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| Platform of organizations for cooperation with UN human rights mechanisms |



RIGHT TO PEACEFUL ASSEMBLY

spontaneous gatherings and

social media

##

## **Introduction**

The Platform of Organizations for Cooperation with United Nations Human Rights Mechanisms[[1]](#footnote-1) ( hereinafter: the Platform) has been founded by leading Civil Society Organizations that have significant experience in reporting to UN human rights mechanisms and follow-up to recommendations, recognizing the need and importance of a continuous and evidence-based reporting process, monitoring the implementation of recommendations that mechanisms send to the Republic of Serbia as well as interact with government bodies for monitoring the implementation of the UN human rights recommendations.

The Platform welcomes the Human Rights Committee’s decision to develop a General Comment on Article 21 of the International Covenant on Civil and Political Rights (ICCPR). In this submission the Platform aims to provide the Committee with information on:

* *How the use of social media in organising and coordinating gatherings is affecting the freedom of peaceful assembly and the freedom of expression.*
* *How the threat of very high fines for organisers of peaceful spontaneous gatherings is affecting the freedom of peaceful assembly.*
* *How unprofessional and biased media reporting and fake news are affecting the freedom of peaceful assembly.*

We encourage the Human Rights Committee while developing the General Comment on Article 21 of the ICCPR to consider and address the relationship between freedom of peaceful assembly and the freedom of expression, the two enabling rights protecting the enjoyment of other rights guaranteed under the ICCPR and other international instruments.

## **Restrictions on peaceful spontaneous gatherings**

* *Authorities using social media to identify organisers of peaceful spontaneous gatherings solely for the purpose of issuing very high fines.*
* *Imposing very high fines for organisers of peaceful spontaneous gatherings.*
* *Can these kinds of practices be seen as necessary in a democratic society?*

While freedom to participate to peaceful assembly is an inalienable right, it can be limited in certain circumstances, as clearly provided by Article 21 of the International Covenant on Civil and Political Rights. Among other limitations, States can impose restrictions to freedom of assembly when it is deemed necessary in a democratic society[[2]](#footnote-2). That being said, States must balance this right with their responsibility to ensure that the right to organize peaceful assembly is not restricted by any undue bureaucratic obligations and must further ensure that the freedom is enjoyed in a practical manner[[3]](#footnote-3). What is more, according to the OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, States have a positive obligation to “protect and facilitate the right to freedom of assembly, rather than impose unnecessary or disproportionate limits on it.”[[4]](#footnote-4)

This is particularly important with the use of social media to convene and organise public gatherings which was made more difficult after the introduction of spontaneous gatherings with the Law on Public Assembly (2016). Spontaneous gatherings were finally formalised in 2016, albeit in a severely limited manner. The Law stipulates that spontaneous assemblies cannot be convened and have an organiser.

This nonsensical stipulation defeats the purpose of introducing spontaneous gatherings into the Law since any person or persons stepping out from gathered crowd to communicate with authorities could be misidentified as the organiser, making the entire gathering illegal. Furthermore, a bias interpretation of this unclear stipulation could allow for users who only shared their views and opinions online to be identified as organisers and for the assembly to be declared illegal and ordered to disperse. It goes without saying that online discussion tends to evolve into calls for public gatherings without users having the intention to become organisers. Since the police have been known to use social media posts as evidence in bringing misdemeanour charges against users for organisation of spontaneous gatherings this issue requires further elaboration in the General comment.

When States use their police forces with the sole purpose of monitoring the behaviours of participants of spontaneous gathering or peaceful assemblies who are using social media to bring together the public, they are clearly breaking their obligation of encouraging public gathering and protecting peaceful assembly. As a matter of fact, such an approach has the effect of fostering an environment of fear where organizers, or simple participants, of gatherings do not wish to use social media anymore as a mean of promoting peaceful assembly since their acts are being scrutinize and are risking high fines.

