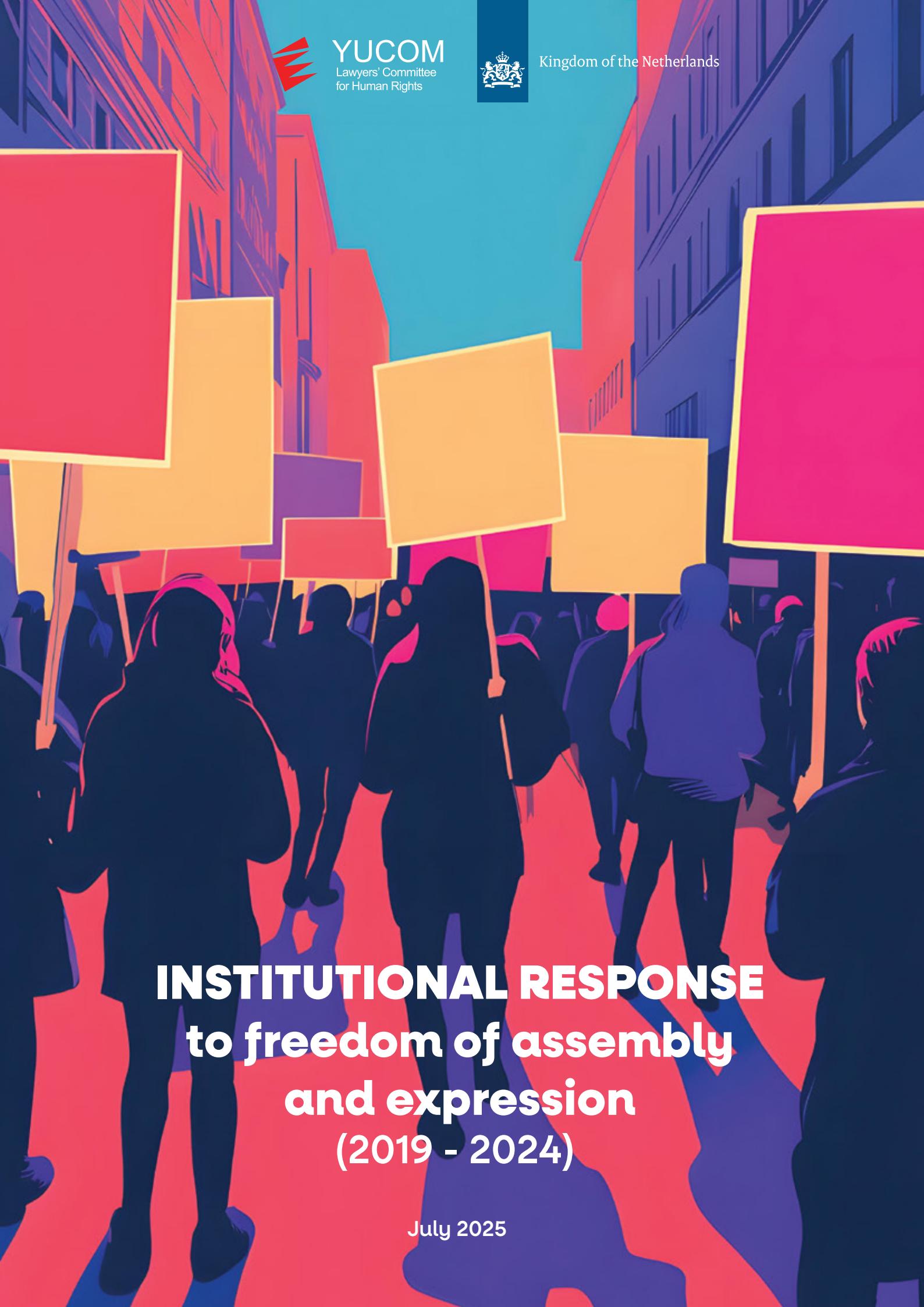




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INSTITUTIONAL RESPONSE to freedom of assembly and expression (2019 - 2024)

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The rights to freedom of assembly and expression are fundamental components of a democratic society and serve as key mechanisms for civic participation and political engagement. Their protection and implementation in Serbia have been particularly significant in the context of frequent public assemblies over the past five years. Between late 2018 and 2024, Serbia experienced a series of mass assemblies reflecting widespread citizen dissatisfaction with the political situation, the functioning of state institutions, media freedoms, environmental concerns, and the overall state of human rights. Although the assemblies were sparked by a variety of issues - including political violence and electoral manipulation, pandemic-related measures, environmental challenges, and accidents caused by infrastructural deficiencies - they collectively highlighted citizens' shared demand for greater institutional accountability, protection of fundamental rights, and more transparent governance.

Despite government efforts to undermine the significance of these assemblies through media and institutional pressures, they shaped Serbia's political landscape and raised important questions about the limits of freedom of expression, the role of the media, police accountability, and access to justice for citizens who took part in them. Independent media and social networks played a key role in informing and mobilizing the public, while the authorities sought to discredit civic assembly movements by portraying them as driven by the opposition or by foreign actors.

The institutional response to these large-scale assemblies - including the actions of the police, the judiciary, and independent bodies - reflects the state of democratic standards, the rule of law, and the protection of citizens' fundamental rights in Serbia. Particularly concerning are patterns of excessive use of force, selective sanctioning, and the inadequate safeguarding of the rights of participants and detained individuals.

The aim of this analysis is to provide a comprehensive overview of the actions of key institutions in the context of public assemblies and the exercise of the right to freely express opinions and views. By assessing the legal framework and its implementation in practice, the analysis will examine institutional patterns in handling major assemblies from 2019 to 2024. Particular attention will be given to related rights, such as the right to freedom of expression, the rights to liberty and security, the protection of personal data, and the procedural rights of individuals subject to the actions of competent authorities.

Based on the analysis of legal norms, case law, documented rights violations, and insights from interviews with representatives of civil society, the judiciary, and the media, this document seeks to identify systemic challenges and informal influences shaping institutional responses. Using these findings, it provides recommendations to improve institutional performance, safeguard democratic values, and strengthen accountability mechanisms in the actions of competent authorities.

II. RESEARCH METHODOLOGY

The analysis of institutional responses regarding the freedom of assembly and expression in Serbia is based on a combined methodological approach, which includes:

- The review of the legal framework;
- The examination of institutional practices;
- The collection of data through requests for access to information of public importance; and,
- In-depth qualitative interviews with relevant stakeholders.

The research aimed to provide an overview of how institutions implement laws related to the freedom of assembly and expression, to identify key challenges in the enforcement of these regulations, and to serve as a basis for developing recommendations to improve institutional practices. Recommendations arising from this research will be presented in separate documents intended for the relevant institutions.

LEGAL FRAMEWORK

The first step involved analyzing domestic regulations governing the freedom of assembly and expression, including the Law on Public Assembly, the Law on Police, the Criminal Code, the Code of Criminal Procedure, the Law on Misdemeanors, and the Law on Personal Data Protection. International norms and practices were also examined, particularly the European Convention on Human Rights and relevant judgments of the European Court of Human Rights, to assess the alignment of domestic legislation with international standards.

INSTITUTIONAL PRACTICE

The second phase of the research involved collecting and analyzing data on institutional responses to key assemblies held between 2019 and 2024, including the “One of Five Million” assembly, protests against emergency measures, ecological road blockades, the “Serbia Against Violence” assemblies, demonstrations related to suspected electoral fraud, and student protests following the collapse of the canopy in Novi Sad. The focus was on the outcomes of police and judicial proceedings, particularly the frequent practice of entering into plea agreements.

REQUESTS FOR ACCES TO INFORMATION

In order to create a comprehensive overview of the number of proceedings conducted before different institutions, as well as their outcomes, requests for access to information of public importance were submitted to a total of 248 institutions, namely:

- 27 police directorates;
- the Ministry of Internal Affairs;
- 66 basic courts, 25 higher courts and 4 appellate courts;
- 44 misdemeanor courts and the Misdemeanor Appellate Court;
- the Constitutional Court;
- the Administrative Court.

Requests submitted to **the police** directorates and **the Ministry of Internal Affairs** sought information on several key aspects of public assemblies, including: the number of decisions banning assemblies and appeals against such decisions; orders to disperse assemblies; cases involving the use of coercive measures; the number of individuals detained; requests to initiate misdemeanor proceedings under the Law on Public Assembly,¹ the Law on Public Order and Peace,² and the Law on Road Traffic Safety;³ criminal complaints against participants and organizers; and complaints regarding police conduct, including their outcomes.

Requests submitted to **the misdemeanor courts** sought information on key aspects of proceedings under the Law on Public Assembly, including the number of requests received, requests rejected, proceedings initiated, convictions, acquittals, decisions to discontinue proceedings due to the statute of limitations, and decisions converting unpaid fines into days of imprisonment, as well as the number of such decisions executed. Similar information was requested for cases under the Law on Public Order and Peace and the Law on Road Traffic Safety. In addition, final judgments related to these misdemeanors were requested.

Requests submitted to **the Misdemeanor Appellate Court** sought information on the number of appeals filed against first-instance court decisions concerning the application of the Law on Public Assembly, as well as the outcomes of those appeals. Copies of judgments issued in such cases were also requested. In addition, information was sought regarding the application of the Law on Public Order and Peace and the Law on Road Traffic Safety in the context of public assemblies.

¹ Official Gazette of the Republic of Serbia, No. 6/16

² Official Gazette of the Republic of Serbia, Nos. 6/2016 and 24/2018

³ Official Gazette of the Republic of Serbia, Nos. 41/2009, 53/2010, 101/2011, 32/2013 - Constitutional Court decision, 55/2014, 96/2015 - other law, 9/2016 - Constitutional Court decision, 24/2018, 41/2018, 41/2018 - other law, 87/2018, 23/2019, 128/2020 - other law, 76/2023 and 19/2025

Requests submitted to **the basic public prosecutors' offices** sought information on criminal offenses of Endangerment of Safety (Article 138, paragraph 3 of the Criminal Code) and Obstructing an Official in the Performance of Duties (Article 23 of the Law on Public Order and Peace). For each of these offenses, data were requested on the number of criminal complaints filed, the number submitted by the police, the number dismissed, indictments issued, convictions, plea agreements concluded and confirmed, motions filed under Article 522 of the Criminal Procedure Code, and cases in which detention or other measures to secure the defendant's presence were proposed or ordered. Final judgments related to these offenses were also requested.

Requests submitted to **the basic courts** sought statistical information and final judgments concerning the criminal offenses of Endangerment of Safety (Article 138, paragraph 3 of the Criminal Code) and Obstructing an Official in the Performance of Duties (Article 23 of the Law on Public Order and Peace). In particular, data were requested on the number of criminal complaints, indictments, convictions, plea agreements, motions under Article 522 of the Criminal Procedure Code, and security measures.

Requests submitted to **the higher public prosecutors' offices** sought information on the criminal offenses of Incitement to Violent Change of the Constitutional Order (Article 309 of the Criminal Code), Incitement of National, Racial, and Religious Hatred and Intolerance (Article 317 of the Criminal Code), and Racial and Other Discrimination (Article 387 of the Criminal Code). For each of these offenses, data were requested on the number of criminal complaints filed, the number submitted by the police, the number dismissed, indictments issued, convictions, plea agreements concluded and confirmed, motions filed under Article 522 of the Criminal Procedure Code, and cases in which measures to secure the defendant's presence were proposed or ordered. Final judgments for these offenses were also requested.

Requests submitted to **the higher courts** sought information on the criminal offenses of Incitement to Violent Change of the Constitutional Order (Article 309 of the Criminal Code), Incitement of National, Racial, and Religious Hatred and Intolerance (Article 317 of the Criminal Code), and Racial and Other Discrimination (Article 387 of the Criminal Code). In particular, data were requested on the number of criminal complaints, indictments, convictions, plea agreements, motions under Article 522 of the Criminal Procedure Code, and security measures. The requests also sought information on the number of appeals filed, rejected, dismissed, and upheld, as well as decisions overturning or amending judgments, in relation to the offenses of Endangerment of Safety and Obstructing an Official in the Performance of Duties.

Requests submitted to the appellate courts sought the provision of all decisions issued on appeals against judgments related to the criminal offenses of Incitement to Violent Change of the Constitutional Order, Incitement of National, Racial, and Religious Hatred and Intolerance, and Racial and Other Discrimination.

A request submitted to the Constitutional Court sought information on constitutional appeals concerning alleged violations of Article 54 of the Constitution of the Republic of Serbia. For each individual appeal, data were requested on the number of cases, the date of submission, the date of the decision, the name of the state body whose act or action was challenged, and the type of decision issued.

A request submitted to the Administrative Court sought information on lawsuits filed by organizers of public assemblies against decisions banning public assemblies, as well as on requests to suspend the execution of administrative acts. For each individual case, data were requested on the number of cases, the date of submission, the date of the decision, the name of the authority whose decision was challenged, the outcome of the proceedings, and information on any request to suspend execution and its outcome.

Nearly all institutions responded to the requests.⁴ The overall proportion of responses containing the requested statistical data and judgments was satisfactory, enabling the development of relevant conclusions.

Although the requests for access to information of public importance also covered data on criminal offenses under Articles 317 (Incitement of National, Racial, and Religious Hatred and Intolerance) and 387 of the Criminal Code (Racial and Other Discrimination), these data were not included in the analysis. This is due to the fact that the number of final judgments for these offenses was extremely low, and the available cases were not related to the context of public assemblies, which is the main focus of this analysis. To maintain focus and methodological consistency, it was decided not to include these data, as their inclusion could lead to misleading conclusions about the application of criminal law in the context of public assemblies.

Based on the responses received from institutions, the following were processed:

- 419 judgments from basic courts;
- 88 judgments from higher courts;
- 13 judgments from appellate courts;
- 226 decisions from misdemeanor courts;
- 46 judgments from the Misdemeanor Appellate Court.

⁴ Two basic courts, four public prosecutors' offices, and three misdemeanor courts did not provide a response.

Type of Source	Number of	Number of	Number of Cases/
	Requests Submitted	Responses	Judgments Processed
Police Directorates	27	27	Statistical data
Ministry of Internal Affairs	1	1	Statistical data
Basic courts	66	64	419 judgments
Higher courts	25	25	31 judgments
Appellate courts	4	4	13 judgments
Misdemeanor courts	44	41	138 judgments
Basic Public Prosecutors' Offices	58	54	Statistical data
Higher Public Prosecutors' Offices	25	25	Statistical data
Appellate Public Prosecutors' Offices	4	4	Statistical data
Misdemeanor Appellate Court	1	1	Statistical data
Constitutional Court	1	1	Statistical data
Administrative Court	1	1	Statistical data
Semi-structured interviews (activists, journalists, etc.)	—	—	8 interviews

Table 1: Overview of Sources and Number of Processed Data

QUALITATIVE INTERVIEWS

The research team conducted eight semi-structured interviews with stakeholders outside of institutions representatives of civil society, protest organizers, journalists, and citizens who had been subjected to proceedings for participating in public assemblies. The interviews provided deeper insight into personal experiences of repression, use of force, legal uncertainty, abuse of the legal framework, and surveillance of citizens.

VALIDATION AND CONCLUSIONS

Preliminary findings were presented at a roundtable with representatives of the judiciary, public prosecution, independent bodies, and civil society, where they were further validated and enhanced with participants' comments. Following this, the final analysis was prepared, which, based on the relevant legal framework, presents institutional practices and identifies challenges. Recommendations formulated on the basis of this research will be presented in separate documents addressed to the relevant institutions.

Based on the analysis of legal norms, institutional practices, and empirical data, the research provides a comprehensive overview of the functioning of institutions in the area of fundamental freedoms in Serbia. The findings will serve as a basis for advocating reforms and strengthening accountability mechanisms.

From late 2018 to 2024, Serbia witnessed a series of mass assemblies reflecting widespread citizen dissatisfaction with the political situation, the functioning of institutions, media freedoms, environmental issues, and the state of human rights. Although these assemblies arose from various issues, each in its own way reflected deep public dissatisfaction and expressed a clear demand for political and social change.

The “One of Five Million” assembly (2018–2019) was one of the longest-lasting mobilizations against authoritarian governance, media pressures, and political violence. Assemblies against the measures imposed during the state of emergency (2020) escalated into clashes between citizens and the police, highlighting public dissatisfaction with pandemic-related restrictions. Environmental road blockades (2021–2022) brought together a broad base of citizens opposing projects harmful to the environment, while the “Serbia Against Violence” assembly (2023) reflected a societal crisis caused by rising violence and lack of institutional accountability. Assemblies against electoral fraud (2023) were initiated following suspicions of electoral manipulation, and the student protests and blockades in 2024 represented the most recent wave of resistance, demanding institutional accountability for the collapse of a canopy in Novi Sad and improvements in the education system.

Although the authorities often sought to undermine the protests through media and institutional pressures, the assemblies left a lasting impact on Serbia’s political landscape. Independent media and social networks played a key role in informing the public and organizing the assemblies, while pro-government media frequently attempted to delegitimize them and underestimate the number of participants.

1. “ONE OF FIVE MILLION” ASSEMBLY (2018-2019)

The “One of Five Million”⁵ assembly represented one of the longest-lasting and largest civic mobilizations in Serbia’s recent political history.⁶ Initiated in December 2018 in response to political violence, it quickly evolved into a broader social movement against the suppression of media freedoms, electoral manipulation, and institutional repression. The assemblies spread to over one hundred cities across the country, attracting diverse social groups and raising key questions about the state of democracy in Serbia. Although they did not result in concrete political changes, these assemblies highlighted the challenges faced by civil society in the struggle for freedom of expression and the rule of law.

⁵ The original name of the protest “Stop the Bloody Shirts” was changed in response to the statement of the President of Serbia, Aleksandar Vučić, who declared that he would not meet any of the protest’s demands even if five million citizens were to gather. Available at: <https://www.021.rs/story/Info/Srbija/203507/Vucic-Nijedan-zahtev-necu-da-ispunim-nek-vas-bude-i-pet-miliona.html>

⁶ „Bojkot izbora i protesti '1 od 5 miliona'”, Radio slobodna Evropa, 30. januar 2020, dostupno na: <https://www.slobodnaevropa.org/a/bojkot-1-od-5-miliona/30405563.html>

The demonstrations initially emerged as a response to the attack on opposition leader Borko Stefanović in Kruševac,⁷ but rapidly grew into a wider movement against authoritarian governance, threats to media freedoms, and political pressures.

The Key demands included:

- Freedom of the media and cease all pressure on journalists;
- Free and fair elections;
- Dismissal of the management of Radio Television of Serbia (RTS) due to biased reporting;
- An end to political violence and accountability of the authorities for attacks on political opponents and activists.⁸

For the most part, the police did not intervene directly during the assemblies; however, several incidents occurred, most notably in March 2019, when demonstrators entered the RTS building, prompting a police response and the arrest of seven participants.⁹ In two separate cases, minors Nikola Pilipović and Slobodan Boba Stefanović, a local councilor and activist, were arrested for carrying mock hangings, which the police interpreted as a threat of violence by the SNS¹⁰ or as the criminal offense of Racial and Other Discrimination.¹¹

The government's most significant response was expressed through media and institutional pressures targeting protest organizers and participants. Pro-government media largely ignored the demonstrations or portrayed them as orchestrated by opposition forces and foreign interests.¹² In contrast, independent media provided detailed coverage, while social networks played a central role in coordinating the assemblies and disseminating information.

⁷“The Ministry of Internal Affairs Responds Regarding the Attack on Borko Stefanović,” Alo, 26 November 2018.

Available at: <https://www.alo.rs/vesti/politika/mup-se-oglasio-povodom-napada-na-borka-stefanovica/198217/vest>

⁸The demands referred to the unresolved murder of Oliver Ivanović, leader of the Civic Initiative SDP, the brutal attack on Borko Stefanović, leader of the Serbian Left, as well as the attempted murder of Milan Jovanović, a journalist with the portal Žig info.

⁹Journalists' Association of Serbia, “Seven Arrests for Entering the RTS Building”. Available at:

<https://www.uns.org.rs/sr/desk/UNS-news/76608/sedam-hapsenja-zbog-upada-u-zgradu-rts.html>

¹⁰“SNS Condemns Gallows Display at Protest: We Will Defeat the Politics of Hanging and Outbursts of Violence, Threats, Hatred, and Insults,” Kurir, 10 February 2019. Available at:

<https://www.kurir.rs/vesti/politika/3203445/sns-osudila-vesala-na-protestu-pobedicemo-politiku-vesanja-i-izlive-nasilja-pretnji-mrznje-uvreda>

¹¹“Slobodan Stefanović from Kragujevac: I Carried My Own Gallows,” Danas, 10 February 2019. Available at: <https://www.danas.rs/vesti/drustvo/kragujevc-anin-slobodan-stefanovic-nosio-sam-svoja-vesala/>

¹²“PHOTO/VIDEO SHOCKING: Is This Irrefutable Proof That America Is Behind the Protests in Belgrade? Sergej Trifunović Receives Instructions from the U.S. Embassy's Political Department Agents!” Informer, 4 February 2019. Available at: <https://informer.rs/politika/vesti/419665/fotovideo-sokantno-ovo-je-neoborivi-dokaz-da-amerika-stoji-iza-protesta-u-beogradu-sergej-trifunovic-prima-instrukcije-od-specijalaca-politickog-odeljenja-ambasade-sad>

Assemblies against emergency measures in July 2020 represented one of the most intense expressions of civic dissatisfaction in Serbia in the past decade.¹³ Initially focused on the announced reintroduction of a curfew and restrictive pandemic measures, the assemblies quickly evolved into a broader rebellion against authoritarian governance, the abuse of the crisis, and irregularities in the electoral process.¹⁴ The demonstrations were marked by significant clashes between protesters and the police, who used excessive force, including tear gas and physical violence against participants and journalists.¹⁵ Arrests and other repressive measures targeting protesters drew widespread public condemnation, while pro-government media sought to delegitimize the assemblies by portraying them as violent and orchestrated by opposition forces.

Mass assemblies broke out in July 2020, primarily in Belgrade, but also in other cities such as Novi Sad and Niš. The initial trigger was the reintroduction of movement restrictions and other restrictive pandemic measures, but the assemblies quickly escalated into a broader expression of dissatisfaction with the authorities.

The key demands included:

- Lifting of the curfew and other restrictive measures;
- Accountability for inadequate decisions and failures during the pandemic;
- Free and fair elections (the assemblies followed the boycott of the June 2020 elections).

The police used excessive force. Unlike most other assemblies, this demonstration saw the use of not only tear gas and batons but also additional coercive measures, including police dogs and mounted units. There were also documented cases of excessive force against journalists and observers.¹⁶

More than 70 people were arrested, including young protesters as well as passers-by.¹⁷ Many were subjected to misdemeanor proceedings without the presence of defense attorneys and were summarily sentenced to 30 to 60 days in prison for allegedly insulting public officials.¹⁸ Pro-government media portrayed the protesters as hooligans and enemies of the state,¹⁹ while independent media reported on police brutality.²⁰

¹³Amnesty International, Serbia: Violent police crackdown against COVID-19 lockdown protesters must stop, 9. jul 2020. Available at:

<https://www.amnesty.org/en/latest/news/2020/07/serbia-violent-police-crackdown-against-covid-19-lockdown-protests-must-stop/>

¹⁴The parliamentary elections in the Republic of Serbia in 2020 were initially scheduled for 26 April, the same day as the local and provincial elections. However, due to the outbreak of the COVID-19 pandemic and the introduction of a state of emergency, the elections were postponed and held on 21 June. The majority of opposition parties decided to boycott these elections.

¹⁵Balkan Insight, Serbian Police Attack Journalists in Second Night of Clashes, 9 July 2020. Available at:

<https://balkaninsight.com/2020/07/09/serbian-police-attack-journalists-in-second-night-of-clashes/>

¹⁶CIVICUS Monitor, Excessive police force used against citizens, journalists during anti-government COVID-19 protests, 13 July 2020. Available at:

<https://monitor.civicus.org/explore/excessive-police-force-used-against-citizens-journalists-during-anti-government-covid-19-protests/>

¹⁷The Guardian, "Serbian police arrest 71 in coronavirus protests", 11 July 2020. Available at:

<https://www.theguardian.com/world/2020/jul/11-serbian-police-arrest-71-in-coronavirus-protests>

¹⁸Mitrović, Nemanja, "Protests in Serbia: Allegations of Fast-Track Trials and Violations of Protesters' Rights," BBC News in Serbian, 13 July 2020. Available at: <https://www.bbc.com/serbian/lat/srbija-53393924>

¹⁹Ljubičić, Milica, "Top Three Fake News Stories About the Protests," Raskrikavanje, 13 July 2020. Available at:

<https://www.raskrikavanje.rs/page.php?id=TOP-tri-lazne-vesti-o-protestima-697>

²⁰Radovanović, Vojin, "Tear Gas, Live Ammunition, Batons, All Used Against the Unarmed Youth....: 7 July – When Belgrade Cried for Freedom," Danas, 7 July 2023. Available at:

<https://www.danas.rs/vesti/politika/suzavac-bojeva-municija-pendreci-sve-protiv-goloruke-omladine-7-jul-2020-kada-je-beograd-plakao-za-slobodu/>

Environmental road blockades that took place at the end of 2021 and the beginning of 2022 became one of the key forms of civic resistance in Serbia.²¹ These blockades, which began in major cities and spread to over 50 locations across the country, were directed against the adoption of the Law on Expropriation and the Law on Referendum and Popular Initiative, as well as against Rio Tinto's plan for lithium extraction.

The key demands were:

- to withdraw the Law on Expropriation and the Law on Referendum and Popular Initiative, which were seen as mechanisms to facilitate mining projects;
- to halt the Rio Tinto project and lithium extraction.

The assemblies escalated into mass demonstrations demanding the suspension of mining projects, while the authorities' response became the subject of numerous controversies. Cases of violence were documented, particularly in Šabac, where individuals attacked protesters with hammers in the presence of police, and where a blockade of gathered, citizens were breached using an excavator.²² The police responded selectively, protecting pro-government groups while dispersing protesters by force.

