



# MONITORING THE RIGHT TO FREE ASSEMBLY

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2017  
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 **#right2freeassembly**



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za ljudska prava



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# I. BACKGROUND AND CONTEXT

The state of fundamental human rights in Serbia is being affected by stagnation and backsliding. The accession negotiation process to join the EU is being used by the incumbent government to push through legislation weakening the rule of law reforms. Concluding the important talks with Pristina as a priority, the incumbent government hopes the EU will turn a blind eye to its more authoritarian tendencies. The *Law on Public Assembly* belongs to several laws that are important for the implementation of fundamental human rights but were more deficient than the previous ones and were adopted in what could be called an unsatisfactory public debate. While this is a step forward compared to many important laws being adopted through an emergency procedure in the past, the quality and the outcome of these public debates, pose a question of whether the government is using them simply to simulate a broad dialogue with all interested actors, rather than to engage in one.

In general, we can observe that the right to peaceful assembly is largely enabled, but that the situation could be improved, especially regarding politically sensitive assemblies. In this regard we have not noted any difference between the situation in Belgrade and other

cities and municipalities in Serbia.

Since 2016, there has been an increase in the number of protests, especially in Belgrade, due to the forced eviction of citizens as a result of urban planning decisions by local authorities. Activists, hoping to prevent forced evictions are often exposed to misdemeanour charges, usually for organising non-notified assemblies. This is happening due to the vague legal definition of what constitutes a "spontaneous assembly" in the Law on Public Assembly. The Law prescribes spontaneous assembly as a peaceful gathering, without an organizer, as a direct reaction to a particular event, that is held in an open or indoor space, in order to express opinions and attitudes regarding the event occurring. The result of such legal definition is that spontaneous assemblies, although existing in Law, are practically impossible, since every assembly has participants who take on some of the roles usually attributed to organisers. It is worth noting that one of the shortcomings of the previous Law on the Gathering of Citizens was that it did not prescribe spontaneous assemblies, but that the MoI generally respected the right to gather spontaneously in accordance with the Constitution of Serbia.



Some assemblies are treated differently, because of their political sensitivity (such as Belgrade Pride; Ponos Srbije, another LGBT event; anti-war protests of NGOs dealing with war crimes issues; and especially protests against Government politics). Most such protests are held in Belgrade while some noted protests held in Niš<sup>1</sup> and Novi Sad<sup>2</sup> as well. Comparing the current situation to 5 years ago, we can conclude that the state of the right to peaceful assembly is deteriorating, because of numerous misdemeanour charges against activists and political influence which pressurises the judiciary.

<sup>1</sup> Protest in Niš were held in April 2018, over the decision of local self-government to transfer the ownership of the local airport to the national government. Citizens of Niš feared that the national government would halt the development of the airport to fulfil its obligations from a concession agreement for the airport in Belgrade, which limited competition from other airports. See also: <http://rs.n1info.com/a376492/English/NEWS/Protests-over-Nis-airport.html>

<sup>2</sup> Protests in Novi Sad were held in May 2016 over the politically motivated dismissal of the programmatic director of Radio Television Vojvodina, Slobodan Arežina. The protests named "Support RTV" were repeated in May 2017 as well. See also: <https://www.indexoncensorship.org/2016/07/serbia-journalists-protest-government-control-at-public-broadcaster/>



## II. LEGAL FRAMEWORK

The Law on Public Assembly was finally adopted on January 26th 2016, after a 4-month long legal gap, during which the Right of Peaceful Assembly was not regulated by any Law. The new Law provides judicial protection, but it does not specify time limits for the delivery of first- and second-instance authorities' decisions<sup>3</sup>.

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 that the new Law would be in line with international standards, as the lawmaker failed to take in account the argumentation that Constitutional court made in declaring the former Law unconstitutional. In its decision regarding the former Law on Public Assemblies. The Constitutional Court of Serbia stipulated that Serbia is obliged to regulate the exercise of a certain guaranteed right or freedom by envisaging the judicial protection of that right, in a way that preserves the very substance of the protected right, which, among other things, implies the effectiveness of the prescribed protection. The Constitutional

<sup>3</sup> These were, nevertheless, in the reporting period delivered within the time limits for the issuing of decisions by the competent authorities

Court also emphasized that restrictions can only be imposed for the purposes allowed by the Constitution, to the extent necessary for the constitutional purpose of the restrictions to be satisfied in a democratic society and without prejudice to the substance of the protected right. The Constitutional Court found that certain constitutional grounds for restraining freedom of assembly (for example, the necessity of protecting the rights of others) may require closer legal regulation, but then the prescribed reason for banning the public assembly must be brought in direct relation with the constitutional ground on limitation.

The Law on Public Assembly also lacks a deadline for the Administrative Court to reach its decision on bans of public assemblies. Conversely, if there is no obligation to issue a final decision prior to the planned date of the assembly, the remedies available to the appellant cannot be considered to provide adequate protection against restrictions on freedom of assembly, in view of their *post hoc* character. The practice shows that no mechanism exists within the Administrative Court to speed up the issuance of a final decision before the scheduled date of the banned assembly. There are no guaranties that the Administrative Court would even take



the lawsuit into consideration, even when the organiser respects the time limit set by deadlines prescribed by the Law.<sup>4</sup> However, if the organizer assesses that the gathering is sensitive, and makes the notification several weeks before the deadline for the notification, there is chance in practice that Administrative Court could issue the decision prior to the proposed event.

