



HUMAN RIGHTS AND COVID-19



Analysis of the Changes in Legal Framework during the
COVID-19 Epidemic and Impact on Enjoying Human Rights
in the Republic of Serbia

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Content

01 Introduction	5
02 Declaring and Lifting the State of Emergency	6
03 Decision Makers	7
04 System of Controlling Measures	9
1. The National Assembly	9
2. The Constitutional Court of the Republic of Serbia.....	10
3. The Protector of Citizens of the Republic of Serbia.....	10
4. The Commissioner for Information of Public Importance and Personal Data Protection ..	13
5. The Commissioner for the Protection of Equality	14
05 Basic Rules with Respect to Restriction of Rights	16
06 Fundamental Rights and Freedoms	18
1. Freedom of Assembly	18
2. Freedom of Movement	23
3. The Right to a Fair Trial.....	31
4. The Right to Health Care.....	42
5. Freedom of Expression.....	49
07 Conclusion	57

01

Introduction

On March 10th, 2020, the Government of the Republic of Serbia passed *the Decision on Declaring the COVID-19 Disease Caused by the SARS-CoV-2 Virus an Infectious Disease.*

The Constitution of the Republic of Serbia allows restrictions on certain human rights (such as freedom of movement) when public health is endangered and the state decides to manage the epidemic through formal restrictions on human rights, with severe and expeditious sanctioning for violating regulations.

Human rights restrictions culminated during the state of emergency that was introduced on **March 15th, 2020** and lasted until **May 6th, 2020**. During the state of emergency, regulations affecting human rights, were changed on daily basis, as the authority that needed to adopt them had passed from the National Assembly to the executive.

The pandemic, as a global phenomenon, activated international human rights organizations taking into account that human rights restrictions, due to public health needs, represent a global challenge. Since the beginning of the pandemic, the United Nations has timely issued to Member States instructions on how to manage the epidemic, while respecting international human rights standards. This organization continuously monitored the practice of states in regard to respecting human rights during a pandemic. Since there is no practice on how to manage in this type of unexpected challenging situations, and since each country determined its own path in the fight against the pandemic, the UN, following comparative practice, warned of negative phenomena and pointed out examples of good practice.

“Human Rights and COVID-19” presents an analysis of changes in the legal framework during the COVID-19 epidemic and their impact on exercising human rights. Starting from the principle of the rule of law, the analysis shows the decision making manner which limits human rights, control of the consequences of new regulations in practice, with a systematic presentation of the rights that have suffered the most formal restrictions (freedom of assembly, freedom of movement, right to fair trial, right to health care and freedom of expression). The analysis also shows the limitations of other rights, such as freedom of religion and the right to personal and family life, which have arisen as an indirect consequence of the undertaken measures. There are also presented the problems which mentioned measures and restrictions created to vulnerable groups, the initiatives and proposals submitted to the state bodies in order to solve or mitigate the observed problems, as well as state’s response to the initiatives.

The analysis shows the compliance of human rights restrictions with the appeals of the United Nations bodies and the instructions which this organization had been giving during the pandemic.

Developing and publishing a set of individual analysis issued during the state of emergency, as well as the final analysis "Human Rights and COVID-19", was supported by the United Nations Human Rights Team in Serbia. The views expressed do not necessarily represent the views of the United Nations.

02

Declaring and Lifting the State of Emergency

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 10th, 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 Commission¹ and the Institute², may issue an ordinance to ban gatherings in public places, therefore, on **March 12th 2020**

¹ Republic Expert Commission for Protection of the Population from Infectious Diseases

² Institute of Public Health of Serbia "Dr Milan Jovanovic Batut"

the Minister of Health issued an *Ordinance on 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.³

On **April 29th, 2020**, the National Assembly of the Republic of Serbia adopted *the Decision on Confirming the Decision on Declaring a State of Emergency. The Law* on Confirmation of Decrees, Adopted by the Government with the Co-Signature of the President of the Republic, confirmed 44 decrees passed during the state of emergency. Adopting *the Decision* of the Constitutional Court at the 4th session of the First Grand Chamber, held on **May 21st, 2020**, there were rejected the initiatives for initiating the procedure for assessing the constitutionality and legality of the Decision on Declaring a State of Emergency as well as requests for suspending individual acts and actions undertaken on the basis of the disputed Decision on Declaring a State of Emergency.

On **May 6th, 2020**, the National Assembly of the Republic of Serbia passed *the Decision on Lifting the State of Emergency*, and on the same day, the Law on the Validity of Decrees passed by the Government with the co-signature of the President of the Republic during the state of emergency and confirmed by the National Assembly, was passed and entered into force. This Law determines which decrees cease to be valid and which continue to be valid.

