



# HUMAN RIGHTS AND COVID-19

## Analysis of the changes in legal framework during a state of emergency and impact on enjoying human rights

### Freedom of Movement, Freedom of Assembly, Freedom of Religion

In the Republic of Serbia, in order to prevent the spread of the infection and the effects caused by the SARS-CoV-2 virus, [the Decision on Declaring a State of Emergency](#) was adopted on March 15<sup>th</sup> 2020. This decision, as well as many other regulations concerning it, that were adopted, have resulted in the restriction of certain rights of citizens.

The analysis chronologically shows the changes in the scope of enjoying guaranteed rights and the manner of regulating changes during the first month of the state of emergency (March 15<sup>th</sup> – April 15<sup>th</sup>, 2020), with an assessment of the compliance of activities and measures of all branches of the government with the requirements of the rule of law and the principles of human rights restrictions. There are also presented the issues that these measures and restrictions had been creating, particularly to vulnerable groups, initiatives and proposals submitted to state authorities to solve or mitigate the issues, as well as the State's response to the initiatives.

*The analysis was conducted with the support of the United Nations Human Rights Team in Serbia. The views expressed do not necessarily represent the views of the United Nations.*

### Declaring a State of Emergency

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Article 200 of [the Constitution of the Republic of Serbia](#) stipulates that when public danger threatens the survival of the state or citizens, the National Assembly declares a state of emergency. The same article stipulates that when the National Assembly is unable to meet, the decision on declaring a state of emergency shall be taken jointly by the President of the Republic, the President of the National Assembly and the Prime Minister, under the same conditions as the National Assembly, in which case the measures derogating from human rights and minority rights may be prescribed by the Government, by decree, with the co-signature of the President of the Republic. Measures of derogation from human and minority

rights prescribed by the National Assembly or the Government shall be valid for a maximum of 90 days, and upon expiration of this period, they may be renewed under same conditions.

On March 10<sup>th</sup>, 2020, the Government of the Republic of Serbia adopted [\*the Decision on the Declaration of COVID-19 disease caused by SARS-CoV-2 infectious disease\*](#). This decision is the basis for the application of Article 52 paragraph 1 item a of [\*the Law on the Protection of the Population from Infectious Diseases\*](#), which stipulates that the Minister, based on the proposal of the Commission and the Institute, may issue an ordinance to ban gatherings in public places, therefore, on March 12<sup>th</sup> 2020 the Minister of Health issued an [\*Ordinance of banning gatherings in the Republic of Serbia in indoors public places\*](#), where, in item 1 states that in order to prevent the spread of infectious disease, COVID-19, it is prohibited public gatherings throughout the territory of the Republic of Serbia in indoors public places when more than 100 persons gather. Without a formal written explanation, the President of the Republic, the President of the National Assembly and the Prime Minister took the Decision on Declaring a State of Emergency on whose basis measures of derogation from human rights were prescribed.<sup>1</sup>

### **Fundamental Rights with Respect to Restriction of Rights**

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With respect to the general restriction of rights, *the Constitution of the Republic of Serbia* stipulates in Article 20 that human and minority rights guaranteed by the Constitution may be restricted by law if the restriction is allowed by the Constitution<sup>2</sup>, for the purposes that the Constitution allows it, to the extent necessary to satisfy the constitutional purpose of the restriction in a democratic society and without encroachment on substantially the guaranteed right. [\*The International Covenant on Civil and Political Rights\*](#), in Article 4, as a basis for the restriction of human rights, stipulates an extraordinary public danger that is officially declared. Measures that restrict rights are possible to the extent of strictly defined requirements of the situation, they cannot be incompatible with other obligations imposed by international law

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<sup>1</sup> The Speaker of the National Assembly provided a written reply on March 23<sup>rd</sup>, 2020 to the opposition MPs that she had proposed that the National Assembly do not meet, due to a ban on assembly. Available at: <https://dostajebilo.rs/wp-content/uploads/2020/03/Odgovor-Maje-Gojkovic.pdf> (accessed on April 24<sup>th</sup>, 2020).