The new law also imposes very steep penalties that could have a chilling effect on organisers of public assemblies.<sup>5</sup> Explicit banning of public assemblies in front of specific places<sup>6</sup> is not in line with international standards.<sup>7</sup> Holding of spontaneous assemblies not requiring previous registration was made possible by the Law, but in a very limited manner.<sup>8</sup> The law limited spontaneous assemblies only to those without an invitation from an organiser,<sup>9</sup> which is contrary with the OSCE Guidelines on Freedom of Peaceful Assembly and also defeats the purpose of such gatherings, as being an immediate reaction to a specific event. 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 assemblies are tolerated

4 In the case Mol respects the deadline for issuance of the ban and the issuance of the decision on the appeal to the ban, the organizer could have up to 48 hours before the scheduled day of the assembly to file the lawsuit to the Administrative court. The Administrative court would then have to reach it's decision within the remaining time and in time to allow the organiser to hold the assembly.

5 Law on Public Assembly, art. 21

6 Places in front of health institutions, schools, preschool institutions as well as spaces in front of objects of strategic and special significance for defence and security of the Republic of Serbia

7 Law on Public Assembly, art. 6, para. 2

8 Law on Public Assembly art.13, para. 1, line 4

9 Ibid., art.13, para. 3

as long as they do not jeopardize the ruling political structure.

The US State Department Report for Serbia 2017 stated: "According to the Lawyers Committee for Human Rights research, the 2016 law on public gatherings contained restrictions in terms of locations and times for public gatherings, cumulative sanctioning, and high monetary penalties, which were not in line with the constitution or international standards." But the new law has not been subject to any formal review by relevant national or international bodies. There are several cases pending before the Constitutional Court<sup>10</sup> initiated by the appeals of decisions that ruled on the banning of assemblies, but there is no case related to the constitutional review of the provisions found in the new Law on Public Assemblies.

### ACCOUNTABILITY IN LAW MAKING:

When the Constitutional Court of the Republic of Serbia declared the Law on Gathering of Citizens unconstitutional on April 9<sup>th</sup>, 2015, it gave the Government a deadline to adopt a new Law within 6 months. The Mol published a draft law, which showed serious terminological inconsistencies, only three weeks before the expiration of the deadline. The looming deadline prompted a very short public consultation with judges, prosecutors, inspection services, communal police, professional associations and CSOs. This gave CSOs the opportunity to voice their objections and to give suggestions. These objections focused on the blanket bans of assemblies by location and time, lack of an effective legal

10 Falun Dafa constitutional appeals were filled in 2016, 2017 and 2018

remedy and the very high fines. Even though these objections were clearly in line with the decision of the Constitutional Court, the opinion of the Venice Commission<sup>11</sup> and the ODIHR Guidelines, they were not accepted. The suggestion that the Law should prescribe spontaneous assemblies was accepted but the limitation imposed in the Law to such assemblies made this innovation meaningless. In his opinion on the proposal of the Law on Public Assembly, the Protector of Citizens expressed similar objections<sup>12</sup>. No initiative exists within the government structures to amend the provisions of the existing Law despite its shortcomings noted in theory and shown in the implementation.

Lack of public discussions in adopting Law on public assemblies was just a beginning in practise of derogation of democratic institutions. This continued through adoption of numerous laws by urgent procedure on the proposal of the Government and complete disregard of proposals and comments sent by NGOs and professional associations.

11 See: <https://www.legislationonline.org/documents/id/16019>

12 See: [http://udruzenja.info/wp-content/uploads/2016/05/4544\\_Misljenje-na-Predlog-zakona-o-javnom-okupljanju-FINAL.doc](http://udruzenja.info/wp-content/uploads/2016/05/4544_Misljenje-na-Predlog-zakona-o-javnom-okupljanju-FINAL.doc) (available in Serbian only)



# III. ADMINISTRATION OF FREEDOM OF ASSEMBLY



The role of civil authorities in administering Freedom of Peaceful Assembly is limited to their approval for the occupation of public areas when groups or organisers intend to set up stands or other objects occupying public areas. If organisers wish to abide by the existing regulation and avoid possible misdemeanour responsibility, they will face a number of obstacles. The procedure is different from one municipality to the other, often regulated by different types of bylaws dealing with different subject matters; often these bylaws are not easily accessible. Differences exist even between municipalities within the same city. Organisers face difficulties getting the correct information on the fees charged for the occupation of public space and other possible requirements, and often must resort to inquire from one municipality counter to another. The fees payable are different between municipalities and some may even require documents issued by other authorities, subject to the payment of additional fees, such as Decision on measures and conditions of noise protection (the city of Kraljevo) or Urbanistic opinion<sup>13</sup> (city of Smederevo) In this regard, an organiser in one municipality

may not have to pay any fees while in other municipality may have to pay fees as high as 70 euros.

Because there are no guarantees the organisers will get correct information and fulfil all the necessary formalities, a legal uncertainty remains, this provides opportunities for the local authorities to abuse their power against people sharing opposing political views and file misdemeanour charges against them for breaching communal regulations.

In addition to this, local authorities also have a role in passing bylaws specifying places where assemblies are banned by law (places in front of health institutions, schools, pre-school institutions as well as spaces in front of object of strategic and special significance for defence and security of the Republic of Serbia). These types of blanket bans are generally considered to be disproportionate.<sup>14</sup> Some municipalities have specified places relating to waterworks and other communal companies, bridges, railroads, and in one case, the municipality of Negotin, contrary to Law on Public Assembly and the Constitution of Serbia, banned the holding of assemblies in front of the local Parliament.