03

Decision Makers

Regulations restricting human rights were passed at the national central level and at the local level.

At the national level, the Government of the Republic of Serbia passed 44 decrees, while the Ministry of Health, the Ministry of Internal Affairs, the Ministry of Justice⁴, the Ministry of Education, Science

³ The Speaker of the National Assembly provided a [written reply](#) on March 23rd, 2020 to the opposition MPs that she had proposed that the National Assembly do not meet, due to a ban on assembly.

⁴ The Ministry of Justice issued recommendations outside its jurisdiction.

and Technological Development, the High Judicial Council, the Republic Public Prosecutor's Office and others, within their competences, had also been adopting measures. Most of the regulations were passed in consultation with the Crisis Headquarters for the Suppression of Infectious Disease COVID-19, which was formed on **March 15th, 2020**.

The Law on the Planning System of the Republic of Serbia, regulating the creation of public policies on the principles of equality and non-discrimination, coordination and cooperation, public and partnership, has literally been suspended. With the restrictions imposed by the state, it made it impossible for the most vulnerable groups, which the restrictions have had very harmful consequences on, to be defined in a timely manner.

Managing the epidemic and the epidemic itself implies certain restrictions on human rights, both formally (through adopting new regulations) and literally (in the form of lacking adequate conditions for freely exercising guaranteed rights). In human rights management policy, it is crucial to define the most vulnerable and provide them with treatment enabling them to enjoy absolute rights in crisis situations⁵. Creating that type of policy is possible through the formal involvement of institutions and organizations for the protection of human rights and vulnerable groups in the process of combating the COVID-19 epidemic.

However, analysing media content as well as the address of the Prime Minister in the National Assembly, it is concluded that some professional associations, citizens' associations, as well as *professional associations*, had been sending their recommendations and proposals to the Crisis Headquarters of the Government, although they were not formally involved in the work of the Crisis Headquarters, even after requests have been made.⁶

The Office of the United Nations High Commissioner for Human Rights in its guideline pointed out that states should ensure existing channels of civil society participation, at local, national and international levels are maintained – and possibly expanded – when shifting to remote meetings and videoconferencing in the COVID-19 context.

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Clément Nyaletsossi Voule, on the occasion of the tenth anniversary of this special procedure on **May 13th, 2020** in his *Report* pointed out that no country or government can solve the crisis alone; civil society organizations should be seen as strategic partners in the fight against the pandemic. In particular, civil society will have an important role in helping countries mitigate, adapt and transform from the devastating and long-term socioeconomic development effects of this crisis.

⁵ 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.

⁶ Based on these recommendations, as well as the need, Judges' Association of Serbia requested a judge to be a member of Crisis Headquarters of the Government on July 7th, 2020, but that request did not obtain the answer.

The Special Rapporteur recommended that: civil society should be viewed as an essential partner in responding to the crisis, freedom of association and of assembly online should be respected, civil society actors should be free to express their opinions and share information, as well as civil society's participation in multilateral institutions should be secured.

04

System of Controlling Measures

UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Harlem Désir, *supported* the efforts of **Council of Europe Commissioner for Human Rights, Dunja Mijatovic** who *urged* that measures against misinformation during Covid-19 pandemic must be necessary, proportionate and subject to regular scrutiny, including by parliament and national human rights institutions.

1. The National Assembly

According to *the Law on the National Assembly*, the National Assembly meets without an invitation after the declaration of a state of war or emergency.⁷ The first session of the National Assembly was *held on April 28th, 2020*, or 43 days after the declaration of the state of emergency. The control of measures restricting human rights was performed ex post, with a time distance that made it impossible to perform the corrective role of the National Assembly, i.e. to eliminate the consequences that the decisions of the executive had on human rights.

By *The Decision on Confirming the Decision on Declaring a State of Emergency* from **April 29th, 2020**, the National Assembly of the Republic of Serbia confirmed the decision on declaring a state of emergency. *The Law* on Confirmation of Decrees Adopted by the Government with the Co-Signature of the President of the Republic confirmed 44 decrees passed during the state of emergency.

⁷ The Law on the National Assembly, Official Gazette of the Republic of Serbia, no. 9/2010), art. 48

2. The Constitutional Court of the Republic of Serbia

During the state of emergency, 66 initiatives were submitted to the Constitutional Court to initiate the procedure of assessing the constitutionality and legality of regulations⁸ on declaring a state of emergency and measures during the state of emergency on the basis which ten cases were formed of.

Decision of the Constitutional Court of **May 21st, 2020** rejected the initiative to initiate proceedings to review the constitutionality and legality of the Decision on Declaring a State of Emergency and request for stay of execution of individual acts and actions taken on the basis of the contested Decision on the Declaration of State of Emergency. The Decision and the reasoning were criticized by a large number of university law professors⁹, especially of constitutional law¹⁰, as well as civil society organizations¹¹.

