LEGAL POSITION OF HUMAN RIGHTS DEFENDERS IN SERBIA

SERBIA IN TERMS OF BASIC HUMAN RIGHTS

FREEDOM OF EXPRESSION, FREEDOM OF ASSEMBLY, THE RIGHT TO LIBERTY AND SECURITY, AND THE RIGHT TO ASSOCIATION

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Introduction

Freedom of expression, freedom of association and freedom of assembly are three rights that are often inseparable in a modern democratic society: our right to express an opinion on current social and political issues, the right to stand together for our views and establish movements and organisations for these purposes, and the right to express our message and send it to others at public gatherings so that it reaches as many people as possible. In addition to these three freedoms, the right to liberty and security, as a basic human right, should be implied. When we jointly express an opinion on certain issues in a peaceful protest, we should not have to fear for our own security. Because, without freedom and security, there are no other rights and there is no democratic society. This document aims to positively address the legal framework of four basic rights that are necessary for human rights defenders to be able to perform their activities, to point out problems in legislation, but also to present a real picture of the position of activists in Serbia who encounter direct or indirect violations of these rights on a daily basis.

Since the Constitution of Serbia[1] prescribes that "the Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws.", we will also refer to international agreements that Serbia has ratified, primarily the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights as the most important international sources in this field. In the absence of answers in domestic practice, we will turn to the practice of the European Court of Human Rights, which has set internationally accepted standards in the exercise of these rights and freedoms through the interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The International Covenant on Civil and Political Rights is an important source of law because it creates space for human rights defenders to use United Nations' mechanisms for the protection of these rights, primarily by addressing the Human Rights Committee. Given the scope of this document, we will mention only the most important international sources. However, the international legislation governing these rights, or mechanisms for their protection, does not end there. Within the United Nations, there are a number of bodies and special procedures that activists can use to protect their rights, such as e.g. addressing the Special Rapporteur on the protection of human rights defenders.[2]

1 "Official Gazette of the Republic of Serbia", no. 98/2006
2 https://www.ohchr.org/en/issues/srhrdefenders/pages/srhrdefendersindex.aspx, accessed on 2 Dec 2021

Freedom of Thought and Expression

Freedom of opinion and expression is defined in Article 46 of the Constitution of Serbia as a basic human right:

> *The freedom of thought and expression shall be guaranteed, as well as the freedom to seek, receive and impart information and ideas through speech, writing, art, or in some other manner.*
>
> *Freedom of expression may be restricted by the law if necessary to protect rights and reputation of others, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society and national security of the Republic of Serbia.*

As for international sources, the most important for Serbia is the European Convention for the Protection of Human Rights and Fundamental Freedoms,[3] which, in Article 10, stipulates as follows:

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

Of great importance for Serbia is also the International Covenant on Civil and Political Rights,[4] whose Article 19 guarantees freedom of opinion and expression:

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

3 "Official Gazette of Serbia and Montenegro – International treaties", nos 9/2003, 5/2005 and 7/2005

4 "Official Gazette of the Republic of Serbia", no. 7/71

3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

   (a) For respect of the rights or reputations of others;

   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

In domestic law, apart from a general constitutional guarantee which prescribes the conditions for its restriction, freedom of expression is not regulated by any single, special law. It is mainly governed through restrictions to it, prescribed in a number of laws and bylaws that regulate various areas of life.

While the guarantee of the right itself is clear, problems arise in the practical application of said right, i.e. the way in which the restrictions of this right are interpreted and enforced.

A restriction must be:

1. Legal,
2. Necessary,
3. Included exclusively for the purposes of protecting the rights and reputations of others, preserving the authority and impartiality of the judiciary, protecting public health, the morals of a democratic society and national security.

Numerous laws in Serbia allow restrictions on freedom of expression. Here, we will single out just some of the most important restrictions that are prescribed by law.

First of all, the **Criminal Code of the Republic of Serbia**[5] prescribes a number of criminal acts that restrict this freedom. To name a few - the criminal offences of insult, endangering security, causing panic and disorder, persecution, violation of secrecy of procedure, racial and other discrimination, calling for a violent change of the constitutional order and so on.

The Law on Public Order and Peace[6] envisages two offences that can affect freedom of expression, and which are closely related to public gatherings. The offences in question are: indecent, insolent and reckless behavior[7] and insult, commission of

5 "Official Gazette of the Republic of Serbia", nos. 85/2005, 88/2005 - ispr., 107/2005 - corrigenda, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019

6 "Official Gazette of the Republic of Serbia", nos. 6/2016 and 24/2018

7 Article 8 of the Law on Public Order and Peace: Whoever violates public order and peace by indecent, insolent or reckless behaviour, or endangers property, or insults the morals of citizens, will be fined in the amount of RSD 10,000 to 150,000, or shall be imposed a sanction of community service lasting 80 to 360 hours.Whoever commits the offence referred to in paragraph 1 of this Article in a group of three or more persons, shall be imposed the sanction of community service lasting 240 to 360 hours, or 30 to 60 days in prison.

violence, making a threat or engaging in a fight.[8] Due to overly broad definitions of offences, manz ways of exercising the right to freedom of expression can result in misdemeanours that carry fines and prison terms. The absence of a definition of what is considered indecent or insolent behaviour, and what is to be deemed as insult, makes it easier for these articles of law to include a wide range of statements or gestures that fall within the realm of freedom of expression and intimidate those who have used this freedom with misdemeanour sanctions.

In addition to the Criminal Code, freedom of expression is restricted also by civil law, such as the **Law on Obligations**,[9] which provides for the possibility of material and non-material compensation for damage caused to one's honour and reputation, especially material compensation for spreading false allegations.

The **Law on Public Information and Media**[10] also provides for the restriction of freedom of expression by prescribing the right to a reply, and the right to correction, as well as lawsuits for the exercise of these rights. In a lawsuit, one may also request that it be established that published information or record has violated their right/interest, that something not be published, that re-publishing of information be prohibited and that a recording be handed over, and that a published recording be removed or destroyed (deletion of video and audio records, destruction of photographic negatives, removal of items from publications, and the like).