More than 30 people were detained, and misdemeanor proceedings were initiated against numerous others.²³ Thousands of citizens received fines for walking on the roadway,²⁴ while a large number of individuals who shared calls for the blockades on social media faced misdemeanor proceedings for allegedly organizing unregistered assemblies.²⁵

The media played a key role in shaping public opinion, with independent outlets reporting on repression, while pro-government media sought to undermine the significance of the protests.²⁶

²¹Al Jazeera Balkans, "Protests and Blockades in Serbia: Mass Brawl in Novi Sad," 4 December 2021. Available at: <https://balkans.aljazeera.net/news/balkan/2021/12/4/srbiju-danas-ocekuju-masovni-ekoloski-protesti-i-blokade-puteva>

²² Nova.rs, "Using an Excavator Against People: Chaos in Šabac, Masked Thugs Attack Protesters," 27 November 2021. Available at: <https://nova.rs/vesti/drustvo/bagerom-na-ljude-haos-u-sapcu-maskirani-huligani-napali-demonstrante-video/>

²³ "Misdemeanor Charges Over Blockades – A Systemic Attack by the Regime on Citizens," Civic Initiatives, 6 December 2021. Available at: <https://www.gradjanske.org/preksajne-prijave-zbog-blokada-sistemski-napad-rezima-na-gradjane/>

²⁴ N1, "Ecological Uprising Publishes List of All Locations to Be Blocked on Saturday," 2 December 2021. Available at: <https://n1info.rs/vesti/ekoloski-ustanak-objavio-spisak-svih-lokacija-koje-ce-bit-blokirane-u-subotu/>

²⁵ "Citizens Receiving Misdemeanor Orders Due to Blockades, 'Kreni-Promeni' Ready to Pay the Fines," 021.rs, 6 December 2021. Available at: <https://www.021.rs/story/Info/Srbija/293709/Gradjanima-stizu-preksajni-nalozi-zbog-blokada-Kreni-promeni-spreman-da-plati-kazne.html>

²⁶ Andrić, Tanja, "Fake Environmentalists Can Block Roads, But Not Life! (VIDEO)," Informer.rs, 19 October 2024. Available at: <https://informer.rs/tv/live-tv/954117/sasa-milovanovic-radoslav-milojicic-info-jutro>

Two mass shootings in May 2023 deeply affected Serbia, causing shock and triggering a wave of public discontent. The first attack occurred on May 3 at “Vladislav Ribnikar” Elementary School in Belgrade, when a thirteen-year-old pupil killed ten people, including nine classmates and a school security guard.²⁷ Just a day later, on May 4, near Mladenovac, an armed shooter randomly opened fire on passers-by, killing eight and injuring several others.²⁸

These tragic events raised serious questions about security, the role of institutions, and the social climate that fosters violence. Citizens took to the streets demanding concrete measures from the authorities, including accountability of state institutions for the rise in violence, the dismissal of the Minister of Internal Affairs and the Director of Radio Television Serbia (RTS), as well as a ban on reality shows and media content that promote violence and aggression.²⁹

The assemblies spread from Belgrade to other cities in Serbia, gathering tens of thousands of people. Although the police did not carry out mass arrests, cases of pressure on participants were documented, such as threats of dismissal in public enterprises and misdemeanor charges. Public opinion was divided - pro-government media accused the opposition of exploiting the tragedy for political purposes,³⁰ while independent media reported objectively.³¹

“Serbia Against Violence” assemblies became a symbol of civic resistance to violence and a demand for greater accountability from the authorities in ensuring a safe society.

The key demands were:

- accountability of state institutions for the rise in violence;
- the dismissal of the Minister of Internal Affairs and the Director of RTS;
- the ban of reality shows that promote violence;
- the withdrawal of financial support for tabloids that incite violence.

The police generally did not intervene directly, but reports of pressure on protest participants were documented, including dismissals from public enterprises.³²

Journalist Boško Savković was convicted in June for the criminal offense of inciting violent change of the constitutional order. He was sentenced for carrying a banner at the “Serbia Against Violence” assembly depicting a doll with the likeness of the President, with a rope around its neck and its head bowed, which, according to the prosecution, alluded to hanging.³³

²⁷ Bogdanović, Nevena, “Eight Students and a Guard Killed in School Shooting in Belgrade, Several Pupils and a Teacher Seriously Wounded,” Radio Free Europe/Radio Liberty, 3 May 2023.

Available at: <https://www.slobodnaevropa.org/a/srbija-beograd-pucnjava-skola-vladislav-ribnikar/32391310.html>

²⁸ Lakićević, Mijat, “One Year Later: Chronology of the Mass Shooting in Malo Orašje and Dubona,” Vreme, 3 April 2024.

Available at: <https://vreme.com/drustvo/godinu-dana-kasnije-hronologija-masovnog-ubistva-u-malom-orasju-i-dubonu/>

²⁹“Thousands of Citizens Protest in Serbia Following Mass Shootings,” Radio Free Europe/Radio Liberty, 8 May 2023.

Available at: <https://www.slobodnaevropa.org/a/srbija-protest-beograd-novi-sad-nasilje-masovna-ubistva-skola/32402200.html>

³⁰“MISERABLE WRETCHES! Power-Hungry Opposition LIES and Exploits DEAD CHILDREN to Grab Seats!” Informer.rs, 5 May 2023.

Available at: <https://informer.rs/politika/vesti/791635/bednici-bedni-opozicija-gladna-vlasti-laze-i-preko-mrtve-dece-hoce-da-se-docepa-fotelja>

³¹“What the 23rd ‘Serbia Against Violence’ Protest Looked Like in Pictures (PHOTO),” Danas, 7 October 2023. Available at: <https://www.danas.rs/vesti/drustvo/kako-je-izgledao-23-protest-srbija-protiv-nasilja-u-slikama-foto/>

³²“Brnabić: No One Lost Their Job for Participating in the Protests Against Violence,” N1 Info, 6 June 2023. Available at: <https://n1info.rs/vesti/brnabic-niko-nije-dobio-otkaz-zbog-ucesca-na-protestima-protiv-nasilja/>

³³“Calling for the Overthrow of the Constitutional Order: From Suspended Sentence to Five Years in Prison,” Insajder.net, 27 December 2023.

Available at: <https://www.insajder.net/teme/pozivanje-na-rusenje-ustavnog-poretka-od-uslovne-kazne-do-pet-godina-zatvora-video>

In December 2023, protests were held across Serbia, particularly in Belgrade, following allegations of serious irregularities in the parliamentary and local elections. Protesters demanded a recount of the votes and an investigation into alleged false residencies, which, according to the accusations, were used to manipulate voter rolls.³⁴

The key demand was:

- an investigation into alleged false residencies used to manipulate voter rolls.

A peaceful assembly in front of the City Assembly of Belgrade at one point turned violent when someone from the crowd of demonstrators began throwing stones at the Assembly building, where police officers in riot gear were present. The police used physical force against a large number of protesters, as documented by numerous media and citizen cameras.³⁵ Several demonstrators were detained and convicted for criminal offenses of inciting the violent change of the constitutional order and violent conduct at a sports event or public assembly. Media later speculated about agent provocateurs who allegedly disrupted the peaceful assembly with violence, but this was never proven or disproven.

Pro-government media sought to delegitimize the protests,³⁶ while independent media focused on analyzing electoral irregularities.³⁷

In November 2024, Serbia was shaken by a tragic event when a canopy at the Railway Station in Novi Sad collapsed, killing 15 people and seriously injuring two others.² This accident triggered a wave of protests across the country, led by students demanding accountability from the authorities responsible for the tragedy³⁸

³⁴Petrović, Ivica, "Protests in Serbia: Part of the Opposition Calls for Election Annulment," Deutsche Welle, 19 December 2023. Available at: <https://www.dw.com/bs/protesti-u-srbiji-dio-opozicije-tra%C5%BEi-poni%C5%A1tavanje-izbora/a-67765067>

³⁵Disproportionate Use of Force at the Protest in Front of the Belgrade City Assembly <https://yucom.org.rs/saopstenje-nesrazmerna-upotreba-sile-prema-gradanima-na-protestu-ispred-skupstine-grada-beograda/>

³⁶"SPECIAL BROADCAST ON INFORMER TV! Đilas's Supporters Call for a New Maidan and Bloodshed! (VIDEO)," Informer.rs, 25 December 2023. Available at: <https://informer.rs/tv/live-tv/859572/opozicija-protest-beograd-vucic-nasilje-dilas>

³⁷"Election Irregularities: How to Recognize Them and Whom to Report Them To?" N1 Info, 2 November 2023. Available at: <https://n1info.rs/vesti/izbori-2023/izbori-nepravilnosti-kome-prijaviti/>

³⁸"What Is Happening at the Opposition Protests in Serbia: Demands, Government Reactions, and International Attention," BBC News in Serbian, 20 December 2023. Available at: <https://www.bbc.com/serbian/articles/cy0yl2w41p0o/lat>

² The sixteenth victim of the demolition canopy died on March 21, 2025.

The first protests began in Novi Sad, where citizens and students held peaceful assemblies in memory of the victims. However, after students and faculty members from the Faculty of Dramatic Arts were attacked during one of these assemblies on November 22, 2024, the students decided to organize faculty blockades. This action quickly spread to other universities, including the Faculty of Philosophy in Novi Sad, as well as the Faculty of Philology, Faculty of Philosophy, Faculty of Natural Sciences and Mathematics, and the Faculty of Political Sciences in Belgrade.

The key demands of the students included:

- to publish the complete documentation on the reconstruction of the Railway Station in Novi Sad to determine responsibility for the canopy collapse;
- the release of detained students, activists, and citizens who were detained during previous protests;
- the filing of criminal charges against those who attacked students, professors, and citizens during the protests;
- a 20% increase in the higher education budget to improve the conditions for studying.

The protests soon spread to more than 276 cities, municipalities, and towns across Serbia. Professors, primary and secondary school teachers, as well as citizens from various social backgrounds joined students. Support also came from the diaspora, with solidarity assemblies organized in cities across Europe, the America, and Australia.

Participants in the student protests were subjected to numerous verbal and physical attacks, most commonly through attempts to break the blockades with cars during the “15 Minutes of Silence” action for the victims of the canopy collapse, which frequently resulted in injuries.¹

Government representatives claimed that they had met all the students’ demands, while the students involved in the blockades emphasized that none of the demands had been fully implemented. Pro-government media often undermined the significance of the protests or portrayed them as politically motivated actions,⁴² whereas independent media provided more detailed reporting on the events.⁴³

³⁹FoNet, “Trial Postponed for Attack on FDU Students,” Danas, 26 March 2025.

Available at: <https://www.danas.rs/vesti/drustvo/odlozeno-sudjenje-za-napad-na-studente-fdu/>

⁴⁰Archive of Public Assemblies, “Locations Where Actions Were Held After the Demolition of the Canopy,” Javniskupovi.org, 1 February 2025.

Available at: <https://javniskupovi.org/index.php/2025/02/01/gradovi-u-kojima-je-odrzana-akcija-zastani-srbijo/>

⁴¹Danas. “(VIDEO) Driver Runs Over Participants of the Blockade near the Faculty of Agriculture.” Danas.rs, 15 December 2024.

Available at: <https://www.danas.rs/vesti/drustvo/video-automobilom-pokosio-ucesnike-blokade-kod-poljoprivrednog-fakulteta/>

⁴²“Behind the students and professors there is politics! They came up with everything with the help of foreigners!”, Informer.rs, 7 May 2025. Available at: <https://informer.rs/politika/vesti/1015330/blokaderi-studenti-profesori-politika-izbori>

⁴³Danas. “(VIDEO) Automobilom pokosio učesnike blokade kod Poljoprivrednog fakulteta.” Danas.rs, 15 December 2024, <https://www.danas.rs/vesti/drustvo/video-automobilom-pokosio-ucesnike-blokade-kod-poljoprivrednog-fakulteta/>

⁴⁴“Students blocked RTS, stating that the blockade will last for 22 hours”, Danas, 11 March 2025.

Available at: <https://www.danas.rs/vesti/drustvo/studenti-blokirali-rts-porucili-da-ce-blokada-trajati-22-sata/>

1.

JUDICIARY

This section of the analysis highlights the role of the judiciary in prosecuting offenses related to public assemblies in Serbia during the period from 2019 to 2024, with a particular focus on selected criminal and misdemeanor offenses most commonly prosecuted in this context. The report provides a detailed examination of case law and statistical data on offenses such as endangering security, obstructing public officials, inciting the violent change of the constitutional order, and promoting hatred and discrimination, as well as relevant misdemeanors under the Law on Public Assemblies, the Law on Public Order and Peace, and the Road Traffic Safety Law. The analysis indicates how inconsistencies in the interpretation of legal norms, selective prosecution, and the use of repressive measures contribute to legal uncertainty and have a deterrent effect on the exercise of the rights to freedom of expression and assembly. The role of the police as the primary initiator of proceedings is particularly highlighted as an issue, as is the fact that a large number of criminal and misdemeanor cases are concluded with dismissals, acquittals, or expiration due to statute of limitations. At the same time, examples of good practice are highlighted, where courts recognized the importance of constitutional and international human rights standards.

1.1.

COURTS OF GENERAL JURISDICTION

Courts of general jurisdiction play a key role in deciding criminal offenses frequently prosecuted in connection with public assemblies and freedom of expression. Their jurisdiction includes, among others, criminal offenses such as endangering security, obstructing a public official in the performance of official duties, inciting the violent change of the constitutional order, and other crimes most commonly associated with protests in practice. Beyond the legal framework, judicial work may also be shaped by social and political contexts, including statements made by public officials regarding specific cases. Inappropriate influence on the judiciary represents a serious obstacle to the independence and impartiality of courts and prosecutors. Statements and comments by public officials about specific cases or participants in proceedings can exert pressure on judges and prosecutors, affecting the legality and fairness of decision-making. Such practices, especially in cases that attract public attention due to their political or social significance, undermine citizens' trust in institutions and equal access to justice.

1.1.1.

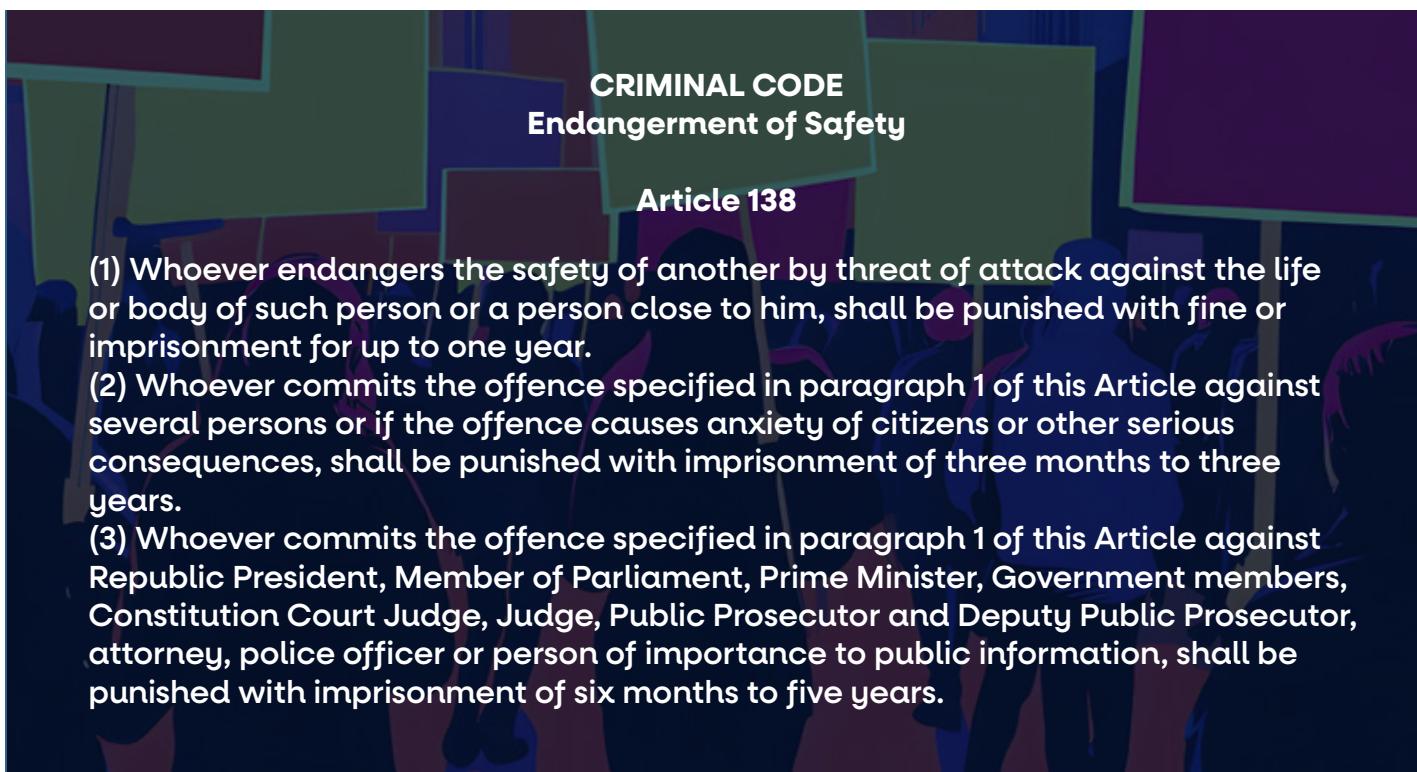
CRITERIA FOR SELECTION OF CRIMINAL OFFENCES

Javna okupljanja predstavljaju jedan od ključnih oblika izražavanja mišljenja i ostvarivanja političkih i građanskih prava. Međutim, ona sa sobom nose i određene bezbednosne rizike kako za učesnike tako i za javne funkcionere, policiju, novinare i širu zajednicu. U takvim situacijama dolazi do izražaja sankcionisanje određenih krivičnih dela koje je neophodno za zaštitu javnog reda, sigurnosti i osnovnih vrednosti demokratskog društva, ali može biti i zloupotrebljeno za ograničavanje prava na okupljanje. Krivična dela obuhvaćena ovom analizom selektovana su na osnovu višegodišnjeg iskustva Komiteta pravnika za ljudska prava – YUCOM u pružanju pravne pomoći aktivistima, kao i na osnovu javno dostupnih informacija i medijskih izveštaja nakon održanih javnih okupljanja. Važno je napomenuti da ovaj spisak nije iscrpan, već ilustruje često primenjivana krivična dela u praksi.⁴⁴ U tom kontekstu, izdvajaju se sledeća krivična dela: Ugrožavanje sigurnosti čl. 138 st. 3 Krivičnog zakonika, Ometanje službenog lica u vršenju službene dužnosti čl. 23 Zakona o javnom redu i miru i Pozivanje na nasilnu promenu ustavnog uređenja čl. 309 KZ.

⁴⁴ According to the information obtained from the police directorates, criminal charges against participants and organizers of public assemblies were also filed for the criminal offences of Destruction and Damage to Another Person's Property (Article 212 of the Criminal Code), Unauthorized Possession of Narcotic Drugs (Article 246a CC), Violent Behavior at a Sports Event or Public Assembly (Article 344a CC), Unauthorized Production, Possession, Carrying and Trafficking of Weapons and Explosive Substances (Article 348 CC), and Illicit Trade in Excise Goods (Article 176 of the Law on Excise Duties).

1.1.2. ENDANGERMENT OF SAFETY (ARTICLE 138 PARAGRAPH 3 OF THE CRIMINAL CODE)

ANALYSIS OF CASE LAW



This criminal offense refers to threats directed at high-ranking state officials, police officers, attorney-at-laws, prosecutors, judges, and individuals performing public functions in the field of information. In the context of public assemblies, unfounded prosecution of citizens for this offense can be misused as a tool for pressure and intimidation.

In practice, there have been cases where this criminal offense was applied selectively, primarily against citizens and activists, while similar or even more serious threats directed at journalists often were not subject to prosecution. Journalists, who play a key role in informing the public about protests, frequently become targets of verbal and physical attacks, whereas case law often interprets offensive messages directed at state leadership as threats. This raises questions about double standards in the interpretation of this offense.⁴⁵

In the context of public assemblies and existing case law, this criminal offense is most often committed through the posting of comments or statuses on social media directed at state officials or public officers, expressing dissatisfaction with the actions of the competent authorities or the very reason for the public assembly.

In line with the aforementioned case law, a citizen was convicted for a Facebook post related to an incident in Novi Sad, where a boy with autism was beaten while riding his bicycle - an incident for which, despite a filed criminal complaint, no one was held accountable.⁴⁶

⁴⁵“Freedom of Expression in Serbia’s Digital Space: Analysis of Prosecutorial and Judicial Practice,” YUCOM, 6 September 2022. Available at: <https://yucom.org.rs/wp-content/uploads/2024/11/Freedom-of-expression-in-the-digital-space-1.pdf>

⁴⁶“How could they - Autistic Boy Beaten While Riding a Bicycle,” Direktno.rs, 12 July 2020. Available at: <https://direktno.rs/vesti/srbija/287557/gde-ce-vam-dusa-tukli-autisticnog-decaka-na-biciklu.html>

He had commented on a photo of an injured police officer, which was captioned as depicting the officer who had beaten the boy on the bicycle:

“Simply put, kill him while he is young. Publish the address where he lives. Absolutely.”

“No, ma’am, we decide about his children, him, his family. Damn, how ugly he is. It’s clear that the child has a developmental disability. Where does this Nikola, the fool, live? Little peasant eager for a ride. Slowly, he will be sent to Lešće, his wish will be fulfilled.”

Following the conducted judicial proceedings, this individual was sentenced to house arrest, having previously been held in pretrial detention for up to 60 days, and his mobile phone was confiscated. In connection with the 2020 demonstrations against the announced anti-COVID measures and the reintroduction of movement restrictions, criminal proceedings were also initiated against a citizen who wrote on the Instagram page of the President of the Republic:

“It’s not that people are afraid to take to the streets - it’s this homo Vučić who shit himself because the people went out into the streets. Such a fuss that they even made software to count people. Vučić, you’ll end up like your namesake from 1903 if you keep this up. Only this time it won’t be the army to judge you, but the people you’ve ridden and driven mad for years.”

This person was acquitted following judicial proceedings, as the court held that the statement constituted an expression of opinion rather than a threat. In the same year, a user left a comment on the YouTube website:

“I bought a pistol from a smuggler on the black market; I would gladly spend a bullet on Vučić. If 12/7 can be called that.”

This comment was made in the context of a protest against anti-COVID measures, during which the police used disproportionate force against citizens. The act was prosecuted as endangerment of the security of the President of the Republic; however, the Higher Court in Belgrade did not uphold the charge, reasoning that the public prosecutor’s office had failed to prove the existence of a criminal offense. Neither the existence of a threat nor its consequence - that is, that the President of the Republic actually felt threatened - was established. In doing so, the court departed from established practice in which, instead of the President himself, members of his security detail testify about the subjective element of the criminal offense, explaining that the perception of special units - who interpret a certain situation as a threat and respond by increasing security measures - cannot be equated with a threat in the criminal law sense.

Regarding this criminal offense, a recurring issue has been noted, namely the inconsistency in case law concerning when a statement is considered a threat and when it falls within the legally permissible bounds of freedom of expression toward public officials, who are expected to tolerate a higher level of criticism than the general public. This inconsistency is also reflected in the varying interpretation of the elements of the offense. In some judgments, it is held that, even in cases involving the highest state officials, such as the President of the Republic, the existence of the subjective element of the offense (i.e. a feeling of being threatened) must be specifically proven, whereas in other judgments, similar defense claims have been rejected without detailed consideration.

Case law typically requires, in addition to the subjective element, the presence of an objective element of a threat. During the analysis, a court held that it is sufficient for the victim to have subjectively felt threatened, and that the existence of an objective element of the threat is not necessary. This was the case in a matter before the Higher Court in Belgrade⁴⁷ concerning posts about a police officer involved in the incident with an autistic boy in Novi Sad. Such inconsistencies in the case law of the same courts create significant legal uncertainty for citizens, rendering the exercise of fundamental human rights - such as the right to freedom of expression and the right to liberty and security - unpredictable.

⁴⁷ Higher Court in Belgrade, judgment KPO 3 33/20, upheld by the Appellate Court in Belgrade in judgment Kž 26/22 of 6 February 2023.

STATISTICAL ANALYSIS

Based on data from responses by basic public prosecutor's offices for the period 2019–2024, a significant increase in the number of criminal complaints for the offense of endangerment of security of public officials is evident. The number of complaints remained relatively stable during the first two years of observation - 427 in 2019 and 410 in 2020. However, in 2021 there was a marked increase, with as many as 467 complaints, the highest number in the entire observed period. This rise may indicate the instrumentalization of this criminal offense to suppress freedom of expression and public dissent. From 2022 to 2023, the number of complaints remained stable (446 in both 2022 and 2023), before sharply dropping to just 307 complaints in 2024.

ENDANGERMENT OF SECURITY CRIMINAL COMPLAINTS

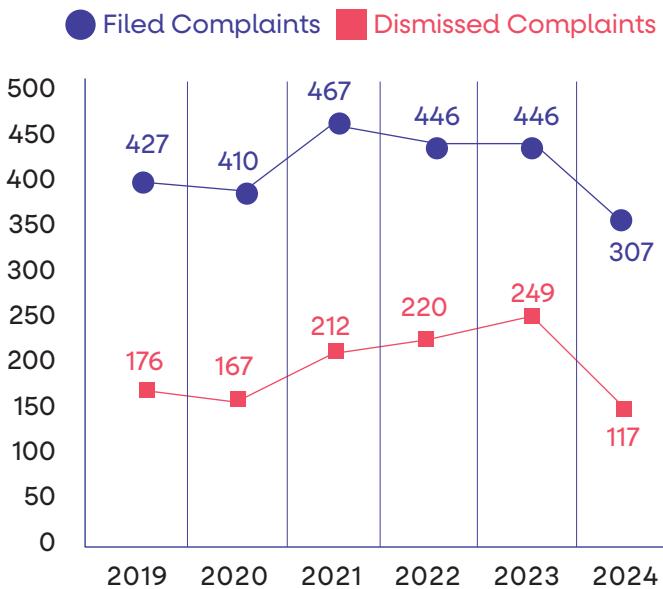


Chart 1: Endangerment of Security - Criminal Complaints
Source: Responses from Basic Public Prosecutor's Offices

Of particular concern is the increase in the percentage of dismissed complaints. In 2019, as many as 41.21% of complaints were dismissed, with a similar trend observed the following year (40.73%). However, in 2021 this percentage rose to 45.39%, and then to 49.32% in 2022. In 2023, it reached its peak - 55.82% of all filed complaints were dismissed -indicating a trend of submitting complaints that were insufficiently substantiated, which further supports suspicions of potential misuse.

The most significant change is observed in 2024, when the number of dismissed complaints sharply decreased to just 117 (a decline both in absolute numbers and as a percentage - 38.11%). There are two possible explanations. First, it is possible that in previous years a large number of complaints were submitted without sufficient grounds, leading to their dismissal. The reduction in complaints in 2024 may result from greater attention to evidence collection and a more selective approach when filing them.

Considering that **the majority of criminal complaints are filed by the police**, it is possible that in 2024 the police were less likely to recognize this offense as a basis for prosecution, or that its interpretation had changed.

ENDANGERMENT OF SECURITY

ENDANGERMENT OF SECURITY - INDICTMENTS, CONVICTIONS AND PLEA AGREEMENTS



Chart 2: Endangerment of Security - Indictments, Convictions and Plea Agreements. Source: Responses from Basic Courts, Basic Public Prosecutor's Offices and the Higher Public Prosecutor's Office in Belgrade.

In the period from 2019 to 2024, data on the number of indictments, convictions, and plea agreements for the criminal offense of endangerment of security show a relatively stable pattern up to 2023, when there is a sharp increase across all categories, before returning to previous levels in 2024.

From 2019 to 2022, the number of indictments ranged between 67 and 71 per year, with slight fluctuations indicating a consistent approach by the prosecution offices. **However, in 2023, a dramatic increase occurred - as many as 135 indictments were filed, more than double the number from the previous year.**

This exceptional rise, which does not align with previous patterns, may be linked to specific socio-political circumstances, including a higher number of public assemblies, protests, or expressions of discontent in the public sphere.

A similar pattern can be observed in the number of convictions. While between 2019 and 2022 the number of convictions ranged from 31 to 49 per year, **2023 saw a sharp increase to 79 convictions - the highest number in the observed period. This indicates that courts ruled on criminal liability under this offense in a significantly greater number of cases, further confirming that 2023 was a year of intensified activity related to this criminal offense.**

In 2024, all categories experienced a sharp decline - the number of indictments fell to 59, convictions to 27, and plea agreements to 19. This decrease may indicate a change in prosecutorial and judicial practice, a reduction in the number of incidents qualifying as endangerment of security, as well as a potential institutional response to the excessive prosecution in the previous year.

The high percentage of plea agreements in cases related to endangerment of the security of senior state officials is particularly problematic. The annual number of plea agreements ranges from 14 to 23, with as many as 39.1% of convictions in the observed period resulting from such agreements, while in 2024 this percentage reached 70.37%.