3. The Protector of Citizens of the Republic of Serbia

According to Article 138 of the Constitution of the Republic of Serbia, the Protector of Citizens is an independent state body that protects the rights of citizens and controls the work of state administration bodies, whose work is regulated in more detail by *the Law on the Protector of Citizens*. The first reaction of this institution referred to the danger of spreading fake news through social networks, and already on **March 18th, 2020**, in his *appeal* the Protector of Citizens, emphasized the need for citizens to be informed in a timely manner about all measures to combat the coronavirus virus and to adhere to them with discipline.

During the state of emergency, *mobile team of the Protector of Citizens*, monitored the state of human rights, and on **March 20th, 2020** due to an increase in citizens' addresses, it was introduced *work during the weekend* Visits within the National Preventive Mechanism (NPM) have been intensified (*the County Jail in Belgrade (March 23rd, 2020)*, *Penitentiary in Belgrade*, Penitentiary Belgrade – Padinska skela and Shelter for Foreigners in Padinska skela (**April 24th, 2020**), *Reception Center Obrenovac (April 28th, 2020)*, *Penitentiary Sremska Mitrovica (April 30th, 2020)* and *Reception Center Adasevci (May 5th, 2020)*) with special emphasis on measures to combat coronavirus. During the state of emergency, the Protector of Citizens also visited the Reception Center in Obrenovac and the Asylum Center in Krnjacha. These visits were carried out by the team of the Protector of Citizens independently, without the participation of associations of citizens that perform the activities of the

8 The initiatives requested the initiation of proceedings to assess the constitutionality and legality of the Decision on Declaring a State of Emergency, the Law on Confirmation of Decrees Adopted by the Government with the Co-Signature of the President of the Republic, the Order on Prohibition of Indoor Gatherings, Visit and Restriction of Movement in the Facilities of Institutions for the Accommodation of the Elderly, the Decree on the Manner of Participation of the Accused in the Main Trial in Criminal Proceedings held during the state of emergency. Available in Serbian at <https://www.rts.rs/page/stories/sr/story/125/drustvo/3983828/ustavni-sud-inicijative-vanredno-stanje.html>

9 University professors Vesna Rakic-Vodinelic, Zoran Tomic, Miodrag Jovanovic, Goran Dajovic, among others, gave a critical review of the decision and reasoning;

10 Professors of Constitutional Law Tanasije Marinkovic and Ratko Markovic;

11 Belgrade Center for Human Rights, Lawyers' Committee for Human Rights – YUCOM, Center for Judicial Research - CEPRIIS, etc.

NPM. *The first registered case* of COVID-19 among the prison population was recorded on **April 27th, 2020** in the Zabela Penitentiary. However, the Protector of Citizens did not visit this institution either. The Protector of Citizens prepared a *Special Report on the Activities of the Protector of Citizens during the State of Emergency*, while within the work of the NPM it was prepared *Thematic Report: Application of the CPT's principles on the Treatment of Persons Deprived of Liberty during the Coronavirus Pandemic*.

In its thematic report, prepared in accordance with the *Principles relating to the Treatment of Persons Deprived of Their Liberty in the Context of the Coronavirus Disease (COVID-19) Pandemic*, NPM monitored the measures applied to combat COVID-19 in visited institutions where there are persons deprived of liberty. In a Letter addressed to competent administrative authorities on **March 27th, 2020** NPM pointed to the principles of the CPT, which had been published on the website of the NPM together with *Advice of the Subcommittee on Prevention of Torture to States parties and National Preventive Mechanisms relating to the Coronavirus Disease (COVID-19) Pandemic*.

In its report, NPM noted, among other things, measures related to maintaining increased room hygiene, measuring body temperature, availability of personal hygiene packages to persons who cannot afford to buy them and treatment of postal packages. Attention was also paid to measures to reduce the prison population (early release, termination of detention, etc.), which is one of the principles of the CPT, i.e. the SPT's advice, since prison overcrowding encourages the spread of the virus.

NPM noted problems in maintaining personal contacts of detainees with family members in Sremska Mitrovica Penitentiary due to the lack of telephone booths in the part of the institution where they are held, and recommended that all persons be allowed to keep in touch with family members and relatives by telephone, and in case of a longer duration of the ban on visits introduction of the possibility of maintaining contact via the Internet, or programs for the transmission of images and sound.¹²

The UN Subcommittee on Prevention of Torture (SPT) in the *Advice to Member States* stressed the need to provide alternative methods of communication with family and the outside world in case of bans for health reasons such as telephone, internet, email, video communication, which would compensate for the lack of visits. The SPT also emphasized that the communication of persons deprived of their liberty with family and friends should not only be facilitated but also encouraged, emphasizing the importance of maintaining regular communication not only for the enjoyment of the rights of these persons but also for their health.