Although the intention of the legislator who had prescribed the restriction of freedom of expression is clear, and the framework of this restriction is defined by the Constitution in a rather restrictive way, in practice there is the problem of frequent abuse of said restrictions to the detriment of human rights defenders. The most common form of abuse has to do with the fulfilment of conditions that are necessary for the restriction of rights. Although indeed prescribed by law, a restriction may be so disproportionate as to substantially encroach on the very core of the right to freedom of expression and impede its exercise.

Certainly the most drastic form of restriction of the right to freedom of expression is the **initiation of criminal proceedings due to the spoken word**. Some activists have found themselves the target of a repressive criminal apparatus because of statements they have made in public or posted on social networks. For example, activist D. M. from Novi Sad was questioned on suspicion that he committed the crime of calling for a violent change of the constitutional order because he posted an apparently ironic tweet on his satirical Twitter account, which read: "*I openly call for civil war. It is only important that it be fought completely in Serbia. We should not bother others with our misery anymore...*"

8 Article 9 of the Law on Public Order and Peace: Whoever violates public order and peace by insulting another or by committing violence against another, or threatening another, shall be punished by a fine in the amount of RSD 20,000 to 100,000, or 10 to 30 days in prison.

9 "Official Gazette of the SFRY", nos. 29/78, 39/85, 45/89 - decision of the Constitutional Court of Yugoslavia and 57/89, "Official Gazette of SRY", no. 31/93, "Official Gazette of Serbia and Montenegro", no. 1/2003 - Constitutional Charter, and "Official Gazette of the Republic of Serbia", no. 18/2020

10 "Official Gazette of the Republic of Serbia", nos. 83/2014, 58/2015 and 12/2016 - authentic interpretation

The activist was questioned as a suspect, and his phone was temporarily confiscated as a tool he used to commit crime. Although the criminal proceedings were suspended after a few months, the very interrogation of the activist and the threat of criminal sanctions (from 6 months to 5 years in prison) represented a disproportionate restriction of freedom of expression, which did not aim to protect the constitutional order but rather to prevent free speech.

Activists of the Centre for Women's Studies also encountered restrictions on freedom of expression when, on the occasion of 8 March, the International Women's Day, they symbolically hung the apron reading *Abortion is a woman's right* on the statue of the late Serbian Orthodox Patriarch Pavle. In this way, they expressed dissatisfaction with the church's interference in women's reproductive rights. Although the statue was not damaged in any way, and the apron with the inscription was soon removed, one of the right-wing associations filed a lawsuit against the Centre, and its activists individually, for the aforementioned violations under Articles 8 and 9 of the Law on Public Order and Peace. The activists were acquitted because the association that submitted the request to initiate misdemeanour proceedings did not have the status of victim in the proceedings, and was therefore not entitled to initiate them in the first place. The problem in this case was the court's non-compliance with the Law on Misdemeanours, since, pursuant to Article 184 of this Law, the court is obliged to reject any request for initiating misdemeanour proceedings that is submitted by an unauthorised person. Instead, the activists were summoned to a hearing and ordered to submit their written defence. Only then were they acquitted. All these actions extremely unfavourably affect freedom of expression, because the individual remains in a state of legal uncertainty throughout the proceedings, under the threat of sanctions, simply for deciding to use his/her freedom of expression.

Citizens' associations, as well as numerous activists, are also affected by a relatively recent phenomenon called SLAPP.[11] Translated into Serbian, the term SLAPP involves a strategic procedure against participation in public policies. These are mostly civil proceedings initiated by natural persons against activists and/or media outlets, most often because of alleged damage to honour and reputation caused by some allegedly untrue statement. In a SLAPP lawsuit, the plaintiff knows that s/he has no or very little chance to win, but s/he still files a lawsuit because s/he wants to intimidate the person who, by using freedom of expression, has publicly pointed out a problem in conducting public policies. SLAPP proceedings reflect the disproportionate power relationship between activists and those who want to discourage their activities, as significantly greater material resources (and often even a political function) are always on the side of the opponent, that is, the plaintiff. A series of such cases affected activists from Novi Pazar[12] who publicly spoke out against the director of the City Hospital and the way he

11 Strategic Lawsuit against Public Participation

12 https://beta.rs/vesti/drustvo-hronika-srbija/154256-novi-pazar-direktor-bolnice-podneo-37-tuzbi-zbog-uvreda-25-postupaka-jos-u-toku, accessed on 2 Dec 2021

has managed the hospital since the beginning of the COVID-19 epidemic. This man - a public official, hospital director and member of the Serbian Progressive Party - filed more than 30 lawsuits, seeking compensation for damages, against activists, citizens and doctors who spoke publicly and protested, dissatisfied with the epidemiological situation and the way the director managed the hospital. The Serbian public is also aware of the lawsuit of the private company "Millennium Team" against the movement *Let's Not Drown Belgrade*,[13] in which the company demanded compensation for material damages in the amount of RSD 12 million because the movement had criticised, in several public appearances, its work and connections with the top of the state. *Let's not drown Belgrade* is just one of the organisations that were sued by Milinium Team, which also sued several independent media and citizens' associations. In this way, the Law on Obligations and the Law on Public Information and Media have been grossly abused for the purpose of restricting freedom of expression, contrary to the purpose of the rights granted thereby.

Freedom of Assembly

Unlike freedom of expression, freedom of assembly is governed in detail by domestic regulations, in a significantly more compact way.

The Constitutional guarantee of freedom of assembly prescribes as follows:

> *Citizens may assemble freely.*
>
> *Assembly held indoors shall not be subjected to permission or registering.*
>
> *Gathering, demonstrations and other forms of assembly held outdoors shall be reported to the state body, in accordance with the law.*
>
> *Freedom of assembly may be restricted by the law only if necessary to protect public health, morals, rights of others, or the security of the Republic of* Serbia.[14]

With regard to freedom of assembly, the European Convention for the Protection of Human Rights and Fundamental Freedoms emphasises the importance of freedom of assembly and freedom of association as two compatible rights guaranteed by a single article, together and inseparable. Thus, Article 11 of the Convention reads as follows:

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

13 https://nedavimobeograd.rs/milenijum-tim-tuzio-ne-davimo-beograd/, accessed on 2 Dec 2021
14 Article 54 of the Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia", no. 98/2006)

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

The International Covenant on Civil and Political Rights regulates the right to peaceful assembly its in Article 21:

> *The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

In addition to the Constitution, the umbrella law that governs freedom of assembly is the Law on Public Assembly.[15] This Law was passed in 2016, after the Constitutional Court of Serbia declared the entire previous Law on the Assembly of Citizens unconstitutional and gave a deadline of 6 months to pass a new one. The Government of Serbia was more than four months late in fulfilling this obligation, so there was a legal gap during the period after the old Law ceased to be valid by a court decision but the new one was not yet passed.