<sup>13</sup> Urbanistic opinion is specific kind of urbanistic administrative act

<sup>14</sup> Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR, Warsaw/Strasbourg, 2010, paragraph. 102



According to the information available in Paragraph legal database<sup>15</sup> only 10 out 167 municipalities adopted by-laws specifying places where holding of assemblies was banned, despite a 60 days deadline to do so passing in April 2016. The Law on Public Assembly doesn't prescribe any penalties for municipalities failing to fulfil their obligations prescribed in the law and adopt the decision.

This legal gap leaves open space for arbitrary decisions by local police to ban assemblies, since they have a broader latitude in interpreting the article of the Law prescribing places where holding of assemblies is banned.

### ACCOUNTABILITY IN ADMINISTRATION

The civil authorities use the communal police<sup>16</sup> for the maintenance of communal order in cities where the communal police exist. Interviewed activists said that communal police only checked whether the use of public space has been approved by local authorities. As the local authorities are only authorized to control communal order and to determine the places where holding of assemblies is prohibited, there is no need to engage any other agencies.

<sup>15</sup> See: <https://www.paragraf.rs/>

<sup>16</sup> Communal police is formed by the local authorities and under jurisdiction of Ministry of Local Self-Government. Under jurisdiction of communal police, according to Law on communal police are: 1) maintenance of communal and other legally regulated order of importance for communal activity; 2) control over the implementation of laws and other regulations and general acts in the field of communal and other activities within the jurisdiction of the city; 3) exercising supervision in the public urban, suburban and other local traffic, in accordance with the law and regulations of the city; 4) protection of the environment, cultural goods, local roads, streets and other public buildings of importance for the city; 5) support to the implementation of regulations ensuring unhindered lifestyle in the city, preservation of city assets and other tasks within the competence of the city (maintenance of the city order).

The police are usually present at a public assembly due to their responsibilities under the Law on Public Assemblies.

The biggest challenge for civil authorities in relation to dealing with assemblies is the numerous bylaws which regulate the use of public areas, such that sometimes even public servants who work in municipalities are not aware of all of them. It would therefore be very useful to ensure that local regulations are consistent across all areas and are easily available, so that citizens who wish to assemble in public areas can find information regarding the conditions for such practice.







## IV. POLICING OF ASSEMBLIES

Since the information on the number of assemblies taking place each year is not publicly available, YUCOM sent a FOI request directly to Mol which replied they were not accruing statistical data in this regard and hence could not provide us with the requested information. Additional FOI were sent to police stations and police authorities, requesting this and other information pertaining to this research. This was done after consultations with the Mol's Bureau for Information, which instructed us to send the questions directly, and not through their office, as a time saving measure.

Two weeks after the legal deadline passed, YUCOM received only three replies. Many of the letters were sent back because the police stations refused to receive them or because the addresses, which were taken from Mol address book on their own websites, were not up to date. Instead of rejecting our request within legal deadline of 15 days or extending the deadline for up to 40 days, the Mol waited for all its organisational units to send their responses. Mol then rejected our request altogether, almost two months after it was filled, with the similar explanation given before, that is the Mol is not accruing any statistical data regarding public assemblies

and is in no legal obligation to supply us with a newly created document containing the requested data.

The lack of transparency of the Mol makes it impossible to gather data relevant to freedom of peaceful assembly, such as the total number of assemblies held in 2017. The information published annually by the Mol does not contain any statistical information regarding freedom of public assemblies.

Activists interviewed for this research also complained that the Ministry of Internal Affairs refused to provide them with information of the number of police officers engaged in policing some assemblies, such as „Ponos Srbije“, an LGBTIQ event that was held in 2016. Due to the lack of transparency regarding public assemblies, information can only be gathered from other sources, such as the media, social networks and through monitoring of assemblies by the activists of Lawyers Committee for Human Rights – YUCOM and other NGOs and informal groups of activists.

Organisers have a legal obligation to notify the police of their intention to hold an assembly five day in advance, filling the notification in person or by post. The notification should



contain the following information:

1. the name, surname, ID number, travel document or other ID document of the organizer of the assembly, and if the organizer is a legal person, the name and location of the organizer, name, surname, ID number, travel document or other identity document of the responsible person in the legal entity and a contact telephone;
2. name, surname, ID number, travel document or other identification document and contact telephone of the leader of the assembly and responsible person for the stewarding service;
3. information on the place and time of the assembly;
4. programme and goal of the assembly;
5. information on the measures taken by the organizer under Article 11 of this Law;<sup>17</sup>
6. information of interest for safe and undisturbed holding of assembly;
7. the course of the moving assembly, the place of departure and the place of completion, as well as the way the participants are going to move from one location to the other (pedestrians,

<sup>17</sup> The organizer of the assembly is obliged to: 1) hire a steward service and ensure the holding of a peaceful assembly in a way that prevents the outbreak of violence and misconduct of the participants during the assembly, as well as when the participants arrive and leave the assembly place; 2) organise and supervise the assembly and organize and direct the work of the staff; 3) enable smooth passage of ambulances, police and fire vehicles; 4) act upon the orders of the competent authority; 5) terminate the assembly if there is an immediate danger to the safety of people and property and inform the police immediately. (Law on Public Assembly, art. 11)

vehicles, or the combination of these).

The police have the power to ban, prevent or disperse an assembly if legal reasons are met<sup>18</sup>. While these reasons are partly in line with the reasons prescribed in the Constitution of Serbia<sup>19</sup> allowing limitations on right to peaceful assembly, the police can prevent or disperse an assembly solely on grounds related to the lack of notification. In addition to this, the police can also file misdemeanour charges for holding a non-notified assembly. This possibility is in direct contradiction with the Constitution as well as ODHIR Guidelines on Peaceful Assemblies.