Of particular concern is the role of the Security-Information Agency (BIA) in these proceedings, which, although performing an important security function, can exert additional pressure on the accused through its participation. BIA's involvement has a chilling effect, restricting the right to defense, and resulting in plea agreements being concluded under pressure rather than as the outcome of a free and informed decision by the accused.

Given the seriousness and political sensitivity of these offenses, the expedited resolution of cases through plea agreements may undermine the transparency and impartiality of judicial proceedings. There is a risk that such agreements are used as a means to avoid thorough examination of all relevant circumstances and evidence, which often results in inadequately reasoned judgments.

When analyzing the handling of cases involving endangerment of security, pretrial detention is imposed in only 6% of cases. However, it should be noted that plea agreements are often concluded during police custody, which can last up to 48 hours.

On the other hand, measures that might indicate a different nature of the problem - such as security measures requiring compulsory psychiatric treatment - are applied very rarely, imposed in only 1% of cases. The greatest concern, however, lies in the outcomes of the proceedings.

Data shows that a large number of complaints do not ultimately result in a conviction. Nearly half of all complaints over the past five years - 45.59% - were dismissed. Convictions were handed down in only 9.75% of cases, while plea agreements accounted for as much as 39.1% of all convictions.

ENDANGERMENT OF SECURITY APPEAL OUTCOMES

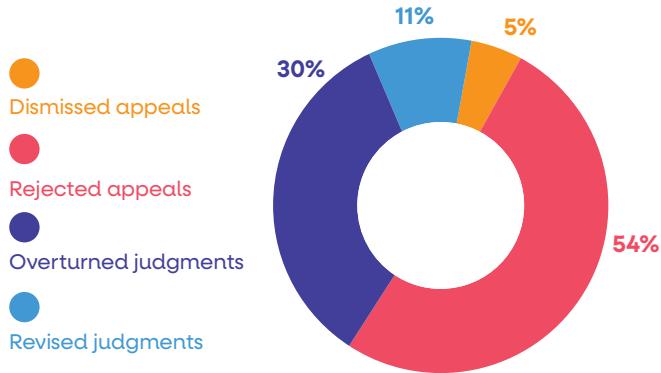


Chart 4: Endangerment of Security – Appeal Outcomes
Source: Responses from Higher Courts and the Appellate Court in Belgrade

ENDANGERMENT OF SECURITY DETENTION, SECURITY MEASURES, AND CONFISCATION OF OBJECTS

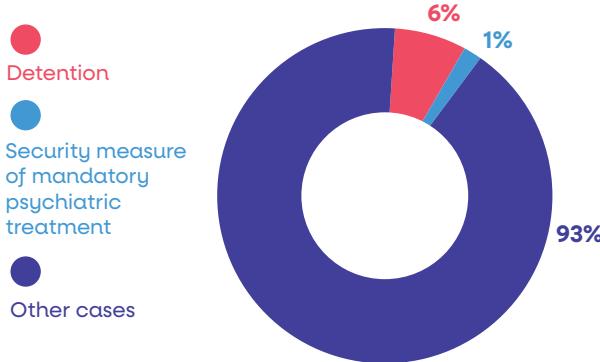


Chart 3: Endangerment of Security - Detention, Security Measures, and Confiscation of Objects Source: Responses from Basic Public Prosecutor's Offices and the Higher Public Prosecutor's Office in Belgrade

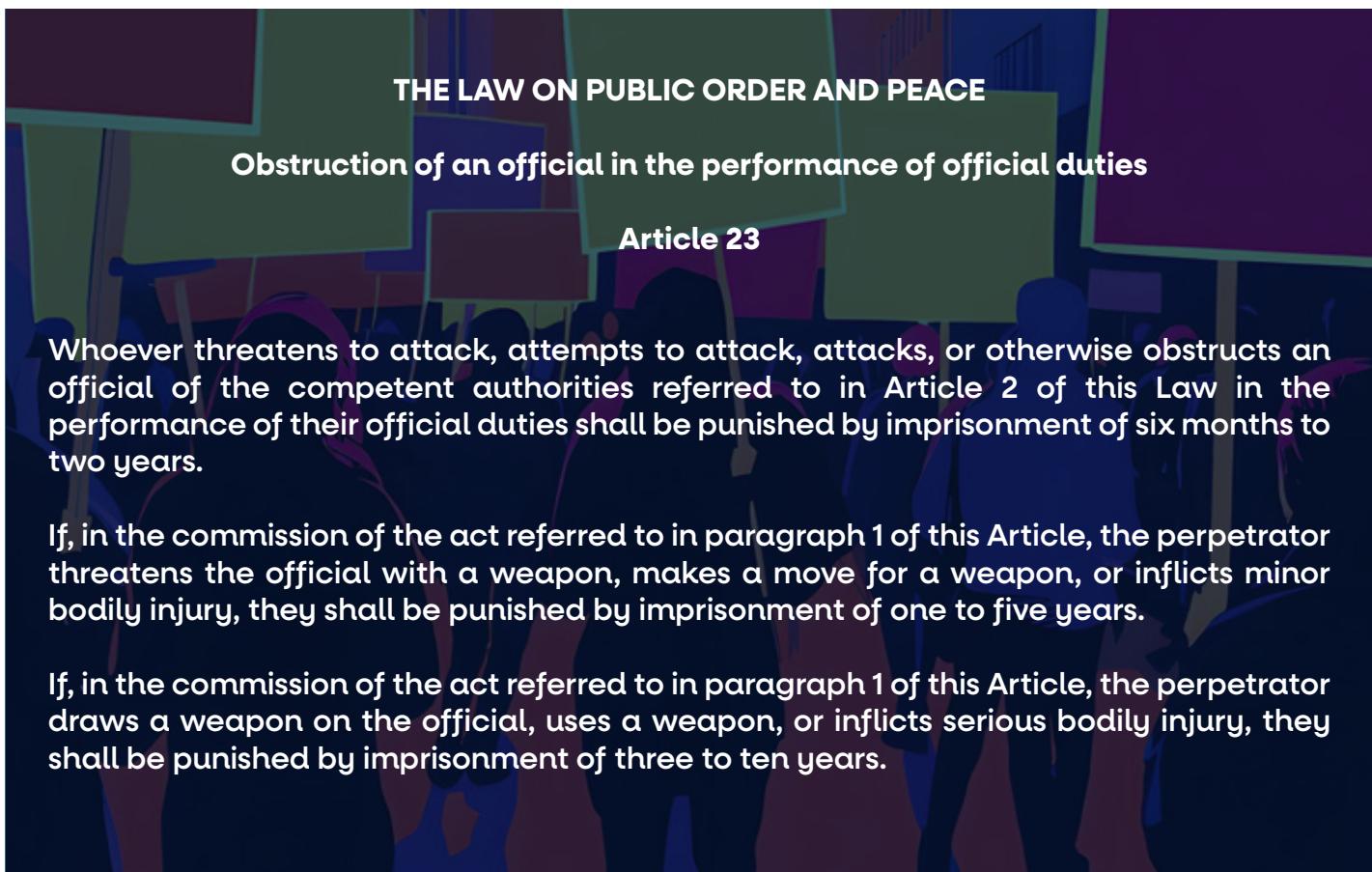
Appeals against convictions were filed in nearly a quarter of cases (22.18%), with a significant proportion (41%) resulting in the appellate court finding irregularities and upholding the appeals, either overturning or modifying the first-instance judgments. However, it should be noted that the number of appeals would likely have been considerably higher if not for the large share of convictions based on plea agreements, which significantly limit the possibility of appeal.

When these data are considered together with the high percentage of dismissed criminal complaints and the fact that the police filed the complaint in 82% of cases, the question arises as to whether this criminal offense is applied in a fair and purposeful manner - that is, whether its application truly contributes to the protection of the security of the victims or is used as a means of exerting pressure.⁴⁸

⁴⁸Four higher courts, including the Higher Court in Belgrade, submitted data that were not disaggregated by subsections or by year, or were missing information on the outcomes of proceedings. As a result, those data could not be included in the statistical analysis, meaning that the statistical overview is not complete and does not cover all appellate proceedings conducted before higher courts in the Republic of Serbia during the observed period.

1.1.3. OBSTRUCTION OF AN OFFICIAL IN THE PERFORMANCE OF OFFICIAL DUTIES (ARTICLE 23 OF THE LAW ON PUBLIC ORDER AND PEACE)

ANALYSIS OF CASE LAW



At public assemblies, situations often arise in which participants attempt to prevent police officers or other competent authorities from performing their official duties. Obstruction of officials may take the form of physically impeding the enforcement of the law, verbal attacks, or refusal to comply with orders. This offense is relevant because it reflects the balance between the right to protest and the necessity of maintaining public order and ensuring the safety of all assembly participants.

However, there are instances where this offense is used as a tool to suppress civic protest. In certain cases, protesters who were merely expressing dissatisfaction verbally or recording police interventions were charged with obstruction of officials. Conversely, when police officers used excessive force against demonstrators, even when recorded, they were often not subjected to prosecution.⁴⁹

For example, one person wrote on a social network:

"I said if they introduce a 24-hour curfew I will not sit at home, I will go out into the street, I am not afraid of the police or Vučić, and the first cop who comes near me I will, without hesitation, cut to pieces."

⁴⁹ BBC News in Serbian, "Serbia and the July Protests – One Year Later: I have physically recovered from the beating, but I am not sure if I will be able to recover mentally," BBC News in Serbian, 7 July 2021. Available at: <https://www.bbc.com/serbian/lat/srbija-57751545>

This person is subject to criminal proceedings, in which he was previously remanded in custody, and has admitted to committing the offence. The case is problematic for several reasons, foremost among them the question of whether the offence exists at all. Under the Criminal Procedure Code,⁵⁰ the court would accept, by judgment, a plea agreement based on a confession of a criminal offence only if the conditions laid down in Article 317 of the Criminal Procedure Code are satisfied.⁵¹

Pursuant to Article 318 of the Criminal Procedure Code, the court shall, by a ruling, reject a plea agreement if any of the grounds for discontinuing proceedings provided under Article 338 of the Criminal Procedure Code exist - namely, if the act forming the subject of the charge does not constitute a criminal offence and there are no conditions for applying a security measure; if criminal prosecution has become time-barred; if the act has been covered by amnesty or pardon; or if there are other circumstances that permanently preclude criminal prosecution. The court shall also reject the agreement if there is insufficient evidence to support a reasonable suspicion that the accused committed the offence forming the subject of the charge.

The aforementioned provisions of the Criminal Procedure Code grant the investigative judge deciding on the acceptance of a plea agreement to the legal authority to reject such an agreement if, from the description of the act in the indictment, it is evident that the conduct attributed to the accused does not constitute a criminal offence. It should also be borne in mind that the judge is obliged to be familiar with the case law of the court in which he or she serves.

It is therefore reasonable to question whether, in such cases, the court, which also has the authority to examine the accused in order to determine whether the offence was indeed committed, remained overly passive and failed to engage with the question of whether the accused had in fact committed the act. This is of particular concern given that the accused was remanded in custody during the investigation and that the confession to the alleged offence was made while in detention. Since judgments confirming a plea agreement do not contain detailed reasoning as to why the court considers that the described conduct constitutes a criminal offence, and as the statutory grounds for appeal are very limited, such judgments are generally not subject to review by higher judicial instances.

This poses a particular danger that, under pressure and while in detention, an individual may agree to admit to whatever the prosecution demands merely to secure release from custody - even at the cost of a suspended sentence. For that reason, the role of the court is of utmost importance in such cases, and a passive attitude on the part of the court effectively amounts to active participation in the repression of the right to freedom of expression.

In one case, concluded through a plea agreement, an individual was sentenced to a suspended sentence for returning a tear gas canister to police officers during demonstrations held at a time of the COVID-19 pandemic. Since this was a plea agreement procedure, further details of the case are unavailable, and it is therefore impossible to assess whether the person concerned was afforded a fair trial. From the information contained in the judgment, it can only be established that this individual had not been held in custody prior to concluding the plea agreement.

⁵⁰ "Official Gazette of the Republic of Serbia", Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - Constitutional Court decision, and 62/2021 - Constitutional Court decision

⁵¹ The court shall, by judgment, accept the plea agreement and find the defendant guilty if it determines:

- 1) that the defendant knowingly and voluntarily admitted the criminal offence(s) that are the subject of the charges;
- 2) that the defendant is aware of all the consequences of the concluded agreement, in particular that they waive the right to trial and accept the limitation of the right to appeal (Article 319 paragraph 3) against the decision of the court rendered on the basis of the agreement;
- 3) that there is other evidence which is not contrary to the defendant's admission of committing the criminal offence;
- 4) that the sentence or other criminal sanction, or other measure agreed upon by the public prosecutor and the defendant, has been proposed in accordance with the criminal or other law.

In addition to the elements referred to in Article 428 paragraphs 2, 3 and 5 of this Code, the judgment referred to in paragraph 1 of this Article shall also include the reasons on which the court relied when accepting the agreement.

STATISTICAL ANALYSIS

According to data provided by the Basic Public Prosecutor's Offices, the period from 2019 to 2024 shows fluctuations in the number of criminal complaints filed for the offence of obstruction of an official in the performance of official duties. The highest number of complaints was recorded in 2021, with as many as 357 cases filed.

This year coincided with a wave of mass public protests, which raises reasonable suspicion that this criminal offence was used as a means of suppressing the freedom of assembly and expression of political dissent. After that period, the number of complaints declined - to 253 in 2022, 261 in 2023, and 227 in 2024 - but it remains higher than the level recorded in 2019.

It is important to note that only a small number of the judgments delivered relate to the commission of this criminal offence in the context of public assemblies, which suggests that such cases are more frequently found among dismissed criminal complaints. The fact that the majority of complaints are filed by the police further complicates the picture, especially given that a significant percentage of those complaints were dismissed - particularly in years marked by heightened social tensions. For example, in 2020 and 2021, the prosecution dismissed more than one-third of all submitted complaints (36% in 2020 and 32% in 2021), indicating that a substantial number of criminal complaints lacked sufficient factual or legal basis. These figures raise concerns regarding the criteria and motives underlying the police's filing of criminal complaints, particularly when viewed in the context of public protests and the possibility that legal mechanisms are being used to deter citizens from participating in such assemblies.

On the other hand, it should be borne in mind that a significant number of these offences are recorded during traffic controls, so the decline in the total number of complaints in recent years may also indicate a lower intensity of such enforcement activities, rather than an actual decrease in the number of incidents.

OBSTRUCTION OF AN OFFICIAL IN THE PERFORMANCE OF OFFICIAL DUTIES

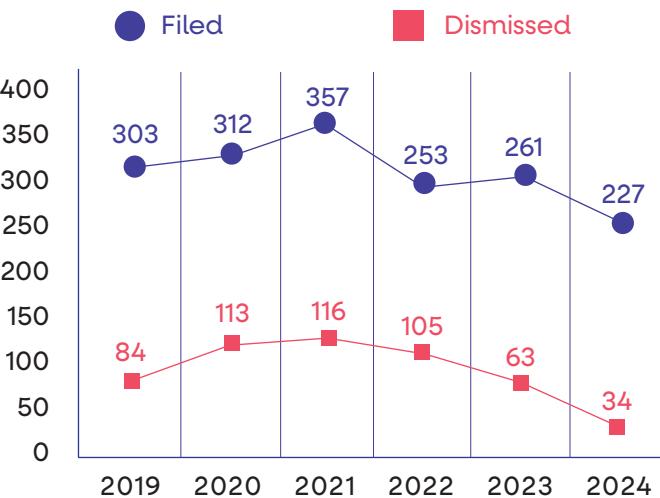


Chart 5: Obstruction of an Official in the Performance of Official Duties - Criminal Complaints
Source: Responses from Basic Public Prosecutor's Offices

Overall, the available data indicates a risk that the criminal offence of obstructing an official in the performance of official duties is being applied selectively and as a means of intimidation, particularly during politically sensitive periods. Even when the proceedings do not reach the court, the fact that a citizen has been the subject of a criminal complaint can have a strong deterrent effect on the exercise of the rights to freedom of expression and peaceful assembly. The number of indictments and convictions reached its peak in 2021, with 254 indictments and 206 judgments of conviction. By 2024, these figures had more than halved - with only 99 indictments and 44 convictions. When it comes to measures ensuring the presence of the accused, detention is still ordered in 13% of cases, which is not insignificant.

Measures such as mandatory psychiatric treatment or confiscation of objects are rarely applied. The data further show that approximately 30% of criminal complaints were dismissed during the observed period. Convictions were rendered in 52.9% of cases, while plea agreements accounted for 15.8% of the total number of convictions.

Data from the 2019–2024 period indicate a possible selective application of the criminal offence of obstructing an official in the performance of official duties, particularly during politically sensitive periods. The high number of complaints filed in years marked by civic protests, coupled with a large percentage of dismissed complaints - 82% of which are filed by the police - points to potential misuse of criminal prosecution mechanisms aimed at deterring citizens from exercising their rights to freedom of expression and assembly. At the same time, the decline in the number of indictments and judgments confirms that the initiation of many proceedings lacked a legal basis.

OBSTRUCTION OF AN OFFICIAL IN THE PERFORMANCE OF OFFICIAL DUTIES INDICTMENTS, CONVICTIONS AND PLEA AGREEMENTS

● Accusatory motions ■ Convictions

▲ Plea agreements

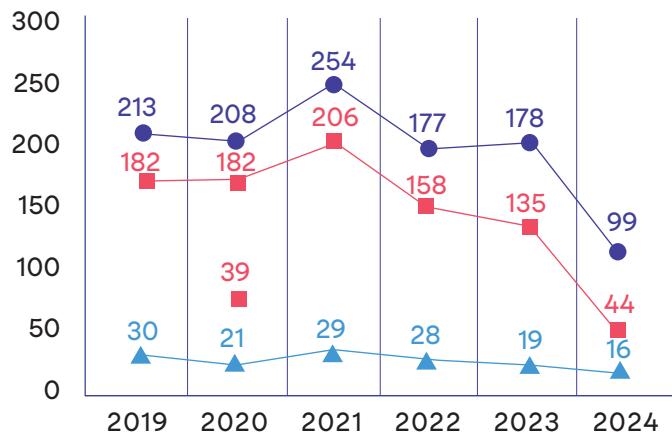


Chart 6: Obstruction of an Official in the Performance of Official Duties - Indictments, Convictions and Plea Agreements
Source: Responses from Basic Public Prosecutor's Offices

OBSTRUCTION OF AN OFFICIAL IN THE PERFORMANCE OF OFFICIAL DUTIES

DETENTION, SECURITY MEASURES, AND CONFISCATION OF OBJECTS

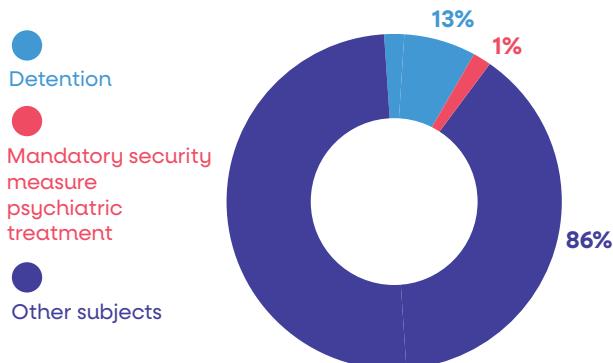


Chart 7: Obstruction of an Official in the Performance of Official Duties - Detention, Security Measures, and Confiscation of Objects

Source: Responses from Basic Public Prosecutor's Offices

OBSTRUCTION OF AN OFFICIAL IN THE PERFORMANCE OF OFFICIAL DUTIES APPEAL OUTCOMES

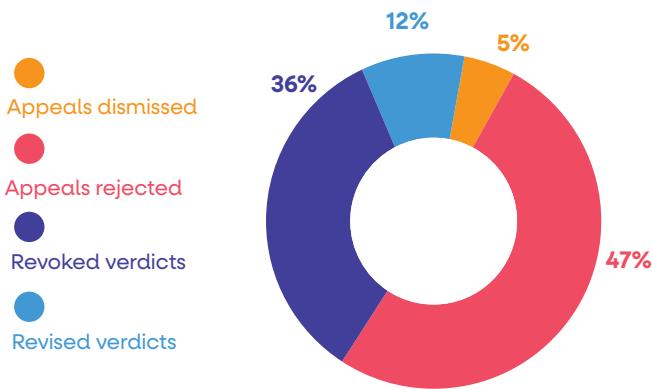


Chart 8: Obstruction of an Official in the Performance of Official Duties - Appeal Outcomes

Source: Responses from Basic Public Prosecutor's Offices.

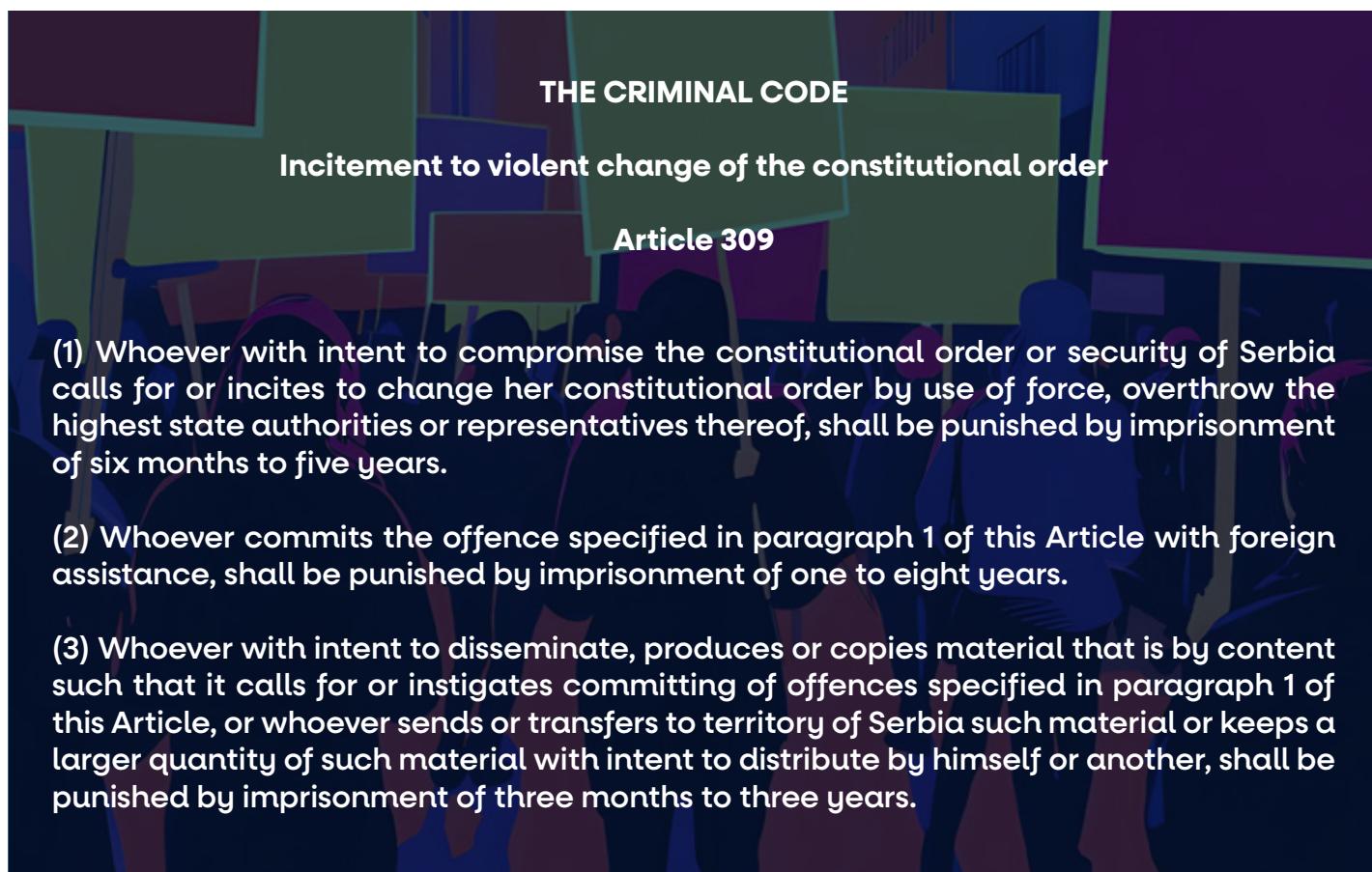
This practice gains additional significance when viewed in light of the statistics on appeals against convictions during the observed period.

Appeals were filed in only 7.63% of cases, which may indicate a limited willingness or ability of defendants to challenge the judgments. This may stem from the fact that, in most cases, the primary-and often the only-piece of evidence was the testimony of a police officer, which the courts generally regard as credible.

In the majority of cases, appeals were dismissed and the judgments upheld, while 20% of convictions were quashed and 11% were modified. Taken together with the high rate of dismissal of reports typically submitted by the police, these data point to a systemic practice that may seriously affect the right to a fair trial and the legal certainty of citizens.

1.1.4. INCITEMENT TO VIOLENT CHANGE OF THE CONSTITUTIONAL ORDER (ARTICLE 309 OF THE CRIMINAL CODE)

ANALYSIS OF CASE LAW



Public assemblies may serve as a platform for radical political ideas, including calls for the violent overthrow of the government or the disruption of the constitutional order.

While political speech is protected under the right to freedom of expression, this provision of the Criminal Code defines the boundary between legitimate political activism and incitement to violence, thereby preventing the destabilization of society and the escalation of conflict.

However, practice shows that individuals and activists have been charged with this criminal offence even when their speech was figurative or politically satirical. This raises the question of whether this provision is used solely for the protection of constitutional order, or at times also as a mechanism for suppressing political dissent.

This criminal offence is particularly noteworthy from the perspective of case law. We examined nine first-instance decisions of the Higher Court in Belgrade and three second-instance decisions of the Belgrade Court of Appeal. Out of the nine first-instance decisions, one resulted in an acquittal, one decision imposed compulsory psychiatric treatment due to the defendant's lack of criminal responsibility, and two were convictions⁵², one final and one later overturned,⁵³ while in the remaining five cases, a plea agreement was concluded.⁵⁴

⁵² Higher Court in Belgrade, Judgment KPo3 31/21 of 6 June 2022, upheld by the Appellate Court in Belgrade in Judgment Kž1-Po3 17/22 of 18 October 2022. A suspended sentence was imposed.

⁵³ Higher Court in Belgrade, Judgment K. No. 276/23 of 11 July 2023, overturned by the Appellate Court in Belgrade in Decision Kž1 983/23 of 13 September 2023.

⁵⁴ Higher Court in Belgrade, Judgment Spk No. 33/23, Judgment Spk No. 65/23, Judgment Spk No. 66/23, Judgment No. 67/23, Judgment Spk No. 68/23.

In four cases relating to the same date and event - 24 December 2023, namely a citizens' protest over alleged electoral fraud in the Belgrade local elections held in front of the Belgrade City Assembly, four individuals were detained by the police for 48 hours and subsequently convicted in proceedings confirming plea agreements for two offences: Violent behavior at a sporting event or public assembly, and Incitement to violent change of the constitutional order.⁵⁵ Immediately prior to the initiation of the proceedings, the Ministry of Justice issued a public statement in which Minister Maja Popović condemned the violent actions of those gathered in front of municipal and state institutions and called on participants not to destroy state property, incite chaos, disorder and panic, or commit criminal offences. She emphasized that state authorities would not tolerate violence, that the state is stronger than any deviant individual or organized violent group, and that it would preserve the constitutional order. Minister Popović further stated that state power can only be obtained through elections.⁵⁶

What is particularly noteworthy in all of these judgments - in which the same public prosecutor and the same preliminary proceedings judge acted - is that these two criminal offences were not distinguished from one another in the description of the act. This raises a serious question as to whether such a judgment meets the mandatory requirement prescribed by Article 314 of the Criminal Procedure Code.