> The Law on Public Assembly regulates the details of the manner of exercising the right to public assembly. Thus, a public gathering is considered to be: "*a gathering more than 20 people to express, achieve and promote state, political, social and national beliefs and goals, or other freedoms and rights in a democratic society. In the sense of this Law, gatherings are also other forms of gatherings whose purpose is to realise religious, cultural, humanitarian, sports, entertainment and other interests*".[16]

With regard to the place of gathering, the law stipulates that it is any space that is, unconditionally or under the same conditions, available individually to an indefinite number of persons, prescribing also the possibility of holding a moving gathering.

> *Gathering is not allowed at a location where, due to the characteristics of the location itself, or its special purpose, there is a rask of endangering the safety of people and property, public health, morals, rights of others, or the security of the Republic of Serbia.*
>
> *For the purposes of this Law, the location referred to in paragraph 1 of this Article shall be the area in front of a health institution, school, preschool institution, as well as the area in front of facilities of strategic and special importance for defence and security of the Republic of Serbia.*

15 "Official Gazette of the Republic of Serbia", no. 6/2016
16 Article 3 of the Law on Public Assembly

Gatherings are not allowed in places where such gatherings would violate the human and minority rights and freedoms of others or endanger morals, and in places that are closed to the public.

Restrictions on gathering places provided by law are not in accordance with the Constitution and international standards, as they are expressed *in abstracto*. The location and/or time of a (planned) gathering of citizens may be a reason to restrict these freedoms, but only if that is necessary *in concreto* to protect public health, morals, the rights of others, or the security of the Republic of Serbia. With regard to the general restriction, the Venice Commission has defined international standards based on the practice of international bodies charged with the protection of human rights. It is explicitly prescribed that any restriction of time and place for holding a specific gathering must pass the proportionality test in each individual case. General restrictions, such as the prohibition of restrictions in certain locations, do not, as a rule, allow the application of the principle of proportionality, which requires the competent authorities to apply the least restrictive measures to achieve legitimate objectives when restricting rights.[17]

General requirements for the prohibition of a public gathering are prescribed by Article 8 of the Law, which stipulates that a gathering is not allowed:

1. *When there is a threat to the security of people and property, public health, morals, rights of others, or the security of the Republic of Serbia;*
2. *When the goals of the gathering are aimed at calling for and inciting armed conflict or the use of violence, violating human and minority freedoms and the rights of others, i.e. causing or inciting racial, national, religious or other inequality, hatred and intolerance;*
3. *When there is a danger of violence, destruction of property, or other forms of disturbance of public order on a larger scale;*
4. *If the holding of the gathering is contrary to the provisions of the Law on Public Assembly.*

The provision on the requirements for banning a public gathering has been interpreted to the detriment of human rights defenders, contrary to international standards of the right to public assembly. Thus, on 9 November 2021, the Ministry of the Interior banned a public gathering that was announced by the NGO *Youth Initiative for Human Rights*[18] for the purpose of removing the mural depicting a convicted war criminal Ratko Mladić. Explaining the ban on the rally, the MoI stated that it could "result in a physical conflict" because of the "gathering of a larger number of people to express their displeasure

17 Joint opinion on amendments and supplements to the Law on the Right of Citizens to Peaceful Assembly without Arms, Free Holding of Rallies and Demonstrations of the Republic of Kyrgyzstan, Venetian Commission and OSCE/ODIHR, 2008 https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)025-e, accessed on 2 Dec 2021

18 https://rs.n1info.com/vesti/yihr-mup-zabranio-skup-gde-je-trebalo-da-bude-uklonjen-mural-ratka-mladica/, accessed on 2 Dec 2021

and opposition to the [original] rally". Such an action represents a serious violation of the freedom of assembly, because the obligation of the state is not only to protect the gatherings that do not disturb citizens, but *all* peaceful gatherings that are organised for the purose of achieving allowed goals. The reasons for banning a rally must be interpreted very restrictively. "**The obligation of the state to protect peaceful assembly is of special importance where people holding or trying to hold a rally are advocating for an unpopular position, because this can increase the likelihood of hostile behavior by the opponents of the gathering. However, potential riots resulting from hostilities against those participating in a peaceful assembly must not be used to justify restrictions being imposed on said peaceful assembly**."[19] Contrary to this standard, on the occasion of the announced civil road blocks as an expression of protest against the adoption of the Law on Expropriation and the Law on Referendum, the Ministry of the Interior of the Republic of Serbia published a special telephone number and asked citizens to report road blocks and write down the protesters' licence plates. In this way, instead of trying to secure the gathering, they exacerbated the already tense situation at these protests, which, previously, already involved violence.[20] Banning a gathering just because there is a danger that there will be a counter-gathering does not constitute a legitimate and proportionate restriction on public assembly. In contrast to this event, a gathering of the right-wing organisation *People's Patrols* was held in October 2020 in Belgrade, under the slogan "Let's clean out the park next to the Faculty of Economics",[21] which represented a direct call to expel migrants and refugees from the Middle East from the park they frequented. Although the goal of the gathering was clearly defined contrary to the principles prescribed by the Serbian Constitution, and was calling for the violation of rights and discrimination of a minority group living in Serbia, the gathering was not banned, despite the fact that several NGOs drew the attention of the police to the potential security problem. Since 2014, Falun Gong activists have been banned from holding any of their planned and announced gatherings, even though the organisation operates in full compliance with the Constitution and laws of the Republic of Serbia.[22]

The law also prescribes that a gathering must be announced (registered) at least five days before its date. This registration, according to the letter of the Constitution, should be viewed only as a notification of the MoI that the gathering will be held, and not as a request for permission to hold it. Although this method of informing the MoI is in line with international standards applicable to the right to public assembly, the problem lies in the recently adopted Law on Protection from Noise Pollution, which prescribes the following: *For public gatherings, entertainment and sports events, as well as other activities in open and closed spaces (hereinafter: activities) that may lead to exceeding the limit values of noise indicators, the local government unit shall identify, in a decision,*