All police authorities have special sections for public assemblies within their Departments for Public Order and Peace. While serious issues have been noted with politically sensitive assemblies, it should be noted that the police do try to facilitate and enable all assemblies. While politically sensitive assemblies are not usually banned, numerous misdemeanour charges may be brought against supposed political opponents of the incumbent president, who mostly organise anti-corruption protests. While the legal argumentation behind these charges is often of low quality, the speed of the procedure, lack of experienced judges, as well as unclear and ambiguous provisions in

<sup>18</sup> When there is a threat to security of people and property, public health, morals, rights of others or the security of the Republic of Serbia; when the purpose of the assembly is to invoke and encourage the armed conflict or the use of violence, the violation of human and minority freedoms and the rights of others, or to cause or encourage racial, national, religious or other inequality, hatred and intolerance; when there is a danger of violence, destruction of property or other forms of disturbance of the public order to a greater extent; If the assembly is held contrary to the provisions of this Law; (Law on Public Assemblies, art. 8)

<sup>19</sup> Protection of public health, morals, rights of others or the security of the Republic of Serbia. (Constitution of Republic of Serbia, art. 54 para. 4)

the Law lead to a legal uncertainty. This, in turn, could result in a hesitation on the part of the organisers to hold further assemblies since the fines they would be unable to pay could result in a prison sentence of up to 60 days.

“Ne davimo Beograd” initiative (Don’t drown Belgrade), which was formed as a response of a group of citizens to the unlawful demolition of buildings in central Belgrade and actively aims to highlight the corrupt actions of the authorities especially in relation to the Belgrade Waterfront project, have organised massive protests in Belgrade. The protesters demanded an investigation into the events surrounding the unlawful overnight demolition in Savamala<sup>20</sup> in 2016, and for the culprits to be brought to justice. They also demanded for the mayor of Belgrade to resign his office. Those involved have been actively prosecuted with various misdemeanour and criminal charges for the purpose of financial exhaustion of activists.

The stated reasons behind the persecution of activists vary and include facing criminal complaints of violent behaviour, misdemeanour procedures due to traffic blockage, non-notified assemblies, breaches of communal regulation etc. Some activists have been charged 13 times for organising a non-notified assembly, and have so far been sentenced to pay misdemeanour fees in the amount of 270 000,00 dinars (approximately 2,500,00 euros) by the Law on Public Assemblies. One of the activists had his unpaid misdemeanour fine for breaching communal regulations converted into prison term of

<sup>20</sup> Belgrade neighbourhood at the location of the “Belgrade Waterfront” urban renewal project

10 days. In another case, an activist faced a criminal complaint for the crime of violent behaviour, which was eventually dropped. The court has not yet considered a single case where the claims of the activist was justified that the assembly was held as a reaction to a particular event which could not have been notified (i.e. a spontaneous assembly).

The police often insist that organisers should employ private security for the assembly, although this condition is not prescribed by law. This can cause large financial expenses for organisers and even the cancellation of an assembly. In some cases interviewed activist stated that private security is engaged on the recommendation from police and in other cases that this is an obligation for all organisers. In some cases, even police officers were not able to confirm whether this is an obligation or not. So far, the police haven’t issued any instructions regarding the number of security staff and it depends on the estimation of the security agency. There is no information available that any assembly has been banned because the organisers failed to hire private security or did not hire a sufficient number of security staff. When met with this type of request by the police, organisers usually engage security agencies or simply cancel the planned assembly.

Putting aside protests motivated with clearly political issues (such as electoral theft) over the past few years there has been an increase in protests motivated by the poor planning, execution and corruption associated with different urban renewal projects. These protests revolve around the lack of transparency in decision making, lack of a public debate involving citizens as well as



different professionals and their associations (such as architectural associations). One series of such protests was conducted over the cutting of trees in a municipal park in Petlovo Brdo (Belgrade) where protesters tied themselves to, or climbed up trees. In the hot summer weather during the protest held on May 23<sup>rd</sup>, 2018, the police did not allow for water to be given to a girl who climbed up a tree and spent hours there refusing to come down. The notification for the assembly was rejected because it didn't meet the required deadline and that the organizer informed the public of this. The person who tried to notify the assembly and informed public about rejection of notification was still charged with holding a non-notified assembly.

Police officers are known to have engaged in regular communication with the organisers before assemblies organised during the months long "Protest against the dictatorship" following a supposed electoral theft, held in Belgrade between April and May 2017. They would communicate with the organisers about the route on the daily basis and sometimes suggest one of the few routes the assembly usually took.

In some cases, bans on assemblies were not preceded by an attempt of the police to mediate possible conflict with opposing parties and there was no attempt at a communication before the decision was made. This was the case in all bans on assemblies organised by Falun Dafa, where no attempt was made to communicate with the organisers or with the leaders of the local Chinese community. The assemblies were banned because Falun Dafa and members of the Chinese community residing in Serbia were repeatedly identified

as potentially liable to be involved in violent clashes and which might endanger people and property.

Barriers and shields are normally used by the police to manage assemblies. Use of force by the police is very rare and has always in response to violence from participants. The rule is that police use batons at assemblies, but as mentioned, it is very rare in practice. The police generally issues verbal warnings before any use of force. Although first aid is usually not present at assemblies, injured person will get treated in hospital or by doctors in an ambulance.

