police permit participants in assemblies to video / film / photograph police actions?

Police usually engages in forms of dialogue with organisers before the assembly, especially in the cases where there is a risk for safety. Sometimes, police tries to influence the place or time of planned gathering. During an assembly, there is no place for dialogue. The communication is one-sided. The police officers are issuing orders during assemblies and there is no place for objections. We have no information whether police has ever held a debriefing meeting with organisers after an assembly has ended.

Police administers, facilitates and enables fairly politically neutrally public assemblies, regardless of the fact whether they are notified or not. The same can be said about counter protests and peaceful assemblies that block roads and traffic.

There are examples of changing the place of assembly, as result of counter protest. NGO Women in Black is faced with this problem, although they notified the assembly and the counter meeting was not notified.

The use of force of police is very rare and it is always response to violence from participants. The rule is that police use batons at assemblies, but as mentioned, it is very rare in practice and the police generally issues verbal warnings before use of force. Barriers and shields are normally used by police.

It is rule that injured person will get help in Hospital or by doctors in the Ambulance.

Assemblies of higher officials organized by leading political party are secured by undercover police. This was case in the situation of Serbian President inauguration in May 2017. They are involved in surveillance and security regulation.

The participants of gatherings have never seen usage of any instruments for surveillance. Also in the case of violent incidents police used video material from public cameras or cameras from private objects.

The Law on the protection of personal data³ set out the conditions for personal data collection and processing, the rights and protection of the rights of persons whose data are collected and processed, limitations to personal data protection, proceedings before an authority responsible for data protection, etc. Public authorities shall process data without the consent of the person concerned if such processing is necessary for them to perform duties within their spheres of competence as defined by a law or another regulation with a view to achieving the interests of national or public safety, national defence, crime prevention, detection, investigation and prosecution, economic or financial interests of the state, protection of health and ethical norms, protection of rights and freedoms and other public interests, while processing in all other cases shall require the consent in writing from the person concerned. (Art. 13).

The police officers selectively respond to recording of their activities during assemblies. The law on the police⁴ prescribes: "To protect victims of a criminal offense, persons inflicted damage by misdemeanour or other event, and to protect the interest of the proceedings, a police officer shall be authorized to prohibit recording of the scene." (Art. 99) The Commissioner for access to information of public interest and data protection issued the opinion that the recording the police officers on duty is legal since there is public interest to monitor their behaviour.

³ Law on the protection of personal data ("Official Gazette of RS", Nos. 97/2008, 104/2009 - 68/2012 – Dec. CC 107/2012)

⁴ Law on the Police ("Official Gazette of RS", No. 6/2016)



Media and Assemblies

Is the mass media able to report freely at assemblies?

Are citizen journalists or non-accredited journalists able to report freely at assemblies?

Are human rights defenders and or monitors able to observe freely at assemblies?

There is no equal treatment of media date report during the assemblies. While reporting on assemblies during presidential inauguration (31st May 2017) a few non-regime journalists were attacked in front of the public building (Belgrade City Hall). The attack was recorded by camera. Public announcements were issued by Association of Journalists and various NGOs, requesting the prompt reaction of judiciary. Although some of the attackers were identified, still no charges were filed.

On the other hand, when journalists of media that are close to the governing party were attacked, the investigation was publicly highly prioritized by the Ministry of Interior.

Reporting of the public assembly is generally free for citizens and non-accredited journalists. There are no restrictions for monitoring the public assemblies by human rights defenders.



Social Media and Assemblies

Do organisers of, and participants in, assemblies use social media before, during or after assemblies?

Has the government or other authorities imposed any restrictions on use of social media in relation to assemblies?

Social Media (Facebook, Twitter, Instagram) are regularly used for organizing protests and street actions, mainly in order to attract people to take participation in the action. By this, it is often easy to identify the organiser of "spontaneous gatherings" - announced assemblies. Police monitors the social media to identify the person who breached the Law, by omitting the submission of application to the police. Also, police monitors the social media to identify the intention of participants in counter protests in order to decide is there any reasons for ban of assemblies or for assessing of security.

Police is monitoring social media activity in due to identify persons who call for participating in unannounced assemblies. Those persons are in risk to be prosecuted in front of Misdemeanour court. Misdemeanours fines are very high. YUCOM is currently representing two activists accused of a misdemeanour offence of holding an assembly without prior registration. The assembly which was organised trough social networks was an immediate

reaction to an announced eviction of a family from the last house standing in the way of a controversial urban development project. The activists could each be fined up to 150.000,00 RSD (approximately 1100 euros), which is roughly the equivalent of 3 average salaries.



Responsibility of Organisers

Are the organisers of an assembly held liable for behaviour of others?

If there is no identifiable organiser, how do the police respond?

The Law stipulates a cumulative punishment of a legal entity, the responsible person in the legal entity and organizers or leaders of assembly, which represents a disproportionate interference with the freedom of assembly and deters the desire to organize public assemblies. The main characteristic of the penal provisions of the Law on Public Assembly is the emphasis on accountability of organizers and high penalties. However, organisers themselves cannot be held liable for behaviour of others.

Generally, the peaceful spontaneous assemblies are monitored and not disturbed by police. Police officers are authorized to prevent or suspend a gathering if, prior to the holding of the assembly or during its duration, some of following circumstances occur:

1. when there is a threat to the safety of people and property, public health, morals, the rights of others or the security of the Republic of Serbia;
2. when the aims of the gathering are aimed at invoking and encouraging armed conflict or the use of violence, to violate human and minority freedoms and the rights of others, or to incite or encourage racial, national, religious or other inequality, hatred and intolerance;
3. when there is a danger of violence, destruction of property or other forms of violation of public order on a larger scale;
4. if the holding of the assembly is contrary to the provisions of this law.