19 OSCE/ODIHR, Guidelines for Freedom of Peaceful Assembly, 2010, https://www.osce.org/files/f/documents/4/0/73405.pdf, accessed on 2 Dec 2021

20 https://www.vesti.rs/Jug-Srbije/MUP-pozvao-gradjane-da-prijavljuju-blokade.html, accessed on 2 Dec 2021

21 https://www.danas.rs/vesti/drustvo/poceo-skup-protiv-migranata-u-beogradu-i-kontrask-up-dve-strane-razdvaja-policija/, accessed on 2 Dec 2021

22 https://www.slobodnaevropa.org/a/srbija-kina-falun-gong/31407082.html, accessed on 2 Dec 2021

streets, parts of streets and settlements and other locations intended for these purposes, as well as sound protection measures to be taken during the gathering. The deadline for registering such a gathering is 20 days prior to its date.[23] It is the local self-government unit that determines, in a decision, which streets, parts of streets and settlements and other locations can be used for such gatherings. Such a solution is in direct contravention of the Law on Public Assembly and the envisaged deadlines, and it significantly restricts the right to freedom of assembly. Since political gatherings, rallies and protests are the types of rallies that regularly, by their nature, exceed the predicted noise limit (shouting of slogans, banging on pots, use of whistles...), this solution gives local self-government units the authority to decide whether a public gathering is to be held or not, under the pretext of protecting the population from noise. Restriction of assembly is, thus, not only a direct ban on a gathering, but also any excessive and unnecessary imposition of obligations on the organisers of the gathering that make the gathering difficult to organise. In the above case, these are: the extremely long deadline for registration, and the need to obtain approval from the self-government unit, with the restriction of locations allowed for gathering.

The notion of spontaneous gathering, regulated for the first time in domestic legislation, is another novelty of the Law on Public Gathering of 2016. The Law stipulates that "spontaneous peaceful gatherings that have no organisers and are occurring as a direct reaction to a certain event, after said event, held outdoors or indoors in order to express opinions and views regarding said event" do not have to be registered.[24] Although welcomed by the civil society, this provision of the Law paradoxically became the biggest source of its abuse in the five years of application. The definition of spontaneous gathering as a peaceful gathering without organisers has caused the activists who truly spontaneously gathered to react to events to be prosecuted for misdemeanour offences as organisers of unregistered rallies, simply because they used social media to call on people to attend a specific rally, or when the MoI would in some other way identify a person who called on others to attend a gathering. According to the Law on Public Assembly, the organiser of a gathering is a natural or legal person who, in accordance with the provisions of the Law, prepares the gathering, organises the gathering, and invites others to attend the gathering.[25] Such a broad definition of a gathering enabled the misdemeanour sanctioning of many citizens who tried to express their disagreement with the policy of the Government of Serbia by gathering spontaneously. The most sanctions for spontaneous gathering were imposed on the initiative *Let's not drown Belgrade*,[26] which had called for spontaneous gatherings due to various problems in society - from illegal demolition of buildings in the Belgrade neighborhood of Savamala and as a reaction to a worker's death, to the environmental protection from pollution. On the other hand, the police very often fail to intervene when

23 Article 20 of the Zakon o zaštiti od buke u životnoj sredini ("Official Gazette of the Republic of Serbia", no. 96/2021)
24 Article 13 paragraph 1, item 4 of the Law on Public Gathering
25 Article 10 of the Law on Public Assembly
26 https://www.danas.rs/vesti/drustvo/platili-vise-od-600-000-dinara-kazni/, accessed on 2 Dec 2021

one of the non-governmental organisations organises a rally that spontaneously attracts counter-protesters of right-wing political orientation. Almost every single gathering organised by *Women in Black*, an anti-war feminist organisation, is thus accompanied by a counter-rally during which right-wing activists insult the participants by shouting the most debasing slogans[27] at them. In such cases, requests for the initiation of misdemeanour proceedings due to unregistered gathering are filed very rarely. The goal of the practice of treating pro-state and anti-state spontaneous gatherings differently is to financially deplete and intimidate activists, who often have to resort to collecting donations from citizens to pay misdemeanour fines.

Problems with the Law on Public Assembly also exist with regard to the protection of rights. The organiser who is forbidden to hold a gathering has 24 hours to file an appeal with the MoI. The MoI, then, has 24 hours to respond to the appeal. In the event that the appeal is not responded to, or is rejected, a dispute may be initiated before the Administrative Court.[28] The problem is caused by the fact that the law does not prescribe an (urgent) deadline within which the Administrative Court must decide on the appeal, so public gatherings are subject to deadlines that apply to all other administrative disputes. This makes the protection of the right to public assembly meaningless, because it takes the Administrative Court several months to take the case into consideration and reach a decision.

Misdemeanour sanctions prescribed by the Law on Public Assembly include the following sanctions: for legal and natural persons as organisers of gatherings; for responsible persons in the legal entity, if a legal entity is the organiser of a gathering; for leaders of gatherings appointed by the organisers; and for participants. Sanctions are provided for several types of behaviour that are contrary to the Law on Public Assembly, such as failure to act on the orders of a state authority, interruption of the gathering in situations where this is provided by law, holding a gathering without registering it, and so on. Fines are extremely high and range from RSD 30,000 for participants to RSD 150,000 dinars for the organiser. According to international standards, rally organisers should not be held liable for failing to perform their duties if they have made reasonable efforts to do so. The organisers cannot be held responsible for the actions of individual participants, those who do not participate in the gathering, or provocateurs. Instead, individual responsibility should be provided for each person who has, personally, committed the offence or disobeyed a police order.[29] In addition, steep fines imposed on legal entities, such as political parties, trade unions and NGOs, represent a disproportionate restriction on the right to freedom of assembly that can easily lead to the financial exhaustion of organisations operating in the non-profit sector. Sanctions prescribed for holding an unregistered rally also have the potential to jeopardise freedom of assembly. Holding a gathering without previously registering it is not

