

Freedom of Assembly in the Republic of Serbia in 2015

Since its establishment in 1997, the Lawyers' Committee for Human Rights – YUCOM has been committed to safeguarding fundamental human rights and freedoms. In its work, YUCOM pays special attention to strategic cases because they represent a way to initiate necessary changes in the deficient system of human rights and freedoms protection.

In a series of decisions, the Constitutional Court pointed to the necessity of urgent amendments to the Law on Public Assembly. Especially interesting is the decision to the case involving the “*Women in Black*” organization, which is strategically represented by the Lawyers' Committee for Human Rights.

A decision adopted by the Constitutional Court in March 2012 established that the prohibition of the gathering “*One Hundred Years of Struggle*”, held on March 8, 2008, under the organization of “*Women in Black*”, violated a number of human rights: the right to freedom of assembly, the right to a fair trial, the right to trial within a reasonable time and the right to an effective legal remedy. Their assembly was at that time prohibited without explanation. In the procedure that followed before the authorities and courts, the Police Directorate stated that the said gathering had not been approved because a number of sports, cultural and other events of increased risk were being held on that critical day within the territory of Belgrade; it was reasonably expected that informal groups and extremist fan groups would assemble and thus endanger safety and property.

That decision to ban the moving assembly of human rights defenders was an arbitrary decision based on political motives. The process that the Lawyers' Committee for Human Rights led to the highest instance showed most of the shortcomings relating to the regulation of freedom of assembly, especially the lack of effective remedies for its protection. “The Constitutional Court thus adopted a conclusion taking into account the views of the European Court of Human Rights set forth in the stated *Baczkowski and others v. Poland* case. That Court emphasized that for the effective exercise of freedom of assembly it is important that the law prescribes terms in which competent authorities shall take their decision. In contrast, if there is no obligation of reaching a final decision before the planned date of the event, it cannot be concluded that the tools that the appellant has at his/her disposal - with respect to their post hoc character, allow adequate protection due to the restriction of the freedom to assembly.”¹

Over the course of August 2014, the Republic of Serbia chronicled shortcomings of the applicable Law on Public Assembly in the first draft of the Action Plan for Chapter 23

¹ Lawyers' Committee for Human Rights -YUCOM, “*Annual Report - YUCOM 2013*”, no. 1, Belgrade, 2013, p. 21.

and pledged to work on a new Draft Public Assembly Act, which shall regulate the freedom of assembly in accordance with the EU acquis.

On April 9, 2015, the Constitutional Court of the RS issued a decision establishing that the Law on Public Assembly ("Official Gazette of the RS", No 51/92, 53/93, 67/93, 17/99 and 33/99, "Official Gazette of the FRY", No 21/01 and "Official Gazette of the RS", No 29/01 and 101/05) was not in conformity with the Constitution. The main criticism of the Constitutional Court of the RS concerned the regulation of restrictions on freedom of assembly (including the venue of the event) and the effectiveness of legal remedies.

In terms of restrictions on freedom of assembly, it was pointed out that peaceful assembly of citizens in an open space may be limited only by a constitutionally established basis, which means that the law that prescribes the manner of exercising the guaranteed freedom of assembly can predict these bases when regulating the prohibition of an announced public assembly. The decision of the Constitutional Court pointed out that certain constitutional bases of the restriction to freedom of assembly (for example the need to protect the rights of others) may require closer legal regulation, but then the given reason for the prohibition of public assembly must be brought into direct connection with the constitutional basis of limitation. The Constitutional Court in its decision further stated that the holding of public meetings is in principle allowed everywhere, and therefore there is no constitutional basis for determining an area in which the holding of public meetings is allowed. Excluding a certain area for public assemblies may be prescribed in order to protect the values that are determined by the Constitution as a basis for restrictions on freedom itself.

In terms of the effectiveness of legal protection, it was emphasized that there was no constitutional and legal basis to prescribe a different decision-making procedure to ban a public gathering on the basis of case specific reasons to limit the freedom of assembly. The Constitutional Court in its decision further stated that the entire procedure for exercising the guaranteed freedom of assembly was regulated in a way that did not meet the criteria of effectiveness. Regardless of the reason that represents the basis for the prohibition of an announced public gathering, the deadline stipulated for fulfilling obligations of both the convenor to announce the assembly and the competent authority to adopt a decision on an eventual ban actually does not allow for an effective conduct and conclusion of the decision-making procedure on banning a public assembly before the scheduled time of the

gathering, which includes the use of all legal means provided for the protection of the convenor.²