On **March 25th, 2020** the Protector of Citizens joined the NOOIS¹³ appeal against the abolition of community services (supported housing, personal assistants, personal companions of children and geronto-housewives) and in his *statement* he especially pointed out the problem of running water shortages in Roma settlements, due to which maintaining hygiene was not possible. On this occasion, on **April 8th, 2020** he sent *an appeal* to local self-governments to provide the inhabitants of Roma settlements with basic living conditions.

¹² Protector of Citizens, *Thematic report: Application of the CPT's principles on the treatment of persons deprived of liberty during the coronavirus pandemic*, May 15th, 2020

¹³ National Organization of Persons with Disabilities of Serbia

During the state of emergency, Protector of Citizens was visiting facilities used for the reception of quarantine Serbian nationals (*Reception Center in Subotica* (March 23rd, 2020)), as well as temporary hospitals (*Belgrade Fair* (March 29th, 2020), *Clinic Centre Nish* (April 8th, 2020) and *Chair* (April 9th, 2020)).

During the visit to the temporary hospitals, the Protector of Citizens stated that the general conditions prescribed by laws and bylaws were met, while the only problem observed was the insufficient number of toilets in Chair. In the case of the Belgrade Fair, the Protector of Citizens mediated to solve the problem with the delay of test results, due to which citizens went on strike, while in the case of KC Nis he mediated in resolving complaints of family members of persons accommodated in that institution that they can not get the information about the health condition of their relatives.

The UN Subcommittee on Prevention of Torture (SPT) in its *Advice* emphasized the need for transparent communication with persons deprived of their liberty, members of their families and the media regarding the undertaken measures.

During his visit to the reception center in Subotica he determined shortcomings in relation to the number of crossings between clean / dirty paths and defective lamps in some rooms, which were quickly remedied.¹⁴

On **April 1st, 2020** the Protector of Citizens sent an *Opinion* to the Ministry of Justice regarding the facilitation of confidential communication between defendants and defense attorneys during the so-called Skype trials. On **April 7th, 2020** the Protector of Citizens addressed the Prime Minister in order to solve the problem of *obtaining movement permits* for citizens who take care of people with disabilities, the elderly and children. Due to the refusal of certain local governments to issue permits for exercising child visitation rights, on **April 10th** the Protector *called on* the authorities to respect the rights of the child, and on **April 30th** he sent an *initiative* that the prescribed measures of movement restrictions should not be applied to victims of domestic violence.

During the state of emergency, the Protector of Citizens initiated procedures to *control the work of the Ministry of Internal Affairs* (April 16th, 2020) and social protection institutions (*Gerontology Center Nish* (April 14th, 2020), *20 institutions* (April 22nd, 2020), *Center for Social Work Panchevo* (April 24th, 2020)). While in the case of the control of the Ministry of Internal Affairs, the Protector of Citizens *determined* that the police officer of PS Vrchar acted illegally and humiliatingly during the arrest, information on the outcome of controls conducted in social protection institutions are still not available on the Protector of Citizens website.

¹⁴ The Protector of Citizens, *Special Report on Activities of the Protector of Citizens during the State of Emergency*, June 10th, 2020, pg. 6

4. The Commissioner for Information of Public Importance and Personal Data Protection

The Commissioner for Information of Public Importance and Personal Data Protection bases his work on the provisions of *the Law on Free Access to Information of Public Importance* and *the Law on Personal Data Protection*, as two umbrella laws and on a number of bylaws. The Commissioner is competent to monitor compliance with the obligations of the authorities established by these laws and to report to the public.

Due to a large number of people's addresses, on **March 20th, 2020**, the Commissioner *informed* the public, that in a state of emergency, the right to free access to information of public importance has not been suspended, but that it can reasonably be expected that the authority is objectively unable to act upon each request, especially within the legal deadline. In the same statement, however, the Commissioner emphasized the obligation of public authorities to respond within 48 hours to requests related to endangerment, i.e. protection of the health of the population and the environment, and advocated the proactive publication of information.

UN experts stressed in a statement *COVID-19: Governments must promote and protect access and free flow of information during a pandemic* the importance of providing true and reliable information about the coronavirus and their importance in combating false information that can lead to health concerns, panic and disorder.

Commissioner's *statement* from **March 25th, 2020** welcoming the adoption of *the Decree on the Application of Deadlines in Administrative Proceedings during a State of Emergency*, announcing that the institution itself would apply it in its work, was interpreted by many public authorities as not requiring them to respond to requests while a state of emergency lasts. Thus, freedom of access to information during a state of emergency was effectively suspended.