As clearly highlighted by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies in their joint report:

« The right to freedom of peaceful assembly includes the right to plan, organize, promote and advertise an assembly in any lawful manner. Any restrictions on such activities should be considered as a prior restriction on the exercise of the right. Restrictions on freedom of association and of expression may also effectively serve as a restriction on freedom of peaceful assembly. »[[5]](#footnote-5)

Of course, States are allowed to request the notification of public assemblies to maintain public order[[6]](#footnote-6), but investigating participants’ social media with the sole intention to search for potential misdemeanours do not align with the ideals of a democratic society as freedom of assembly should not be seen as a privilege, but a right[[7]](#footnote-7). What is more, regarding spontaneous or simultaneous assemblies, State should respond reasonably to them and the imposition of irrationally high fines to alleged participants or organizers of gatherings is undoubtedly disproportionate and does not respect the right of peaceful assembly[[8]](#footnote-8). In this regard, when assemblies are peaceful, and demonstrators do not engage in any violent act, the ECHR emphasized that States should show “a certain degree of tolerance”[[9]](#footnote-9). Tolerance from public authorities should not only be promoted with respect to the use of force to disperse an assembly, but also when it comes to the monitoring and fining of participants to peaceful assemblies.

The Constitution of Serbia doesn’t allow for the right to public assembly to be limited solely because of the lack of prior notification. However, Law on public assembly (2016) authorizes the police to order such gatherings to disperse and to charge its organisers for failure to submit notification in time. The Law also limits freedom of peaceful assembly even more by imposing very high fines in those cases. So far, the police have shown a degree of tolerance towards holding of spontaneous gatherings and have ordered only a few to be dispersed. However, the tolerance ends with that and the great majority of misdemeanour charges filed against organisers in the last three years were brought for failure to submit a prior notification.[[10]](#footnote-10) Majority of the organisers in these cases were not charged with misdemeanours related to disturbance of public order and peace and most assemblies themselves were held without any major incidents.

Restricting spontaneous gatherings in such a manner could have a deterring effect on the freedom of assembly and the freedom of expression, particularly when misdemeanour charges are brought against people who are not the actual organisers. In one case of “mistaken identity” two students of the Faculty of Dramatic Arts, who were later acquitted, were charged with organizing a non-notified assembly simply for standing at the head of the crowd, using a loudspeaker at one point and suggesting the protesters should go to the public gallery of the National Assembly. The actions of the police sent a strong message for anyone being active and standing out in crowd of the consequences they might face. This raises the issue of proper differentiation between organisers and other active and vocal participants in gatherings, as well as in online discussions.

So far, most misdemeanour charges have been filed against the organisers who are considered political opponents of the incumbent president (i.e. “Let's Not Drown Belgrade”, “Protest Against the Dictatorship”, “Youth Initiative for Human Rights” etc.). Given the amount a legal person could be fined with, this could lead to their dissolution and is also a deterrent to formalisation of informal movements thus restricting the freedom of association as well.[[11]](#footnote-11)

In one example, activists of “Let's not drown Belgrade” informal movement scheduled a Facebook event to be held on August 26th, 2016 at the last house to be demolished for the controversial [Belgrade Waterfront](https://www.belgradewaterfront.com/sr/) urban renewal project. They scheduled the event upon learning that the eviction of the family living in the house was planned for that day. Even though most of the people gathered in the fenced off yard of the house, making this an assembly in closed space which doesn’t require a prior notification, the organisers were still charged with holding of a non-notified assembly.

On the other hand, the number of misdemeanour procedures taken against same persons from these informal groups could lead to their inability to pay the fines and end up in prison for up to 60 days for each of the charges. The range of the fine for a natural person for holding non-notified assembly is 100 to 150 thousand dinars (845 to 1270 euros). The median monthly income in Serbia is around 335 euros[[12]](#footnote-12), while financial social assistance is only 70 euros[[13]](#footnote-13). The very high fines are further exuberated by the fact that many of organisers are university students with no or low income. The same misdemeanour would carry a fine for the legal person in the range from 1 to 2 million dinars (9.620 to 19.240 euros). An amount this high could result in the dissolution of a legal person.