Remarks to the competent authorities in connection with the adoption of the law

In light of the decision of the Constitutional Court establishing that the Law on Public Assembly was not in conformity with the Constitution, the Lawyers Committee for Human Rights-YUCOM and Civic Initiatives urged the authorities in a joint statement of April 21, 2015 to initiate the process of drafting the new Law on Public Assembly. On this occasion, it was pointed out that the six-month period the Constitutional Court postponed the presentation of the decision's rationale, "should be used for drafting the new law, which should be prepared with the involvement of experts/ activists and representatives of the civil society. By doing so, the participatory process shall provide a good proposal of the new law and allow the public to participate in the drafting process before the law comes before the deputies of the National Assembly of Serbia."³

Six months later, on October 9, 2015, YUCOM, together with other civil society organizations, was forced to react with an announcement when it became apparent that significant progress had not been made in this respect and that this area may remain without legal norms. On this occasion the potential danger to public order, peace and safety of people and the exercise of freedom of assembly was highlighted. Namely, due to the lack of a legal framework, the Ministry of Internal Affairs (MoI) is losing the authority and the ability to act preventively and ban rallies inciting violence and hatred. The announcement particularly emphasized that this issue was also recognized as essential under Chapter 23, as well as in the OSCE/ ODIHR guidelines on freedom of peaceful assembly.⁴

Public consultation

On October 9, 2015, non-governmental organizations called for the urgent regulation of the field of freedom of assembly. A Draft Law on Public Assembly⁵ and a conclusion ordering the opening of a public hearing in the period from 10 to 30 October was published on the website of the Ministry of Internal Affairs.

² Katarina Golubovic, "Analysis of the Conformity of the Draft Law on Public Assembly with the Constitution of the Republic of Serbia", January 15, 2016, p. 4-5, available at: <http://www.ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/4540-2016-01-15-08-19-55>.

³ Press release "Initiate the process of drafting the new Public Assembly Act", YUCOM and the Civic Initiatives; available at: <http://www.yucom.org.rs/pokrenuti-proces-izrade-novog-zakona-o-okupljanju-gradana/>.

⁴ Press release "The Government and the Assembly silent on the decision of the Constitutional Court", the OCD Coordination Committee for OSCE Chairmanship Monitoring; available: <http://www.yucom.org.rs/vlada-i-skupstina-neme-na-odluku-ustavnog-suda/>.

⁵ Draft Law on Public Assembly; available at: <http://www.mup.gov.rs/cms/resursi.nsf/161015-JIAT%20-%20OKUPAJANJE%20A%20JABHY%20PACIPABY.pdf>.

During the public debate, this draft was not forwarded to the Ombudsman of the Republic of Serbia for opinion. At the same time, the Ombudsman noted a shortcoming in the Ministry of Internal Affairs' work resulting in the lack of a law regulating freedom of assembly of citizens in the Republic of Serbia since October 23, 2015.

In the period between the decision of the Constitutional Court on April 9, 2015 and its publication on October 23 of the same year, the Ministry did not promptly prepare a draft of the new law nor did it forward it to the competent authorities and the public for debate, and subsequently adoption. These shortcomings have brought the Republic of Serbia into a situation in which the present law does not regulate the exercise of the constitutionally guaranteed freedom of citizens to assembly. Furthermore, this prevents the achievement of public interest to limit freedom of assembly when it is necessary on constitutionally prescribed grounds in order to protect public health, morals, and rights of others or the security of the Republic of Serbia.

At a joint meeting on public assembly, which was organized on October 28, 2015 by the Lawyers Committee for Human Rights-YUCOM in the Human Rights House, it was evaluated that the Law on Public Assembly should provide for spontaneous gatherings, namely a shorter deadline for registration of assemblies that represent reactions to current issues. The opinion at the meeting was that the 8-day deadline for registration of gatherings effectively prevented spontaneous assemblies. During the meeting, proposals were also made to regulate counter-gatherings. Besides the representatives of YUCOM, the meeting was attended by the Deputy Ombudsman Robert Sepi, representatives of the Youth Initiative for Human Rights, Praxis, Belgrade Centre for Human Rights and the organization Ministry of Space. On this occasion, it was assessed that the restriction of freedom of assembly in the period between 8 a.m. and 10 p.m. is unacceptable and that other restrictions envisage excessive obligations on the part of a gathering's organizers.

In accordance with the adopted conclusion, the Draft Law on Public Assembly passed the public debate in the form of four round tables that were organized in a short period of time in Novi Sad, Kragujevac and Nis. The fourth round table held in Belgrade in the premises of the City of Belgrade Police Administration was the last one to be held. Prosecutors, misdemeanor judges, as well as representatives of inspection services, the municipal police, professional associations and other NGOs, were invited to the public hearing attended by the Lawyers Committee for Human Rights - YUCOM.