On **April 1st, 2020** the Commissioner *condemned* the phenomenon of fake news spreading through social networks, such as the fake news about the starting time of the 24 hour curfew and appealed to all citizens not to accept all news spreading on social networks lightly, but to as far as they are able, check the truthfulness of the allegations in the news. One month after the disputed interpretation of the Deadline Regulation, the Commissioner *informed* the public that the International Conference of Information Commissioners (ICIC), which the Commissioner participates in, *highlighted* the importance of exercising the right to access information of public importance during the coronavirus pandemic (COVID-19).

During the state of emergency, the Commissioner filed an *appeal* on **March 19th, 2020** against the violation the right to privacy of infected persons, regarding the frequent complaints of parents of school children which indicate that teachers through modern electronic means of communication required notice about the health of students and their family members, justifying it with the request of school administrations and the Ministry. The Commissioner, recalling the ban on restricting the right to protection of personal data, even during a state of emergency, warned citizens of possible misuse of personal data by unknown persons through social networks (so-called phishing campaigns).

On **March 30th, 2020** the Commissioner *warned* all citizens, especially the elderly, not to fall prey to “offers of help” and not to give their personal data in the described way, so as not to suffer very great consequences due to reckless disclosure of their personal data. In his *statement* from **April 1st, 2020** the Commissioner informed the public that the right to protection of personal data is not limited, so managers and processors are obliged to perform their activities in accordance with the Law on Personal Data Protection and other regulations which regulates that matter.

5. The Commissioner for the Protection of Equality

During the state of emergency on the territory of the Republic of Serbia, the Commissioner for the Protection of Equality proposed to the public authorities a series of measures in the field of equality. Commissioner’s reactions and appeals concerned almost all vulnerable groups, with special emphasis on groups that were particularly endangered in the situation of the declared epidemic of the infectious disease COVID-19. Thus, on **March 24th, 2020** the Commissioner issued a *Warning to the Public* regarding the observed stigmatization of persons suffering from the infectious disease COVID-19 on the basis of their health condition, as well as the current stigmatization of Serbian citizens who returned to the country from abroad.

In several recommendations and initiatives, the Commissioner drew attention to the difficult situation of the elderly, and sent a *Recommendation to the PE “Electric Power Industry of Serbia”* to enable the supply of electricity to all persons over 65 years of age, given that they were prohibited from moving during the state of emergency on the basis of the Order on Restriction and Prohibition of Movement of Persons on the Territory of the Republic of Serbia. The Commissioner also sent an *Initiative to the Ministry of Internal Affairs of the Republic of Serbia* to issue instructions on the actions of members of the Ministry in monitoring compliance with the order banning movement and imposing fines for violating the ban on persons over 65 suffering from dementia, which are not able to understand the significance of the stated measure, as well as the obligation to respect it.

The Government of the Republic of Serbia was also sent a *Recommendation of measures regarding movement permits, work of help and support lines, domestic violence* where, among other things, it is recommended to review the adequacy of terms set for the movement of persons over 65 and their frequency. Part of the mentioned recommendation that has been accepted, and it concerns the elderly, is the introduction of telephone lines to help the elderly and other lines for various types of support and assistance. During the state of emergency, the Commissioner paid special attention to the limited freedom of movement, and on that occasion also recommended the simplification of the procedure for issuing movement permits and proposed that permits be issued via SMS messages.

The Commissioner also pointed out the particularly difficult situation of victims of domestic violence during the state of emergency and the ban on movement, and called on the competent authorities to send instructions to all institutions that have statutory competencies regarding dealing with or risking violence in the circumstances of the state of emergency, in order to provide victims of violence with timely protection. With a special *Initiative* the Commissioner proposed amending the Decree on measures during a state of emergency and enabling victims of domestic and partner violence to

leave their apartment, room and dwelling in residential buildings and household (yard) at the time of direct exposure to violence.

Based on the information received from civil society organizations, the Commissioner for the Protection of Equality sent a *Recommendation* to the Government of the Republic of Serbia where she pointed out the particularly difficult situation of persons belonging to the Roma national minority living in informal or substandard settlements. The Recommendation points out that these persons are particularly vulnerable due to the conditions in which they live and are therefore at greater risk of coronavirus infection, and recommended that the Government provide for the obligation to provide local residents with full access to clean water by installing cisterns, plastic tanks, with water bottles and the like.