Undercover police are used at assemblies usually for surveillance. They generally use small GoPro type cameras, while the Mol has acquired face recognition software as well.<sup>21</sup> While the Law on Police stipulates that police, officers should announce publicly their intention to film an event (with the exception of undercover filming in accordance with the Criminal Procedure Code), this does not happen in practice. Any imagery retained should be destroyed after one year with the exception of imagery used in legal procedures as evidence<sup>22</sup>.

In some cases, members of the communal police have instructed the public to stop filming their actions and personnel, stating falsely that filming is illegal. In one case, members of "Ne davimo Beograd" attempted to give an interview near the construction site of Belgrade Waterfront, when they were ordered to leave by the communal police which made

21 See: <https://www.alo.rs/vesti/hronika/ovo-su-uspesi-srpske-policije/89302/vest>

22 Law on Police ("Official Gazette", nos. 6/2016 and 24/2018)

threatening moves suggesting they might break the filming equipment. Regarding this case, questions have been posed whether the actions of the communal police went above their authority and were aimed at obstructing public resistance to the Belgrade Waterfront urban renewal project.

During the, "Protest against dictatorship", held in Belgrade during April and May 2017, two students of the Faculty of Dramatic Arts were charged with organizing a non-notified assembly.<sup>23</sup> What draws the attention in their case is the low quality of legal arguments in the charges in document filed by the Mol. The document is filled with quotes of slogans the crowd was shouting aimed at various political figures in the government and which were not subject of the charges. At the very end of the document it is stated that the accused identified themselves as the organisers by standing at the head of the crowd, using a loudspeaker at one point and suggesting the protesters should go to the public gallery of the National Assembly. This is a case suggesting the intention of the government is to quash the protest by targeting individuals who are active at an assembly, but who are not related to the actual organisation, thus seeding fear among other ordinary participants they might face charges as well, if they actively participate, pick up a loudspeaker or stand out in any

23 See: <http://www.balkaninsight.com/en/article/serbian-police-charges-organizers-of-spontaneous-april-protests-10-03-2017>

other way<sup>24</sup>.

## GOOD POLICING PRACTICES

In May 2018, police banned all nationalist assemblies announced in relation to "Mirdita, dobar dan", a festival on Serbian and Albanian culture and reconciliation, held in Belgrade in several locations<sup>25</sup>. Despite the prohibition of the assemblies, the protesters, mainly Serbian radical party activists, gathered anyway, and attempted to pass the police cordon. Due to the advanced announcement of the protest, security was provided by large number of uniformed police officers and the main streets in the centre of Belgrade were blocked<sup>26</sup>. The police prevented violence using the minimum of force and the Mirdita festival was held, but in a very hostile atmosphere. In this example, we are able to see that providing politically sensitive gatherings is possible with good police organization and timely response.

## ACCOUNTABILITY OF THE POLICE

While it is possible to hold the police to account for their behaviour and actions, the effectiveness of such legal procedures is dubious. A good example of this is the great difficulty for the Falun Dafa association to hold any kind of public assembly for a number of

24 YUCOM's lawyers provided representation in this case and held interviews with the actual organizers of the "Protest against dictatorship" in preparation of the defence. The organizers themselves claimed to be in regular communication with the police and that their involvement in the organization is well known to Mol. One month later several misdemeanour charges were filed against them as well.

25 See: <http://rs.n1info.com/a392073/English/NEWS/Nationalist-protest-against-Kosovo-culture-festival-in-Belgrade.html>

26 See also: <https://www.rferl.org/a/festival-showcasing-kosovo-culture-opens-belgrade-amid-nationalist-protests/29260695.html>



years. Due to the government’s desire to draw investments from China, Falun Dafa, whose adherents are dissidents in that country, are in most cases not allowed to assemble in public, not even to hold presentation of mediation exercises. All attempts at a legal recourse in those cases have proven to be futile and three constitutional complaints are still pending<sup>27</sup>, while Falun Dafa adherents regularly receive Mol decisions on bans stating the same justification that “there is a possibility of a violent clash between Chinese living in Serbia and the participants of the banned assembly” All assemblies Falun Dafa have tried to organise have been banned and there is an indication that this is a general ban, rather than the ones based on stated reasons. This is supported by the fact that bans are issued even in municipalities where there the possibility of a violent conflict is reduced by the smaller number of Chinese residents which would not be able to gather in greater numbers. It is important the note that the stated reasoning isn’t based on any previous experience with the parties in this alleged conflict and that the police never attempted to communicate with them and prevent the conflict before issuing the bans. In addition, the Law on Public Assemblies doesn’t even prescribe a legal remedy in case the police order the assembly to disperse, which happened in one case when this association attempted to gather signatures for a petition asking the Government of China

27 While the decisions of the Mol on the appeal to the bans were always rendered and delivered within the legal deadline, decisions of the Administrative court were usually adopted 3 or more months after the scheduled date of the assembly. The three constitutional appeals ( filled in 2016, 2017 and 2018 ) have all recived their court number but their de-liberation dates keep are constantly postponed. The Constitutional Court doesn't adhere to the rule that appeals should be resolved in the order of being received.

to stop persecution of Falun Dafa adherents in that country, at the Republic square in Belgrade on December 16<sup>th</sup>, 2017.