On the basis of comments presented and very precise objections to the then current draft, a new Draft Law on Public Assembly was adopted on November 17, 2015, which was forwarded for an opinion to independent institutions such as: the Ombudsman, the Commissioner for Equality, the Commissioner for Information of Public Importance and Personal Data Protection, the Association of Free and Independent Trade Unions and representatives of non-governmental organizations. On the occasion of the new draft, a joint session of the Committee for Human and Minority Rights and Gender Equality and the Committee on Defense and Internal Affairs was held on December 15, 2015, at which the members of the Committees were acquainted with the Draft Law on Public Assembly submitted by

the Ministry of Internal Affairs. In addition to members of the Committee, objections to the Draft Law on Public Assembly were made during the discussion by the Commissioner for Protection of Equality Brankica Jankovic, the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic, Deputy Ombudsman Milos Jankovic, President of the Association of Free and Independent Trade Unions Ranka Savic, as well as by representatives of the civil society. The Commissioner for Protection of Equality made a number of remarks. She especially emphasized that the draft did not regulate counter-meetings, and that spontaneous gatherings and moving assemblies were not sufficiently defined. The Commissioner stressed the need to once again check whether all the provisions in the draft legislation were in line with OSCE guidelines for public assembly. Trade union representatives pointed out to the fact that a peaceful gathering expressing social discontent was not distinguished from sports, religious and other gatherings. The Commissioner for Information of Public Importance objected to an article of the draft law regulating the keeping of records of competent authorities, pointing out that the provision is unclear and that its interpretation was too broad. Deputy Ombudsman Milos Jankovic said that the legal vacuum that had emerged due to the absence of the Law created a very unpleasant situation. The President of the Association of Free and Independent Trade Unions Ranka Savic criticized the provision that prescribes that the MoI issues the decision to ban gatherings and that the police may stop an assembly with an "order". She pointed out that a special problem was excessive "penalties for organizers of events which are organized at dangerous locations or without an issued permit".⁶ Remarks were echoed by representatives of NGOs and YUCOM particularly explained the shortcomings in the regulation of legal protection.

After the joint session of the Committee for Human and Minority Rights and Gender Equality and the Committee on Defense and Internal Affairs, the new Final Draft Law on Public Assembly was passed, which was adopted as a proposal on December 31, 2015.

Institutional cooperation- professional assistance

The Lawyers' Committee for Human Rights-YUCOM has achieved good cooperation with the Ombudsman for whose needs it prepared an analysis of compliance of the Draft Law on Public Assembly with the Constitution of the Republic of Serbia.⁷ An expert of the Lawyers' Committee for Human Rights, Katarina Golubovic, PhD, pointed out in the analysis to good solutions in the draft that should be applied in the law, but also to shortcomings that need to be rectified, which should therefore harmonize the act with the Serbian Constitution and international human and minority rights standards.

In his opinion on the Draft Law on Public Assembly given on January 18, 2016, the Ombudsman expressed his view that the proposal must clearly emphasize that prescribed limits to freedom of assembly only occur if it is necessary to protect some of the constitutionally prescribed values that the proposer formalized in the Proposal. The Ombudsman noted that restrictions on the location and time of assembly envisaged by the Draft Law are not in accordance with the Constitution since they are placed *in abstracto*. The location and/or time of the (scheduled) assembly of citizens, according to the

⁶ "Shortcomings of the proposed Law on Public Assembly", Euraktiv; available at: <http://www.euractiv.rs/ljudska-prava/9455-manjakvosti-predloenog-zakona-o-javnom-okupljanju>.

⁷ The draft was submitted to the Ombudsman of the Republic of Serbia for opinion on November 17, 2015

Ombudsman's opinion, might be a reason to limit these freedoms, but only if it is *in concreto* necessary to protect public health, morals, rights of others or the security of the Republic of Serbia.

In his analysis of the Proposal's provisions, the Ombudsman concluded that the deficiencies were not remedied in terms of arranging effective procedures after the adoption of solutions that prohibit assemblies. Commenting on the criminal provisions, the Ombudsman noted that "the severity of penalties and the possibility of cumulative punishment of a legal entity, responsible person in a legal entity, organizer or leader of a gathering may have a discouraging effect on organizing public gatherings, while misdemeanor sanctions in certain cases may represent disproportionate means of response".⁸

The Lawyers Committee for Human Rights - YUCOM has achieved significant cooperation with the EU Delegation in the course of commenting on the proposed Law on Public Assembly.