Namely, Article 314 stipulates that the description of the criminal offence forming the subject of the charges is a mandatory element of the plea agreement, while Article 316 provides that the court must reject any agreement that does not contain this mandatory element.

In all of the judgments, only the conduct that could potentially constitute the offence of Violent behavior at a sporting event or public assembly is explicitly described, while no actions are described that would constitute the offence of Incitement to violent change of the constitutional order. Moreover, the descriptions of the acts are nearly identical across all four judgments, with only minor variations concerning the objects allegedly thrown at the Belgrade City Assembly building - yet the two criminal offences are not separated at all. At this point, we will reproduce the description of the criminal act from one of the judgments, which is almost identical in all four decisions. The defendant was found guilty for the following: "During a citizens' protest, he engaged in violence at a public assembly and incited the forcible overthrow of representatives of the highest state authorities by throwing a stone and breaking the glass of the Belgrade City Assembly building, thereby calling on other protesters to forcibly enter the Assembly and proclaim victory in the elections from the Assembly's balcony."

INCITEMENT TO VIOLENT CHANGE OF THE CONSTITUTIONAL ORDER CRIMINAL CHARGES

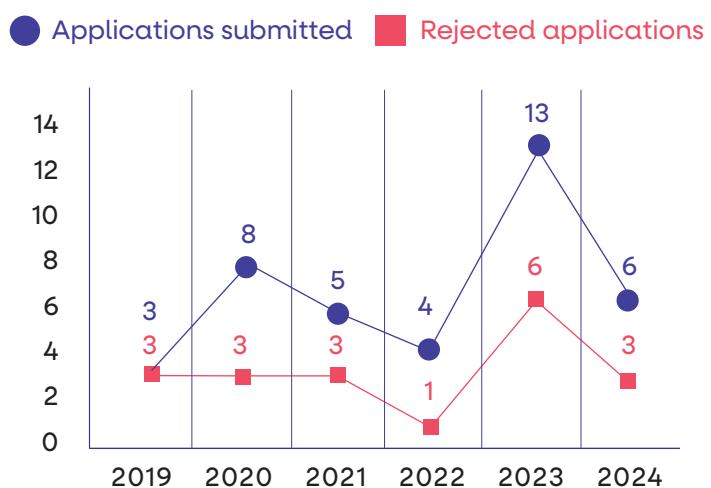


Chart 9: Incitement to violent change of the constitutional order -criminal charges. Source: Responses from Basic Public Prosecutor's Offices.

⁵⁵Higher Court in Belgrade, Judgment Spk No. 65/23, Judgment Spk No. 66/23, Judgment No. 67/23, Judgment Spk No. 68/23.

⁵⁶Ministry of Justice press release of 24 December 2023. Available at: <https://www.mpravde.gov.rs/sr/vest/41723/ministarka-pravde-osudila-nasilje.php>

Although the judgment states that he “incited,” no specific conduct describing how the defendant allegedly did so is provided. Unfortunately, the convicted individuals did not exercise their right to appeal, and these judgments have therefore never been subjected to a review of their legality, even though, based on the sparse reasoning in the decision, one may legitimately question whether they even meet the legal requirements for a valid judgment.

Another case in which an individual was convicted through the confirmation of a plea agreement following detention at the “Serbia Against Violence” protest drew significant attention from the professional public at the time, as it was evident from the narrative promoted in pro-government media that the accused activist would not be afforded the right to a fair trial, particularly given that the incident was publicly identified, disclosed, and commented on by the highest representatives of the executive branch. Ana Brnabić, then Prime Minister of Serbia, posted on her Twitter account following the fifth “Serbia Against Violence” assembly, sharing a photo depicting the “hanging of Vučić.” Her remarks - “How do we explain this to children?” and, in another tweet, “You have a different vision, OK, but hanging, and you claim to stand against violence?”, were also reported by regional media outlets.

The defendant in this case was convicted for the following conduct:

“He called on citizens to forcibly overthrow the representative of the highest state authorities, the President of the Republic, and carried a banner that read ‘Vultures and hyenas march together for a safe Serbia,’ and on the other side ‘Pink Stink,’ from which a doll bearing the likeness of the President of Serbia was hanging, wrapped with thread around the neck and with its head facing downward, suggesting a hanging. He handed this banner to other participants of the assembly to take photos with, and such a photo was published on electronic media platforms and thus made available to a large number of citizens.”

Prior to signing the plea agreement, the convicted individual was first held in police custody for 48 hours, after which pre-trial detention was ordered. Although it is again not entirely clear which specific actions constituted the elements of the offence of Incitement to violent change of the constitutional order, this judgment further confirms the previously stated view that this offence is applied with excessive ease by the competent state authorities and is used as a tool of political pressure.⁵⁷

On the other hand, in a separate case, the Belgrade Court of Appeal, when granting the defendant’s appeal and remanding the first-instance judgment for retrial, adopted a very noteworthy position⁵⁸, it is one of the few reasoned decisions relating to this criminal offence that can be found in judicial practice. Namely, after evaluating the evidence presented, the first-instance court established that on 8 May 2023, with the intent to endanger the constitutional order of the Republic of Serbia, the defendant called for its constitutional order to be changed by force, and for the highest state bodies and representatives of those bodies, i.e. the National Assembly of the Republic of Serbia and the President of the Republic of Serbia, Aleksandar Vučić, to be overthrown, by stating at a public assembly held in front of the National Assembly under the slogan “Serbia Against Violence”, as one of the participants at the said public assembly, in response to the address of an unidentified participant who said, “we have just heard - what is your comment, Mr. Brkić?”, the following words, among others:

⁵⁷Brnabić to protest participants: “You have a different vision – OK, but hanging, while you claim to fight against violence?”, Tanjug. Available at: <https://www.tanjug.rs/srbija/politika/33989/brnabic-porucila-ucesnicima-protesta- imate-drugaciju-viziju-ok-ali-vesanje-a-borite-se-protiv-nasilja/vest>

⁵⁸ Appellate Court in Belgrade, Decision Kž1983/23 of 13 September 2023

"It seems that young kids will have to resolve the fate of Serbia with rifles, what must happen will happen. Enough with protest walks - we should enter the Parliament and grab the idiot and tear his head off, fuck your mother Angelina, you've messed with us long enough, and we keep silent, we just keep silent - do you want [anonymized name and surname of the defendant] at 67 years old to bring you freedom?"

The audio recording was subsequently published in its entirety, with a duration of 10 minutes and 18 seconds, on the YouTube channel "Srbin.info," while a segment of the video and audio recording from 00:54 to 01:17 minutes was published on the internet portals of various public media networks - "Srbin.info," "TV Pink," Twitter - thereby making it accessible to a large number of citizens. By first-instance judgment, the defendant was found guilty and sentenced to one year and two months of imprisonment, with the time spent in pre-trial detention, amounting to two months and six days, to be credited toward the sentence.

In overturning this decision, the Court of Appeal stated, among other things:

"The act of calling for a violent change of the constitutional order is committed by a person who, with the intent of endangering the security or constitutional order of the Republic of Serbia, calls for or incites the use of force to change its constitutional order, or to overthrow the highest state authorities or their representatives. The actus reus of the criminal offence consists of calling for or inciting activities directed against the security or constitutional order of Serbia. 'Calling' involves creating in another person the decision to undertake certain actions and is most often conducted through persuasion, convincing, presenting certain circumstances, and the like - and it must be directed at citizens or a group of citizens.

For the existence of this criminal offence, the manner in which the calling is carried out is not relevant, but it must be conducted with the intent to endanger the security or constitutional order of Serbia. This subjective component is a constitutive element of the criminal offence and must be established in each specific case, as it is precisely what distinguishes this act from possible criticisms and assessments directed at the state order.

Criminal liability requires direct intent, and the perpetrator must be aware that they are advocating for a violent change of the constitutional order, or for the overthrow of the highest state authorities or their representatives."

In this way, the Belgrade Court of Appeal established a clear distinction between freedom of expression and political criticism on the one hand, and unlawful calls for the violent change of the constitutional order on the other.

The importance of judicial review of each indictment for this criminal offence lies in the need to establish case law defining which actions constitute this crime, and, above all, to prevent its misuse for political purposes. Thus, the Higher Court in Belgrade acquitted a suspect who had posted three video recordings on the Facebook page "United People of Serbia," in which he called on citizens of Serbia to engage in a general strike.⁵⁹ In the videos, he stated that the police would "get their asses kicked" if they did not protect him from hooligans, called on citizens to bring sticks, arrive with tractors, bring manure, bring hoes and shovels because "there will be work to do there"; he was holding a hoe in the video and said it was a tool for the announced strike; he also posted a video featuring Molotov cocktails... In this case, the court found that the elements of the criminal offence of calling for a violent change of the constitutional order were not fulfilled, primarily - the existence of intent was not proven, and there was no explicit call for the violent change of the constitutional order.

⁵⁹ Higher Court in Belgrade, Judgment KPo3 No. 45/21 of 8 June 2023, upheld by the Judgment of the Belgrade Court of Appeal, Kč1-Po3 25/23 of 4 October 2023.

From the few reasoned judgments for this criminal offence that we have had the opportunity to review, several important characteristics of this offence have emerged:

- an explicit and unequivocal call for the violent change of the constitutional order, or for the overthrow of the highest state authorities or their representatives - without an explicit call, the criminal offence is not constituted;
- the intent to call for the violent change of the constitutional order is an integral element of this criminal offence and must be established in each individual case;
- the commission of this criminal offence necessarily requires intent.

STATISTICAL ANALYSIS

According to the data provided by the higher public prosecutor's offices, the number of criminal complaints for the offence of calling for the violent change of the constitutional order shows a moderate intensity throughout most of the observed period, with an average of three to five complaints per year. However, in 2023 there was a sharp increase, with as many as 13 complaints filed, more than a threefold rise compared to the previous year. This surge coincides with a period of intense civic protests and political polarization.

An analysis of judicial outcomes shows that only a small number of complaints result in court proceedings. Over the six-year period, out of a total of 39 criminal complaints, 19 were dismissed. Of the seven convictions, six have become final, while one was overturned (the proceedings are still ongoing before the first-instance court). Of the six final convictions, five were rendered on the basis of confirmed plea agreements, all of which were issued in 2023. During the observed period, one final acquittal was also issued - in proceedings initiated in 2021 and concluded with finality in 2023. This data indicates that in situations where proceedings are initiated, the courts predominantly render guilty verdicts.

INCITEMENT TO VIOLENT CHANGE

OF THE CONSTITUTIONAL ORDER

INDICTMENTS, CONVICTIONS
AND AGREEMENTS

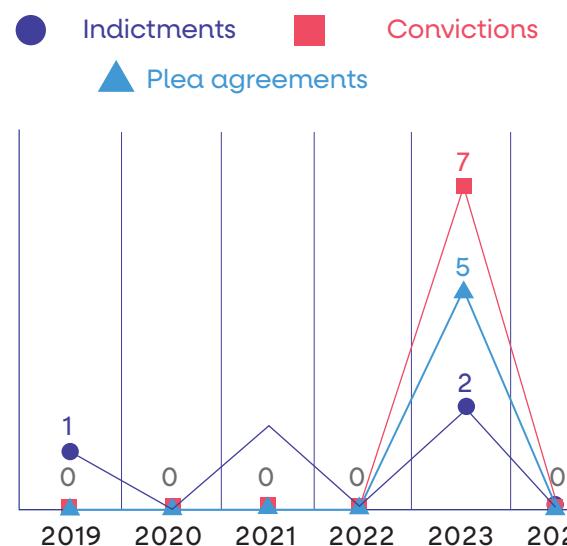


Chart 10: Incitement to violent change of the constitutional order indictments, convictions and agreements
Source: Responses from Basic Public Prosecutor's Offices.

With regard to the measures applied to ensure the presence of the accused, data from the higher public prosecutor's offices show that detention is ordered in as many as 50% of cases. However, what is particularly concerning is that the majority of plea agreements were concluded already during police custody, before detention was even ordered. Additionally, the classification of the offence as a threat to the constitutional order enables the involvement of the Security Intelligence Agency (BIA) in the collection of intelligence data.

INCITEMENT TO VIOLENT CHANGE OF THE CONSTITUTIONAL ORDER

DETENTION, SECURITY MEASURES, MEASURE OF CONFISCATION OF SUBJECTS

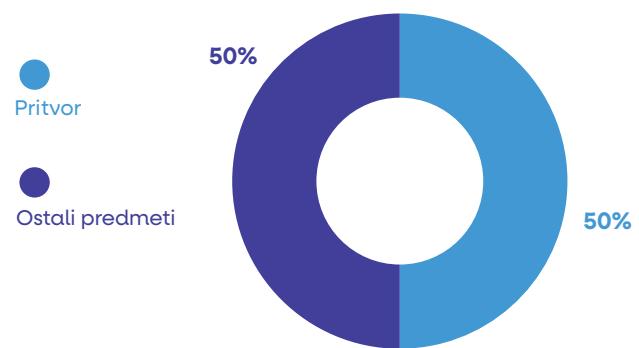


Chart 11: Incitement to violent change of the constitutional order - detention, security measures, measure of confiscation of subjects. Source: Responses from Basic Public Prosecutor's Offices.

The applicable Criminal Procedure Code stipulates that the role of the BIA is limited to the execution of special evidentiary actions, such as covert surveillance and recording, which may only be conducted with court authorization. The BIA does not have formal authority to independently arrest individuals, but it may collect information from them on a voluntary basis. However, several activists reported that BIA officers had detained and interrogated them in relation to these events, without identifying themselves and without informing them of the place and reasons for the detention. Some were reportedly subjected to threats, as well as verbal and physical abuse.

The application of the criminal offense of calling for a violent change of the constitutional order is largely conditioned by political circumstances. During periods of social tension and mass protests, an increase in the number of charges is recorded, creating the impression that this offense is used as a tool to control political dissent and restrict the space for public debate. A strong connection is evident between statements made by the state leadership and the manner in which the prosecution acts in cases of calling for a violent change of the constitutional order. Aleksandar Vučić, the President of Serbia,⁶⁰ addressed the public in relation to the citizen protests held on 24 December 2023, stating that representatives of the "Serbia Against Violence" coalition were attempting to violently take over the Belgrade City Assembly, but that the state would not allow it. Following this, demonstrators were arrested and charged with the criminal offense of calling for a violent change of the constitutional order.⁶¹ Similarly, after the President of Serbia, Aleksandar Vučić, stated⁶² on 9 August 2024 that there were plans for mass unrest aimed at overthrowing the government, and high-ranking officials and the prosecutor⁶³ announced zero tolerance for violence, several participants were detained and charged with this very criminal offense in the days following the protests.⁶⁴

⁶⁰"Vučić: The state is strong enough to defend democracy," Serbian Progressive Party press release, 24 December 2023.

Available at: <https://www.sns.org.rs/novosti/vesti/vucic-drzava-je-dovoljno-snazna-da-odbrani-demokratiju>

⁶¹"Was there incitement to violently overthrow the constitutional order at the protest: What lawyers say," N1, 26 December 2023. Available at: <https://n1info.rs/vesti/izbori-2023/da-li-je-na-protestu-bilo-pozivanja-na-nasilno-rusenje-ustavnog-poretka-sta-kazu-pravnici/>

⁶²"Vučić: The state will continue to build and work hard.", YouTube, <https://www.youtube.com/watch?v=UcAADfv4C0g>

⁶³Appeal of Chief Public Prosecutor Nenad Stefanović, Higher Public Prosecutor's Office in Belgrade, Belgrade, 9 August 2024. Available at: <https://beograd.vjt.rs/saopstenja/apel-glavnog-javnog-tuzitoca/>

⁶⁴ "Who are the detained members of the Eco Guard?", Danas, 18 August 2024. Available at: <https://www.danas.rs/vesti/drustvo/ko-su-privedeni-clanovi-eko-straze/>

Although most charges do not progress to the stage of court proceedings, those cases that are initiated most often result in convictions, indicating strict judicial practice in the application of this offense. Additional concern arises from the fact that detention is ordered in a high percentage of cases, which, aside from the pressure it may exert on the accused themselves, has the potential to create a strong psychological and deterrent effect on the wider public - particularly on citizens who are politically engaged or publicly express critical views.

The specificity of this criminal offense lies in the fact that, unlike the previously analyzed offenses, only two appeals were filed against the convictions. Most judgments were rendered on the basis of plea agreements, through which the accused, with the consent of the prosecution and the court, accepted a criminal sanction, most often a suspended sentence.

In such cases, by signing the agreement, the accused explicitly waives the right to appeal the judgment by which the agreement is adopted. Nevertheless, the right to appeal is not entirely excluded. An appeal may be lodged if there is insufficient evidence to establish reasonable suspicion that the accused committed the offense charged, or if the judgment does not correspond to the subject of the plea agreement.⁶⁵ The statutory deadline for filing an appeal is eight days from the date of receipt of the judgment.

1.2. MISDEMEANOAR COURTS

Misdemeanor courts play a significant role in safeguarding the right to public assembly and freedom of expression, particularly through their adjudication of proceedings frequently initiated against organizers and participants of protests. Their jurisdiction includes misdemeanors related to public assemblies, disturbances of public order and peace, traffic regulations, as well as other misdemeanors applied in the context of public expressions of civic dissent.

The relative speed and efficiency of misdemeanor proceedings make them suitable for timely and preventive responses to undesirable conduct during assemblies. However, this very characteristic of the misdemeanor procedure also creates space for abuse - through the initiation of unfounded proceedings aimed at intimidating participants and suppressing the right to peaceful assembly.

1.2.1. CRITERIA FOR THE SELECTION OF MISDEMEANORS

A qualitative analysis of judicial practice covered 226 decisions of misdemeanor courts⁶⁶ in Serbia. The analysis focused on decisions related to offenses connected to public assemblies, specifically violations under the Law on Public Assembly, the Law on Traffic Safety, and the Law on Public Order and Peace.⁶⁷

⁶⁵ Art. 338(1) and Art. 319(2) of the Criminal Procedure Code.

⁶⁶ Misdemeanor courts in Belgrade, Kragujevac, Kikinda, Zaječar, Sjenica, Valjevo, Negotin, Niš, Čačak, Gornji Milanovac, Kruševac, Lazarevac, Leskovac, Loznica, Obrenovac, Pančevo, Paraćin, Pirot, Požarevac, Preševac, Raška, Smederevo, Subotica, Bačka Palanka, Bećej, Senta, Trstenik, Aranđelovac, Kraljevo, Mladenovac, Novi Pazar, Novi Sad, Požega, Prijepolje, Ruma, Šabac, Sombor, Sremska Mitrovica, Užice and Vranje.

⁶⁷ The Law on Traffic Safety: Article 333, paragraph 1, item 51 (89 decisions), paragraph 1, item 52 (32), paragraph 1, item 26 (2); The Law on Public Assembly: Article 21, paragraph 1, item 1 (2), paragraph 1, item 2 (15), paragraph 1, item 3 (3), paragraph 1, item 6 (21), paragraph 2 in connection with paragraph 1, item 1 (6), paragraph 2 in connection with paragraph 1, item 3 (2); Article 22, paragraph 1, item 1 (2), paragraph 1, item 2 (21), paragraph 1, item 3 (4), paragraph 2 in connection with paragraph 1, item 2 (23); The Law on Public Order and Peace: Article 7, paragraph 2 (1).

SELECTED MISDEMEANORS

Article 93 of the Law on Traffic Safety prescribes that “A pedestrian must not walk or remain on the roadway, except in cases provided for by this law, nor may they suddenly step onto the roadway.” A fine in the amount of 5,000 dinars is prescribed (Article 333, paragraph 1, item 51).

Article 94 of the same law stipulates that “On a road that has a sidewalk or another surface designated for pedestrian movement, or a surface next to the roadway suitable for pedestrian movement, the pedestrian is obliged to use those surfaces. When bypassing an obstacle on the sidewalk, the pedestrian must, before stepping onto the roadway, pay attention to the distance and speed of an approaching vehicle and first make sure that by stepping onto the roadway they do not endanger traffic safety.” A fine in the amount of 5,000 dinars is prescribed (Article 333, paragraph 1, item 52).

Article 62, paragraph 1 of the same law prescribes that “A driver must not stop or park a vehicle in a place where it would endanger the safety of other road users or obstruct the normal flow of traffic or the movement of pedestrians.” A fine in the amount of 5,000 dinars is prescribed (Article 333, paragraph 1, item 26).

Article 21 of the Law on Public Assembly prescribes a monetary fine ranging from 70,000 to 120,000 dinars for a natural person as the organizer, from 1,000,000 to 1,500,000 dinars for a legal entity, and from 70,000 to 120,000 dinars for the responsible person in a legal entity if they fail to hold the assembly at the place and time stated in the notification (paragraph 1, item 1), fail to inform the public about the prohibition of the assembly (paragraph 1, item 2), fail to engage a stewarding service (paragraph 1, item 3), or fail to comply with the orders of the competent authority (paragraph 1, item 6).

Article 22 of the same Law prescribes a monetary fine ranging from 100,000 to 150,000 dinars for a natural person as the organizer, from 1,000,000 to 2,000,000 dinars for a legal entity, and from 100,000 to 150,000 dinars for the responsible person in a legal entity if they attempt to hold or hold an assembly at a location where assemblies are not permitted (paragraph 1, item 1), hold an assembly without notifying the competent authority (paragraph 1, item 2), or attempt to hold or hold an assembly contrary to a decision prohibiting the public assembly (paragraph 1, item 3).

Article 7, paragraph 2 of the Law on Public Order and Peace stipulates that “Whoever disturbs public order and peace or causes public disturbance by performing musical or other content, using musical instruments, radio and television receivers, and other sound devices, as well as mechanical sources of noise and sound signals (engines, sirens, etc.), shall be punished with a fine ranging from 5,000 to 30,000 dinars.”

DECISIONS ON THE DISMISSAL OF REQUESTS FOR INITIATION OF MISDEMEANOR PROCEEDINGS / MISDEMEANOR ORDERS

Out of the total of 226 analyzed decisions, misdemeanor courts issued decisions dismissing requests for the initiation of misdemeanor proceedings or misdemeanor orders in 33 cases, predominantly in cases of offenses prescribed by the Law on Traffic Safety. In regard to the dismissal of misdemeanor orders under the Law on Traffic Safety (21 cases), these involved proceedings initiated at the request of citizens who, upon receiving a misdemeanor order, sought a court decision. In most of these cases, the court found that the police had not lawfully identified the perpetrator of the offense or had failed to provide sufficient evidence that the offense had actually been committed.

When it comes to proceedings initiated on the basis of a request to initiate misdemeanor proceedings, which predominantly concern the application of the Law on Public Assembly (12 cases), the conditions for submitting such a request are prescribed by Article 184 of the Law on Misdemeanors. This article provides that a request to initiate proceedings shall be dismissed when the act described in the request does not constitute a misdemeanor. However, judicial practice records numerous instances in which the proceedings were nevertheless conducted, even though grounds for dismissal existed already at the initial stage.

Many citizens are thus charged as organizers of an unreported public assembly merely for sharing a protest invitation on social media, even though they carried out only one of the three cumulative actions required to be considered organizers.⁶⁸ As a result, such proceedings burden the accused and generate unnecessary costs, particularly in situations where a defense counsel is engaged, with the expenses falling on the court's budget. The reasons for this practice lie primarily in the overburdening of the courts, insufficient experience in applying the Law on Public Assembly, as well as the tendency to preserve functional cooperation with the police authorities. Although the burden of proof lies with the police as the authority submitting the request for initiating misdemeanor proceedings, in practice it is not uncommon for defendants who represented themselves without professional legal assistance to still be convicted, even when the requests for initiating proceedings were legally and factually deficient.

The most common deficiencies on the basis of which misdemeanor courts dismissed requests for initiating misdemeanor proceedings concerned: an imprecise description of the factual actions constituting the legal elements of the offense or an imprecise legal qualification; ambiguities regarding who the organizer of the assembly was; omission of information on the responsible person if the organizer was a legal entity; as well as deficiencies in indicating the registered seat of the legal entity, its tax identification number, and the exact date and location of the assembly. Since the Law on Misdemeanors obliges the court to issue an order to the applicant to rectify the request before issuing a decision on dismissal,⁶⁹ dismissal occurred in cases where the applicant failed to rectify the request within the prescribed time limit or did not do so in a satisfactory manner.

⁶⁸ The organizer of a public assembly is a natural or legal person who, in accordance with the provisions of this law, calls for the assembly, prepares, and organizes the assembly (Art. 10 of the Law on Public Assembly).

⁶⁹ Article 182(1) of the Law on Misdemeanors

The Misdemeanor Court in Zrenjanin dismissed the request for initiating misdemeanor proceedings submitted by the Sectoral Swimming Federation “Serbian Open Water Swimming Federation” because the applicant failed to prove its status as an injured party in the proceedings. The request concerned the organization of an unreported assembly. The Misdemeanor Court in Belgrade dismissed requests for initiating misdemeanor proceedings in ten cases because the police, as the applicant, did not rectify the requests within the prescribed deadline or, in the rectified requests, failed to remedy the deficiencies. The Misdemeanor Court in Niš dismissed the request after even the rectified request did not meet the legal requirements for initiating proceedings.

In one case, the request for judicial review was dismissed due to the expiration of the deadline for submitting the request. The person against whom the misdemeanor order was issued submitted the request for judicial review after the statutory deadline of eight days from the date of receipt of the misdemeanor order. Since the Law on Misdemeanors stipulates that the request for judicial review must be submitted by delivering the signed misdemeanor order to the court,⁷⁰ there are examples in practice where requests submitted in the form of a written submission, with an unsigned misdemeanor order attached as an annex, were dismissed. Out of a total of 226 analyzed decisions, in 67 cases the proceedings were terminated due to the statute of limitations for conducting the misdemeanor procedure.

CONVICTION JUDGEMENTS

Out of a total of 226 analyzed decisions of misdemeanor courts, the courts issued conviction judgments in only 16 cases, mostly for misdemeanors prescribed by the Law on Public Assembly. Specifically, in 14 cases the defendants were convicted as organizers of an assembly held without notifying the competent authority (Article 22, paragraph 1, item 2 of the Law on Public Assembly).

The diversity in the application of the Law on Public Assembly is clearly reflected in these judgments, in which court practice indicates that both football matches held in stadiums and concerts organized in open-air venues on private property, physically enclosed for the purpose of the event, are considered assemblies subject to the application of the Law on Public Assembly. This is despite the fact that such venues are classified as closed spaces under the Law - that is, as spaces that can be entered or exited only at designated points - for which, under the Law, there is no obligation to notify the public assembly.

Although the existence of a misdemeanor depends on this legal distinction, the court in the rendered judgments did not engage in examining the criteria for classifying a space as open or closed. It is noticeable that the defendants did not have legal counsel who could have raised this argument, but also that the defendants involved in the organization of sports events are aware that the Law on Public Assembly applies to their organization.

In practice, it is common for responsible persons to be prosecuted as natural persons - as organizers of unreported assemblies - instead of prosecuting legal entities, with the former most frequently receiving penalties within the prescribed legal range. On the other hand, when legal entities are prosecuted, warnings or fines below the statutory minimum are often imposed, which may be considered good practice, given that the law prescribes very high monetary fines for legal entities - ranging from 1,000,000 to 2,000,000 dinars.⁷¹

⁷¹ Article 21 (2) and Article 22 (2) of the Law on Public Assembly

The inconsistency in practice is particularly evident in cases concerning assemblies organized by the same organization, conducted before the Misdemeanor Court in Belgrade. Thus, out of a total of eight conviction judgments against the citizens' association "Istinoljublje," the proceedings were conducted against the legal entity in six cases, while in the remaining two cases the defendants were natural persons.