When bans of assemblies are adopted, the legal remedies at the disposal of the organiser have been proven ineffective time and time again. In a debate held at YUCOM’s conference in the Human Rights House on (?) ‘An independent judiciary and freedom of assembly as indicators of fulfilment of measures under Chapter 23 on the issue of public assemblies’, one Administrative court judge noted that only 14 cases have been initiated in front of that court since the introduction of the new law at the beginning of 2016, citing lack of judicial experience in this matter as one of the problematic issues. Aside from the fact that the judge noted the lack of a legal deadline for the court to reach their decisions before the scheduled time of the banned assembly, he also noted that judges feel that there is no urgency with the case once this scheduled time has passed and hence they make their decisions accordingly.

It is worth noting that according to available information, the only two cases in which the Administrative Court reached its decision before the scheduled time of the assembly was the assembly planned by the Serbian Radical Party in the village of Hrtkovci<sup>28</sup>. Hrtkovci is a village in the northern region of Serbia called Vojvodina populated by the Croatian national minority. At the beginning of the war in Croatia in 1992, the leader of the Serbian Radical Party Vojislav Šešelj, who had been advocating for population exchange between Croatia and Serbia, held an inflammatory hate speech

28 See: <http://rs.n1info.com/a385632/English/NEWS/Serbian-police-stop-ultra-nationalists-on-road-to-Hrtkovci.html>

reading a list of names of 17 local Croats claiming they we’re members of Croatian paramilitary organisations. Šešelj stood trial at ICTY for this event considered by many as the beginning of a campaign of ethnic cleansing. In 2018 Šešelj planned another rally on May 6th, in Hrtkovci. According to available information this is the only case in which the Administrative Court reached its decision regarding an assembly ban before the scheduled time of the assembly. In this case, the court first quashed the ban of the Mol on procedural grounds and later upheld the new decision of the Mol again banning the assembly. This case suggests that the Administrative Court is susceptible to political pressures. In the case of Hrtkovci the Mol issued a general ban on all assemblies, since there were announcements that another political party would organise

counter protests<sup>29</sup> as well.

The following table shows in detail the efficiency of the Administrative Court in the lawsuits it received based on the Law on Public Assembly. It’s important to note that in two years since this Law came into force, there were only a small number of cases with this subject matter, in which the presiding judges had no previous experience or special training.

29 See: <https://www.blic.rs/vesti/politika/canak-hrtkovci-simbol-i-sinonim-za-etnicko-cicenje-ako-dode-seselj-dolazi-i-lsv/3v5n6bl> (available in Serbian only)

EFFICIENCY OF ADMINISTRATIVE COURT IN CASES BASED ON THE LAW ON PUBLIC ASSEMBLY

DATE OF RECEPTION	DATE OF DECISION	DECISION
June 16, 2016	July 27, 2016	Rejected
June 16, 2016	September 9, 2016	Rejected
June 17, 2016	-	Pending
Februar 24, 2018	-	Pending
March 2, 2018	-	Pending
April 27, 2018	April 30, 2018	Adopted
May 3, 2018	May 4, 2018	Rejected

Information was collected through a FOIA request sent to Administrative court in Belgrade.



## LAW ON PUBLIC ASSEMBLY - ADMINISTRATIVE COURT PROCEDURES<sup>30</sup>

In Stepa Stepanović housing project case<sup>31</sup>, residents of a new housing project organised protests because of the failure of the local government to provide them with health care centre which they were promised. Instead of the health care centre, the Serbian Orthodox Church opened a construction site for a wooden church at the location. A protest notified to be held on July 14th, 2018 at the Slavia roundabout in Belgrade was banned, claiming that holding of the protest would halt traffic and could lead to a conflict between drivers and participants, which would endanger safety of people and property. What makes this case stand out is the fact that the organiser's successful appeal on decisions to ban the assembly, only had one sentence with an argument against the ban which stated: "This ban violates human rights". This again is an indication that decisions in cases of bans may not dependent on legal arguments but rather on political grounds, which in this case was the assessment of the government that allowing to protest to proceed would cause less political damage than banning it.

Constitutional appeal has shown to be an ineffective legal remedy as well, with one case in which the court failed to decide on an interim measure almost a year after it was filed. Cases are decided upon out of order of being received and the court keeps rescheduling cases from one quarter to the next.

30 Information was collected through a FOIA request sent to Administrative court in Belgrade.

31 Legal documents related to the case were made public by the tenant association "Stepa Stepanović" on their Facebook page, available at: <https://www.facebook.com/Naselje-Stepa-Stepanovic-400012483359780/>

## MEDIA AND ASSEMBLIES:

Attacks against numerous journalists have been noted at the inauguration of the incumbent president on May 31<sup>st</sup> 2017 in front of the National Assembly building in Belgrade. Journalists who were attacked by unknown members of the political assembly security members were put in chokeholds and escorted out of the crowd.<sup>32</sup> The attack was filmed and published by the N1 television. A number of associations of journalists and CSOs demanded a swift reaction of the judiciary and an effective investigation of the case. The Public Prosecutor's Office took statements of the attacked journalists and witnesses, had the video of the attack and was able to identify the attackers. Despite all of the evidence, criminal complaints were later dropped by the prosecutorial office claiming the journalist had been removed to prevent their lynching by the crowd supporting the president.<sup>33</sup>

Unlike journalists, human rights defenders can observe freely at assemblies. There is no recorded case of any restrictions in that way. In 2016 YUCOM had an opportunity to lead a network of local CSOs monitoring the implementation of the newly adopted Law on Public Assemblies during the election campaign.