<sup>2</sup> Rights that cannot be restricted are: the right to dignity and the free development of personality; the right to life; the right to the physical and psychological integrity of the person; prohibition of slavery and forced labor; rights related to the treatment of a person deprived of liberty (respect for the dignity of the person, prohibition of torture and extortion of testimony); the right to a fair trial; the right to legal certainty in criminal law (presumption of innocence, no punishment for an act which at the time when it was committed was not a criminal offense, no retroactive application of the criminal law, unless it is more favorable to the perpetrator ...); the right to a legal personality; the right to citizenship; freedom of thought, conscience and religion; conscientious objection; freedom of expression of nationality; a ban on provoking national, racial and religious hatred; the right to marry and the equality of spouses; freedom to decide on birth; the rights of the child; ban on forced assimilation.

and cannot bring about discrimination. The Constitution of the Republic of Serbia stipulates that any type of discrimination, direct or indirect, on any grounds, and in particular on the basis of race, gender, nationality, social origin, birth, religion, political or other belief, financial status, culture, language, age and mental or physical disability, is prohibited as well as that certain measures are not considered as discrimination, those which the Republic of Serbia may introduce in order to achieve full equality of persons or groups of persons who are essentially in an unequal position with other citizens. [The Anti-Discrimination Law](#) stipulates that the terms “discrimination” and “discriminatory treatment” shall mean **any unjustified difference or unequal treatment**, or omission, in relation to persons or groups, as well as to members of their families, or their close persons, in the open or covert way, and which is based on some personality trait.

## 1. Freedom of Movement

*The Constitution of the Republic of Serbia* in Article 39 stipulates that everyone has the right to move and reside freely in the Republic of Serbia, to leave it and to return to it. These freedoms and rights may be restricted by law if it is required to, among other things, prevent the spread of infectious diseases. *The International Covenant on Civil and Political Rights* stipulates this freedom and restriction in Article 12.

[The Law on Police](#) in Article 51 stipulates that the Minister may issue an ordinance to the Police to temporarily restrict or prohibit the movement in certain facilities, on certain areas or public places to protect the health and life of persons. These measures may be time-limited and may last until the reasons, which they were determined for, last. Article 89 of the same Law stipulates that a police officer is authorized, on the basis of a decision made by the Director of Police or the Head of Police Department or persons who they authorized, to temporarily restrict the freedom of movement and detain *persons* in a particular area or facility, or to remove persons from the area or facility, in situations of security *threats* caused by epidemics while those threats are ongoing. **The right to move during the first month of a state of emergency is restricted in many ways.**

On March 18<sup>th</sup>, 2020 it was issued [an Ordinance on Restriction and Prohibition of Movement of Persons in the Territory of the Republic of Serbia](#), prohibiting persons from the age of 65 and above in populated areas over 5000 inhabitants, as well as persons from the age of 70 and above in populated areas up to 5000 inhabitants, to move on public places, that is, out of flats, rooms and dwellings in residential buildings and out of the household completely,

while other persons are prohibited to move from 8 pm to 5 am. The aforementioned decision was revised four more times and the amendments are shown in the table that follows.

Amendments to the Ordinance on Restriction and Prohibition of Movement of Persons in the Territory of the Republic of Serbia				
March 18 <sup>th</sup> , 2020	March 21 <sup>st</sup> , 2020	March 22 <sup>nd</sup> , 2020	March 22 <sup>nd</sup> , 2020	March 22 <sup>nd</sup> , 2020
Complete ban on movement of persons who are 65 or older;	Persons who are 65 or older are allowed to move on Saturdays from 3 to 8 am;	The ban on movement of all persons is changed from 8 pm to 5 pm;	At weekends, there is a ban on movement of all persons begins at 3 pm.	At weekends there is a ban on movement from Saturday at 1 pm to Monday at 5 am.
The ban on movement of other persons is from 8pm to 5am.	It is prohibited movement in all parks and public areas intended for recreation and sports.	It is allowed to take pets for a walk between 8 pm and 9 pm, for 20 minutes, in a distance of 200 m maximum from the place of residence.	It is prohibited to take pets for a walk.	It is allowed to take pets for a walk between 11 pm to 1 am.  Persons who are 65 or older are allowed to move on Saturdays from 3 to 7 am  Up to 2 persons may move or stay together in a public place outdoors; Up to 10 persons at funerals.