27 https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=04&dd=06&nav_category=12&nav_id=1378273, accessed on 2 Dec 2021
28 Article 16 of the Law on Public Assembly of Citizens
29 OSCE/ODIHR, Guidelines for Freedom of Peaceful Assembly, 2010, https://www.osce.org/files/f/documents/4/0/73405.pdf, accessed on 2 Dec 2021

necessarily an excuse to limit said gathering.[30] Namely, in case the gathering is not accompanied by any acts of violence, it is important that the authorities show a certain degree of tolerance for it. The lack of prior registration of a gathering cannot be the only and sufficient reason for its restriction, as public authorities are bound by the principle of proportionality in the restriction of rights.[31]

The Right to Freedom and Safety

The rule of law is inseparable from basic human rights, which include the protection of people's liberty and security. This right is guaranteed by the Constitution of Serbia in the following way:

> *Everyone has the right to personal freedom and security. Depriving of liberty shall be allowed only on the grounds and in a procedure stipulated by the law.*
>
> *Any person deprived of liberty by a state body shall be informed promptly in a language they understand about the grounds for arrest or detention, charges brought against them, and their rights to inform any person of their choice about their arrest or detention without delay.*
>
> *Any person deprived of liberty shall have the right to initiate proceedings where the court shall review the lawfulness of arrest or detention and order the release if the arrest or detention was against the law.*
>
> *Any sentence which includes deprivation of liberty may be proclaimed solely by the court.*[32]

As for the right to liberty and security, it includes protection from unlawful and arbitrary deprivation of liberty. This right is guaranteed by Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

> *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
>
> a. *The lawful detention of a person after conviction by a competent court;*
> b. *The lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

30 ECHR, *Cisse v. France*, application no. 51346/99, judgment of 9 April 2002
31 ECHR, *Kudrevicius and others v. Lithuania*, application no. 37553/05, judgment of 15 October 2015
32 Article 27 of the Constitution of the Republic of Serbia

c. *The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*

d. *The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*

e. *The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*

f. *The lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*

1. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*

2. *Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*

3. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*

4. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.*

The International Covenant on Civil and Political Rights similarly regulates this right in Article 9:

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*

3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*

4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

When it comes to domestic sources of law, deprivation of liberty is prescribed in detail by the Criminal Procedure Code.[33] There is a difference between deprivation of liberty without a court decision and deprivation of liberty based on a court decision.

Deprivation of liberty without a court decision is carried out exceptionally and for the shortest possible time.

Deprivation of liberty without a court decision

The police may arrest a person if there is a reason for detention, but they are obliged to take that person to the competent public prosecutor without delay (police arrest).[34] Bringing the person in, the police must submit to the public prosecutor a report on the reasons and the time of the arrest. A person arrested in this way may exceptionally be detained by the public prosecutor for questioning for a maximum of 48 hours from the time of arrest, i.e. from the time said person responded to the summons (detention of the suspect). In that case, the police shall make a decision on detention no later than two hours from the moment the suspect was informed that s/he is being detained. The suspect has the right to appeal this decision within 6 hours, and the pre-trial judge must decide on the appeal within four hours from the time it was filed. From the moment of the detention order, the suspect must have an attorney. If the suspect does not engage an attorney within four hours, the public prosecutor is to provide him/her with one *ex officio*.[35] No later than 48 hours after the arrest, the public prosecutor must decide whether to propose that the court order detention - as a measure to ensure the presence of the suspect in the proceedings, or release.

There have been numerous cases (involving activists) of abuse of police arrest and detention of citizens for up to 48 hours without a court decision. Activist Daško Milinović from Novi Sad was arrested and detained in December 2018[36] for writing against Serbian Progressive Party officials and MP Vladimir Djukanović on his satirical Twitter account. The controversial tweet reads as follows: "*Will the Nazi pig now be squealing about being endangered on the internets* [sic]*? You fascist boar, we won't tell you twice, you'll be grilled*". Taken out of context, since it was in fact a response to

33 "Official Gazette of the Republic of Serbia", nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - decision of the Constitutional Court, and 62/2021 - decision of the Constitutional Court

34 Article 291 of the Criminal Procedure Code

35 Article 294, *ibid.*

36 https://www.021.rs/story/Novi-Sad/Vesti/204951/Radijski-voditelj-Dasko-Milinovic-uhapsen-zbog-navodnih-pretnji-narodnom-poslaniku.html, accessed on 2 Dec 2021

a direct threat previously made by Vladimir Đukanović to politician Marinika Tepić, this tweet was the reason for depriving the activist of his liberty and confiscating his mobile phone as a tool that was used to commit a crime. The explanation was that D.M. had endangered public security. After being questioned by the pre-trial judge, the activist was released, and the criminal charges against him were subsequently dismissed because there was no act. These circumstances, however, do not change the fact that someone had spent the night in a police station because he exercised his freedom of expression and used harsh language towards a public official, who, as auch, must be able to withstand criticism.

The case of Jelena Jaćimović and Aida Ćorović, activists who were deprived of liberty by police because they threw eggs at the mural of a convicted war criminal, Ratko Mladić,[37] is another such case. Although their detention did not last more than a couple of hours, the police's explanation - that the activists committed a misdemeanour offence of insolent and reckless behaviour - was not enough to justify their depravation of liberty. An additional problem arose due to the actions of the police, since the women were arrested by police officers who were not wearing uniforms, and who refused to identify themselves, while the arrest itself was made in an extremely brutal manner, using physical force. The symbolic gesture of throwing eggs at the mural of a war criminal represents permitted freedom of expression, which, according to the European Court of Human Rights, "refers not only to information or ideas that are desirable or are not considered insulting, but also to those that (unequivocally) insult, shock and disturb".[38] In addition to the right to liberty and security, the right to freedom of expression as a fundamental human right in a democratic society has been violated in both these cases.

Civil arrest, on the other hand, is an exceptional situation prescribed by law.