With regard to the numerous appeals of citizens and civil society about the difficult position of persons with disabilities, in particular persons and children with autism, the Commissioner has sent a *Recommendation* to the Ministry of Labor, Employment, and Social Affairs. The Recommendation emphasizes that, in order to preserve the psycho-physical health of people with autism, it is necessary to consider the possibility of issuing permits for movement in a limited time and limited area near the place of residence. This proposal of the Commissioner for the Protection of Equality has been adopted, and persons with autism spectrum disorders and their companions were allowed to move during the ban on movement for other citizens. One of the initiatives that were adopted contained proposals on ways to address the movement of personal assistants of persons with disabilities who provide services in the evening, during the ban on movement prescribed by measures to combat the spread of the epidemic.

With the Initiative to amend the Decree on one-time financial assistance, the Commissioner for the Protection of Equality proposed to the Government of the Republic of Serbia a one-time assistance salary without submitting an application for the unemployed, persons with disabilities and independent artists. At the same time, the Commissioner initiated an amendment related to enabling the payment of financial aid for persons deprived of legal capacity, by submitting a request on their behalf by their guardians.

During the state of emergency, the Commissioner issued a series of public warnings regarding gender-based violence in the media and on social networks.

The mandate of the Commissioner for the Protection of Equality expired on **May 27th, 2020**, and as this independent body has no deputies with legal authority to act, the work was completely blocked in June and July. At the time of publishing the analysis, the process of electing the Commissioner for the Protection of Equality had not even begun, and due to it the system of control of measures during COVID-19 was weakened.

05

Basic Rules with Respect to Restriction of Rights

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 Constitution¹⁵, 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 and cannot bring about discrimination. According to domestic regulations, both direct and indirect discrimination are prohibited and it is allowed to introduce special measures in order to achieve full equality of persons or groups of persons who are essentially in an unequal position comparing with other citizens. It means that when restrictions on human rights need to be introduced, it is necessary to take into account that restrictions for certain groups of persons, due to their personal characteristics (e.g. mental and physi-

¹⁵ 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.

cal disability, property status, religion, etc.) should not be such alike to put them at a disadvantage comparing to other persons who do not possess those personal characteristics.

In addition, during a state of emergency, it is required to inform the Secretary-General of the United Nations about declaring a state of emergency, as well as the list of rights that will be restricted. Introducing the previous state of emergency, which was declared in the Republic of Serbia on March 12th, 2003, the United Nations was informed in accordance with the regulations, the day after the state of emergency had been declared, stating the list of restricted rights.

On **April 30th, 2020** the **UN Human Rights Committee** *called upon all State parties* that have taken emergency measures in connection with the COVID-19 pandemic that derogate from their obligations under the Covenant to comply without delay with their duty to notify the Secretary-General thereof immediately, if they have not already done so. On **April 6th, 2020**, Serbia informed the UN Secretary-General about declaring the state of emergency and the derogation of certain rights provided by the Covenant to the extent required by the epidemiological situation and medical necessity. The document that the Republic of Serbia sent to the UN Secretary-General does not meet the formal or material criteria prescribed in Article 4 of the Covenant¹⁶. On the same day, Serbia *informed the Council of Europe* about declaring the state of emergency on **April 6th, 2020** without specifying the list of rights (i.e. the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms) that are going to be restricted during the state of emergency.

16 Belgrade Center for Human Rights, Human Rights in Serbia, January – June 2020. Available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Human-Rights-in-Serbia-I-VI-2020.pdf>

06

Fundamental Rights and Freedoms

1. 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 Nyaletsossi Voule, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, issued [a statement / appeal](#) with 10 principles on **April 14th, 2020** stating that States' response to the COVID-19 threat should not abolish freedom of assembly and association.

Freedom of assembly was the first human right in Serbia to be restricted due to the COVID-19 epidemic. This freedom was initially restricted only indoors, and then, during the state of emergency, it was completely abolished outdoors.

Starting from **March 12th, 2020** the Minister of Health, in order to prevent the spread of the infectious disease COVID-19, had been issuing *ordinances of banning gatherings in the Republic of Serbia in indoors public places*. These orders prohibited public gatherings in the entire territory of the Republic of Serbia in public places indoors of more than 100 people (**March 12th, 2020**), and then that number was reduced to 50 (**March 15th, 2020**), and then to five people (**March 21st, 2020**).

Complete restriction of gatherings outdoors lasted during all 52 days of the state of emergency. Adopting [the Decree](#) on measures during the state of emergency, the Government banned gatherings indoors and outdoors (except those that are of special interest for the functioning of state bodies – i.e. government buildings, ministries, etc.), starting from **March 15th, 2020**. Possible exceptions from the general ban on gatherings could, depending on the epidemiological situation, be prescribed by Government decisions.

The ban on gatherings indirectly affected other rights guaranteed by the Constitution and international conventions. The right to freedom of religion, exercised by attending a religious service, was limited by the prohibition of assembly. With its conclusion from **March 27th, 2020**, the Government of the Republic of Serbia recommended to churches and religious communities to perform religious rites in religious buildings and outdoors without the presence of believers during the state of emergency, as well as to perform religious rites during burials with respect to all preventive measures prescribed to effectively suppress infectious diseases and protect human life and health.