The aforementioned Ordinance ceased to be valid on April 9<sup>th</sup>, 2020 with Article 6 of [the Decree on Amendments to the Decree on Measures during the State of Emergency](#), which subsequently became **the basis for the prohibition of movement**.

In addition to the aforementioned Ordinance, the right of movement was restricted by *the Decision on declaring COVID-19 disease caused by the SARS-CoV-2 infectious disease*. The decision first allowed the competent authorities to temporarily prohibit, i.e. restrict the entry and movement of persons coming from virus-affected countries and regions in the decision of

the taxa enumerated. [The Amendment from March 16th, 2020](#), makes a difference whether or not someone comes from the country of the outbreak, and depending on that, 14 and 28 days of supervision and home isolation are determined. [The Amendment of the Decision from March 18th, 2020](#), for the first time, determines the mandatory measure of placing under health surveillance for 14 days (isolation at home), and the amendment that followed, only a day after, it was introduced the term quarantine and it was determined the institution which persons address to. [The Amendment from March 28th, 2020](#) addresses infected persons to be isolated in the facilities provided for this purpose, and persons who are in self-isolation the isolation is extended to 14 days more. [The Amendment on Decision from March 31st, 2020](#) the measures of quarantine in previously decided established facilities are again replaced by the measure of home isolation, and persons entering the Republic of Serbia, who notice symptoms of infectious disease COVID-19, are immediately addressed to the corresponding health institution. Thereupon, [the Amendment of the Decision from April 1st, 2020](#) stipulates the manner of discharge of cured persons and mandatory isolation for those persons for 14 days, as well as the possibility that a person who is in self-isolation, due to contact with an infected person, and needs to leave the territory of the Republic of Serbia before the expiry of a certain measure, a sanitary inspector may suspend by a decision execution of the measure and allow him/her to leave the Republic of Serbia if no symptoms of the disease have been developed by the day the request for suspension of the measure is submitted.

It is important to note that the term “isolation at home” first appears in this decision, although as such it does not exist in *the Law on the Protection of Population against Communicable Diseases*, or other general acts, which the decrees of the decision refer to. In addition, the Law on the Protection of Population against Communicable Diseases recognizes the term isolation for infected persons and the term quarantine for healthy persons who have been exposed to an infectious disease, while these terms in *the Decision* have a different meaning at certain stages of its validity. Furthermore, although Articles 74 and 75 of the Law on the Protection of Population against Communicable Diseases provide a procedure in case it is suspected that a person entering the country may be infected and stipulates that the decision may prohibit or restrict movement of that person, and that the decision may be made verbally, but it shall be entered in the record of performed inspection supervision, this procedure is mentioned for the first time in the aforementioned decision on March 18<sup>th</sup>, 2020.

The right to freedom of movement is also restricted by [the Decision to Close the Border Crossings](#) taken on March 12<sup>th</sup>, 2020, as well as by [the Decision to Close all Border Crossings for Entry into the Republic of Serbia](#) from March 19<sup>th</sup>, 2020.

*All these decisions have created a number of issues and many citizens have contacted YUCOM seeking advice on how to protect their rights. In addition, information about the rights themselves have been sought, because many, due to frequent amendments to the aforementioned decisions, did not know exactly what their rights and obligations were, and the sanctions for violating them were strict and high. Some seekers of legal support were stressed as the rental agreement was running out, and it was not extended because the apartment was rented to another person and they were not allowed to leave the place of self-isolation. A person, who, during self-isolation, sustained a physical injury also sought legal support, as the injury had been identified as insufficient that the Emergency Department team protocol reaches the patient, but serious to the extent that he needed assistance that he had been unable to obtain on his own due to self-isolation.*

*Family members of persons in home isolation experienced a certain issue because it was unclear whether this obligation also applies to them. Furthermore, the issue was also to obtain a permit or to confirmation note on the obligation of self-isolation, in order to, for example, justify absence from work and to protect employment status. Therefore, the Lawyers' Committee of for Human Rights – YUCOM submitted a proposal to the Crisis Staff of the Republic of Serbia to allow those persons to be issued home isolation certificate, proposing the possibility of bringing collective solutions. The Ministry of Health has provided the system to apply online for self-isolation certificate for contact persons.*