> *Anyone can arrest a person caught committing a crime which is prosecuted* ex officio.
>
> *A person deprived of liberty shall be immediately handed over to the public prosecutor or the police, and if that is not possible, one of these authorities must be notified immediately so as to act in accordance with the provisions of this Code.*[39]

The provisions governing civil arrest are abused by right-wing organisations that advocate anti-immigrant policies to put pressure on refugees from the Middle East. In an interview, one of the members of the *People's Patrols* stated the following: "When we learn that there are deviant migrants somewhere, when we hear that our citizen was being attacked somewhere, we should all go there and react". "We have the right to perform civil arrest. It's ok if the police follow our [social network?] group too, I don't care."[40]

37 https://www.masina.rs/uhapsene-jer-su-mural-ratka-mladica-gadale-jajima/, accessed on 2 Dec 2021
38 See European Court of Human Rights, *Handyside v. The United Kingdom*, 1976
39 Article 292 of the Criminal Procedure Code
40 https://birn.rs/mrznja-lazi-i-patrole-srpska-antimigrantska-brigada-se-igra-vatrom/, accessed on 2 Dec 2021

Deprivation of liberty accompanied by a court decision

If the pre-trial judge decides to propose detention, and the court finds that the reasons for detention prescribed by law have been met,[41] the pre-trial judge is to issue a decision ordering the detention measure and its duration - which may be up to 30 days, with the possibility of extension. Once the indictment is filed, the court may decide to terminate or extend the detention without the proposal of the public prosecutor. What is characteristic for the measure of detention, as a form of restriction of the right to liberty and security, is that the case law of the European Court of Human Rights has established that, in many cases against Serbia, detention decisions contained abstract and formal reasons that were based only on the threatened sentence and the nature of the crime, which did not constitute sufficient grounds for detention. Ordering detention, as the most severe form of deprivation of liberty, must be justified by the overriding public interest in relation to the individual's right to liberty and security.[42] The most famous case of such deprivation of libery was that of Aleksandar Obradović, whistleblower from the "Krušik" arms factory, who went public with the information that certain companies were purchasing arms from "Krušik" at discounted prices, and that one of the owners of those companies was the father of the then Minister of the Interior. Obradović was ordered detention on suspicion that he had committed the criminal offence of revealing a business secret. He spent three weeks in the Central Prison in Belgrade, after which period the detention measure was replaced by a milder measure of house arrest, lasting another three months. More than two years have passed from the arrest of Aleksandar Obradović in September 2019 until the day of drafting of this document, but no indictment has been filed against him yet, nor is it known at what stage this criminal procedure currently stands.

41 Article 211 of the Criminal Procedure Code: Detention may be ordered against a person reasonably suspected of having committed a criminal offence:
1) If he is in hiding or his identity cannot be established, or he is obviously avoiding appearing at the mein hearing in the capacity of defendant, or if there are other circumstances that indicate danger of flight;
2) If there are circumstances that indicate that he will destroy, hide, alter or falsify evidence or traces of a criminal offence, or if special circumstances indicate that he will obstruct the proceedings by influencing witnesses, co-perpetrators or aiders/abbetters;
3) If special circumstances indicate that he will soon repeat the criminal offence, or complete the attempted criminal offence, or commit the criminal offence he had threatened to commit;
4) If the criminal offfence for which he was charged is punishable by imprisonment for a term exceeding ten years, i.e. imprisonment for more than five years for a criminal offence with elements of violence, or he has been sentenced by a first instance court to five years or more, and the manner of enforcement or the gravity of the consequences of the crime have led to public disturbance which could jeopardise the smooth and fair trial.
In the case referred to in paragraph 1, item 1) of this Article, detention ordered only because the identity of the person cannot be established shall last until his identity *is* established, and detention ordered only because the defendant is obviusly avoiding appearance at the main hearing may last until the verdict is announced. In the case referred to in paragraph 1, item 2) of this Article, detention shall be terminated as soon as the evidence because of which it was ordered, has been provided.
Once it issues a sentence of imprisonment of less than five years, the court may order detention of the defendant who is at large pending trial if there are reasons referred to in paragraph 1, item 1) and 3) of this Article, while the detention of the defendant who is in custody shall be terminated if reasons for the ordered detention no longer exist.

42 See: European Court of Human Rights, *Purić et al. v. Serbia*, 15 October 2019, *Lakatos et al. against Serbia*, decision of 7 January 2014

Freedom of Association

Freedom of association is the right of a person to establish associations - together with others - and carry out activities within those associations that fall within the framework prescribed by the Constitution. The Constitution guarantees freedom of association as follows:

> *Freedom of political, union and any other form of association shall be guaranteed, as well as the right to stay out of any association.*
>
> *Associations shall be formed without prior approval and entered in the register kept by a state body, in accordance with the law.*
>
> *Secret and paramilitary associations shall be prohibited.*
>
> *Constitutional Court may ban only such associations the activity of which is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, or inciting of racial, national and religious hatred.*
>
> *Judges of the Constitutional Court, judges, public prosecutors, Defender of Citizens, members of police force and military persons may not be members of political parties.*[43]

With regard to freedom of association, the European Convention, as mentioned above, does not separate this right from the right to peaceful assembly, while the International Covenant on Civil and Political Rights regulates this right in Article 21 :

1. *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*
2. *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*
3. *Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.*

43 Article 55 of the Constitution of the Republic of Serbia

The Law on Associations, as the umbrella law governing the establishment of associations, prescribes that an association is: *a voluntary and non-governmental non-profit organisation based on the freedom of association of a number of natural or legal persons, established to achieve and promote certain common or general goals and interests that are not prohibited by the Constitution or law.*[44]

The law repeats the constitutional provision and prohibits military and paramilitary associations, but also provides for unregistered associations to which the rules on civil partnership apply. The rule that applies to all associations is that they must be founded and organised freely, and that they must be independent in achieving their goals. The following restriction is presctibed regarding the goals of associations:

> *The goals and activities of the association may not be aimed at violently destroying the constitutional order and violating the territorial integrity of the Republic of Serbia, violating guaranteed human or minority rights or inciting and encouraging inequality, hatred and intolerance based on racial, ethnic, religious or other affiliation, sex, gender, gender, or physical, mental or other characteristics and abilities.*[45]

Despite this provision, there are several highly active associations in Serbia that call for the incitement of hatred, violation of guaranteed human or minority rights, or are causing and inciting inequality, hatred and intolerance based on racial, national, religious or other affiliation or belief. In June 2020, a proposal was submitted to the Constitutional Court to ban the association called *Leviathan* on these grounds. The Commissioner for the Protection of Equality ordered this movement to stop publishing discriminatory content against the Roma population on social networks, and to remove, within 30 days, any already published content that incited hatred towards the Roma community. *Leviathan* was a candidate in the republic and local elections in 2020. In addition to this group, there are several other extremist organisations in Serbia that publicly advocate hatred of minority groups, especially migrants from the Middle East. The above mentioned *People's Patrols* is one of them. The work of these organisations is tolerated, their gatherings are never banned, and one can notice in the actions of the police affection towards these organisations and their members.