MISDEMEANOR COURT IN BELGRADE

A significant share of the decisions issued by the Misdemeanor Court in Belgrade during the observed period concern proceedings against the citizens' association "Istinoljublje." A total of six acquittal judgments and eight conviction judgments were issued against this association, while in as many as 33 cases the proceedings were terminated due to the absolute statute of limitations for conducting misdemeanor proceedings. In an additional eight cases, the court dismissed the request to initiate misdemeanor proceedings because it was not duly rectified within the prescribed deadline, or because the deficiencies were not remedied even after the authorized applicant submitted an amended request.

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Since 2016, the citizens' association "Istinoljublje" has been organizing moving public assemblies (processions), which most often begin in front of the building of the Government of the Republic of Serbia, with a call to save the Valjevska Gračanica monastery, which was submerged that same year by the formation of the Rovni Lake. According to information published on their website,⁷² they have so far organized as many as 478 processions, which are held on Saturdays. Their assemblies typically gather around 20 participants who carry icons and other religious symbols.

By a judgment of the Misdemeanor Court in Belgrade, the organizer of the public assembly from the citizens' association "Istinoljublje" was sentenced to a fine of 300,000 dinars for the misdemeanor under Article 22(1)(2) of the Law on Public Assembly, committed on a continuous basis, namely for holding an assembly without notifying the competent authority. The defendant, who is the responsible person of the association "Istinoljublje," was tried as the organizer in the capacity of a natural person, and the court ordered the defendant to pay the fine immediately in accordance with Article 308 of the Law on Misdemeanors, under the threat of issuing a separate decision on the substitution of the fine. Interestingly, the court, as a precondition for applying Article 308, classified the misdemeanor as a more serious misdemeanor in the field of public order and peace, stating that there was a risk that the defendant would avoid the execution of the criminal sanction, given that they do not reside at their registered address. The Appellate Court rejected the defendant's appeal as unfounded. In the conviction judgments issued against the legal entity, the citizens' association "Istinoljublje," the most commonly imposed sanctions were warnings or monetary fines below the statutory minimum, ranging from 10,000 to 170,000 dinars. By contrast, in cases where responsibility for the assembly of this organization was attributed to a natural person, significantly higher monetary fines were imposed - in the amounts of 100,000 dinars and 300,000 dinars respectively.

⁷² Website of the citizens' association "Istinoljublje". Available at: <https://istinoljublje.wordpress.com/>

MISDEMEANOR COURT IN KIKINDA

By the judgment of the Misdemeanor Court in Kikinda, the organizer of an open-air assembly and concert held without notifying the Ministry of the Internal Affairs was convicted for the misdemeanor under Article 22(1)(2) of the Law on Public Assembly. The defendant, as the organizer of the unreported concert and children's program, was sentenced to a fine of 50,000 dinars. The court reasoned that no serious consequences had occurred, and therefore imposed the minimum prescribed fine. During the proceedings, the Misdemeanor Court in Kikinda was unable to serve the summons on the defendant, and thus gave credence to the testimony of the police officer whom the defendant had asked about the obligations related to holding the assembly. The police officer stated that he had advised the defendant to engage an agency to perform stewarding duties.

MISDEMEANOR COURT IN SUBOTICA

The Misdemeanor Court in Subotica convicted the organizer of a public assembly for failing to notify the Police Directorate in writing at least five days prior to the assembly, in accordance with Article 22(1)(2) of the Law on Public Assembly. The defendant was sentenced to a fine of 100,000 RSD.

In the proceedings, the defendant claimed that the assembly was a spontaneous assembly of citizens in response to local and national migration policy, while characterizing the initiation of the proceedings as an attack, given his membership in an opposition party.

He stated that he had seen the invitation to the assembly on Facebook, but that he had neither created nor posted it. A police officer testified that he had not checked the defendant's identity at the scene but that he knew him personally and had seen the invitation to the assembly on the defendant's Facebook profile. No link was submitted to the court as evidence - only a screenshot of the profile containing the post. Several witnesses were examined, and the court gave credence to the testimony of the police officers. In the reasoning of the decision, the court stated that the defendant had delivered a speech and had been seen with a megaphone at the assembly calling for the relocation of migrant centers outside the municipality, and thus identified him

as the organizer of an unreported assembly. The defendant was represented by legal counsel.

MISDEMEANOR COURT IN VRANJE

The Misdemeanor Court in Vranje convicted both the legal entity and the responsible person within the legal entity for the misdemeanor under Article 22(1)(2) of the Law on Public Assembly, for organizing an unreported assembly in support of an individual involved in court proceedings.

In the present case, the defendants submitted a notification of the public assembly one day before the scheduled hearing, which was rejected by the competent police directorate as untimely, and the defendants were informed accordingly. Since more than 300 citizens attended the assembly, carrying banners and wearing printed T-shirts with slogans of support, and meals were also distributed, the court gave credence to the testimony of the police officers, while it rejected the defense's claim that, following the rejection of the notification, the defendants did not appear in the capacity of organizers.

A monetary fine in the amount of 100,000 dinars was imposed on the legal entity, while the responsible person within the legal entity (a limited liability company) was fined 20,000 dinars.

MISDEMEANOR COURT IN NOVI SAD

The Misdemeanor Court in Novi Sad convicted the responsible person within a legal entity for holding an assembly, a football match, without notifying the public assembly, for the misdemeanor under Article 22(1)(2) of the Law on Public Assembly.

The defendant did not have an attorney. He accepted responsibility, as the responsible person of the football club, for holding a football match from 10:00 to 11:45 a.m. (Saturday, 26 August), within the youth league, between two registered football clubs, on the football club's field, noting that it constituted an assembly in an open space. He stated that the incident occurred due to an omission caused by a change in the match schedule. He was sentenced to a fine of 70,000 dinars (pursuant to Article 43 of the Law on Misdemeanors).

The Misdemeanor Court in Novi Sad, during the decision-making process and in connection with 40 requests to initiate misdemeanor proceedings for 40 misdemeanors under Article 22(1)(2) of the Law on Public Assembly and one misdemeanor under Article 7(2) of the Law on Public Order and Peace, against a single defendant, consolidated the 40 initiated cases into a single misdemeanor proceeding, joining them with the case that had been initiated first. The reason for these requests by the competent police directorate was that one person had protested continuously for 40 days against COVID passes for hospitality establishments at the city square in Novi Sad.

The defendant was represented by an attorney. During the proceedings, police officers were examined, as well as defense witnesses. The evidence presented included: a review of a photo from social media dated 20 October at 06:06 p.m., showing that citizens were invited from the defendant's profile to attend the defendant's program the following day, 21 October, at 8:00 p.m., at the statue of Miletić, on the topic "Ausweis," which (photo) was accepted as authentic, as well as the testimonies of the police officers who were present at the assembly.

The Misdemeanor Court in Novi Sad rendered a conviction judgment for the misdemeanor committed on 20 October 2021, while acquitting the defendant of all other misdemeanors. In the reasoning of the judgment by which the defendant was convicted, the Misdemeanor Court in Novi Sad stated: "The content of the invitation clearly indicates that the defendant was the organizer of the assembly, and the assembly in question, in which the defendant undeniably participated, corresponds to the content of the invitation. From the report and the testimony of the witnesses, it follows that 80 people attended the assembly, which is significantly more than 20, the minimum required for the assembly to be considered a public assembly."

The defendant was acquitted of the remaining misdemeanors because there was no evidence of the number of attendees, nor was there evidence that he was the organizer of the subsequent unreported assemblies, given that multiple individuals addressed the public and used phrases such as "see you tomorrow at the same time," and the walks were mostly spontaneous. There was also no evidence regarding the number of participants, as the court did not give credence to the reports of the Ministry of Internal Affairs in which the number was rounded down to zero (e.g., 30 citizens, etc.). Upon reviewing the CD containing photos from the assemblies, the court was unable to determine the number of individuals present, nor whether the individuals in the photos were participants or passersby.

MISDEMEANOR COURT IN ŠABAC

The Misdemeanor Court in Šabac convicted the defendant for walking and remaining on the roadway during a public assembly, thereby obstructing the normal flow of traffic, which constitutes a misdemeanor under Article 333(1)(51) in connection with Article 93(1) of the Law on Road Traffic Safety.

The defendant did not have an attorney. In her written defense, she contested the allegations in the misdemeanor order. She stated that on the specific date no police officer had checked her identity, and that Article 76 of the Law on Police had been violated. She further stated that the order claimed her identity had been established through direct observation. At the scheduled hearing for confrontation with the police officer, which did not take place because the officer failed to appear, the defendant accepted responsibility for the misdemeanor, on the basis of which, and considering the other evidence, the court sentenced her to a fine of 5,000 dinars.

This judgment represents an exception from the usual court practice for the same factual situation involving walking on the roadway during a public assembly, both of the Misdemeanor Court in Šabac and of other courts across Serbia. This outcome was influenced by the defendant's defense, in which she admitted her responsibility.

MISDEMEANOR COURT IN ZRENJANIN

The Misdemeanor Court in Zrenjanin sentenced the defendant to a fine of 5,000 dinars for walking and remaining on the roadway during a public assembly, thereby obstructing the normal flow of traffic, which constitutes a misdemeanor under Article 333(1)(51) in connection with Article 93(1) of the Law on Road Traffic Safety.

In ruling on the misdemeanor, the court noted that the defendant changed his defense at the hearing, which had previously been based on denying his presence at the event, after the presiding judge presented a photo from the assembly in which the defendant was marked with an arrow. According to the police officer's testimony, he took the photo himself and did not check the identity of the defendant but recognized him, while the actual misdemeanor order had been issued by his colleague. In response to the defense's arguments that the photo had been obtained unlawfully and that the procedure was contrary to the Law on Police, the court stated that it did not engage with the merits of those claims, and that its decision was based solely on the evidence presented at the hearing.

ACQUITTAL JUDGMENTS

Out of the total number of analyzed judgments, misdemeanor courts rendered acquittal judgments in 120 proceedings, while in 74 cases the proceedings were terminated due to the statute of limitations. One proceeding was discontinued for other legal reasons, namely because the issuer of the misdemeanor order failed to submit evidence to the misdemeanor court within the prescribed deadline.

As many as 92 acquittal judgments were rendered due to a lack of evidence that a misdemeanor had been committed. In some cases, the issuers of the misdemeanor orders failed to appear when summoned by the misdemeanor courts. However, the largest number of acquittal judgments were issued because the identity of the defendant had not been properly established. In as many as 75 misdemeanor proceedings, police officers did not verify the identity of the individuals in the prescribed manner, that is, in accordance with Article 76(1) of the Law on Police, which stipulates that *identity verification is carried out by inspecting an identity card or another public document with a photo, or electronically when the identity card carries both the actual and electronic identity, as well as Article 8(1) of the Regulation on Police Powers, which prescribes that a police officer verifies a person's identity by inspecting an identity card, driver's license, passport, or another public document with a photo issued by the competent authority, or by reading electronic documents using designated technical means.*

In the reasoning of its judgment, the Misdemeanor Court in Pirot even specifies the exact location at which a person must be identified based on police powers, stating that it was not proven that a misdemeanor had been committed because the defendant was identified immediately after the assembly by a plainclothes police officer at a distance of 50 meters from the location of the assembly, and not at the assembly itself.

It is indicative that, during hearings in misdemeanor proceedings, police officers stated that they had known the defendants beforehand or recognized them by sight, and therefore considered it unnecessary to identify them at the scene. In situations where the defendants were not properly identified, their personal data were obtained from the records of the Ministry of Internal Affairs.

Social media and the media were used as tools for detecting misdemeanors and identifying individuals in 13 proceedings. In the reasoning of an acquittal judgment, the Misdemeanor Court in Pirot stated that, *in the specific case, the conditions prescribed by Article 8(1) of the Regulation on Police Powers were not met, that no identification or photoing of the participants was carried out, that the participants themselves had posted photos from the assembly on social media which were not submitted to the court, and that even if they had been, it would have been questionable whether they were obtained in a lawful manner and whether their use in misdemeanor proceedings would have been permissible.*

Misdemeanor orders were issued against seven individuals, and misdemeanor proceedings were subsequently initiated in such a way that the protest itself was recorded with a video camera, after which police officers identified the participants at the police station based on the footage and subsequently drafted and sent the misdemeanor orders.

In 23 acquittal judgments, the court found that the police officers had not been physically present at the assembly itself, but rather had become aware of the potential misdemeanor indirectly, that is, based on statements from colleagues, other police officers, or from photos taken at the assembly. In such cases, misdemeanor courts determined that this conduct by police officers was contrary to Article 169(1)(1) of the Law on Misdemeanors, which stipulates that the authorized body or authorized official shall issue a misdemeanor order if the misdemeanor within its jurisdiction has been detected through the direct observation of a police officer or authorized official during control, supervision or inspection, as well as through an inspection of the official records of the competent authority...

In the reasoning of its judgment, the Misdemeanor Court in Užice stated that there was no evidence that a misdemeanor had been committed, because the police officer testified that he had not been directly present at the environmental protest, but had, after the protest and at the police station, identified the defendant based on photos taken by plainclothes police officers, which is contrary to Article 169(1)(1) of the Law on Misdemeanors.

In three acquittal judgments, misdemeanor courts referred to the freedom of assembly guaranteed to citizens by the Constitution of the Republic of Serbia. Thus, the Misdemeanor Court in Užice found that Article 54 of the Constitution of the Republic of Serbia guarantees the peaceful assembly of citizens, which may be restricted only for reasons prescribed by the Constitution. The court held that the subsequent issuance of a misdemeanor order could have led to a violation of the defendant's freedom of assembly. The temporary interruption of traffic occurred as a result of a peaceful protest, and that fact alone does not imply that the freedom of assembly may be restricted. Therefore, the concept of peaceful assembly must be interpreted in such a way as to also include conduct that, in a specific case, temporarily interrupts traffic.

Eight acquittal judgments were rendered on the grounds that it was not proven that the defendant was the organizer of the assembly. Thus, in the reasoning of one acquittal judgment, the Misdemeanor Court in Aranđelovac stated that the Law on Public Assembly prescribes three cumulative conditions that must be met for a person to be considered the organizer of an assembly, and that if a person merely calls for the assembly via social media, only one of those conditions is fulfilled, and that person cannot be considered the organizer of the assembly.

MISDEMEANOR COURT IN BELGRADE

The informal organization “Women’s Solidarity” organized a series of protests in November 2022 in front of the premises of the daily newspaper “Informer,” in response to its interview with a convicted serial rapist following his release from prison. The interview caused significant public distress and triggered a state of panic.

In the days following the news that a repeat rapist had been released without any accompanying psychological or social measures, and that he was homeless in Belgrade, a wave of alarming messages began to spread across social media, Viber groups, and the media. People were sharing information about the movements of this individual, warning women to stay safe. The situation escalated with the “Informer” interview, in which the convicted rapist was given more than an hour of airtime to present his own version of events. What disturbed the public even more than the interview itself was a deliberately edited sequence in which this person was prompted to describe how he would commit rape. The clip was subsequently released on social media. The spontaneous assembly was supported by a large number of citizens and continued throughout the month of November. The primary aim of the protest was to draw attention to the sensationalist and malicious way in which violence against women was being reported. This series of protests coincided with worldwide demonstrations that began following the killing of activist Mahsa Amini by the police in Iran, held under the slogan “If you are afraid of the dark, we will set the city on fire.”

At one of the protests in Belgrade, activists set off a so-called smoke bomb, which is the mildest form of pyrotechnic device and does not burn, but only emits colored smoke for 30 to 45 seconds pyrotechnic products and firing.” Considering that a key element of this misdemeanor is the disturbance of public order and peace or endangerment of citizens’ safety, it was evident from the misdemeanor applications that the purpose of the proceedings was not the preservation of public order, but rather a form of punishment against the activists for their advocacy to improve the representation of women in media reporting on violence. In its defense of the activists, YUCOM invoked the right to freedom of expression and explained the broader context of the use of a smoke bomb as a completely safe pyrotechnic device used to convey an extremely important message concerning society as a whole. It was stated that the elements of the misdemeanor were not met, given that there was no actual disturbance of public order and peace nor any endangerment of anyone’s safety.

In all three misdemeanor proceedings, the defense was successful. It is important to emphasize that although the police intended to intimidate the activists through misdemeanor proceedings, the misdemeanor court demonstrated a high level of understanding of the issue and, in two cases, discontinued the proceedings due to the statute of limitations, while in the third case acquitting the activist of responsibility.

The Misdemeanor Court in Belgrade acquitted the organization Women in Black, as a legal entity, and Staša Zajović, as the responsible person, of liability for the misdemeanor under Article 22(1)(1) and (2) of the Law on Public Assembly. The acquittal relates to the street action “Stop the War in Ukraine,” held on 26 February 2022, in Knez Mihailova Street in Belgrade, two days after the beginning of the Russian Federation’s invasion of Ukraine. The organization had notified the police of its intention to hold the action the previous day and requested protection from possible attacks. The court held that this constituted spontaneous action by members of the organization immediately following the outbreak of the war, and that the assembly could not have been notified five days in advance, as the war had not yet begun at that moment.

By a judgment of the Misdemeanor Court in Belgrade, the citizens’ association “Istinoljublje” was acquitted of liability for the misdemeanor under Article 22(2) in connection with Article 22(1)(2) of the Law on Public Assembly. In its decision, the court took into account that the testifying police officer was unable to explain the discrepancy between the number of citizens stated in the notification of the assembly and the number he mentioned in his testimony, nor could he identify who those individuals were.

It was also established that the defendants had informed those present on site that the assembly was not authorized, that no more than 20 persons were present, and that no one had identified the participants or issued an order for them to disperse. The court was unable to establish a link between the gathered citizens and the organization of the assembly by the defendants on 19 March 2022. Acting in accordance with the judge’s free assessment of evidence and the principle of *in dubio pro reo*, the court rendered an acquittal.

The majority of acquittal judgments in proceedings against the association “Istinoljublje” were based on the rules on the burden of proof, with it being observed that police officers summoned as witnesses often failed to appear when summoned by the court.

MISDEMEANOR COURT IN ŠABAC

Judgment PR 626/22 as an Example of Good Practice

The Misdemeanor Court in Šabac issued acquittal judgment No. 626/22, finding that the act attributed to the defendant did not constitute a misdemeanor. The defendant had been issued a misdemeanor order for the offense under Article 333(1)(51) of the Law on Road Traffic Safety, committed during environmental protests against the company Rio Tinto. The defendant denied guilt, stating that he had expressed his protest through a peaceful assembly with other citizens, which was the only way to prevent the issuance of a permit to the aforementioned company for lithium exploitation. In the reasoning of the acquittal, the Misdemeanor Court in Šabac cited the provisions of the Constitution of the Republic of Serbia, as well as the European Convention on the Protection of Human Rights and Fundamental Freedoms, specifically those provisions concerning the freedom of assembly and the freedom of association, along with the strict conditions under which these freedoms may be restricted. The court stated that, on the occasion in question, the defendant had exercised his right to freedom of assembly, as well as his right to freedom of opinion and expression, and quoted the relevant provisions of the Constitution and the European Convention that guarantee these rights to the defendant.

The court noted that, on the occasion in question, the defendant, together with other assembled citizens, was exercising the constitutionally guaranteed right to peaceful assembly, with the aim of expressing his opinion and voicing opposition to the activities of the company Rio Tinto. In the court's view, the defendant did not act unlawfully, as he expressed his disagreement with the company's activities in a peaceful manner, in a way permitted by the Constitution, together with other present citizens, which constitutes his constitutional right, as well as a right guaranteed by the European Convention and other international instruments (Universal Declaration of Human Rights, Article 20; International Covenant on Civil and Political Rights, Articles 21 and 22; International Covenant on Economic, Social and Cultural Rights, Article 8, etc.).

The court cited judgments of the European Court of Human Rights concerning the freedom of expression, the protection of the freedom of expression of opinion, as well as those relating to public assembly and the obligation of public authorities to demonstrate tolerance toward peaceful assemblies of citizens.

The court, in the conclusion of this judgment, emphasized the obligation of the State to ensure the realization of the rights enshrined in the European Convention for all those within its jurisdiction and proceeded to analyze the conduct of the police as a public authority. In this regard, the court stated that, in the present case, the State failed to demonstrate a commitment to the rule of law and the protection of fundamental freedoms, since the issuance of a misdemeanor order in this situation constituted an impermissible interference by the State in the exercise of fundamental human rights, aimed at intimidating citizens through financial penalties, thereby effectively discouraging them from exercising their guaranteed rights to freedom of assembly and freedom of expression. The court also recalled the case law of the European Court of Human Rights establishing that sudden and spontaneous assemblies are likewise protected under Article 11 of the European Convention.

MISDEMEANOR APPELLATE COURT

The Misdemeanor Appellate Court has issued a series of important judgments in the field of freedom of assembly. Particularly notable is the established case-law confirming the interpretation of Article 10 of the Law on Public Assembly, according to which three conditions must be cumulatively fulfilled for a misdemeanor to exist - that the defendant calls for, prepares, and organizes a public assembly. Despite the fact that such appeals have virtually no prospect of success, the police routinely lodge appeals against acquittal judgments of first-instance courts, thereby unnecessarily burdening the judiciary and subjecting acquitted individuals to additional harassment.

In the small number of cases in which the Misdemeanor Appellate Court has overturned acquittal judgments, such reversals were generally based on formal deficiencies in the reasoning or on the fact that the applicant had not been given the opportunity to properly rectify the request. However, even when the request was rectified, the supplemented request frequently still did not meet the requirements for initiating misdemeanor proceedings. There have also been cases in practice where the court failed to inform the defendant of the hearing at which police officers would testify as witnesses, nor did it acquaint the defendant with their statements, thereby violating the right to defense and the right to respond to evidence. Although the Law on Public Assembly prescribes high monetary fines, it is not uncommon for the court to impose fines below the statutory minimum, in amounts as low as 20,000 dinars.

The court is not bound by the legal qualification stated in the request (Case No. PRŽ 8945/19)

The Misdemeanor Appellate Court overturned the decision of the Misdemeanor Court in Belgrade due to substantial violations of procedural provisions, where the request to initiate misdemeanor proceedings filed by the Stari Grad Police Station for a misdemeanor under Article 22(1)(2) of the Law on Public Assembly had been dismissed. Namely, after the court issued a notice requesting the rectification of the request, the applicant submitted a rectified request in which the deficiencies had not been remedied.

However, the Misdemeanor Appellate Court took the position that the factual description in the request contains the elements of the misdemeanor under Article 22 of the Law on Public Order and Peace, and that the Misdemeanor Court is not bound by the legal qualification stated by the applicant.⁷³ Despite the applicant's assertion that a separate request under the Law on Public Order and Peace would be submitted in a separate proceeding, and the fact that the appeal arguments referred to the Law on Public Assembly, the Appellate Court found that the existing request already contained sufficiently precise facts indicating the existence of a misdemeanor under Article 22 of the Law on Public Order and Peace, regardless of the legal qualification of the offense.

Violation of the Right to Defense Due to Failure to Summon the Defendant to the Witness Hearing (Case No. PRŽ 10521/19)

The Misdemeanor Appellate Court overturned the judgment of the Misdemeanor Court in Kragujevac, by which the defendant had been sentenced to a fine of 70,000 dinars for misdemeanor under Article 22(1)(2) of the Law on Public Assembly, due to a substantial violation of procedural provisions and because the facts of the case had not been properly and fully established.

The court took the view that the first-instance court, by failing to summon the defendant and his attorney to the hearing of the police officers as witnesses, and by not acquainting them with the contents of their statements, had violated the right to defense, specifically, the right to respond to the evidence used against him.

A request cannot be dismissed without first inviting the applicant to amend it (PRŽ No. 8912/22)

The Misdemeanor Appellate Court overturned the judgment of the Misdemeanor Court in Novi Pazar, which had dismissed as irregular the request of the Novi Pazar Police Directorate to initiate misdemeanor proceedings. The request alleged that the defendant had committed a misdemeanor under Article 22, paragraph 1, item 1 of the Law on Public Assembly, due to social media posts calling citizens to protest.

The Misdemeanor Court in Novi Pazar had dismissed the request on the grounds that the factual description did not demonstrate that the defendant had met all three cumulative conditions required to be considered the organizer of a public assembly - namely, that they called for, prepared, and organized the assembly.

However, the Misdemeanor Appellate Court held that, prior to dismissing the request, the first-instance court was obliged to invite the applicant to rectify the deficiencies in the request.⁷⁴ By failing to do so, the Appellate Court found that a material violation of the provisions of the misdemeanor procedure had occurred.

⁷³ Article 185(6) of the Law on Misdemeanors

⁷⁴ Article 182 of the Law on Misdemeanors

No organization of an assembly without the cumulative fulfillment of three conditions (PRŽ No. 10628/2022)

The Misdemeanor Appellate Court dismissed the appeal of the Niš Police Directorate against the judgment of the Misdemeanor Court in Niš, which had rejected the request to initiate misdemeanor proceedings. The Appellate Court upheld the first-instance court's position that the conduct described - calling for a public assembly - does not in itself constitute a misdemeanor, as for a person to be considered the organizer of an unnotified assembly, they must cumulatively call for, prepare, and organize the assembly. Notably, even in the amended request, the applicant failed to address the identified shortcomings which had led the court to reject the request.

The organizer is not liable for the actions of stewards if all measures were taken (PRŽ No. 25151/23)

The Misdemeanor Appellate Court dismissed the appeal of the Police Directorate – Police Station Kikinda – against the judgment of the Misdemeanor Court in Kikinda, by which the defendant was acquitted of liability for a misdemeanor under Article 21, paragraph 1, item 3 of the Law on Public Assembly. The request to initiate misdemeanor proceedings had been filed on the grounds that public order and peace had been disturbed during the public assembly, with the applicant stating that the defendant had engaged four stewards from a security agency who did not exercise any of their powers during the event, for which misdemeanor proceedings were initiated against them, resulting in a conviction. The Misdemeanor Appellate Court held that the defendant had undertaken all necessary measures to prevent the disturbance of public order and peace, and that the occurrence of such circumstances could not be attributed to her fault.

Photos from a public Facebook profile can be used as evidence (PRŽ No. 17692/23)

The Misdemeanor Appellate Court dismissed the defendant's appeal against the judgment of the Misdemeanor Court in Novi Sad, by which the defendant was fined 110,000 dinars for a misdemeanor under Article 22, paragraph 1, item 1 of the Law on Public Assembly, for an event held on 21 October 2021, while being acquitted of liability for 39 assemblies held between 22 October 2021 and 12 January 2022.

In his appeal, the defendant contested the use of a photo from his Facebook profile as evidence, arguing that its use required prior verification of authenticity in order to exclude the possibility of photomontage or other forms of falsification. He also pointed out that the photo in itself did not contain anything that would unequivocally indicate that he was the organizer of a public assembly.

The court, however, stated in the reasoning of its decision that Article 50 of the Law on Police allows police officers, for the purpose of establishing the existence of elements of a punishable act, to obtain data and information from a person's Facebook account, provided that the account is public.