However, there are situations when Police randomly picks the participants and charges them for breaching the Law for omission to submit an application for assembly.⁵

⁵ Serbian Students Charged with Organizing Anti-Vucic Rally, <http://www.balkaninsight.com/en/article/serbian-police-charges-organizers-of-spontaneous-april-protests-10-03-2017>



Detention and Prosecution

Are people ever arrested or detained in advance of an assembly? If so, are they given easy access to legal advice or medical assistance?

Has there been an increase in the scale of punishments imposed on people arrested at assemblies in recent years?

Are the courts generally seen as neutral and impartial?

Generally, the arrest and detention prior and during public assemblies are very rare since there are no violent assemblies.

In December 2014, eleven foreign Falun Gong activists were detained for four days in a prison near Belgrade. They came to Serbia to draw the attention to the human rights violations in China. According to the public announcement of the Minister of Interior, they were ignoring a "general" police order - "A certain number of members of this sect, who are nationals of other countries, expressed their desire to organize a rally despite a warning that there is a prohibition of any gathering in Serbia during the visit of the Chinese premier".

According to the Serbian Criminal Procedure Code, arrested people have mandatory defence for the crimes punishable by prison of 5 years and more. However, arrested and detained people for less severe crimes have to pay for legal advice by themselves. Usually, arrested and detained people on public assemblies are prosecuted in misdemeanour proceeding, so they are not provided ex officio defence. There are few cases led by the Misdemeanour Court in which misdemeanour penalties are issued.

According to the Serbian Criminal Procedure Code and legislation, detained and arrested people have the medical observation if it is needed.

Misdemeanour court is not seen as neutral. For example, in one case led against Anita Mitic, director of Youth initiative from Serbia, that held assembly against genocide in Srebrenica, the court sustained to issue the judgment timely. In this case it was very clear that the charge is unfounded since "misconduct" was not prescribed in the new law (no provision, no misconduct). The Court rejected the charge one year and a half after the charge was filled. The judgment was issued in the time when the case was not anymore politically attractive.



Accountability

Is it possible to hold any state authorities (ministry, municipality) or the police to account for their behaviour and actions relating to assemblies?

According to the Law of contract and torts⁶: "A State whose agencies, in conformity with existing regulations, were bound to prevent injury or loss, shall be liable for loss due to death, bodily injury or damaging or destroying property of an individual due to acts of violence or terror, as well as in the course of street demonstrations and public events" (Article 180 para 1). Hence, the civil procedure against the state can be raised in these cases.

It is possible to hold the police to account for their behaviour and actions. Serbian Ministry of Interior has the Internal Control that is competent for investigating the misconduct of police officers. It is possible to initiate the disciplinary procedure for violation of official duty. The police officers are often temporarily removed from work until the termination of the disclaimer procedure.

However, it is the rule that the police station in which charged police officer works files a criminal charge against injured citizen for the crime of obstruction of authorized persons in the maintenance of public order and peace.

According to the Criminal Code⁷, the police officer can be charged with torture of a person in performing official duties (Art. 137) and abuse of duties (Art. 227).

Also, in case of an illegal ban of an assembly, an administrative appeal can be raised in front of the Administrative Court. However, administrative dispute is not effective legal remedy since the procedure is not urgent by law and in the practice of Administrative court.

Ombudsman can start a control procedures *officio* or based on the complaint. In a case of breaching the law or Code of Conduct by public officials of municipality or police, ombudsman can issue recommendations.

After the Belgrade Pride Parade in 2014, several gendarmes are accused for attacking and torture a military person in performing official duties. The accused are also charged with abuse of duties. The victims of this crime were the brother of the President of Serbia and brother of Major of Belgrade. After three years of suing, the judgment has not been issued.

The rule is that police officers are individually identifiable, by a number, since the police officers have uniforms with numbers. However, assemblies of higher officials are secured by undercover police. This was case in the situation of Serbian President inauguration in May

⁶Law of contract and torts ("Official Gazette of the SFR od Yugoslavia, nr. 29/1978; Amendments in nrs.: 39/1985, 45/1989, and 57/1989; Official Gazette of the FR of Yugoslavia, no. 31/1993; Official Gazette of the Serbia and Montenegro No. 1/2003-Constitutional Charter).

⁷Criminal Code ("Official Gazette of RS", Nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016)

2017. Notwithstanding that the law envisaged that undercover policemen must legitimize themselves before applying the police authority by showing their official badges and official identification, policemen generally did not legitimize themselves in maintaining order at a public gathering, unless a person explicitly requested it.



Overall Assessment

Is the right broadly respected, facilitated and protected by the state?

There are some improvements in respecting, facilitating and protecting the right on free assembly by the state, but still there are serious problems in exercising freedom of assembly when it comes to political sensitive cases. There are also problems with protection of right, due to the lacks in legislative, as seen in „Summary“ section.

RECOMMENDATIONS

- The government should adopt a new Law to be in line with international human rights standards on the freedom of assembly.
- The new Law should prescribe efficient legal remedy in cases of assembly prohibition.
- The new Law should prescribe less severe misdemeanour sanctions and milder penal policy.
- The Ministry of internal affairs should issue guidelines for police officers to establish unified practice when it comes to spontaneous gatherings.
- NGOs should use previous experience and good practice examples and use all available legal remedies to deal with especially sensitive assemblies for which there is a risk to be prohibited to force Government to fully adopt the freedom of public assembly.