*YUCOM addressed the Ministry of Foreign Affairs of the Republic of Serbia, the Border Police Directorate and the Protector of Citizens due to the large number of Serbian citizens who sought help because they were “stuck” at airports or border crossings around the world. We think that these appeals have been fruitful as the Ministry has organized the transfer of Serbian citizens to the country, in cooperation with the Protector of Citizens, among those a large number of persons who have addressed this issue.*

### **1.1. Prohibition of movement and vulnerable groups**

The ban on movement has particularly affected vulnerable groups, the homeless, the socially disadvantaged, citizens who are older than 65 and 70, persons with disabilities, migrants, and persons with developmental disabilities.

***a) Persons with developmental disabilities and autism***

Following the reactions of the Commissioner for Equality and non-governmental organizations, the amendments to the Decree on Measures during the State of Emergency from April 9<sup>th</sup>, 2020 **allow** the persons with developmental disabilities and autism **to move during the prohibition of movement time**, exclusively accompanied by one adult up to 200 m away from the place of residence.

***b) Persons with disabilities***

Commissioner for Protection of Equality, Mrs. Brankica Jankovic, welcomed the adoption of her initiative on April 6<sup>th</sup>, 2020, which she proposed on March 26<sup>th</sup> including the ways to solve the movement of assistants of disabled persons who provide the service in the evening, at a time when the movement prohibition has been prescribed by measures to prevent the spread of the epidemic. The initiative was also related to the assistance and support services to persons with disabilities, provided by informal caregivers, relatives or friends, who do not live in a shared household, as well as for our citizens who are in the terminal phase of the disease and who use palliative care at home, as well as persons suffering from dementia. These persons were able to obtain *a permit to move* during the time of the prohibition of movement, upon request in the prescribed procedure.

***c) Asylum seekers and migrants***

[The Decision on Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum Centers and Reception Centers in the Republic of Serbia](#) restricted the movement of asylum seekers and irregular migrants and established enhanced surveillance and security of these facilities, and therefore only exceptionally and in justified circumstances (going to the physicians or for other justifiable reasons), it was allowed to leave the place, with special permission of the Commissariat for Refugees and Migration. This measure was explained to be undertaken in order to prevent the spread of the virus among the migrant population. Migrant camps are under the control of the Armed Forces of the Republic of Serbia<sup>3</sup>. UN High Commissioner for Human Rights warned about the dangers of exclusion

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<sup>3</sup> Available at: <https://www.slobodnaevropa.org/a/migranti-karantin-srbija/30570851.html> (Accessed on April 24<sup>th</sup>, 2020)

of certain minority groups from individual rights and increased discrimination against migrants.<sup>4</sup>

## 2. Freedom of Assembly

Article 54 of *the Constitution of the Republic of Serbia* provides freedom of assembly, but also the possibility of restricting this right by law only if it is necessary for the protection of public health, morals, and rights of others or the security of the Republic of Serbia. *The International Covenant on Civil and Political Rights*, in Article 21, recognizes the right of peaceful assembly and the possibility of restricting it, inter alia, for the protection of public health. [\*The Law on Public Assembly\*](#) in Article 8 provides a restriction on freedom of assembly and stipulates that it is not allowed when there is a threat to the safety of persons and property, public health, morals, rights of others or the security of the Republic of Serbia. Clément Voule, United Nations Special Rapporteur on the right to freedom of peaceful assembly and freedom of association issued a statement / appeal with 10 principles on April 14<sup>th</sup>, 2020 (Geneva) which states that States' response to the COVID-19 threat should not abolish freedom of assembly and association.

During the reviewed period, three *Decrees on Prohibition of Assembly in the Republic of Serbia in Indoor Public Areas* were adopted. These decrees, in order to prevent the spread of infectious disease COVID-19, prohibited public gatherings throughout the territory of the Republic of Serbia in indoors public places when more than 100 persons gather, afterwards reduced to 50 persons and last changed to gatherings of more than five persons.