Expert analysis of the Draft

In the analysis of the compliance of the Draft Law on Public Assembly with the Constitution of the Republic of Serbia, the Lawyers Committee for Human Rights noted that the draft law does not comply with OSCE/ ODIHR guidelines, because it introduces a license system and excessive commitments on the part of organizers of public gatherings. Sanctions are not set in accordance with the gravity of the misdemeanor. In this regard, it is necessary, first of all, to proportionally regulate fines in relation to different types of offenses.

Furthermore, the Draft stipulates cumulative punishment of a legal entity, responsible person in a legal entity and organizer or leader of a gathering, which represents a disproportionate interference with the freedom of assembly and has a deterrent effect on organizing public gatherings. It is necessary to prevent the possibility of simultaneous punishment of organizers, leaders, legal persons and responsible persons in legal entities.

Organizers of meetings should not be held liable for failure to perform duties if they made an effort to carry out these duties. Organizers cannot be held liable for the actions of individual participants, of those not participating or agents provocateurs. Instead,

⁸Opinion of the Ombudsman on the Draft *Law on Public Assembly*, January 2016; available on: http://www.ombudsman.rs/attachments/4544_Misljenje%20na%20Predlog%20zakona%20o%20javnom%20okupljanju%20FINAL.doc.

individual responsibility must exist for every person who has personally committed a violation or has not complied with statutory orders of the police.⁹

In exercising their authorities under the Law on Public Assembly, local self-government units may jeopardize the achievement of the OSCE/ ODIHR guidelines through the use of certain regulations. Article 25 of the Draft establishes the jurisdiction of local self-government units to closer designate the venue for holding assemblies referred to in Art. 6 par. 1 of the draft by adopting an act. Bearing in mind that only the law may prescribe the manner of exercising human and minority rights, if it is expressly provided by the Constitution or if it is necessary to exercise a specific right due to its nature, the constitutionality of the decision referred to in Article 25 of the Draft Law on Public Assembly may be called into question.

According to Article 25 of the draft, "the City Assembly or municipality shall, within 60 days from the date of entry into force of this law, determine the venue for gatherings referred to in Article 6, paragraph 1 of this Act." First of all, Article 25 is not consistent with Article 6, paragraph 1, in the sense that a provision of Article 25 provides the units with jurisdiction to determine venues for holding assemblies, and Article 6, paragraph 1 to determine locations where gatherings are banned. Furthermore, if the exercise of freedom of assembly is mediated through an act adopted by a local self-government unit, then this obviously violates the constitutional principle of direct application of guaranteed constitutional rights and freedoms of citizens.

In order to harmonize these provisions with the Constitution, both in terms of competence and in terms of eliminating general restrictions, it is necessary to completely erase Article 25 and allow the competent authority-the organizational unit of the Ministry of Internal Affairs - to evaluate the safety of a location or the necessity to ban a gathering at a certain venue in order to protect the established basis referred to in Art. 54, par. 4 of the Constitution.¹⁰

Local self-government units are authorized to adopt decisions establishing communal order, thus in accordance with Article 9, paragraph 4 of the Draft they provide communal services related to public gatherings. Regulating communal order may influence the system for registering assemblies. Local self-government unit authorities can in this manner interfere with the freedom of assembly by not interpreting their competences correctly.

⁹Katarina Golubovic, "Analysis of the conformity of the Draft Law on Public Assembly with the Constitution of the Republic of Serbia", January 15, 2016, p. 9-10, available at: <http://www.ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/4540-2016-01-15-08-19-55>.

¹⁰Ibid, p. 10-11.

Compliance of regulations and legal certainty in this area is of great importance, given that in practice malicious conduct of misdemeanor proceedings may occur. There has been a sufficient amount of cases in which the application of the Law on Public Peace and Order and the Law on Road Traffic Safety had priority, while the application of the Law on Public Assembly was completely ignored. In this regard, in order to harmonize and facilitate the full application of the new law, it is necessary to identify all regulations that could, either in the registration phase or in the subsequent stage of procedure, interfere with the exercise of this freedom. In order to prevent a collision of laws that could be applied to participants in the exercise of freedom, it is necessary to use the draft law to determine the status of the Law itself and its relationship with other laws that indirectly affect the exercise of freedom of assembly, with the aim of avoiding subsequent amendments to other laws that could supersede the organic law. Also, it is necessary to increase the transparency of the Ministry of Internal Affairs and local self-governments in the exercise of authorities relating to the restriction of freedom of assembly.