With regard to the the associations' acquisition of assets, the Law prescribes the methods of acquisition quite broadly:

> *An association may acquire assets from membership fees, voluntary contributions, donations and gifts (in cash or in kind), financial subsidies, bequests, interest on deposits, rent, dividends and in other ways permitted by law.*
>
> *Natural and legal persons who make contributions and give gifts to associations may be exempted from the relevant tax obligations in accordance with the law introducing appropriate public revenue.*[46]

44 Article 2 of the Law on Associations ("Official Gazette of the Republic of Serbia", no. 51/2009, 99/2011 – other laws, and 44/2018 – other law)
45 Article 3, *Ibid.*
46 Article 36, *Ibid.*

An association may perform activities that serve to achieve the goals established by its articles of association.

An Association may directly conduct economic or other profit-making activities in accordance with the law governing the classification of activities, under the following conditions:

1. *That the activity is related to the goals specified in its articles of association;*
2. *That the activity is envisaged in the articles of association;*
3. *That the activity is of a smaller scope, i.e. that the activity is conducted to the extent necessary to achieve the goals of the association.*[47]

Article 38 of the Law also prescribes the manner in which funds for the implementation of programmes of public interest can be obtained from the budget of the Republic.

Although the Law on Associations is quite liberal, the practical application of the right to associate causes everyday problems. The Map of Incidents,[48] created within the project "Solidarity for the Rights of All",[49] shows 118 different attacks and pressures that have been applied in two years concerning the human rights defenders' freedom of association. Pro-government media are conducting a systematic campaign against non-governmental organisations that criticise the work of republic and local authorities, and it is often public officials that speak against such organisations, calling them traitors and enemies of the people.

On 28 July 2020, NewsMax Adria broadcast a story that the Administration for the Prevention of Money Laundering (Ministry of Finance) had sent a request to banks operating in the Republic of Serbia to provide it with insight into all the transactions that had taken place, since the beginning of 2019, in the accounts of civil society organisations dealing with the rule of law and human rights, media associations, as well as some prominent activists and journalists.[50] The programme was created after the editorial office received a copy of the request, which contained a list of 20 persons and 37 organisations and media outlets. The request referred to Article 73 of the Law on Prevention of Money Laundering and Terrorism Financing, which stipulates that such a request can be made when the Administration assesses that certain transactions or persons provide grounds for suspicion of money laundering or terrorism financing. Thus, all the listed persons were marked as suspicious. The Acting Director of the Administration for the Prevention of Money Laundering and Terrorism Financing confirmed that the request was sent, explaining that the approach was not selective,

47 Article 37, *Ibid.*

48 https://www.yucom.org.rs/mapa-incidenata/, accessed on 2 Dec 2021

49 The network "Solidarity for the Rights of All" is an initiative that is part of the project titled "Empowering Human Rights Defenders", supported by the EU Delegation to Serbia and implemented by the Committee of Lawyers for Human Rights - YUCOM, the People's Parliament of Leskovac and the Belgrade Centre for Security Policy, https://www.yucom.org.rs/osnazivanje-branitelja-i-braniteljki-ljudskih-prava/, accessed on 2 Dec 2021

50 https://rs.n1info.com/vesti/a624048-spisak-novinara-i-organizacija-cije-transakcije-trazi-uprava-za-sprecavanje-pranja-novca/, accessed on 2 Dec 2021

and that ministers and organisations were 'holy cows' and were also subject to control. He also said that certain organisations ended up on the list for risk-verification purposes, and that in the future efforts will be made to create public policies to combat terrorism and money laundering. The Minister of Finance confirmed that the request of the Administration was legal. The last information from the Acting Director of the Administration was obtained on 15 October 2020, at the event organised by the National Convention for the EU, when he stated that the above verification was a part of a strategic analysis of risk assessment, and not a review of those who think critically. He added that the ublic was presented with only a part of the list, which in fact included more than 100 organisations. The explanations changed after the reaction of the international community, and the final one was that the public was actually presented with a "fake" list. This was followed by a negative media campaign that criticised the funding of the NGO sector. The Commission of the European Union reacted to the list in its last annual report on Serbia. There were also reactions of the US Embassy, Amnesty International and the association European Lawyers for Democracy and Human Rights (ELDH). Most listed organisations and individuals took action to find out whether banking secrets have been revealed. According to the statement from the Office of the UN High Commissioner for Human Rights,[51] Serbia abused the anti--terrorism legislation to put pressure on NGOs.

An active campaign is currently being waged against a number of environmental organisations, with growing attacks on environmental movements and organisations that have stepped up their activities in Serbia in recent years due to the problems of environmental pollution. On 14 July 2020, the daily newspaper *Informer* published an article titled "NGOs FINANCED BY THE USA AND THE EU SPREAD LIES ABOUT CHINESE COMPANIES THAT INVESTED EUR 2.74 BILLION IN SERBIA AND EMPLOYED THOUSANDS OF PEOPLE!",[52] written by A. Crnomarković. The article accused the organisations CEKOR, RERI and Civic Reversal [*Građanski preokret*] of endangering, with their slander, all future Chinese investments as well as the lives and existence of tens of thousands of families throughout Serbia. The article reads as follows: "These mercenaries have published texts in the media that are controlled by Dragan Djilas, claiming that the Ironworks in Smederevo, the Mining and Smelting Basin in Bor and the Tire Factory in Zrenjanin pollute the environment, which is an absolute lie because the Government's Environmental Protection Agency has established that these plants in no way harm nature and the world around".