Requests to initiate misdemeanor proceedings

SPONTANEOUS ASSEMBLIES AND THE NORMATIVE FRAMEWORK

The data obtained show that the police most frequently filed requests to initiate misdemeanor proceedings against participants and organizers of public assemblies in relation to assemblies held without notification to the competent authority.⁷⁵ The Law on Public Assembly regulated, for the first time, the possibility of spontaneous assemblies - assemblies without an organizer, which represent an immediate response to a specific event, taking place after that event, either in open or closed space, for the purpose of expressing opinions and views regarding the event in question.⁷⁶ The law explicitly excludes the possibility for a spontaneous assembly to have an organizer.⁷⁷ Such a normative solution is not in line with international standards and has led to the practice of prosecuting individuals whom the police classified as organizers of spontaneous assemblies.⁷⁸

PROCEDURAL DEFICIENCIES IN REQUESTS TO INITIATE MISDEMEANOR PROCEEDINGS

Moreover, in the case of spontaneous or unnotified assemblies, difficulties arise in identifying the actual organizers, which has led to the prosecution of individuals who were the most active during the protests - for example, those who led the march or circulated calls on social media. The factual descriptions in police requests often do not provide sufficient basis to substantiate the claim that a particular individual was an organizer within the meaning of the legal definition - that is, that the person prepared, called for, and organized the assembly. Defendants who were represented by counsel and who pointed out this deficiency were generally acquitted of misdemeanor liability. In contrast, some defendants who lacked legal assistance were convicted, despite the burden of proof resting with the police. These outcomes can be partially explained by the courts' excessive caseload, insufficient familiarity with the relevant legal standards, but also by an effort to maintain good institutional cooperation with the police.

SELECTIVE PROSECUTION OF SPONTANEOUS AND UNNOTIFIED ASSEMBLIES

It is important to note that the police tolerated spontaneous and unnotified assemblies in most cases. However, the prosecution practices were selective and most frequently targeted assemblies aimed at criticizing the authorities. Organizers of multi-day protests were particularly exposed to pressure, as they were prosecuted for each individual day of the assembly, with some facing up to six misdemeanor proceedings simultaneously. This practice has a chilling effect on the organizers of public assemblies, given that each proceeding carried a potential fine of 150,000 dinars, which, if not paid within the prescribed deadline, could be converted into a prison sentence of 60 days.⁷⁹

⁷⁵ Article 22, paragraph 1, item 2

⁷⁶ Article 13, paragraph 1, item 4

⁷⁷ Article 13, paragraph 3

⁷⁸ General Comment No. 37 (2020) on the right of peaceful assembly (Article 21), UN Human Rights Committee, para. 14.14

⁷⁹ Article 22 of the Law on Public Assembly

The European Court of Human Rights has established that a chilling effect may persist even after the acquittal or withdrawal of charges against protest participants, as the very act of prosecution may discourage them from taking part in similar assemblies (Nurettin Aldemir and Others v. Turkey,⁸⁰ 2007, para. 34). Moreover, such action may deter others from participating in similar assemblies in the future (Balcik and Others v. Türkiye,⁸¹ 2007, para. 41), and the subsequent annulment of fines does not automatically eliminate the chilling effect (United Macedonian Organisation Ilinden and Ivanov v. Bulgaria⁸² (No. 2), 2012, para. 135).

In accordance with international standards on the freedom of peaceful assembly, the requirement to notify public assemblies is permissible only to the extent necessary to assist the authorities in ensuring the unobstructed holding of peaceful assemblies and the protection of the rights of others. However, the notification requirement must not become an end in itself, nor may it be misused for the purpose of restricting the freedom of assembly.⁸³

OTHER MISDEMEANORS

It is important to note that some of the responses from police directorates to requests for access to information of public importance were incomplete - in certain cases, although the article was cited, the relevant paragraph and item of the misdemeanor were omitted, making it impossible to precisely determine which offense was at issue. Based on the data that was nevertheless available during the research, the most frequently recorded misdemeanors included: holding an assembly contrary to a prohibition decision,⁸⁴ failure to engage a stewarding service,⁸⁵ failure to inform the public about the prohibition of the assembly,⁸⁶ and holding an assembly at a prohibited location.⁸⁷

Among the most frequently prosecuted misdemeanors, the prosecution of organizers for failing to engage in a stewarding service is particularly problematic. Namely, uncertainty over whether this refers to the engagement of a professional service or the organization of volunteers has led to legal uncertainty and selective prosecution of public assembly organizers. If this obligation were interpreted as requiring the engagement of a professional service, it would constitute a financial barrier to the freedom of assembly and result in discrimination against organizers who do not have access to the necessary resources. Moreover, engaging volunteers as stewards may in fact be more effective, as they often enjoy greater authority among participants, better understand the context and purpose of the protest, and can intervene more effectively in tense situations. According to an interviewee from a civil society organization, the obligation to hire private security for the organization of Pride represents a significant financial and organizational burden - an additional cost that other organizations do not face, since their assemblies do not require such security arrangements. This practice is confirmed by other interviewees, who state that the police have never required them to engage private security, indicating selective enforcement of this obligation. In addition to imposing a financial burden, such an approach shifts state responsibility onto the organizers themselves. However, a review of court practice suggests that this obligation is mainly interpreted restrictively in cases of commercial events, such as New Year's celebrations.

⁸⁰ European Court of Human Rights, Nurettin Aldemir and Others v. Turkey, judgment of 18 December 2007, applications nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02, 32138/02, 32141/02, 32143/02, and 32145/02. Available at: <https://hudoc.echr.coe.int/eng?i=001-84054>

⁸¹ European Court of Human Rights, Balcik v. Turkey, judgment of 29 November 2007, application no. 25/02., Available at: <https://hudoc.echr.coe.int/eng?i=001-83580>

⁸² European Court of Human Rights, Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, judgments of 2 October 2001, applications nos. 29221/95 and 29225/95. Available at: <https://hudoc.echr.coe.int/eng?i=001-107044>

⁸³ General Comment No. 37 (2020) on the right of peaceful assembly (Article 21), UN Human Rights Committee, para. 70.

⁸⁴ Article 22(1)(3)

⁸⁵ Article 21(1)(3)

⁸⁶ Article 21(1)(2)

⁸⁷ Article 22(1)(1)

The Law on Public Assembly prescribes only one misdemeanor for participants, failure of participants to comply with an order from the organizer or leader of the assembly to leave the assembly site (Article 20). Participants of public assemblies may also be held liable under other laws. The Law on Public Order and Peace regulates misdemeanors and criminal offences that may occur during a public assembly.

These include indecent, insolent, or reckless behavior (Article 8); insulting, committing violence, threats, or fighting (Article 9); igniting pyrotechnic devices or shooting (Article 17); insulting an official in the performance of their official duty (Article 22); and obstructing an official in the performance of their official duty (Article 23).

It is important to note that organizers or participants of public assemblies may be subjected to various forms of administrative pressure, which can result in the initiation of misdemeanor proceedings, even when such proceedings are not directly related to the assemblies themselves but are rather a consequence of their activism. One interviewee stated that his microenterprise had been subjected to a tax inspection, which he associates with the organization of public assemblies. Although no irregularities were found during that inspection, he perceives such scrutiny as a form of pressure, particularly given that tax inspections are rare.

STATISTICAL OVERVIEW

Although the court issues a decision to initiate misdemeanor proceedings in almost 92% of cases based on submitted requests, practice has shown an increasingly pronounced trend of dismissing requests filed by the police. This shift may be the result of the fact that, in cases of acquittals or statute-of-limitations dismissals, defense costs are borne by the court, as well as due to the support of the legal profession and civil society organizations, which have enabled a large number of defendants to have adequate legal representation. Several interviewees emphasized that the presence of an attorney was crucial to a successful defense. Most also noted that judges generally conducted the proceedings in a fair manner, although some observed that judges initially displayed a haughty and authoritarian attitude, which changed once an attorney became involved in the case.

LAW ON PUBLIC ASSEMBLY OUTCOMES OF INITIATED PROCEEDINGS

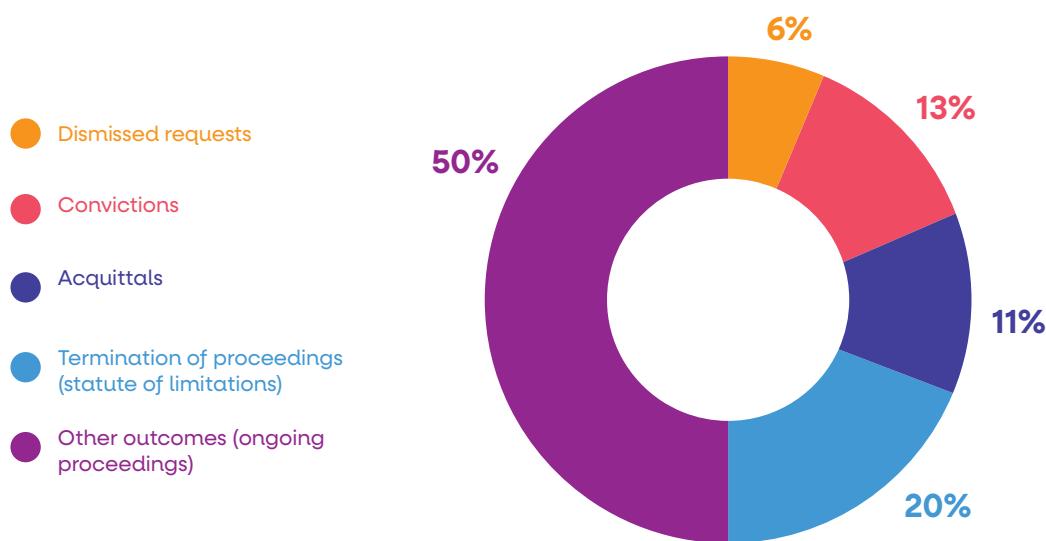


Chart 12: Law on Public Assembly – Outcomes of Initiated Proceedings
Source: Responses from Misdemeanor Courts

Perhaps the most illustrative indicator of systemic pressure on protest participants emerges from the analysis of court case outcomes. Almost half of all proceedings are still ongoing, indicating the slowness and inefficiency of the judicial system. Additionally, 20% of cases have been discontinued due to the statute of limitations, meaning that a large number of proceedings never result in a trial. When decisions are made, convictions are relatively rare (13%), while acquittals are even rarer. Furthermore, 6% of requests were dismissed, indicating that some proceedings lacked legal basis from the outset. According to one interviewee, an attorney, the police automatically lodge appeals against acquittals, even when such appeals have little chance of success, thereby unnecessarily prolonging the proceedings and increasing costs. She interprets this as an additional form of pressure on the accused.

The number of misdemeanor proceedings initiated under the Law on Public Assembly between 2019 and 2024 indicates a clear connection between the state's repressive measures and periods of intensive civic protest. According to data obtained from police directorates, 2021 stands out in particular, with a drastic surge in the number of initiated misdemeanor proceedings - as many as 155 cases, which is several times higher than in any other year of the observed period.

The year 2021 was marked by numerous protests in Serbia, including mass environmental protests against lithium mining linked to the company Rio Tinto. Citizens across Serbia, with the support of civil society, organized road blockades, rallies, and protest marches in opposition to harmful environmental projects and non-transparent government decisions. These protests intensified toward the end of the year, culminating in December 2021 with large-scale road blockades across the country. During this period, institutions responded by initiating a large number of misdemeanor proceedings against protest participants, as clearly reflected in the data. The Law on Public Assembly was one of the instruments used to sanction citizens, thereby further shrinking the space for free expression and peaceful assembly.

MISDEMEANOR PROCEEDINGS

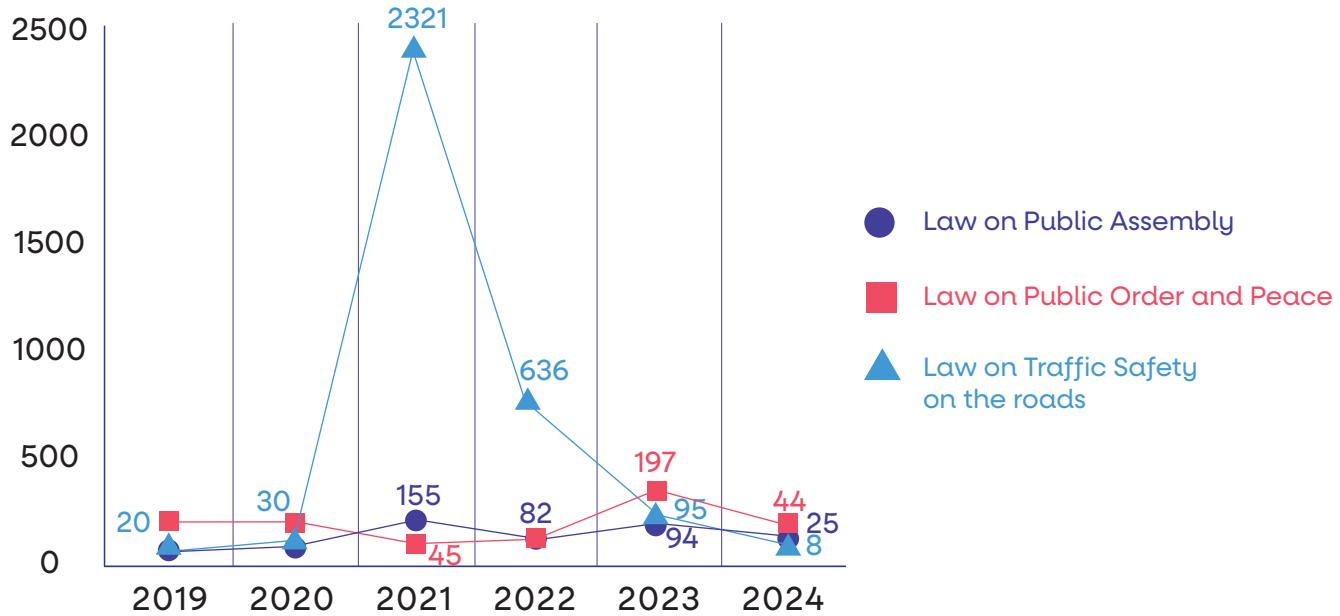


Chart 13: Misdemeanor proceedings. Source: Responses from police departments

Following this peak of repression, there was a gradual decline in the number of misdemeanor proceedings - 92 in 2022 and 95 in 2023 - which may indicate a slight stabilization, but also the continuation of institutional pressure, given that the number of proceedings remained significantly above the levels recorded in 2019 and 2020, when there were 29 and 30 cases respectively. In 2024, the number of proceedings again decreased to 41, yet still did not return to pre-protest levels, indicating the long-term consequences of repressive practices.

In the same period, a significant number of misdemeanor proceedings were also initiated under the Law on Public Order and Peace, especially in 2023, when there were 197 such cases, as well as a sharp increase in summary fines issued under the Law on Road Traffic Safety - as many as 2,321 cases in 2021, related to the sanctioning of road blockades during protests. This points to a broader strategy of legal pressure through the use of multiple legal bases with the aim of discouraging protests and civic activism.

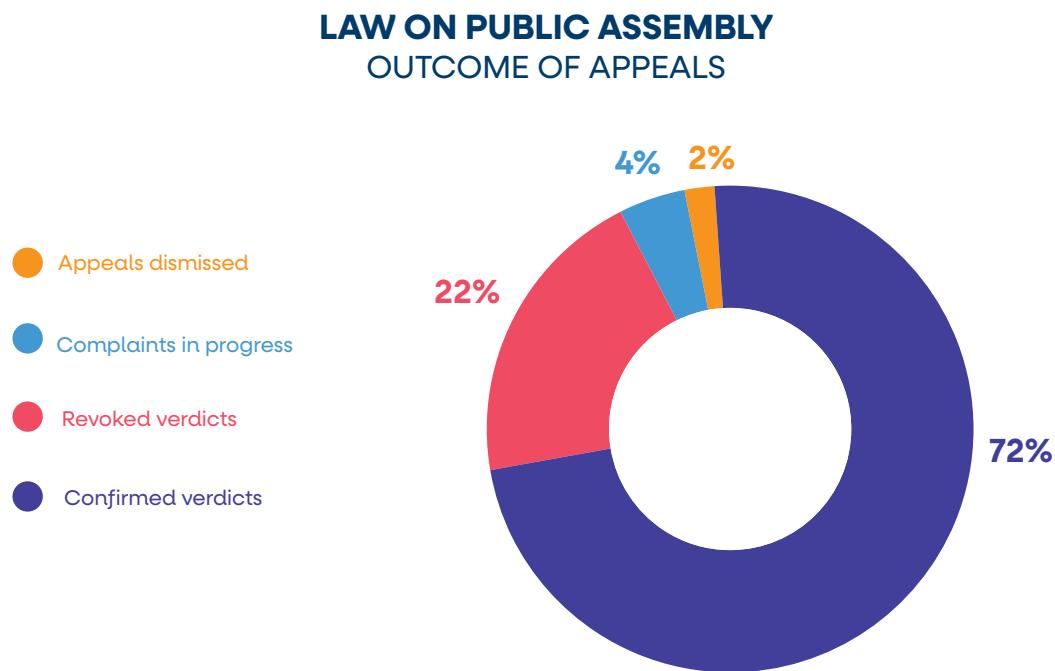


Chart 14: Law on public assembly-outcome of appeals Source:: Response of the Court of Criminal Appeals

The outcomes of appeals before the Misdemeanor Appellate Court show a high proportion of confirmed judgments (72%). This result is partly due to the practice whereby the police, as the applicant initiating the misdemeanor proceedings, automatically file appeals against first-instance judgments, regardless of their merits or prospects of success. Judgments are overturned in approximately one-fifth of cases (22%), while the number of decisions rejecting appeals as unfounded is very low (2%).

This section of the analysis examines the role of the police in ensuring and restricting the right to peaceful assembly in the Republic of Serbia, through an overview of the legal framework, practice, and international standards. It outlines how police powers related to public assemblies, including the prohibition and dispersal of assemblies, as well as the use of coercive measures - significantly deviate from international guidelines on freedom of assembly. Particular attention is given to the ineffectiveness of legal remedies in cases of assembly bans, selective protection of demonstrators, poor communication between the police and organizers, and the controversial use of coercive means, including biometric surveillance and sound-emitting devices (so-called sound cannons). The section also highlights shortcomings in the prosecution of unlawful police conduct, which further contributes to a climate of impunity. Through the analysis of the practices of competent authorities and courts, key points of non-compliance with the Republic of Serbia's international obligations are identified, particularly in relation to the standards of the European Convention on Human Rights and the case law of the European Court of Human Rights.

2.1.

POLICE RESPONSIBILITIES

The police play a crucial role in safeguarding the right to peaceful assembly, as well as in preventing potential incidents that could endanger the safety of participants and other citizens. The duties and responsibilities of the police in relation to public assemblies are regulated by the Law on Public Assembly,⁸⁸ the Law on the Police,⁸⁹ the Constitution of the Republic of Serbia,⁹⁰ and ratified international human rights treaties.⁹¹ The provisions of domestic legislation are to be interpreted in line with international standards arising from the practice of supervisory bodies responsible for monitoring the implementation of ratified international treaties, such as the European Court of Human Rights.⁹² These standards are of particular importance, especially when restrictions on the freedom of assembly are justified by vague concepts such as morality or the security of the Republic of Serbia.

Police officers are obliged to ensure that assemblies are held without disturbance, but they are also authorized to intervene if an assembly becomes violent, threatens public order and peace, or takes place in violation of legal provisions.

The police may use coercive measures against participants in an assembly,⁹³ detain them, and, in cases of serious threats to public safety, even order the dispersal of the assembly. However, any police intervention must comply with the law, pursue a legitimate aim, be necessary in a democratic society, and remain proportionate to the threat. In this context, it is essential to strike a balance between exercising the right to freedom of assembly and the legitimate grounds for its restriction,⁹⁴ while ensuring that the police perform their duties in a manner that does not endanger democratic values or fundamental human rights.

⁸⁸ "Official Gazette of the Republic of Serbia," No. 6/2016

⁸⁹ "Official Gazette of the Republic of Serbia," No. 6/2016

⁹⁰ "Official Gazette of the Republic of Serbia," Nos. 98/2006 and 115/2021

⁹¹ International Covenant on Civil and Political Rights, European Convention on Human Rights

⁹² Art. 18 of the Constitution of the Republic of Serbia

⁹³ Such as physical force, batons, and similar means.

⁹⁴ In accordance with Article 54 of the Constitution of the Republic of Serbia, the freedom of assembly may be restricted by law only when necessary for the protection of public health, morality, the rights of others, or the security of the Republic of Serbia.

LEGAL GROUNDS FOR BANNING PUBLIC ASSEMBLIES

The Law on Public Assembly stipulates that an assembly is not permitted when there is a threat to the safety of people or property, public health, morality, the rights of others, or the security of the Republic of Serbia; when the goals of the assembly are aimed at provoking or inciting armed conflict or the use of violence, at violating the human and minority rights and freedoms of others, or at stirring up racial, national, religious, or other forms of inequality, hatred, and intolerance; when there is a risk of violence, property destruction, or other large-scale disturbances of public order and peace; or when the assembly is contrary to the provisions of the Law on Public Assembly.⁹⁵ The police are authorized to prohibit, prevent, or disperse an assembly if any of these conditions are met.⁹⁶ Considering that the Law on Public Assembly also restricts assemblies in certain locations and outside the permitted hours (6 a.m. to midnight), the police are likewise empowered to ban assemblies held in such circumstances.

Assemblies are not permitted in locations where, due to their characteristics or specific purpose, there is a risk to the safety of people or property, public health, morality, the rights of others, or the security of the Republic of Serbia. For the purposes of this law, such locations include areas in front of healthcare institutions, schools, and preschools, as well as facilities of strategic or special importance for the defense and security of the Republic of Serbia. Assemblies are also prohibited in places where their organization would violate the human and minority rights and freedoms of others, endanger public morality, or in locations that are closed to the public.

The possibility for the police to ban an assembly on the grounds of illegality - such as failure to submit a timely notification - is not in line with international standards, which include the presumption in favor of peaceful assemblies. According to the Guidelines on Freedom of Peaceful Assembly⁹⁷ (para. 21), this presumption entails an obligation of tolerance and restraint toward peaceful assemblies, even when legal or administrative procedures and formalities have not been observed. In the case of *Oya Ataman v. Turkey* ⁹⁸ (no. 74552/01), the European Court of Human Rights held that the mere fact that an assembly was not formally notified cannot, by itself, constitute sufficient grounds for its prohibition, provided that the assembly remained peaceful.

General bans on the location or timing of public assemblies are likewise inconsistent with international standards. According to General Comment No. 37 of the UN Human Rights Committee⁹⁹, such restrictions may be permitted only in exceptional circumstances and must be based on clear and specifically applied reasons that correspond to legitimate aims, such as public safety or the protection of the rights of others. The burden of proof that such restrictions are necessary and proportionate lies solely with the state authorities and must be assessed on a case-by-case basis, in accordance with the requirements of Article 21 of the *International Covenant on Civil and Political Rights*.

⁹⁵ Article 8

⁹⁶ Articles 15 and 17

⁹⁷ Venice Commission and OSCE/ODIHR, 'Guidelines on Freedom of Peaceful Assembly (3rd Edition)', CDL-AD(2019)017rev, 15 July 2020. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)

⁹⁸ European Court of Human Rights, *Oya Ataman v. Turkey*, application no. 74552/01, judgment of 5 December 2006. Available at: <https://hudoc.echr.coe.int/eng?i=001-78330>

⁹⁹ General Comment No. 37 (2020) on the right of peaceful assembly (Article 21), UN Human Rights Committee, para. 55.

INNEFFECTIVENESS OF LEGAL REMEDIES IN PROTECTING RIGHTS

Under the Law on Public Assembly, the police must issue a decision banning an assembly no later than 96 hours before it is scheduled to take place.¹⁰⁰ The organizer may file an appeal against this decision to the Ministry of Internal Affairs within 24 hours, and the Ministry is obliged to decide on the appeal within the following 24 hours.¹⁰¹ Although the law does not prescribe a specific deadline for delivering these decisions, in practice they are usually served on time.

The organizer also has the right to file an administrative lawsuit before the Administrative Court against the decision of the Ministry of Internal Affairs.¹⁰² However, the law does not specify a time limit within which the court must render its decision, nor does it provide for an expedited procedure. As a result, court rulings are often issued months, or even more than a year, after the planned date of the assembly, rendering this legal remedy ineffective and inconsistent with international standards.

There is no legal remedy prescribed by law against a police order to terminate an assembly. The complete absence of a legal remedy against such an order represents a serious deficiency in the legal protection of the freedom of assembly. Termination of an assembly is often the most drastic measure, and the lack of any mechanism to review such a decision further endangers the rights of organizers and participants. According to the Guidelines on Freedom of Peaceful Assembly, court decisions prohibiting an assembly should be made without delay, ensuring that any appeal proceedings are concluded before the scheduled date of the assembly. The Guidelines also emphasize the importance of an effective administrative procedure (paragraph 125).

Bans on public assemblies in Serbia issued for security reasons often contain vague and almost identical explanations, which makes it significantly more difficult to file a successful appeal. The police typically cite the possibility of clashes between participants of the assembly and other individuals with opposing political views who might allegedly gather at the same place and time. In certain cases, security assessments are mentioned, but they are usually classified and inaccessible to the organizers, as was the case with the prohibition of the march during the EuroPride event in 2022.

Such practice is contrary to the Guidelines on Freedom of Peaceful Assembly, which require that participants have full access to relevant evidence, including risk assessments, in order to be able to challenge the proportionality of the restrictions imposed. The Guidelines further emphasize that the parties to the proceedings should have the right to judicial review of any refusal to disclose evidence, and that the authorities must not be permitted to rely on undisclosed evidence as the basis for restricting an assembly (para. 127).

According to data obtained from police departments, between 2019 and 2024 the police issued a total of 23 decisions prohibiting public assemblies and 50 orders to terminate assemblies. The highest number of bans was issued by police stations in Belgrade (17) and Valjevo (2), while single bans were issued by police stations in Pančevo, Sremska Mitrovica, Kragujevac, and Prokuplje. Orders to terminate assemblies were most frequently issued in Belgrade (46), followed by four in Jagodina and one in Novi Sad.

¹⁰⁰ Article ¹⁵

¹⁰¹ Article ¹⁶

¹⁰² Ibid.

Although these are not formal prohibitions, in the previous period there were recorded cases of informal pressure by police officers directed against participants and organizers of public assemblies, with the aim of discouraging them from organizing or taking part. This is also indicated by testimonies of interviewed activists who were warned in advance by police officers that by organizing or participating in an assembly they would allegedly be violating the law. Although such actions did not have the intended effect in their cases, it cannot be ruled out that other activists refrained from participating in public assemblies as a result of such warnings.

It is important to note that the context of such pressures differs from the practice of the ECtHR, according to which the police have an obligation to warn potential offenders in order to prevent violence, as emphasized in the case *Identoba and Others v. Georgia* (2015, para. 99)¹⁰³. In that case, the warning was directed at counterdemonstrators, with the aim of preventing violence against LGBT participants - that is, with the purpose of protecting the right to assembly, not restricting it.