## 3. Freedom of Religion

Prohibitions of movement and assembly indirectly affected other rights guaranteed by the Constitution and international conventions. The right to freedom of religion, exercised by attending a religious service, is limited by a ban on movement and a ban on assembly. This limits the rights provided in Article 43 of *the Constitution of the Republic of Serbia* and Article 18 of *the International Covenant on Civil and Political Rights*. Conclusion of the Government of the Republic of Serbia from March 27<sup>th</sup>, 2020 it was recommended to churches and religious communities to perform religious ceremonies in religious premises and outdoors during the state of emergency without the presence of believers, as well as to perform religious ceremonies at funerals in the presence of a small number of persons, respecting all preventive

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<sup>4</sup> Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25757&LangID=E> (Accessed on April 24<sup>th</sup>, 2020)



measures prescribed for effective control of infectious disease and protection of human life and health.

*Some citizens have experienced the inability to exercise their right to attend a religious service and spiritual communion act as a violation of human rights and have contacted the Lawyers' Committee for Human Rights for legal support.*

Regulations adopted since COVID-19 disease caused by SARS-CoV-2 infectious disease has been declared*	
March 10 <sup>th</sup> , 2020	<a href="#">The Decision on Declaring COVID-19 Disease caused by SARS-CoV-2 Infectious Disease</a> <sup>5</sup>
March 12 <sup>th</sup> , 2020	<a href="#">The Ordinance of Banning Gatherings in the Republic of Serbia in Indoors Public Places</a> <sup>6</sup> <a href="#">The Decision to Close the Border Crossings</a> <sup>7</sup>
March 14 <sup>th</sup> , 2020	<a href="#">The Decree on Banning Visits and Restricting Movement in the Facilities of Institutions for the Accommodation of the Elderly</a> <sup>8</sup>
March 15 <sup>th</sup> , 2020	<a href="#">The Ordinance of Banning Gatherings in the Republic of Serbia in Indoors Public Places</a> <sup>9</sup> <a href="#">The Decision on Declaring a State of Emergency</a> <sup>10</sup> <a href="#">The Decision on Limiting the Price of Basic Foodstuffs and Protective Equipment</a> <sup>11</sup>
March 16 <sup>th</sup> , 2020	<a href="#">The Decree on Organizing the Work of Employers during the State of Emergency</a> <sup>12</sup> <a href="#">The Decree on Measures during the State of Emergency</a> <sup>13</sup> <a href="#">The Decision on Suspending all Election Activities related to Conducting the Elections for the Members of the National Assembly, planned for April 26th, 2020</a> <sup>14</sup> <a href="#">The Decision on Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum Centers and Reception Centers in the Republic of Serbia</a> <sup>15</sup>
March 17 <sup>th</sup> , 2020	<a href="#">The Ordinance on the Organization and Implementation of the Quarantine Measures</a> <sup>16</sup>
March 18 <sup>th</sup> , 2020	<a href="#">The Ordinance on Restriction and Prohibition of Movement of Persons in the Territory of the Republic of Serbia</a> <sup>17</sup> <a href="#">The Decision on Limiting the Prices and Margins of Basic Foodstuffs and Protective Equipment</a> <sup>18</sup>
March 19 <sup>th</sup> , 2020	<a href="#">The Decision to Close all Border Crossings for Entry into the Republic of Serbia</a> <sup>19</sup>
March 20 <sup>th</sup> , 2020	<a href="#">The Decree on Time Limits in Court Proceedings during the State of Emergency Declared on March 15th, 2020</a> <sup>20</sup> <a href="#">The Decree on the Use of Financial Resources of the Budget of the Republic of Serbia during the State of Emergency Caused by COVID-19 Disease Caused by the SARS-CoV-2 Virus</a> <sup>21</sup>
March 21 <sup>st</sup> , 2020	<a href="#">The Decision on Limiting the Provision of Services in the Field of Retail Trade, Including Selling Goods and Providing Services in Shopping Centres and Stores that are Indoors</a> <sup>22</sup> <a href="#">The Decree on Misdemeanor for Violation of the Ordinance of the Minister of the Interior on Restriction and Prohibition of Movement of Persons in the Territory of the Republic of Serbia</a> <sup>23</sup> <a href="#">The Ordinance of Banning Gatherings in the Republic of Serbia in Indoors Public Places</a> <sup>24</sup>
March 22 <sup>nd</sup> , 2020	<a href="#">The Decree on Limiting the Retail Price of Protective Equipment for the State of Emergency Caused by COVID-19 Caused by the SARS-CoV-2 Virus</a> <sup>25</sup>