Although NGOs are free to seek funding from whomever they want, pro-government tabloids are actively advocating for changes to the law that would limit funding for citizens' associations to domestic sources only. On 23 August 2021, the daily *Serbian Telegraph* published a special issue undet the title "Dossier Media".[53] The words on the

51 https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26492&LangID=E, accessed on 2 Dec 2021
52 https://informer.rs/vesti/drustvo/534021/nvo-koje-finansira-sad-lazima-napale-kineske-kompanije-koje-srbiju-ulozile-milijarde-evra-zaposlile-hiljade-ljudi, accessed on 2 Dec 2021
53 https://www.republika.rs/vesti/politika/304578/dosije-mediji-otkrivamo-zasto-tviter-zavodi-brutalnu-cenzuru-zapadni-megafoni-dobili-milione, accessed on 2 Dec 2021

front page were: “Western megaphones have received millions”. In addition to primarily targeting several media outlets – KRIK, Birn, and CINS – the point of the article was, as they wrote, to “discover who finances the media and NGO fighters for democracy and freedom”. They claimed that the reason for the article was the fact that their newspaper, as well as 8 other media outlets, were marked by the social network Twitter as “media cooperating with the Government of Serbia”, which action they called “suffocation of Serbian media that do not want to submit to foreign interests”. The authors of the special issue singled out 10 non-governmental organisations and foundations: Trag Foundation, Civic Initiatives, Committee of Lawyers for Human Rights YUCOM, Humanitarian Law Center, Youth Initiative for Human Rights, Belgrade Centre for Security Policy, European Movement in Serbia, National Coalition for Decentralisation, Foundation “Catalyst” and CRTA. The text provided information on the founders, legal representatives and most frequent financiers of these NGOs, with a clear tendency to show that foreign countries have regulated the functioning of the NGO sector, citing the US, Germany, Russia, France, Hungary, China and Bulgaria, and perfidiously pointing to the negative practice of labeling the civil sector as “foreign mercenaries” and/or agents. As the reason for the funding of NGOs by foreign foundations, they stated “promoting views that are contrary to the policies pursued by the Government of Serbia”, especially in the context of dealing with the past and the issue of the status of Kosovo. Through such reporting, NGOs advocating for the rule of law and respect for human rights have once again been identified as enemies of the state. As it was clear that the authors of the article were able to obtain certain information only through the commission of the crime of revealing a business secret, some of the victims of this attack filed criminal charges against unknown perpetrators from commercial banks and the Administration for the Prevention of Money Laundering.

Conclusion

Freedom of expression, freedom of peaceful assembly, the right to liberty and security, and freedom of association are often inseparable rights when it comes to any form of activism. In this document, they were specifically addressed because it is precisely these rights that were violated by most of the recorded attacks and pressures suffered by human rights defenders. In its practice, the European Court of Human Rights frequently connects these four rights and emphasises their importance in a democratic society. For example, in a judgment against Turkey, the court stated as *follows: The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association*.[54] The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms,[55] to which Serbia is a signatory, provides a clear legal and political framework outlining the obligations of the state to create a favourable social environment for civic activism practiced by human rights defenders. This Declaration pays special attention to the abuse of rights and the interpretation of the rights guaranteed by the Declaration and the Charter of the United Nations[56] contrary to the purpose for which they were established. Frequent abuse of public powers by government authorities and republic and local officials have led to daily violations of these rights and the creation of a social atmosphere in which civic activism has become a form of undesirable and dangerous behaviour.

In the above described examples, we can see a number of direct and indirect violations of these rights. The problem lies primarily in the lack of a clear definition, followed by the practice of abuse of rights within our legal system. When it comes to private, civil, procedures, the institute of abuse of rights is mentioned only in the Law on Obligations[57] and the Law on Civil Procedure[58] and very rarely recognised and applied by domestic judicial bodies. In the sphere of public law, abuse of rights is part of the everyday lives of citizens engaged in activism.

54 *Freedom and Democracy Party (ÖZDEP) v. Turkey*, 23885/94 , 8 Dec 1999
55 UN general Assembly, 8 March 1999 http://www.yucom.org.rs/upload/vestgalerija_50_14/1341229507_GS_Trojezicna%20deklaracija%20o%20braniteljima%20ljudskih%20prava.pdf
56 UN general Assembly, 26 Jun 1945
57 "Official Gazette of SFRY", 29/78, 39/85, 45/89 - odluka USJ i 57/89, "Official Gazette of SRY", nos. 31/93, Official Gazette of Serbia and Montenegro", no. 1/2003 – constitutional charter, and "Official Gazette of the Republic of Serbia", no. 18/2020
58 "Official Gazette of the Republic of Serbia", nos. 72/2011, 49/2013 – decision of the Constitutional Court, 74/2013 - – decision of the Constitutional Court, 55/2014, 87/2018 and 18/2020

Apart from the necessary amendments to the laws that govern public assembly, the laws in Serbia are not restrictive towards human rights defenders; it is their practical application that is problematic and arbitrary. In the capacity of victims, activists very rarely find justice before the state authorities; however, they often find themselves in the capacity of suspects and defendants who frequently pay fines. Intimidation is carried out within the limits of the law, through detention without a court decision for up to 48 hours, private civil lawsuits, selective application of the law, as well as through inspection controls and abuse of regulations that protect the public interest. Judicial bodies still do not have a sufficiently developed practice of direct invocation of ratified international agreements, despite the fact that this obligation is prescribed by the Constitution of Serbia.

Frequent labeling of activists as enemies of the Serbian people in public and media space cannot be stopped by any legal means, because it is most often carried out by those who have parliamentary or official immunity, while pro-government tabloids hide behind the right to freedom of expression and media freedom. Criminal charges filed by citizens' associations thus end up being rejected, without any substantial examination of whether a crime was actually committed and who the perpetrator was. All this points to the fact that laws are not enough if there is no political will to implement them, and if institutions are not free to apply the law as it reads, equally to all and without discrimination. Increasingly, a clear institutional positioning against civic activism - as in the case of the MoI, which has called on citizens to report those who blocked the roads in protest, using their constitutional right to freedom of peaceful assembly - sends a clear message that the state will not protect activists. Quite the opposite, actually. Using international mechanisms of informing and reporting to relevant international institutions and bodies, NGOs must encourage the international community to draw attention to problems in systematic human rights violations and stifling civil activism, because the next step will be to encourage civil disobedience whenever it is clear that laws are abused against the public interest. In societies where laws do not apply equally to all people, the danger of "taking justice into one's own hands" is nothing but a step towards complete anarchy, which will be survived only by those who are willing to use violence.

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