Promoting respect for European standards within the OSCE

Priority goals of Serbia's chairmanship of the OSCE in 2015 were improvements in implementing obligations under the OSCE human dimension, strengthening monitoring instruments in this field, strengthening ties with civil society organizations and promoting their active participation in the work of the Organization. In 2015, Serbia adopted the decision to continue the self-evaluation process that was launched in 2014 by Switzerland. The main goal was to have the current chairmanship serve as an example of objective consideration of the implementation of commitments in the human dimension sphere. Self-evaluation has been entrusted to independent institutions and civil society organizations, among which is the Lawyers' Committee for Human Rights - YUCOM. They prepared reports on the basis of their analysis and evaluation. The Ministry of Foreign Affairs selected four topics, including the freedom of assembly.

Civil society organizations presented their reports at the Parallel Civil Society Conference, which was held in Belgrade on December 1-2, 2015, just before the meeting of the Ministerial Council of the OSCE. In its analysis of the implementation of commitments in the field of freedom of assembly, the Lawyers' Committee for Human Rights pointed to deficiencies of the Public Assembly Bill, but also to the necessity of conducting a more detailed analysis of all legal norms that restrict OSCE/ ODIHR guidelines with regard to the freedom of peaceful assembly. Furthermore, YUCOM drew attention to the possibility that local self-government units may impede the implementation of these guidelines by adopting bylaws, which they are authorized to do according to the law, citing as an example the decision of the city of Zajecar that effectively prevents the assembly of citizens on the city square. As another example of local self-government decision-making, the Lawyers' Committee for Human Rights also pointed to the

decision of the municipality of Kraljevo on noise protection that requests organizers of public gatherings to seek approval from the authority competent for environmental protection.¹¹

The Law on Public Assembly was adopted in the National Assembly on January 26, 2016. Despite the opinion of the Ombudsman, the adopted Law kept restrictions presented in Proposal. The Ombudsman's opinion was not respected in the part that refers to locations where public gatherings are prohibited. Specifically, public gatherings are prohibited in the vicinity of health care institutions, schools, preschools, in front of structures of strategic or special importance for the defense and security of the state. Despite the opinion of the Ombudsman and representatives of non-governmental organizations that the fines proposed in the draft were too high, in some cases the level of fines was even increased in the adopted Law. The most drastic increase in penalties in relation to the Draft has been envisaged for penalties against responsible persons in legal entities as organizers of gatherings. In the event that a person attempts or holds a gathering without prior registration, he/she risks a fine amounting to 100,000 to 150,000 dinars instead of 50,000 to 100,000 dinars, which was the punishment provided for in the Draft. The law has regulated spontaneous gatherings, as well as shorter deadlines for registering assemblies, in accordance with the views presented at the joint meeting on public assembly organized by the Lawyers Committee for Human Rights in the Human Rights House on October 28, 2015. Despite objections presented by experts, the adopted Law on Public Assembly does not regulate counter-gatherings.

Further activities

Most media followed the activities of YUCOM.¹² Conclusions on the adopted Law in terms of legal protection, excessive fines, and poor regulation of spontaneous gatherings were presented to the public through media appearances. Discussions concerning the improvement of perceived problems shall be held during the negotiations under Chapter 23; over the course of 2016, attention shall be paid to new strategic cases and analysis of monitoring gatherings, which shall also contribute to a more precise definition of potential solutions.

¹¹ "Self-Evaluation Report - Serbian OSCE Chairmanship", CSO Coalition for the Monitoring of Serbia's OSCE Chairmanship; available at: <http://helsinki.org.rs/doc/Self-evaluation%20report.pdf>.

¹² "Unregulated assembly of citizens", Danas, October 9, 2015; available at:

http://www.danas.rs/danasrs/ukratko/neregulisano_okupljanje_gradjana.83.html?news_id=99440

"NGO: Registration of assemblies is not compulsory", Radio television Vojvodina, October 9, 2015; available at: http://www.rtv.rs/sr_lat/drustvo/nvo-prijavljivanje-skupova-policiji-nije-obavezno_646968.html

"Without a rally in front of the Assembly in the future?", Novosti, October 23, 2015; available at:

<http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:573177-Ubuduce-bez-mitinga-ispred-Skupstine#>

"The Law on Public Assembly is restrictive and highly illogical", N1, October 28, 2015, available at:

<http://rs.n1info.com/a104325/Vesti/Zakon-o-javnim-okupljanjima-restriktivan-i-pun-nelogicnosti.html>