LAW ON PUBLIC ASSEMBLY PROHIBITIONS AND SUSPENSIONS

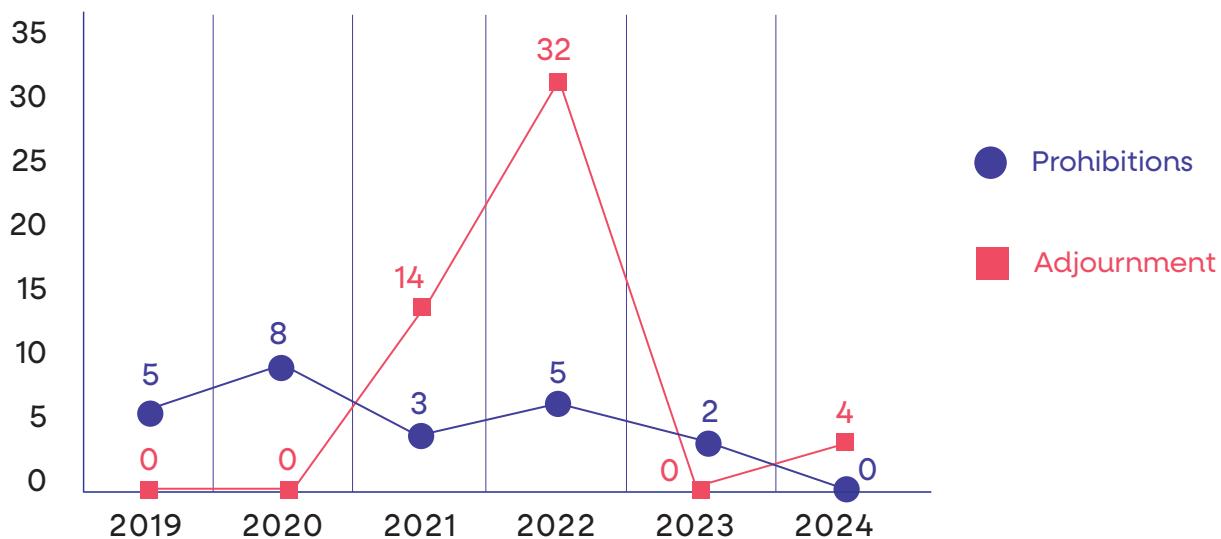


Chart 15: Law on public assembly prohibitions and suspensions. Source: Responses from police departments

According to data provided by the Ministry of Internal Affairs, from the entry into force of the Law on Public Assembly in 2016 until 2024, almost all appeals against decisions prohibiting assemblies were rejected, with only one exception.¹⁰⁴ Numerous decisions banning assemblies organized by Falun Dafa, issued during the same period in various cities and containing almost identical reasoning, indicate that such prohibitions are made centrally at the level of the Ministry of Internal Affairs rather than by the competent local police stations. This practice undermines the role of the Ministry as a second-instance authority and suggests that, in the process of protecting rights, it serves merely as an additional formal obstacle to access judicial review. Supporting this conclusion, a representative of a civil society organization noted that her organization's assemblies had been banned¹⁰⁵ several times by decisions of almost identical content, which could not be successfully challenged, assessing the available legal protection as slow and ineffective.

¹⁰³ European Court of Human Rights, *Identoba and Others v. Georgia*, application no. 73235/12, judgment of 12 May 2015. Available at: <https://hudoc.echr.coe.int/eng?i=001-154400>

¹⁰⁴ The only appeal by the Ministry of Internal Affairs that was upheld concerns a protest from 2018, when the ban on the gathering at Slavija - initially justified by the possibility of clashes with drivers - was lifted under public pressure. The protest was organized due to an unfulfilled promise to build a health center in the Stepa Stepanović neighborhood.

¹⁰⁵ Decision on banning the assembly for the removal of the Ratko Mladić mural, Vračar Police Station, 4 November 2021. Available at: <https://yihr.rs/wp-content/uploads/2021/11/YIHR-Resenje-bez-podataka.pdf>

According to data provided by the Administrative Court, between 2019 and 2024 the court received only two lawsuits challenging decisions prohibiting public assemblies, both of which were dismissed in 2021 and 2022. The lawsuits concerned the prohibition of an assembly related to the removal of the Ratko Mladić mural and the ban on the march within the EuroPride event. Interestingly, in the case concerning the ban on the assembly related to the removal of the Ratko Mladić mural in 2021, a request for a stay of execution of the administrative act was also submitted, which the court rejected within one day, while the decision on the lawsuit itself was made only after three months and ten days.

In the case concerning the prohibition of the march within the EuroPride event, the Administrative Court in 2022 rendered a decision rejecting the lawsuit within a reasonable timeframe, that is, before the scheduled date of the assembly. Together with the decision upholding the lawsuit regarding the ban on the assembly of the Serbian Radical Party in the village of Hrtkovci from 2018,¹⁰⁶ these are the only two cases in which the decision was made in a timely manner. At the same time, the decision in the Hrtkovci case remains the only one in which the lawsuit was upheld, although the assembly was again prohibited following a repeated notification, and the subsequent lawsuit concerning that second prohibition was later dismissed.¹⁰⁷

In addition to the fact that urgency of proceedings is not formally prescribed, the delay is also due to the excessive workload of the Administrative Court, which has led to a significant increase in the time required to resolve cases. When it comes to prohibitions of public assemblies, practice shows that the court responds promptly only in cases that attract substantial media attention, while such cases generally do not receive the priority that reflects their urgency.

According to data from the Constitutional Court, of the six constitutional complaints filed between 2016 and 2022 for violations of Article 54 of the Constitution of the Republic of Serbia, five were dismissed. The longest time taken to decide on a dismissal was seven years, six months, and 21 days from the date of filing. Four complaints were dismissed due to the failure to exhaust all legal remedies, while one was dismissed as incomplete. Similar to the Administrative Court, the Constitutional Court is chronically overburdened with a large number of cases, resulting in multi-year delays in decision-making and calling into question its effectiveness as a legal remedy.

The only constitutional complaint that was upheld concerned the prohibition of an assembly organized by Falun Dafa in 2018. On that occasion, the Constitutional Court found a violation of the right to freedom of assembly, as the prohibition had not been based on any security assessment by the police. Namely, from the Ministry of Internal Affairs' response to the lawsuit against the decision prohibiting the assembly, which had never been delivered to the plaintiff, nor considered by the Administrative Court in its ruling, it followed that no such security assessment had ever existed. In the reasoning of the decision prohibiting the assembly, the Ministry of Internal Affairs claimed that there was a possibility that citizens of the People's Republic of China might gather at the same place and time, which could lead to clashes with Falun Dafa supporters.¹⁰⁸ As the basis for that claim, the Ministry referred to allegedly "generally known facts," without providing any concrete evidence.

¹⁰⁶ The ban concerned a gathering of the Serbian Radical Party in Hrtkovci, scheduled on the anniversary of the war crime for which its leader Vojislav Šešelj was convicted. The court upheld the complaint due to a procedural error in the police station's decision, but a new ban was reissued and subsequently confirmed by the Ministry of Interior and the Administrative Court.

¹⁰⁷ Data from the Administrative Court's responses to freedom of information requests from 2023 and 2025.

¹⁰⁸ Falun Dafa is a spiritual practice originating from Chinese tradition, which has been considered a banned and persecuted organization in the People's Republic of China since 1999.

2.1.2. PROTECTION OF PARTICIPANTS IN PEACEFUL ASSEMBLIES

DUAL NATURE OF THE STATE'S OBLIGATION

The right to peaceful assembly encompasses both the negative obligation of the state to refrain from unjustified interference and the positive obligation to take proactive measures to enable the exercise of that right, including protecting demonstrators from violence, even when it originates from third parties such as counterdemonstrators. The European Court of Human Rights consistently emphasizes that authorities have a positive duty to ensure that assemblies can take place and to take all reasonable measures to protect participants, particularly when the assemblies involve unpopular or minority views. The role of the police is crucial in assessing risks, securing the venue, and managing traffic, while ensuring that any intervention imposes the least possible restriction on the right to assembly.

The authorities have a positive obligation to “use all available means, for example, by making public statements prior to demonstrations advocating, without any ambiguity, a tolerant and conciliatory attitude, and by warning potential offenders about the nature of possible sanctions” (Identoba and Others v. Georgia,¹⁰⁹ 2015, para. 99). Conversely, directly justifying or undermining attacks against protest participants, as well as statements by state officials that falsely portray peaceful protests as violent, may be regarded as encouragement of such actions. Organizers and participants of public assemblies are often targets of smear campaigns in pro-government tabloids. Interviewees reported that they initiate lawsuits for defamation when attacks are directed at individuals, but less frequently when organizations are targeted, due to unfavorable court practice in such cases. Although tabloid media have already been sued and convicted multiple times, their reporting style remains unchanged.

According to interviewees, this can be explained by the continuous financial support they receive from the state. One interviewee emphasized that she did not initiate a lawsuit against a tabloid due to a lack of adequate legal assistance.

OBLIGATIONS OF THE POLICE IN SECURING ASSEMBLIES

The ECtHR has established that a prohibition may have a chilling effect even if the assembly later proceeds without interference from the authorities - for example, when, due to the lack of authorization, the authorities would fail to provide protection to demonstrators against violent counterdemonstrators (Bączkowski and Others v. Poland,¹¹⁰ 2007, paras. 66–68). The fact that an assembly has not been formally notified does not relieve the police of their obligation to take adequate measures to secure it and maintain public order, especially when information about its occurrence was publicly available, widely known, or easily foreseeable.¹¹¹ In such circumstances, the competent authorities have sufficient grounds to assess potential security risks and to organize appropriate protection measures in a timely manner. The police are expected to act proactively and, in a manner, consistent with the respect for the right to peaceful assembly, regardless of the formal notification status of the assembly. Establishing informal but effective communication with organizers of such assemblies is essential for preventive action and minimizing possible incidents. The European Court also recognizes that spontaneous assemblies, although not formally notified, are protected under Article 11 of the ECHR, particularly when they are a response to an event of public significance (Bukta and Others v. Hungary,¹¹² 2007, para. 36).

¹⁰⁹ European Court of Human Rights, Identoba and Others v. Georgia, application no. 73235/12, judgment of 12 May 2015. Available at: <https://hudoc.echr.coe.int/eng?i=001-154400>

¹¹⁰ European Court of Human Rights, Bączkowski and Others v. Poland, application no. 1543/06, judgment of 3 May 2007. Available at: <https://hudoc.echr.coe.int/eng?i=001-80464>

¹¹¹ For example, citizens blocked roads during protests against the Law on Referendum and People's Initiative, as well as during protests organized in response to the tragedy in Novi Sad, which had been previously announced via social media and mass media, or it was known that the blockades were taking place every day at specific times.

¹¹² European Court of Human Rights, Bukta and Others v. Hungary, Application No. 25691/04, judgment of 17 July 2007. Available at: <https://hudoc.echr.coe.int/eng?i=002-2587>

The police's obligation includes providing safe routes and regulating traffic during moving public assemblies, as well as assemblies held on roadways. The police are required to direct and adapt traffic in order to ensure the safety of assembly participants, as well as other road users.

This obligation exists regardless of the legal status of the assembly - whether it is duly notified in accordance with the law, spontaneous, or even unlawful. Although an assembly may be labeled as "unlawful" under domestic legislation, the ECtHR has repeatedly emphasized that this, in itself, does not justify its dispersal nor the denial of protection to its participants (Oya Ataman v. Turkey, 2006, para. 39).

PROTECTION FROM COUNTERDEMONSTRATORS

The police have an obligation to ensure citizens' right to peaceful assembly, including protecting demonstrators from counterdemonstrators. The Guidelines on Freedom of Peaceful Assembly state that individuals have the right to gather as counterdemonstrators in order to express disagreement with the views expressed at a public assembly. The coincidence of time and place is essential for conveying their message in accordance with the "sight and sound" principle. The only limitation is that counterdemonstrations should not physically disrupt another assembly or create an imminent risk of violence that cannot be prevented or mitigated.¹¹³ Although counter-protests represent a legitimate form of expressing dissent, they must not escalate into hate speech or violence. The Court emphasized that the state failed to enable the assembly by not responding adequately to homophobic verbal attacks and physical pressure from counterdemonstrators, thereby violating its positive obligation under Article 11 of the ECHR (Berkman v. Russia, ¹¹⁴ 2020, para. 57).

The European Court of Human Rights has established that the authorities have a positive obligation to facilitate both protests and counter-protests by applying the least restrictive measures (Fáber v. Hungary, ¹¹⁵ 2012, para. 43). The authorities must also address hate speech by counterdemonstrators (Berkman v. Russia, 2020, para. 56), as demonstrators have the right to hold their assembly without fear of being subjected to physical violence by their opponents.

The right to counter-protest cannot be extended to disrupting the exercise of the right to protest (Platform "Ärzte für das Leben" v. Austria, ¹¹⁶ 1988, para. 32). The police are therefore obliged to protect participants of a peaceful assembly from groups and individuals opposing the event who might resort to violence to intimidate participants or attempt to disrupt the assembly.

In practice, there have been cases where the police, due to the potential for clashes between participants of a public assembly and counterdemonstrators, resorted to banning both assemblies¹¹⁷ or imposed a general, blanket ban on all public assemblies,¹¹⁸ which is contrary to the Guidelines on Freedom of Peaceful Assembly. Nevertheless, the police generally allow both protests and counter-protests to take place, fulfilling their obligations by physically separating participants and establishing communication with the organizers. A representative of a civil society organization noted that the communication between police officers and counterdemonstrators often appears inappropriately cordial, and that the police frequently fail to intervene in cases of hate speech by counterdemonstrators.

¹¹³ Venice Commission and OSCE/ODIHR, 'Guidelines on Freedom of Peaceful Assembly (3rd Edition)', CDL-AD(2019)017rev, 15 July 2020. Available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e) para. 77

¹¹⁴ European Court of Human Rights, Berkman v. Russia, Application No. 46712/15, judgment of 1 December 2020. Available at: <https://hudoc.echr.coe.int/fre:i>

¹¹⁵ European Court of Human Rights, Faber v. Hungary, Application No. 40721/08, judgment of 24 July 2012. Available at: <https://hudoc.echr.coe.int/eng?i=001-112446>

¹¹⁶ European Court of Human Rights, Plattform "Ärzte für das Leben" v. Austria, Application No. 10126/82, judgment of 21 June 1988. Available at: <https://hudoc.echr.coe.int/eng?i=001-57558>

¹¹⁷ RTV, "Ministry of Internal Affairs Bans EuroPride and Anti-Globalist Marches; Miletic: We Will March Regardless of Everything.". Available at: https://www.rtv.rs/sr_lat/drustvo/mup-zabranio-setnje-evoprajda-i-antiglobalista;-miletic-setacemo-bez-obzira-na-sve_1373362.html

¹¹⁸ "Police Ban All Tomorrow's Assemblies Regarding Srebrenica," RTV, 10 July 2015. Available at: https://www.rtv.rs/sr_lat/drustvo/policija-zabranila-sve-sutrasnje-skupove-povodom-srebrenice_618827.html

Lack of police response to react to hate speech may be interpreted as a tactical measure aimed at preventing the escalation of conflict, given that the offenders can be prosecuted subsequently. However, the absence of police intervention in cases of physical violence by counterdemonstrators constitutes a violation of international standards, the Constitution, and the applicable laws of the Republic of Serbia. One interviewee noted a pronounced difference in police conduct between Belgrade - where officers tend to be more experienced and restrained - and smaller towns, where police behavior often depends on the relationship between local police structures and political actors. As an example of police inaction, the interviewee referred to an incident on the bridge in Šabac, when an attempt was made to break through a blockade using an excavator, while the police stood about 30 meters away without intervening.¹¹⁹ Similarly, a representative of a civil society organization recalled an incident during the Mirdita festival, when a group of participants was locked inside the venue with padlocks, and the police once again refrained from intervening.¹²⁰

COMMUNICATION BETWEEN ORGANIZERS AND THE POLICE

In line with the standards established by the European Court of Human Rights (ECtHR), states have a positive obligation to ensure effective communication and coordination with the organizers of peaceful assemblies in order to enable the exercise of the rights guaranteed under Article 11 of the European Convention on Human Rights. The Court particularly emphasizes the importance of proactive conduct by the competent authorities, including timely information sharing, open dialogue, and the establishment of operational cooperation with the organizers (Frumkin v. Russia, 2016,¹²¹ paras. 128–129).

In practice, however, communication between organizers and the police in Serbia varies depending on location, personal relations, and the political context, resulting in an inconsistent approach to the exercise of the right to peaceful assembly.

In Belgrade, according to several interviewees, communication with the police is generally more professional, and organizers often manage to establish contact with unit commanders, which facilitates technical coordination and minimizes risks. One interviewee described daily communication with police officers during school protests supported by parents, noting that in some cases she managed to obtain operational information and support, although it was not always clear whether the police would act accordingly.

However, the issue of selective and informal conduct remains. A representative of a civil society organization noted that the attitude of the police often depends on personal relationships rather than consistent institutional practice, with decisions frequently based on the “personal judgment” of individual officers. As a negative example, she referred to a situation where, despite having duly notified the authorities and the presence of police protection, participants of the Mirdita festival were attacked by hooligans without an adequate police response.

Additionally, some activists, mistakenly identified as organizers, pointed to a lack of transparency in police communication. One interviewee recounted a case in which police officers came to her home to warn her not to participate in a protest but refused to disclose on whose orders they were acting. Although she recognized the officers, such non-transparent conduct further intensified the feeling of discomfort and insecurity.

¹¹⁹ “Thugs in Šabac: Ombudsman Finds Police Misconduct,” N1, 26 November 2022. Available at:

<https://n1info.rs/vesti/batinanje-u-sapcu-zastitnik-gradjana-utvrdio-nesavesno-postupanje-policije/>

¹²⁰ Organizers of the ‘Mirēdita, dobar dan’ Festival on the Ban: The State Sides with Hooligans,” Radio Free Europe/Radio Liberty, 27 June 2024. Available at: <https://www.slobodnaevropa.org/a/huligani-blokada-festival-miredita/33012090.html>

¹²¹ European Court of Human Rights, Frumkin v. Russia, Application No. 74568/12, judgment of 5 January 2016. Available at: <https://hudoc.echr.coe.int/eng?i=001-159762>

The ECtHR has, in several judgments, emphasized that authorities have a duty to communicate with protest organizers in order to prevent incidents and to ensure the effective exercise of the right to peaceful assembly (Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, 122 2001; Oya Ataman v. Turkey, ¹²³ 2006). Establishing timely and professional communication, even when an assembly is not formally notified, is considered a key instrument for balancing rights and public safety. Failure to fulfil this obligation, or its selective implementation, may be interpreted as a form of indirect obstruction to the exercise of the right to assembly.

SECURITY RISK ASSESSMENT

The case law of the European Court of Human Rights sets the framework for authorities conducting risk assessments. The Court has held that the mere existence of an abstract risk is not sufficient to justify the prohibition of an event. The authorities must make a concrete assessment of the potential scale of disturbances in order to evaluate the resources necessary to neutralize the threat of violent clashes (Faber v. Hungary, 2012, ¹²⁴ para. 40; Barankevich v. Russia, 2007,¹²⁵ para. 33). In Stankov and the United Macedonian Organisation Ilinden v. Bulgaria,¹²⁶ the Court emphasized the importance of allowing different views to be expressed on issues that may offend the sensitivities of the majority - views that would otherwise be silenced if any likelihood of tension or heated exchanges at an assembly were to result in a ban (para. 107). One of the authorities' duties is to communicate with protest leaders and mediate in dialogue to prevent possible disturbances (Frumkin v. Russia, ¹²⁷ 2016, paras. 128–129). The state's positive obligation is to effectively ensure the enjoyment of the right to peaceful assembly, particularly for those holding unpopular opinions or belonging to minorities (Bączkowski and Others v. Poland, ¹²⁸ 2007, para. 64), including LGBT assemblies, and this obligation extends both before and during the event.

A representative of a civil society organization pointed out that prohibitions of public assemblies are often inadequately reasoned, with explanations being nearly identical, and that the mere existence of risk, which is inherent in any assembly, cannot in itself constitute sufficient grounds for a ban. In his view, the existence of a security risk must be substantiated in a specific and convincing manner, for example, by indicating the existence of preparations for the commission of criminal offences.

Issues regarding the existence and accessibility of security risk assessments are clearly reflected in the practice of the Constitutional Court. This is confirmed by the decision upholding the constitutional appeal of Falun Dafa concerning the prohibition of an assembly in 2018. From the Ministry of Internal Affairs' response to the Administrative Court, which was neither delivered to the appellant nor reviewed by the court, it emerged that no security assessment had been made at all. In the case of the prohibition of the march during EuroPride 2022, the security assessment was classified as secret and remained inaccessible to the organizers.

¹²³ European Court of Human Rights, Oya Ataman v. Turkey, application no. 74552/01, judgment of 5 December 2006. Available at: <https://hudoc.echr.coe.int/eng?i=001-78393>

¹²⁴ European Court of Human Rights, Faber v. Hungary, application no. 40721/08, judgment of 24 July 2012. Available at: <https://hudoc.echr.coe.int/eng?i=001-112446>

¹²⁵ European Court of Human Rights, Barankevich v. Russia, application no. 10519/03, judgment of 26 July 2007, para. 33. Available at: <https://hudoc.echr.coe.int/eng?i=001-81766>

¹²⁶ European Court of Human Rights, Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, applications nos. 29221/95 and 29225/95, judgment of 2 October 2001. Available at: <https://hudoc.echr.coe.int/?i=001-59689>

¹²⁷ European Court of Human Rights, Frumkin v. Russia, application no. 74568/12, judgment of 5 January 2016. Available at: <https://hudoc.echr.coe.int/eng?i=001-159762>

¹²⁸ European Court of Human Rights, Bączkowski and Others v. Poland, application no. 1543/06, judgment of 3 May 2007. Available at: <https://hudoc.echr.coe.int/eng?i=001-80464>

USE OF VIDEO SURVEILLANCE

According to the Guidelines on Freedom of Peaceful Assembly (para. 172), recording for identification purposes, including biometric facial recognition, should be strictly limited to situations where there is a reasonable suspicion that a criminal offence has been committed. The Guidelines also emphasize that the presence of cameras and the possibility of being recorded may have a chilling effect, discouraging citizens from participating in public assemblies.

In line with the above Guidelines, Article 52 of the Law on Police limits the possibility of recording public assemblies to situations where there is a real danger to life, human health, or property. However, it remains unclear to what extent the police, when deciding to record, assess proportionality and justification, and whether there exists a standardized methodology for making such decisions.

Following the swift arrest of the suspect in the death of a pedestrian on Branko's Bridge in 2015, who had previously fled to China (the so-called "Countryman case"), the Serbian authorities decided to implement a mass biometric surveillance system supplied by the Chinese company Huawei, without an established legal framework. Although attempts to legalize biometric surveillance through draft versions of the Law on Internal Affairs failed to pass the legislative procedure, both being withdrawn at the last moment, the system remained in place.¹²⁹

The possibility of the existence and activation of such surveillance, without clear legal regulation and independent oversight, has the potential to influence citizens' behavior and discourage them from participating in assemblies, thereby posing a serious threat to the right to freedom of public assembly.

Due to the absence of a legal framework, data obtained through biometric video surveillance cannot be used as evidence in court proceedings. Nevertheless, their use for operational data collection in police investigations cannot be ruled out. The organization Amnesty International has warned that the police may have used biometric video surveillance to monitor protest activities.¹³⁰ Particularly concerning is the alleged use of this system during the road blockades at the end of 2021 for the purpose of identifying demonstrators.

The oversight procedure conducted by the Commissioner for Information of Public Importance and Personal Data Protection in connection with these events focused solely on the use of handheld radio communication devices (walkie-talkies) among police officers, while the mass video surveillance system remained outside the scope of the review- further heightening concerns over lack of transparency and potential abuse.¹³¹

¹²⁹ Thousands of Cameras - Movement for the Control of Video Surveillance. Available at: <https://hiljade.kamera.rs/sr/pocetna/>

¹³⁰ Serbia: Violent police crackdown against COVID-19 lockdown protesters must stop Amnesty International. Available at: <https://www.amnesty.org/en/latest/news/2020/07/serbia-violent-police-crackdown-against-covid-19-lockdown-protesters-must-stop/>

¹³¹ The Commissioner for Information of Public Importance and Personal Data Protection conducted an oversight procedure within the Ministry of Internal Affairs following suspicions of the use of facial recognition technology (FRT). Available at: link

2.1.3. USE OF MEANS OF COERCION

LEGAL CONDITIONS FOR THE USE OF MEANS OF COERCION

Police officers may use means of coercion against participants in protests only when a task cannot be carried out in any other way, and they must act restrainedly and proportionately to the threat or offence being prevented.¹³² The police may order a group to disperse if the assembly is unlawful, violent, or poses a threat to public order. If the group fails to comply, means of coercion such as physical force, batons, tear gas, police dogs, horses, or other instruments may be used.¹³³ The use of such means must be authorized by the head of the police administration, and, as a rule, in written form.¹³⁴

Physical force shall not be used against children under 14 years of age, pregnant women, persons with severe disabilities, or persons who are manifestly ill, unless they pose an immediate threat by means of a weapon.¹³⁵ Tear gas (or other chemical agents) shall not be used in the vicinity of schools, hospitals, or combustible materials.¹³⁶ The use of firearms is permitted only when all other means have been exhausted and there is an imminent threat to life.¹³⁷

Each use of means of coercion requires a written report within 24 hours.¹³⁸ A police officer is not held liable if the coercion was applied in accordance with the law, and the Ministry provides legal assistance in the event of legal proceedings being initiated against the officer.¹³⁹

Means of coercion at protests are applied gradually and under clearly defined conditions, with the aim of protecting public order while minimizing harmful consequences. Before using force, the police are obliged to warn the participants and to apply the least restrictive measure capable of achieving the lawful objective.¹⁴⁰

In performing official duties, depending on the situation, the authorized officer shall always seek to apply means of coercion gradually, that is, from the least to the more severe, ensuring in every case that only the minimum necessary force is used.¹⁴¹

¹³² Article ¹⁰⁵ of the Law on Police

¹³³ Article ¹⁰⁶, paragraph ²

¹³⁴ Article ¹⁰⁶, paragraph ³

¹³⁵ Article ¹⁰⁷

¹³⁶ Article ¹²² (3)

¹³⁷ Article ¹²⁴

¹³⁸ Article ¹⁰⁸ (1)

¹³⁹ Article ¹⁰⁹ (1) and (2)

¹⁴⁰ Article ¹⁰⁵ (3)

¹⁴¹ Rulebook on the Conditions and Manner of Use of Means of Coercion ("Official Gazette of the Republic of Serbia," No.¹³³/2004)

LAW ON PUBLIC ASSEMBLY
MEANS OF COERCION, ARREST

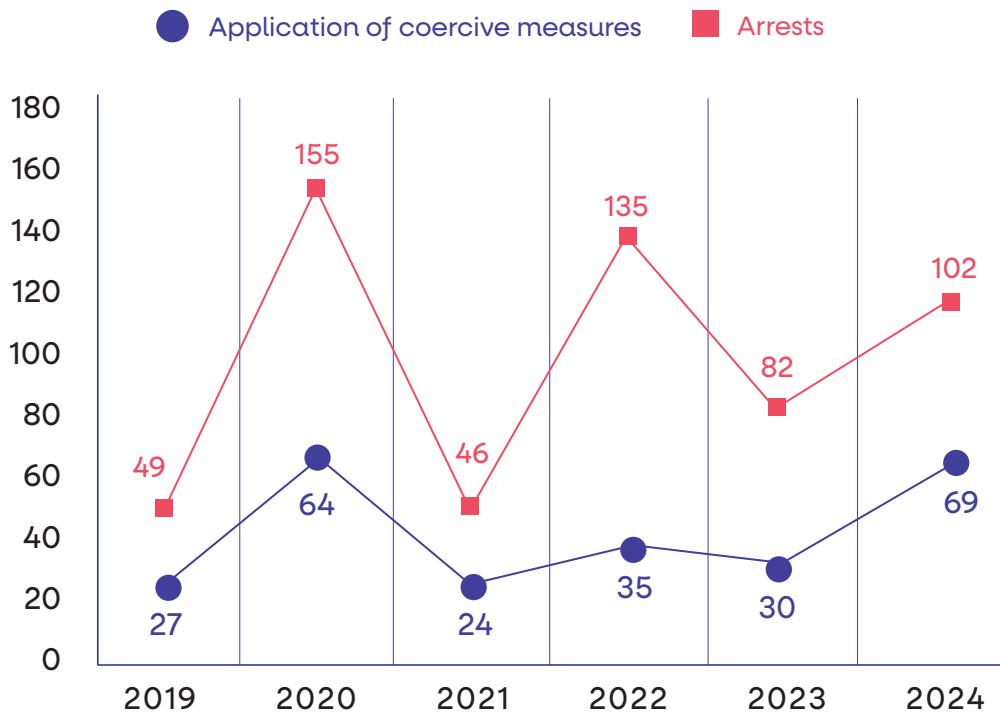


Chart 16: Law on public assembly-means of coercion, arrest. Source: Responses from police departments

According to data from police directorates, means of coercion are seldom used, and when they are, the most common measures involve physical force and restraining devices.