The use of social media in organising and coordinating assemblies has proven to be problematic in the light of the introduction of spontaneous gatherings into the 2016 Law on Public Assembly. While spontaneous

32 See: <http://www.slavkocuruvijafondacija.rs/en/six-attacks-against-journalists-on-day-of-new-serbian-president-s-inauguration/>

33 See: <http://www.balkaninsight.com/en/article/serbian-journalists-request-urgent-meeting-with-prosecutor-11-23-2017>

assemblies were finally formalised in law they are severely limited, since the Law states that any gathering which was convened by the organiser cannot be a spontaneous assembly. In that sense the police have been known to use Facebook posts to charge users for the organisation of non-notified assemblies.

In one example activists of "Ne davimo Beograd" movement scheduled a Facebook event to be held on August 26th, 2016 at the last house to be demolished for the controversial Belgrade Waterfront urban renewal project. They scheduled the event upon learning that the eviction of the family living in the house was planned for that day. Even though a majority of the people gathered in the fenced off yard of the house, making this an assembly in closed space which doesn't require a prior notification, the organisers were still charged with holding of a non-notified assembly.

While assemblies favourable to the government usually receive wide media coverage, protests aimed against the government are usually underreported. This discrepancy can best be illustrated by the difference between the coverage of assemblies promoting the incumbent president and assemblies promoting opposition leaders. In one example a press conference attended by major opposition leaders and dedicated to the attack against an opposition leader Borko Stefanović at an opposition assembly in Kruševac, was only broadcasted live on Facebook.

The series of non-partisan protests were organized by citizens in December 2018 in reaction to a physical attack against the opposition leader Borko Stefanovic, who he had to seek medical treatment for his injuries. The protest "Against violence - Stop

bloody shirts!" scheduled every Saturday until popular demands are met grew in size reaching 50.000 protesters in Belgrade and spreading to Kragujevac, Novi Sad and Nis by the end of 2018.<sup>34</sup> <sup>35</sup> Their demands were aimed at stopping the violence against political opponents of the incumbent government and especially addressed the media climate filled with hate speech as one of the root causes. In its latest report on Serbia, the European parliament stated that "situation as regards freedom of expression and independence of the media remains a particularly serious concern which needs to be addressed in a determined and effective way as a matter of priority" <sup>36</sup>

Government officials constantly downsized the number of protesters at times engaging in attempts to support their claims with nonsensical calculations involving the surface occupied by the protesters, number of protesters in winter jackets fitting in one square meter and whether they were stationary or on the move. Biased and unprofessional media reporting which was one of the causes of the protests continued throughout with pro-government Studio B falsely reporting that the organisers were calling for lynch, rape and violence. During the debate over the numbers of protesters, the President stated that had would not concede to demands of protesters even if 5 million people gathered. After the statement made by president Vucic.

34 See: <http://rs.n1info.com/English/NEWS/a442546/Belgrade-citizens-protest-against-violence-in-society.html>

35 See: <https://beta.rs/en/101814-attack-on-borko-stefanovic-political-freedoms-threatened>

36 European Parliament, Report on the 2018 Commission Report on Serbia, October 2018, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2018-0331+0+DOC+PDF+V0//EN>



the protest was renamed to "1 of 5 million". The protests are scheduled to continue in 2019 until the demands have been met by the government.



# V. CRIMINALIZATION OF PROTESTS

The Law on Public Assemblies adopted in 2016 prescribes very high penalties for legal and natural persons. So far, most misdemeanour charges have been brought against the organisers who are deemed political opponents of the incumbent president (i.e. "Ne davimo Beograd" movement, "Protest protiv diktature" informal movement, Youth Initiative for Human Rights etc.). Given the amount a legal person could be fined, this could lead to their dissolution and is also a deterrent to formalisation of informal movements thus restricting the freedom of association as well.

On the other hand, the volume of these procedures against same natural persons within these informal organisations could lead to their inability to pay the fines and end up in prison for up to 60 days for each charge. In the case of spontaneous protests held during the months long "Protest against the dictatorship" following a supposed electoral theft, different charges for holding a non-notified assembly were brought for different days of the same protest, against different persons and often against participants unrelated to the

organisation itself.<sup>37</sup> Considering the low quality of the legal argumentation laid down, it is possible that charges were brought under political pressures from the executive, solely to have a chilling effect on continuing organisation of the anti-government protest and not to result in actual convictions. The high fines could have a chilling effect on possible socially motivated protests as well<sup>38</sup>.

37 Two misdemeanour charges were filed against two students of the Faculty of Dramatic Arts for holding of the "Protest against dictatorship" and two misdemeanour charges were filed against two students of the Faculty of Political Science for "Protest against dictatorship", all on different dates.

38 Changes in government policies and laws have significantly reduced the level of rights of socially indigent peoples who are now forced to work in order to receive their welfare checks (around 65 euros) as well as pregnant woman who in same cases now receive as low as 7 euros per month because of a different way their salary compensation is calculated according to the new Law.



LAW ON PUBLIC ASSEMBLY - MISDEMEANOUR PROCEDURES 2016-2018

MISDEMEANOUR	2016	2017	2018 (UNTIL MAY)
Holding a non-notified assembly	15	33	18
Holding an assembly at a prohibited location	-	-	1
Holding an assembly at a location or time different from the notification	-	3	1

Information was collected through FOIA requests sent to misdemeanour courts in Belgrade, Novi Sad, Niš and Kragujevac and the interviews with activists.

According to the data available the most common misdemeanour is holding of non-notified assemblies.<sup>39</sup> Since other possible misdemeanours related to public assemblies fall under other laws and regulations such as the Law on Public Order and Peace and decisions on communal order there is no available statistical data that could be obtained from the courts. As stated above police stations have failed to answer our FOI request in the legal deadline and the most reliable source of information are the organisers of the protests themselves thus providing a somewhat limited overview of the situation regarding this issue.