 In the case of spontaneous gathering held during the months long “Protest Against the Dictatorship” following a supposed electoral theft, different charges for holding non-notified assemblies were brought for different days of the same gathering, against different persons and often against participants unrelated to the organisation itself.[[14]](#footnote-14)

While the police actively track social media, it doesn’t engage in communication with the organisers to prevent non-notified gatherings. In one case, the Minister of interior and the president-elect even gave misleading statements about the police intention to tolerate such assemblies, identifying political figures as the organisers after which the police filed charges against other unrelated persons[[15]](#footnote-15).

## **Media coverage of public assemblies**

* *Relationship between freedom of expression and access to information.*
* *How the freedom of peaceful assembly is limited by unprofessional and biased media reporting and fake news.*
* *The effect of unprofessional and biased media reporting and fake news on the “sight and sound” principle.*

As clearly highlighted in the OSCE Guidelines, “[t]he right to observe public assemblies is part of the more general right to receive information (a corollary of the right to freedom of expression).”[[16]](#footnote-16) In fact, media coverage allows for the information regarding what occurred during a manifestation (i.e. the number of participants, the message that was sent, the actions that were taken) to be shared with the citizens and, ultimately, to engage a public debate and bolster the ideals of a democratic society[[17]](#footnote-17). However, when media do not report correctly, they do not respect their role “to impart information and ideas on matters of public interest”[[18]](#footnote-18) and, taken in its broader context, undermine the right to public assembly. As clearly underlined by the Representative on Freedom of the Media: “uninhibited reporting on demonstrations is as much a part of the right to free assembly as the demonstrations are themselves the exercise of the right to free speech”[[19]](#footnote-19).

In addition, false news limits the possibility of a manifestation’s message or contestation to be heard. In this sense, it has an impact on the “sight and sound” principle which aims to ensure that the message sent by an assembly will be heard by the targeted audience[[20]](#footnote-20). However, when media wrongly transmit the message, it inevitably limits the possibility of the message to be correctly heard and grasped by the citizens. “[A]ssemblies, parades and gatherings are often the only means that those without access to the media may have to bring their grievances to the attention of the public”[[21]](#footnote-21), however, fake news reporting does not allow this information to be accurately shared and thus, jeopardizes the “sight and sound” principle of freedom of assembly.

Hence, the “sight and sound” principle should not only be interpreted in regard to the “physical” place where the public assembly is held, but should be interpreted broadly and include the media coverage of the protests/public assemblies. By not reporting accurately an event, journalists who report fake news undermine not only the right of the participants to send their message, in other words their freedom of expression, but also their right to be heard by the targeted audience. As assemblies are, by default, expressive activities, “to prevent or unduly restrict participants from conveying their message effectively to their target audience serves to undermine the fundamental nature of the right [of freedom of assembly]”[[22]](#footnote-22).

In Freedom House’s most recent report, Serbia’s rank was dropped from ‘free’ to ‘partly free’, in part due to continuously declining press freedom.[[23]](#footnote-23)An unfree press, one that is unable to impart accurate information on matters of public interest due to government pressure, can be used as an effective tool to suppress public expressions of dissent, as can be seen in the example of recent media treatment of anti-government protests.

Since December 8 2018, tens of thousands of people have taken to the streets in multiple Serbian cities as part of a series of weekly marches under the slogan ‘No More Bloodied Shirts’, provoked by a violent attack on an opposition leader that took place in late November. The professed goal of the demonstrations is to raise awareness about lack of democracy in Serbia and the oppression of dissenting voices in and out of Parliament.[[24]](#footnote-24)

The manner in which these protests, which have been going on for more than twelve weeks, have been covered in Serbian media, when they were covered at all, has been criticised by many, including the Journalists’ Association of Serbia[[25]](#footnote-25), as unprofessional and in breach of the Journalistic Code of Conduct.