During the state of emergency, the longest continuous curfew (84 hours) was requested in order to prevent people from attending church services during the liturgy for Orthodox Easter on **April 19th, 2020**. Despite that, a large number of believers still attended the services, and the police who were present near the churches, however, did not intervene.

The inability to exercise their right to attend religious service and the act of communion, some citizens experienced as a violation of human rights and addressed the Lawyers' Committee for Human Rights for legal support.

During the state of emergency, a person, who wanted to protest due to dissatisfaction with the management of local authorities during the suppression of COVID-19, had contacted the Lawyers' Committee for Human Rights. This question suggests that there was an impression among citizens that all political rights and freedom of expression were completely restricted.

Freedom of assembly restriction during a state of emergency	
Date	Indoor gathering restrictions
March 12 th , 2020	Prohibition of gathering more than 100 persons
March 15 th , 2020	Prohibition of gathering more than 50 persons
March 21 st – May 6 th , 2020	Prohibition of gathering more than 5 persons
Date	Outdoor gathering restrictions
March 15 th – May 6 th , 2020	Prohibition of all assemblies and gatherings

Lifting the state of emergency has led to a change in the regime of restrictions on freedom of assembly.

On **May 7th, 2020**, the Ministry of Health passed a new *Ordinance on Banning Gatherings in the Republic of Serbia in Public Indoors and Outdoors Places*. Within the provisions of this Ordinance there were established restrictions on indoors and outdoors gatherings, in a way that the maximum number of persons was 50, with a distance of 2 meters, and in strict compliance with protective measures, including visible and verifiable wearing of protective masks.

First restriction on freedom of assembly after lifting the state of emergency lasted for a total of 14 days, and then the allowed number of gathered for the next 7 days was increased to 100 (**May**

21st, 2020). On **May 24th, 2020** the central Eid celebration was held in Novi Pazar in the Haji Hurem Mosque. A large number of believers gathered in this and other mosques, despite the fact that the ban on gathering of more than 100 people has been in force.

As early as **May 29th, 2020** up to 1,000 people were allowed to gather, with the exception of sports competitions, where more people could be present. The Order from **May 29th, 2020** introduced a mandatory distance of 1 meter for those present at sports competitions. The restriction on freedom of assembly in terms of the number of people lasted for the next 11 days, and after abolishing this restriction, the obligation to keep a distance of 1 meter was prescribed again (**June 10th, 2020**), but after only two days it was also abolished (**June 12th, 2020**).

Therefore, 32 days after suspending freedom of assembly completely during 52-days of the state of emergency, all remaining measures restricting freedom of assembly were lifted.

The day when restriction on the number of people at outdoor gatherings was lifted (**June 10th, 2020**) coincided with the day when the derby between the two largest Serbian football clubs took place, traditionally the most visited football event. According to many reputable *media*, there were about 25,000 people at this event. The obligation to keep 1 m distance that had been in force was not respected.

From the moment when the restrictions on freedom of assembly had been lifted, it was planned to organize political rallies and events throughout whole Serbia, having in mind that the parliamentary, provincial and local elections were scheduled for **June 21st, 2020**. Freedom of assembly, as a political right, is used as a regular instrument in the election campaign. However, on **June 10th, 2020** (when the restrictions on the number of citizens for gatherings were lifted), the ruling party (Serbian Progressive Party) also made a *decision* to cancel all pre-election rallies. Despite that, some previously scheduled political rallies were still *held* the next day. Additionally, a day later, the presidency of another party also made *a decision to cancel the political rallies in order to protect citizens' health*. The three largest final pre-election rallies were held on *June 17th and 18th in Novi Pazar*. After 10 days, this city and its surroundings became *the hotspot of COVID-19*.

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Clément Nyaletsossi Voule, noting that democracy cannot be postponed, pointed out that designing electoral approaches in the context of the current global pandemic is a challenge. He made clear the consequences of the restrictions on the election process: "Limitations on assemblies in many countries impair individuals' ability to campaign and participate in rallies, to conduct voter outreach and to monitor election processes. Civil society's ability to engage with candidates, or with the broader public in the context of elections, is also constrained." However, the legitimacy of the restriction on freedom of assembly was not questionable, but it was pointed out that "given these challenging circumstances, it is even more important to respect freedom of expression and that the rights to freedom of peaceful assembly and of association online are fully ensured." "States should provide transparency as to their decision-making processes in the context of elections, and should consult with civil society in determining appropriate approaches. While limitations on in-person voting may be necessary in some cases, States should take all measures possible to ensure the timely carrying out of elections, including through the utilization of alternative voting procedures such as mail-in ballots."