An exception to this pattern were the July 2020 protests, during which almost all available police means were deployed - including tear gas, batons, and mounted units.¹⁴² In 2020, a total of 64 cases of police use of force were recorded, significantly higher than in the following years.

The police interventions were extremely violent, often directed even at individuals who offered no resistance, including passersby. Such a response was widely condemned by both domestic and international observers, as it indicated a disproportionate use of force and a serious violation of the right to peaceful assembly and freedom of expression. Despite numerous reports of police brutality, institutional mechanisms of oversight and accountability failed to respond, further reinforcing a climate of impunity and deepening public distrust in institutions. A representative of a civil society organization criticized the fact that victims of police torture are forced to initiate lengthy and costly civil proceedings on their own in order to obtain justice, instead of being provided with an effective non-judicial reparation's mechanism.

¹⁴² BBC News in Serbian, "Serbia and the July protests - one year later: 'I have physically recovered from the beating, but I am not sure I will ever recover psychologically'", 7 July 2021. Available at: <https://www.bbc.com/serbian/lat/srbija-57751545>

Arrests of citizens in connection with protests were frequent during the observed period, increasingly targeting participants in public assemblies who were subjected to criminal proceedings on suspicion of “incitement to violent change of the constitutional order.” This legal qualification has also been used as a basis for involving the Security Intelligence Agency (BIA) in the detention of citizens.

A common feature of these cases is the refusal of officials to inform detained individuals of the reasons for their deprivation of liberty or the location to which they were being taken. Additional concern is raised by the conduct of BIA’s officers, who operate in plain clothes and use unmarked vehicles, making identification impossible and significantly hindering detainees’ ability to exercise their rights.

One interviewee, who was detained in 2023 on suspicion of incitement to violent change of the constitutional order and incitement to the killing of high-ranking state officials, described the process as follows: according to him, the police refused to inform either him or his family of the reasons for his arrest or his destination, and official badges were shown only momentarily, causing him to doubt their authenticity. Motivated by concerns over his health and detention conditions, he eventually agreed to sign a plea agreement. He stated that news of his alleged admission was published in a tabloid even before he entered the prosecutor’s office.

A similar experience was reported by another interviewee during the assembly at Republic Square. He stated that after he asked to be informed of the reason and destination of his detention, he was physically abused inside a BIA’s vehicle. According to his account, his head was forcefully pushed against the window, his beard was pulled, and he was subjected to serious threats, including a threat that “at three in the morning they would break into his home and put a gun to his forehead.” Earlier that same year, armed police with long-barrel firearms and ballistic shields had entered his apartment under the pretext of suspecting him of incitement to violent change of the constitutional order, in the presence of his family members. Another interviewee, a woman, was detained and interrogated in an unmarked building in Čačak on the same charge of incitement to violent change of the constitutional order.

Public distrust regarding the identity of individuals carrying out arrests has been present in public discourse since the use of plainclothes police officers during the July 2020 assemblies against COVID-19 measures, when allegations emerged that members of criminal groups, allegedly engaged by the state to suppress the assemblies, were involved. The ongoing tolerance of violence by counter-protesters, the use of plainclothes officers, and their seemingly coordinated actions with uniformed police have severely undermined public confidence in impartiality, professionalism, and lawfulness of police conduct. A representative of a civil society organization expressed deep distrust in official police statements, citing the example of a person who died in custody in Bor,¹⁴³ which was officially declared a natural death, despite clear signs of torture on the body.

¹⁴³ Direktno.rs, “MOI silent for almost half a year: Who is responsible for the fatal beating at the police station in Bor?,” published on ²⁶ September ²⁰²⁴. Available at: <https://direktno.rs/vesti/chronika/555962/bor-policija-batinanje-preminuo-nasilnom-smrcu.html>

CONTROVERSIES OVER THE INTRODUCTION OF NEW POLICE COERCIVE MEASURES

Although most means of coercion are rarely used in practice, as there has been no objective need, in 2022 a proposal was made to reintroduce rubber bullets, which had previously been removed from use, as well as to introduce new coercive measures. The Draft Law on Internal Affairs from that year sparked significant controversy among legal experts and human rights organizations, as it envisaged the introduction of new means such as a long-range acoustic device (LRAD), commonly referred to as a “sound cannon”, and a restraining device that fires a rope with metal ends, which wraps around a person attempting to escape.¹⁴⁴ Following protests by civil society organizations, these coercive measures were removed from the Draft Law. At the same time, reports emerged that the police had already acquired and tested the so-called sound cannon, even though its use was not legally regulated at the time.¹⁴⁵

The issue of the use of these instruments resurfaced following an incident at the protest held on 15 March 2025 in Belgrade, when, as a result of the alleged use of an acoustic blast, a large number of citizens experienced physical and psychological symptoms, and many sustained injuries as a result of the stampede that followed.¹⁴⁶ After initially denying that Serbia possessed such devices, the Minister of the Internal Affairs revealed that 16 units had been procured in 2022, but claimed they were stored and not in operational use. However, after a photo circulated during the protest showing one of the devices mounted on a Gendarmerie vehicle, the minister stated that the devices were indeed being used - but allegedly used solely as loudspeakers for communicating police orders.¹⁴⁷

¹⁴⁴ Draft Law on Internal Affairs, 12 December 2022. Available at: <https://www.paragraf.rs/dnevne-vesti/121222/121222-vest13.html>

¹⁴⁵ Direktno.rs, “The great secret of the Ministry of Internal Affairs: Police purchased inhumane weapon known as the SOUND CANNON,” 16 December 2021. Available at: <https://direktno.rs/vesti/drustvo-i-ekonomija/405786/vulin-mup-lrad-nehumano-zvucno-oruzje-.html>

¹⁴⁶ Milutin Jelić, “Sound Cannon in Belgrade: Four Possible Scenarios of the Incident,” Danas, 5 April 2025. Available at: <https://www.danas.rs/vesti/drustvo/mup-zvucni-top/>

¹⁴⁷ Uglješa Bokić, “Sound cannon — there is / there isn’t, it’s in the warehouse, actually next to the Parliament: Dačić has been unable to agree with himself for days,” Danas, 19 March 2025. Available at: <https://www.danas.rs/vesti/drustvo/ima-topa-nema-topa-u-magacinu-je-ustvari-pored-skupstine-dacic-danima-ne-moze-da-se-dogovori-sam-sa-sobom/>

Civil society organizations provided legal and psychological aid to a large number of citizens and compiled a database containing 3,032 testimonies from individuals who suffered the effects of the sound cannon.¹⁴⁸ After 47 citizens who experienced its consequences submitted a request to the European Court of Human Rights, the Court issued an interim measure, ordering Serbia to refrain from any further use of the sound cannon and inviting the applicants to submit formal applications. Citizens also addressed the United Nations special procedures, following which six UN Special Rapporteurs¹⁴⁹ sent a joint communication to the Republic of Serbia.¹⁵⁰ The UN Special Rapporteurs expressed concern over allegations regarding the use of acoustic weapons during the 15 March 2025 assembly in Belgrade, noting that available evidence indicates it caused mass panic and may have constituted the unlawful dispersal of a peaceful assembly, particularly given that it was deployed during a moment of silence for the victims of a recent tragedy. The UN experts requested information from Serbia regarding the legal basis, command responsibility, investigative measures, and injuries caused by the use of this device.

A case has been opened before the First Basic Public Prosecutor's Office in Belgrade in connection with the incident involving a loud and unusual sound that triggered panic, running, and public distress, during which 170 individuals have been heard as injured parties.¹⁵¹ However, concerns have been raised regarding pressure exerted on the prosecution, including publicly prejudging the duration and outcome of the investigation,¹⁵² as well as threats that citizens who publicly testify about the consequences of the incident may be prosecuted for causing panic.¹⁵³ Such actions seriously call into question the possibility of conducting an effective, independent, and impartial investigation.

¹⁴⁸ SHARE Foundation, SOUND: Citizen Testimonies on the Incident During the 15 March 2025 Protest. Available at: <https://zvuk.labs.rs/>

¹⁴⁹ The Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

¹⁵⁰ UN Rapporteurs: It appears that the use of sonic weapons caused mass panic at the protest in Belgrade," Radio Free Europe,

5 June 2025. Available at: <https://www.slobodnaevropa.org/a/un-izvestioci-zvucni-top-beograd-protest/33435168.html>

¹⁵¹ "First Basic Public Prosecutor's Office: 170 citizens questioned in the 'sound cannon' case," NIN, 29 May 2025. Available at: <https://www.nin.rs/drustvo/vesti/78860/prvo-osnovno-javno-tuzilastvo-saslusano-170-gradana-zbog-slucaja-zvucni-top>

¹⁵² Radio Free Europe, "Vučić claims that the Army and the Cobras do not possess a sound cannon, announces end of the investigation within 48 hours," published on 17 March 2025. Available at: <https://www.slobodnaevropa.org/a/vucic-protesti-zvucni-top/33350369.html>

¹⁵³ Higher Public Prosecutor's Office in Belgrade, Statement regarding the information on the use of a 'sound cannon' during the protests, published on 16 March 2025. Available at: <https://beograd.vjt.rs/saopstenja/saopstenje-803/>

2.1.4. LEGAL PROCEEDINGS AGAINST POLICE OFFICERS

The existence of an effective mechanism for sanctioning unlawful conduct by police officers, both in law and in practice, is crucial for assessing police conduct during protests. In addition to the possibility of criminal prosecution for various offences that may be committed by police officers in the context of public assemblies, such as ill-treatment and torture,¹⁵⁴ or unlawful prevention of a public assembly,¹⁵⁵ they may also face disciplinary proceedings. Specifically, the Law on Police provides that any person, who believes that their human or minority rights and freedoms have been violated by the action or omission of a police officer in the performance of official duties, may file a complaint within 30 days from the date of the alleged incident.¹⁵⁶ The complaint procedure must be concluded within 30 days from the date of receipt.¹⁵⁷

According to the latest publicly available Police Activity Report for 2022, a total of 1,855 complaints were received (an increase of approximately 30.5% compared to 2020). Of these, 1,206 complaints were processed through the complaint procedure under Article 235 of the Law on Police, while 649 complaints were handled through the summary procedure under Article 241 of the same law. However, the context of these complaints was not made public, making it impossible to determine how many of them concerned police conduct during public assemblies.

Out of the total number of submitted complaints, 1,804 complaints (97.2%) were filed against employees of regional police directorates, while 51 complaints (2.8%) were filed against employees of the Ministry's central headquarters. Proceedings are still ongoing in 284 cases, while 1,571 complaints have been resolved. Among the resolved cases, shortcomings in the conduct of the officers were established in 111 cases, whereas no wrongdoing was found in 1,460 cases. In 223 cases, the proceedings were concluded pursuant to Article 20 of the Rulebook on the Complaint Procedure within the Ministry, and in nine cases the complaints were found to be repeated or an abuse of the right to complain, and were therefore not processed. In cases where misconduct was established, 64 proposals were submitted to initiate disciplinary proceedings for minor or serious breaches of official duty.¹⁵⁸ The report, however, does not provide information on the outcomes of these proceedings, nor on any sanctions that may have been imposed.

A representative of a civil society organization stated that they are not aware of any case in which police officers have been held disciplinarily accountable for their actions during public assemblies, and added that a large number of criminal cases against police officers have been pending before the prosecution for an extended period of time. They recalled the issue of police officer identification during the July 2020 assemblies, caused by the absence of visible identification badges, after which the Ombudsman issued recommendations. However, they emphasized that the situation has since worsened, as police officers now frequently wear masks, making their identification even more difficult.

The interviewee also pointed to other situations that raise serious questions about police accountability, such as cases where officers allow damage to be caused to the premises they are securing, withdraw from the scene, and then return to carry out random arrests of citizens. They expressed particular concern over cases in which police falsely present themselves as victims - citing, as an example, the incident in front of the RTS building, where a police officer claimed he had been attacked by protesters, although according to available information, the incident was in fact a physical altercation between police officers themselves.

¹⁵⁴ Article 137 of the Criminal Code

¹⁵⁵ Article 151 of the Criminal Code

¹⁵⁶ Article 234 of the Law on Police

¹⁵⁷ Article 235 (7) of the Law on Police

¹⁵⁸ The Ministry of Internal Affairs, Information Bulletin on the Work of the Ministry, September 2022, Available at: <http://www.mup.gov.rs/wps/wcm/connect/fe6262bf-9374-4235-ad95-fde5e77f6ade/IOR+septembar+2022+cir.pdf?MOD=AJPERES&CVID=odFwuqN> p. 410

One interviewee, an attorney-at-law, stated that during her attempt to contact clients detained at a public assembly, she was denied access, and was physically assaulted by a police officer at the police station, being forcefully pushed away. A disciplinary procedure against the responsible officer is currently ongoing. Based on her experience representing participants in peaceful assemblies in misdemeanor, criminal, and civil proceedings, she emphasized that her clients would not be able to adequately defend themselves without professional legal assistance, and that denial of access to an attorney can have serious consequences for the protection of their rights.

3.

INDEPENDENT INSTITUTIONS

The role of independent institutions, such as the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection, is of essential importance for overseeing the actions of state authorities in relation to the exercise and protection of civil rights, particularly the right to freedom of assembly. Although the Protector of Citizens formally possesses broad powers, including the function of the National Mechanism for the Prevention of Torture, practice shows insufficient activity and a selective approach in responding to rights violations during public assemblies. His reactions to police violence have often been mild and delayed, while civil and political rights have been neglected in the institution's reports in favor of topics that face less social resistance. The Commissioner for Information of Public Importance has played a more constructive role in monitoring the use of video surveillance and facial recognition technology during assemblies, emphasizing the lack of a legal framework for such practices and the risks they pose to the right to privacy. However, even here, the challenge of a lack of systemic solutions and legislative clarity in the field of data protection remains.

3.1. THE PROTECTOR OF CITIZENS

The Protector of Citizens of the Republic of Serbia is an independent and autonomous state body that protects citizens' rights and oversees the work of public administration bodies, as well as other institutions and organizations entrusted with public authority. Its mandate includes the protection and promotion of human and minority rights and freedoms, as well as the strengthening of the rule of law.

In the context of freedom of assembly, the Protector of Citizens is authorized to supervise the work of administrative bodies responsible for the organization and conduct of public assemblies. Citizens who believe that this right has been violated may file a complaint, after which the Protector conducts an inquiry and responds appropriately to protect their rights. However, it is important to emphasize that the Protector of Citizens does not have the authority to oversee the work of the National Assembly, the President of the Republic, the Government, the Constitutional Court, the courts, or the public prosecutor's offices.

Citizens who claim to have been subjected to excessive use of force during public assemblies or after being detained may also contact the Protector of Citizens. As the National Mechanism for the Prevention of Torture (NPM), the Protector of Citizens conducts both announced and unannounced visits to penal institutions, detention facilities, and other premises where individuals are held under state supervision. During these visits, the conditions of accommodation and the conduct of officials are assessed, with the aim of preventing torture and other forms of inhuman or degrading treatment. One of the Deputy Protectors of Citizens is specifically responsible for safeguarding the rights of individuals deprived of liberty, including monitoring the conduct of state authorities toward them and proposing measures to improve their situation.

During the July 2020 assemblies, a team from the Protector of Citizens monitored police conduct and visited police stations where protest participants were detained. Based on these visits, a report with recommendations was prepared and published in February 2021.¹⁵⁹ The report found that police officers had unlawfully used force and coercive means and had failed to wear visible identification marks, which hindered the conduct of an effective investigation. It also criticized the work of the Internal Control Sector of the Ministry of Internal Affairs, which acted solely upon citizens' complaints instead of initiating investigations on its own, and noted significant delays in its procedures.

The Protector of Citizens issued a recommendation that continuous training be organized for police officers to ensure that their conduct complies with international standards. However, the manner in which the institution responded to these events was criticized by civil society organizations, which considered the reaction to be mild and inadequate in relation to the gravity of human rights violations.

Under the 2021 Law on the Protector of Citizens, the institution's annual report was renamed "Report on the Work and the State of Human Rights," but its content was not properly adjusted to reflect this new formulation. The recommendations addressed to the Ministry of the Internal Affairs in recent reports have primarily focused on the rights of LGBT persons, while other civil and political rights have been neglected.

It is particularly concerning that the section on civil and political rights in the reports issued after 2019 has been significantly shortened and does not contain detailed information on the state of individual rights, including the rights to freedom of assembly and freedom of expression.

Despite numerous instances of police misconduct during various protests in the observed period, the Protector of Citizens rarely made public statements on the matter. Moreover, the institution did not use its authority to propose amendments to relevant regulations governing police conduct and the protection of citizens' rights during public assemblies.

Although granted broad human rights powers, the institution has in its work and public communication focused primarily on children's rights and the rights of victims of domestic violence, while civil and political rights have remained neglected. This focus partly stems from the fact that the deputies of the Protector of Citizens are appointed for specific areas, including the rights of persons deprived of liberty, the rights of persons with disabilities, the rights of victims of human trafficking, and children's rights. These are areas where there is broad social consensus, whereas the enjoyment of civil and political rights is often subject to social polarization.

In its special report on the July 2020 assemblies, the Protector of Citizens stated that its teams (National Mechanism for the Prevention of Torture – NPM) attended the assemblies held between 8 and 25 July and monitored police conduct during that period. According to their observations, the assemblies generally began peacefully, and in the first days the police sought to refrain from using force and acted with relative restraint, particularly in attempts to prevent the violent entry into the National Assembly building.

When efforts to de-escalate the situation without the use of force failed, the police nevertheless employed coercive means - batons, chemical agents, and mounted units - but solely for the purpose of restoring public order and peace. The NPM did not directly observe irregularities in police conduct; however, the report notes that it was not possible to monitor all situations due to the large area over which the events took place and the high intensity of incidents.

However, videos that presented a different picture appeared in the media and on social networks -among them were recordings showing police officers physically assaulting citizens who offered no resistance, including those sitting or lying on the ground. One video in particular drew public attention, showing two representatives of the Protector of Citizens walking past a young man lying on the street while several dozen police officers were beating and kicking him in the head and body, without reacting to the situation.¹⁶⁰

This discrepancy between the official report and what is seen in the footage raised numerous questions about whether all aspects of the events were adequately covered and whether the mechanisms for overseeing police conduct were effective at the time.

On November 27, 2021, an environmental protest was held in Šabac during which a violent incident occurred when a group of masked individuals, using an excavator and wooden sticks, physically attacked the protesters. According to media reports, although many citizens had called the police seeking protection, the patrol withdrew from the scene just before the attack, and the traffic police stationed nearby did not intervene. The Belgrade Centre for Human Rights filed a complaint regarding this incident, pointing to a reasonable suspicion that the police acted in violation of their legal duty. However, the Protector of Citizens responded only a year later, determining that the police's actions had been "delayed, negligent, and ineffective," and recommended disciplinary proceedings against the responsible officers. The Protector of Citizens described this incident and the police's conduct in its 2022 Annual Report, ¹⁶¹ emphasizing that the Šabac Police Department reacted in a delayed, negligent, and ineffective manner, which resulted in a more serious disturbance of public order and the possible commission of several criminal offenses. It was also established that the Ministry of Internal Affairs had failed to ensure the recording of citizens' emergency calls to the number 192. Due to the identified shortcomings, recommendations were issued, all of which were acted upon except in one case, where the statutory limitation period for action had expired.

Complaints were also submitted to the Protector of Citizens regarding the excessive use of force by the police during the assembly held on December 24, 2023. Disproportionate use of coercive measures by police officers against citizens was recorded in numerous videos available on social networks and in the media.¹⁶² As of now, there is still no information on whether the Protector of Citizens has initiated proceedings based on the reports in the media and the submitted complaints.

3.2. COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

The Commissioner for Information of Public Importance and Personal Data Protection is an independent and autonomous state authority responsible for overseeing the implementation of the Law on Free Access to Information of Public Importance¹⁶³ and the Law on Personal Data Protection.¹⁶⁴ The institution of the Commissioner was established based on these two laws as an independent body accountable solely to the National Assembly.

The primary role of the Commissioner is to protect citizens' rights concerning access to information of public importance and the processing of personal data, as well as to monitor the legality of actions taken by public authorities, legal entities, and individuals handling such data. Within its mandate, the Commissioner conducts oversight procedures, issues opinions and recommendations, acts upon citizens' complaints, initiates amendments to regulations, and submits annual reports on its activities to the National Assembly.

In the context of protecting the right to freedom of assembly, the role of the Commissioner for Information of Public Importance and Personal Data Protection is particularly important in assessing the legality of video surveillance and the use of facial recognition technology, especially when the police uses such measures during public assemblies.

In a statement issued on February 18, 2022, the Commissioner reported on an oversight procedure conducted within the Ministry of Internal Affairs (MOI) of the Republic of Serbia, following suspicions that facial recognition technology had been used during the protests held on November 27 and December 4, 2021. The Commissioner determined that police officers had used HUAWEI EP821 devices, which, according to the MOI's statements, do not possess either hardware or software support for facial recognition functionality. It was further established that misdemeanor warrants had been issued solely based on direct identification of individuals through personal documents. The report concluded that facial recognition technology had not been used and that such a practice, even if it were to occur, currently lacks any legal basis in domestic legislation.¹⁶⁵

In the same statement, the Commissioner emphasized that any use of facial recognition technology by the police must be preceded by the establishment of a comprehensive legal framework, including the preparation of a data protection impact assessment and the implementation of appropriate technical, organizational, and personnel safeguards.

In the response that the Commissioner's Office provided to Radio Free Europe on September 20, 2021, it was stated that there are no systemic solutions in the area of video surveillance in the Republic of Serbia, and that the adoption of a specific law regulating this field is necessary. The Commissioner warned that mass video surveillance, particularly when it involves public spaces and the use of software for automatic facial identification, can pose a serious risk to the right to privacy, as well as to broader constitutional values, including dignity, freedom of movement, freedom of thought and expression, legal certainty, and the rule of law.¹⁶⁶

Additionally, the publication Personal Data Protection: Views and Opinions of the Commissioner presents an example of oversight conducted in a municipal administration, which determined that video surveillance covering public areas (such as sidewalks, local roads, and spaces surrounding religious sites) must be carried out in accordance with the Law on Personal Data Protection, with the Commissioner responsible for supervising its legality. This example highlights the need for a clear definition of the purpose and scope of surveillance, in line with the principle of proportionality.¹⁶⁷

The Commissioner's views confirm that Serbia lacks an adequate legal framework that would permit systematic video surveillance of public areas for the purpose of identifying and prosecuting participants in public assemblies, including protests. Any such practice must be clearly and precisely regulated by law, in full accordance with the principles of necessity and proportionality, and with full protection of the rights to privacy, freedom of assembly, and freedom of expression, as guaranteed by both domestic legislation and international human rights standards.

V. CONCLUSIONS

The analysis of the overall legal, institutional, and practical framework shows that the exercise of the right to public assembly in Serbia faces serious and complex challenges. Although this right is formally guaranteed by the Constitution of the Republic of Serbia and international treaties, its implementation in practice is often limited by the inadequate actions of state authorities, particularly the police, judiciary, and independent institutions. The existing legislative framework is not fully aligned with international standards on the right to peaceful assembly, which has been a concern repeatedly raised by civil society organizations since the law was adopted in 2016.

The judicial system, which should serve as an independent guardian of citizens' rights and freedoms, often appears as an actor that enables repressive practices. Particularly concerning is the frequent initiation of criminal and misdemeanor proceedings without solid evidence or fulfilled procedural requirements, often with the aim of intimidating citizens and suppressing political dissent. The use of detention in the early stages of proceedings, especially without clear reasoning or as a matter of routine, further underscores the repressive character of the judiciary in the context of public assemblies. The (mis)use of the criminal offence of inciting the violent overthrow of the constitutional order is most evident when examining the content of plea agreements confirmed by the courts, many of which lacked the basic elements required by law.

In certain cases, however, the courts have demonstrated a willingness to apply domestic and international standards in protecting citizens' rights. Acquittals, references to the Constitution, and reliance on the jurisprudence of the European Court of Human Rights, as well as the dismissal of unfounded charges, indicate that some members of the judiciary recognize their role as an independent corrective within the system. Nevertheless, there is still a lack of harmonization in judicial practice that would fully align with international standards - particularly the case law of the European Court of Human Rights - and thereby provide the necessary legal certainty for the citizens of Serbia in exercising their right to freedom of peaceful assembly. It is not uncommon for the same court to reach different decisions in factually almost identical cases, which can create a strong sense of insecurity among citizens who exercise their right to peaceful assembly and consequently come into contact with the judicial system.

Police conduct further complicates the situation. In a significant number of cases, bans on public assemblies are issued without a clear and specific security assessment, creating room for arbitrariness and politicization in decision-making. At the same time, shortcomings in the existing legal framework limit the ability of organizers to effectively use legal remedies against decisions prohibiting public assemblies.

The police often submit requests for initiating misdemeanor proceedings that do not meet basic procedural requirements, yet misdemeanor courts rarely dismiss such requests and instead initiate proceedings by inertia. Although these proceedings most often end with acquittals or are discontinued due to the statute of limitations, they not only generate unnecessary costs for the state budget but also have a deterrent effect on the exercise of the right to freedom of public assembly. The police routinely appeal the judgments, even though it is clear in most cases that such appeals have no real prospect of success. This practice further burdens the courts, prolongs proceedings, and creates unnecessary expenses for the judiciary, while participants in public assemblies remain in a state of prolonged legal uncertainty.

In smaller communities, activists face informal pressures, intimidation, and inadequate responses to violence from counterdemonstrators. The lack of effective oversight of the police - both disciplinary and judicial - creates an atmosphere of impunity and undermines the rule of law. Repressive police conduct, often accompanied by unlawful actions that result in the dismissal of criminal complaints or acquittals, also burdens Serbian citizens, who ultimately bear the costs of the defense of the accused and suspects through the state budget.

Independent institutions, primarily the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection, have a legal mandate to respond in cases of violations of the right to freedom of assembly and the right to privacy. However, their actions in certain situations have generally been passive, selective, and without visible consequences. For example, although the Protector of Citizens documented irregularities in police conduct during the 2020 protests, his reports did not lead to concrete sanctions or systemic changes. The Commissioner recognized the risks of using biometric surveillance on demonstrators but faced limited legal mechanisms to address the issue in a substantive manner.

Based on testimonies from activists across different parts of Serbia, it is evident that the right to assembly is not exercised equally in all areas. In Belgrade, there is a certain level of institutional sensitivity and greater public visibility, which contributes to more professional conduct. In contrast, in smaller towns and rural areas, protest participants face threats, pressure, and even physical violence, while institutions often ignore their complaints.

Despite all these challenges, citizens and activists remain steadfast in defending democratic space. Their commitment reflects a profound need for change and for strengthening institutions that serve the citizens rather than political interests. For the right to peaceful assembly to move beyond a merely declarative guarantee, substantial changes are required in the legal framework, institutional practice, and social awareness of the importance of free and critical expression.



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