Depending on the severity of the offences, perpetrators could face misdemeanour or criminal charges. The range of the fine for the natural person for holding non-notified assembly is 100 to 150 thousand dinars (845 to 1270 euros). Any inability to pay the fine in time will result in part of the amount

<sup>39</sup> Information was collected through FOIA requests sent to misdemeanour courts in Belgrade, Novi Sad, Niš and Kragujevac and the interviews with activists.

converted to prison term (60 days) and the rest of the amount executed on the person's property. The same misdemeanour would carry a fine for the legal person in the range from 1 to 2 million dinars (9.620 to 19.240 euros) An amount this high could result in the dissolution of a legal person.

In a majority of misdemeanour procedures protesters have not been found guilty but rather have been acquitted of the charges, or the procedure has passed beyond the very short statute of limitations (2 years).<sup>40</sup> Sentences can be appealed to the Misdemeanour Appellate Court but there is not sufficient number of initiated procedures to draw any conclusions as to the effectiveness of this legal remedy.

A recently adopted law on free legal aid explicitly bans free legal aid in misdemeanour proceedings if the offense is not punishable by imprisonment, which is exact case with Law on Public Assemblies. Bearing in mind lack of provisions on free legal aid, but also lack

<sup>40</sup> Ibid.

of experience of judges in this subject matter, the expediency of the whole misdemeanor procedure, possible political pressures, all increase the likelihood of a breach of defendant's rights while the small number of final decisions so far does not provide sufficient basis for drawing any conclusions.

The level of confidence in the judiciary by the general public is low and courts are considered to be slow and corrupt. This happens in part due to covert or open pressure by the executive and the media coverage often breaching the presumption of innocence.

The High Judicial Council is competent for holding disciplinary procedures against judges. According to their Annual work report in 2017<sup>41</sup>, there were 1022 complaints received, on various grounds, but only 3 disciplinary procedures initiated against judges.

<sup>41</sup> See: <https://vss.sud.rs/sites/default/files/attachments/izvestaj%20vss%202017-08-03-2018.pdf>



# VI. RECOMMENDATIONS



- The Government should adopt amendments to the Law in line with international human rights standards on the freedom of assembly. Amendments to the existing law should prescribe:
  - a. *An efficient legal remedy in cases of assembly prohibition;*
  - b. *A definition of spontaneous assembly in line with international standards and the purpose of spontaneous assemblies in democratic society; and*
  - c. *Less severe misdemeanour sanctions.*
- The Ministry of Internal Affairs should issue guidelines for police officers to establish unified practice when it comes to spontaneous gatherings and ensure that it is in line with international standards and best practice, which states that any peaceful assembly should be facilitated.
- The Ministry of Internal Affairs should issue guidelines for the police to stop requiring additional security measures for organisers, especially engaging private security agencies
- The Ministry of Internal Affairs should regularly publish in an accessible format the following information, nationwide and separated by cities and municipalities:
  - a. *number of public assemblies held each year*
  - b. *number of bans issued with legal reasoning behind these decisions*
  - c. *number of orders issued to prevent or disperse assemblies with legal reasoning behind these decisions*
  - d. *number of misdemeanour charges filled*
  - e. *number of instances when there was a disturbance of public order and peace*
  - f. *number of instances force was used by the police*
  - g. *number of procedures initiated against the police for excessive use of force*
- The Ministry of Local Self-Government should adopt guidelines for local government to unify local regulation on the issue of occupying public spaces, due to big legal uncertainty in this area.





- NGOs should use previous experience and good practice examples and use all available legal remedies to deal with especially sensitive assemblies which are in a risk to be prohibited, in order to encourage the Government to fully comply with international standards on freedom of public assembly.

## RESOURCES

1. [Venice commission opinion on Public Assembly Act \(2010<sup>th</sup>\)](#)
2. [Serbia 2017 Human Rights report, State Department](#)
3. [Protest against dictatorship in Serbia](#)
4. [Belgrade Protest Movement Takes to the Streets](#)
5. [Serbia: Journalists protest „government control” of public broadcaster](#)
6. [Serbian Students Charged with Organising Anti-Vucic Rally](#)
7. [Serbian nationalists protest over Albanian culture festival](#)
8. [Serbian police stop ultra-nationalists on road to Hrtkovci](#)
9. [Six attacks against journalists on day of new Serbian president’s inauguration](#)
10. [Attack on Borko Stefanovic: Political Freedoms Threatened](#)
11. [Belgrade citizens protest against violence in society](#)
12. [European Parliament, Report on the 2018 Commission Report on Serbia, October 2018](#)



*The right to free assembly is an indispensable element of democracy and a healthy civil society. Recent years have seen a new era of mass protests, but also a significant increase in practical restrictions on the right in Western Balkan and Eastern Partnership countries. The European Center for Not-for-Profit Law (ECNL) supports its network of local partners (in Albania, Armenia, Belarus, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Montenegro, Kosovo, Serbia and Ukraine) to monitor local laws, observe protests, report challenges and engage in the legal reform process to protect and promote this fundamental right.*

*This year's monitoring reports build on previous efforts and explore issues that are of relevance for all the participating countries. Accordingly, beyond the legal framework, the reports also look at the role of civil administration, policing, criminalization of protesters, as well as the overarching issue of accountability manifesting in all of these aspects.*



 **#right2freeassembly**