<sup>5</sup> (Official Gazette of the Republic of Serbia no. 23/2020, 24/20, 27/20, 28/20, 30/20, 32/20, 35/20, 37/20, 38/20, 39 /20, 43 /20, 45/20, 48/20, 49 /20, 59/20, 60/20)

<b>March 24<sup>th</sup>, 2020</b>	<a href="#">The Decree on Time Limits in Administrative Procedures during the State of Emergency<sup>26</sup></a> <a href="#">The Decree on Certain Technical Requirements, Standards and Application of Medical Devices during the State of Emergency of COVID-19 Disease Caused by the SARS-CoV-2 Virus<sup>27</sup></a> <a href="#">The Decision on the Status of Foreign Persons in the Republic of Serbia during the State of Emergency<sup>28</sup></a>
<b>March 28<sup>th</sup>, 2020</b>	<a href="#">The Decree on the Mode of Participation of the Accused at the Main Trial in the Criminal Procedure Held during the State of Emergency from March 15<sup>th</sup>, 2020<sup>29</sup></a>
<b>April 3<sup>rd</sup>, 2020</b>	<a href="#">The Decree on Additional Financial Loans during the State of Emergency caused by the COVID-19 Disease Caused by the SARS-CoV-2 Virus by credits, issuing government securities on the domestic and international financial markets and providing guarantees of the Republic of Serbia<sup>30</sup></a>

\* Listed regulations are available in Serbian.

<sup>6</sup> (Official Gazette of the Republic of Serbia no. 25/20)

<sup>7</sup> (Official Gazette of the Republic of Serbia no. 25/20, 27/20, 35/20 and 47/20)

<sup>8</sup> (Official Gazette of the Republic of Serbia no. 28/20)

<sup>9</sup> (Official Gazette of the Republic of Serbia no. 30/20)

<sup>10</sup> (Official Gazette of the Republic of Serbia no. 29/20)

<sup>11</sup> (Official Gazette of the Republic of Serbia no. 30/20)

<sup>12</sup> (Official Gazette of the Republic of Serbia no. 31/20)

<sup>13</sup> (Official Gazette of the Republic of Serbia no. 31/20, 36/20, 38/20, 39/20, 43/20, 47/20, 49/20, 53 /20, 56/20, 57/20, 58/20, 60/20)

<sup>14</sup> (Official Gazette of the Republic of Serbia no. 32/20)

<sup>15</sup> (Official Gazette of the Republic of Serbia no. 32/20)

<sup>16</sup> (Official Gazette of the Republic of Serbia no. 33/20)

<sup>17</sup> (Official Gazette of the Republic of Serbia no. 34/20, 39/20, 40/20, 46/20, 50/20)

<sup>18</sup> (Official Gazette of the Republic of Serbia no. 35/20, 55/20, 57/20)

<sup>19</sup> (Official Gazette of the Republic of Serbia no. 37/20)

<sup>20</sup> (Official Gazette of the Republic of Serbia no. 38/20)

<sup>21</sup> (Official Gazette of the Republic of Serbia no. 38/20)

<sup>22</sup> (Official Gazette of the Republic of Serbia no. 39/20)

<sup>23</sup> (Official Gazette of the Republic of Serbia no. 39/20)

<sup>24</sup> (Official Gazette of the Republic of Serbia no. 39/20)

<sup>25</sup> (Official Gazette of the Republic of Serbia no. 40/20, 43/20 and 48/20 and 59/20)

<sup>26</sup> (Official Gazette of the Republic of Serbia no. 41/20 and 43/20)

<sup>27</sup> (Official Gazette of the Republic of Serbia no. 41/20)

<sup>28</sup> (Official Gazette of the Republic of Serbia no. 41/20)

<sup>29</sup> (Official Gazette of the Republic of Serbia no. 49/20)

<sup>30</sup> (Official Gazette of the Republic of Serbia no. 52/20)