According to research conducted by the Bureau for Social Research - BIRODI, Serbian national broadcaster RTS only dedicated 207 seconds of their main information programme to the very first Belgrade march. Meanwhile, protests that took place in France, Hungary and Belgium over the same weekend were given almost double that airtime, at 401 seconds.[[26]](#footnote-26)

Despite provably scarce coverage of the protests by the national broadcaster, they have been accused of showing favoritism to the protesters and opposition. Daily newspaper Informer falsely claimed that one march in January was given 10 minutes of coverage, double the time that was dedicated to a visit by Russian President Vladimir Putin taking place the next day. The actual duration of the relevant segment was under two minutes. Still, this false narrative was furthered by the government, when Secretary General of the Presidency Nikola Selaković, while appearing on their morning programme the following day, admonished RTS for their allegedly unequal coverage of the protest and Putin.[[27]](#footnote-27)

Coverage of the protests by other non-cable television stations, as well as by most print media, while existing, can be described as extremely antagonistic, and the rhetoric employed by them was unobjective and often insulting. Additionally, pro-government news outlets have circulated misleading images in order to give the impression that the attendance of the marches is far less than it is in reality.

One daily newspaper, Alo, published photos of people congregating on the protest location taken before the protest had actually begun in order to declare that “[opposition leader Dragan] Đilas’ people” were “bothered by the cold weather and precipitation, so they decided to stay in their warm apartments.” The Crime and Corruption Reporting Network - KRIK, whose journalists attended the march, estimated that there were at least several thousand people in attendance. Despite this, the protest was widely characterised as a “debacle” in print media.[[28]](#footnote-28)

Another way media have attempted to distort the message of the protest is by smearing them as violent and disruptive, going so far as to invent several such incidents in order to undermine the protests’ stated opposition to violence in politics.

To that end, Informer reported a story about how protesters purposely blocked the passage of an ambulance and endangered the life of the patient inside. However, footage of the event and a subsequent statement from representatives of emergency services disputes this.[[29]](#footnote-29) A further example was a live TV segment about the protest on the network Studio B, wherein a presenter relayed the completely unsubstantiated claim that protesters had “shoved each other and hit each other with umbrellas”, even though the head of the Belgrade police department gave a statement saying the demonstration was peaceful and had passed without incident. She went on to, once again baselessly, profess that “people who organised the protest are calling for lynching, rape, violence, a coup”, adding that “in this situation, when in our country there needs to be a peaceful situation, a stable situation, because of all the happenings in Kosovo and Metohija, they, of course, organise protests.”[[30]](#footnote-30)

From this overview of their media coverage, we can surmise that Serbian citizens were not given the opportunity to correctly hear and grasp the message of the protests, even if the protest participants’ right to gather freely was not expressly denied by the state. In order for the protesters’ right to freedom of assembly to be fully respected, an independent press must exist that would accurately and responsibly convey their dissent.

## **Conclusions and Recommendations**

The Platform encourages the Human Rights Committee while developing the General Comment on Article 21 of the ICCPR to take into account and address the above, particularly:

* *To highlight the relationship between the freedom of expression and access to information and the freedom of peaceful assembly;*
* *To address the issue of authorities using social media to identify organisers of peaceful assemblies solely for the purpose of issuing fines;*
* *To address the issue of imposing very high fines for organisers of peaceful non-notified assemblies;*
* *To address the issue of unprofessional and biased media reporting and fake news affecting freedom of peaceful assembly;*
* *To address and to highlight the importance of adequate communication between authorities and organisers of public assemblies, before the time of the assembly.*
1. Following Civil Society Organizations and CSO Networks are members of the Platform: ASTRA, ATINA, A11 - Initiative for Economic and Social Rights , Belgrade Center for Human Rights, Center for Independent Living of PWDs Serbia, Child Rights Center, FemPlatz, Group 484, Mental Disability Rights Initiative of Serbia (MDRI-Serbia), Lawyers Committee for Human Rights – YUCOM, International Aid Network I.A.N., The Network of Organizations for Children of Serbia – MODS, National Organization of Persons with Disabilities of Serbia, Network SOS Vojvodina, Standing Conference ROMA CITIZENS ASSOCIATION (SKRUG), Gayten LGBT and ERA – LGBTI Equal Rights Association for Western Balkans and Turkey. [↑](#footnote-ref-1)
2. International Covenant on Civil and Political Rights, entry into force 3 March 1976, art. 21. [↑](#footnote-ref-2)
3. Handbook on Monitoring Freedom of Peaceful Assembly, OSCE Office for Democratic Institutions and Human Rights (ODIHR), p. 20. [↑](#footnote-ref-3)
4. See the OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly;* Handbook on Monitoring Freedom of Peaceful Assembly, OSCE Office for Democratic Institutions and Human Rights (ODIHR), p. 21. [↑](#footnote-ref-4)
5. Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, p. 6, para. 19. [↑](#footnote-ref-5)
6. *Rassemblement Jurassien v. Switzerland*, European Court of Human Rights, 1979. [↑](#footnote-ref-6)
7. Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, p. 6, para. 21. [↑](#footnote-ref-7)
8. Handbook on Monitoring Freedom of Peaceful Assembly, OSCE Office for Democratic Institutions and Human Rights (ODIHR), p. 21. [↑](#footnote-ref-8)
9. *Oya Ataman v. Turkey*, European Court of Human Rights, 2006. [↑](#footnote-ref-9)
10. Monitoring the Right to Free Assembly, Katarina Golubović, Milena Vasić, Milan Filipović, ECNL:YUCOM, Budapest 2019, pg. 26, Retrieved March 8, 2019, from: <https://bit.ly/2EGgBTU> [↑](#footnote-ref-10)
11. Human Rights in Serbia 2018, Belgrade Centre for Human Rights, Belgrade 2019, pg.119 [↑](#footnote-ref-11)
12. Statistical Office of the Republic of Serbia, Median earnings, Feburuary 26, 2019, Retrieved March 8, 2019, from: <https://bit.ly/2EX5tn6> [↑](#footnote-ref-12)
13. Decision on nominal amounts of social assistance, Minister for Labor, Employment, Veterans and Social Affairs, April 27, 2018, Retrieved March 8, 2019, from : <https://bit.ly/2XKC3zP> [↑](#footnote-ref-13)
14. Monitoring the Right to Free Assembly, Katarina Golubović, Milena Vasić, Milan Filipović, ECNL:YUCOM, Budapest 2019, pg. 25, Retrieved March 8, 2019, from: <https://bit.ly/2EGgBTU> [↑](#footnote-ref-14)
15. Al Jazeera. (April 6, 2017). Protests against Vucic's election win for third day, Retrieved March 8, 2019, from : <https://bit.ly/2SPdyOd> [↑](#footnote-ref-15)
16. Guidelines on Freedom of Peaceful Assembly, Second Edition, OSCE Office for Democratic Institutions and Human Rights (ODIHR), p. 94. [↑](#footnote-ref-16)
17. EU Human Rights Guidelines on Freedom of Expression Online and Offline, Council of the European Union, p.3. [↑](#footnote-ref-17)
18. Guidelines on Freedom of Peaceful Assembly, Second Edition, OSCE Office for Democratic Institutions and Human Rights (ODIHR), p. 97. [↑](#footnote-ref-18)
19. Special ReportHandling of the media during political demonstrations Observations and Recommendations, Miklós Haraszti, Representative on Freedom of the Media, p. 1. [↑](#footnote-ref-19)
20. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, United Nations General Assembly, A/HRC/20/27, 21 May 2012, p.11. [↑](#footnote-ref-20)
21. Guidelines on Freedom of Peaceful Assembly, Second Edition, OSCE Office for Democratic Institutions and Human Rights (ODIHR), p. 97. [↑](#footnote-ref-21)
22. Handbook on Monitoring Freedom of Peaceful Assembly, OSCE Office for Democratic Institutions and Human Rights (ODIHR), p. 24. [↑](#footnote-ref-22)
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