Sudden changes in the COVID-19 epidemic management policy have affected citizens' trust in the decisions of the Crisis Headquarters to be lost. Additionally, information appeared on the portal covid19.rs on the increased number of infected and dead after opening the hotspot in Novi Pazar. Report of Balkan Investigative Reporting Network (BIRN) on concealing real numbers of infected and dead people as a result of COVID-19 furthermore contributed to mistrust. In that type of atmosphere, [the announcement](#) of the President of the Republic on introducing a new curfew during the weekend (continuously for 59 hours) and a ban on gathering more than 5 people, was the reason for a spontaneous protest gathering of thousands of people in front of the National Assembly building in Belgrade on **July 7th, 2020**. During this gathering, which began and was held as a peaceful protest, after two hours, a small number of participants entered the National Assembly building and were violent towards the police, who responded with disproportionate use of force against all citizens. On that occasion, the police used tear gas, batons, dogs and horses against the citizens, many of whom, judging by the numerous video materials published on social networks, did not offer any kind of resistance. It was clearly visible on the mentioned video materials that the means of coercion, such as the official baton, were used contrary to the valid regulations. In the following days, from **July 8th to July 13th, 2020** protests were also organized in Belgrade and other cities.

These protests, through the actions of right-wing organizations and parties, became violent, which is why the police reacted with disproportionate use of force. The protests have been discussed exclusively as a consequence of the interference of foreign states and former opposition parties and officials, while dissatisfaction with managing suppression of the COVID-19 pandemic has been completely ignored.

In the cities where the protests were organized, the local authorities introduced a restriction on the freedom of assembly, and from **July 15th, 2020** restricting the gathering of more than 10 persons, there was a restriction on the freedom of assembly on the entire territory of the Republic of Serbia. Concerning held public gatherings, a large number of citizens were sentenced to prison terms, while some of the participants were detained for criminal offenses under the Law on Public Order and Peace and the Criminal Code. According to CINS' [data](#) (*Center for Investigative Journalism of Serbia*), a total of 82 misdemeanor proceedings related to insults and attacks on police officers, destruction of property or possession of torches at protests resulted in 43 convictions and 9 acquittals, while 30 proceedings have still been ongoing.

Persons who have been sentenced to imprisonment or have been detained for criminal offenses committed during public gatherings in the period July 7-15, 2020¹⁷

Date	Number of misdemeanor convicted persons under the Law on Public Order and Peace	Number of detained persons under the Law on Public Order and Peace	Number of detained persons under the Criminal Code
July 7 th , 2020	1	0	0
July 8 th , 2020	2	1	0
July 9 th , 2020	5	1	2
July 10 th , 2020	2	0	1

July 11 th , 2020	2	11	8
July 12 th , 2020	9	2	4
July 13 th , 2020	0	0	3
July 14 th , 2020	0	0	1
July 15 th , 2020	3	1	0
Total	24	16	19

On this occasion, the Lawyers' Committee for Human Rights, together with 11 other civil society organizations gathered within the Platform of Organizations for Cooperation with United Nations Human Rights Mechanisms, addressed an *appeal to the UN Special Rapporteur on Torture, Nils Melzer*, asking him to appeal to the authorities to conduct an investigation into police brutality against protesters.

Freedom of assembly restriction after lifting the state of emergency

Date	Outdoor gathering restrictions
May 7 th , 2020	Prohibition of gathering more than 50 persons
May 21 st , 2020	Prohibition of gathering more than 100 persons
May 29 th , 2020	Prohibition of gathering more than 1000 persons, except sports competitions, with a mandatory 1m distance
June 10 th , 2020	The restriction on the number of participants was abolished, with a mandatory 1m distance
June 12 th , 2020	Deleted article that provides a mandatory 1m distance on gatherings
July 10 th , 2020	Prohibition of gathering more than 10 persons in Belgrade
July 10 th , 2020	Prohibition of gathering more than 10 persons in Novi Sad
July 11 th , 2020	Prohibition of gathering more than 20 persons in Nis
July 15 th , 2020	Prohibition of gathering more than 10 persons in the territory of the Republic of Serbia

17 The table was created based on the response of the Administration for Execution of Criminal Sanctions number 7-00-44 / 2020-03 from July 27th, 2020

All events have indicated that the restriction of freedom of assembly during the state of emergency, from the point of view of regulations, was legitimate because it had served to protect public health. The principles of human rights dictate that restrictions on human rights are exercised precisely for protecting other human rights that are absolute and that cannot be restricted. In this regard, the legal regulation of freedom of assembly during COVID-19 can be reviewed from the point of view of respecting absolute human rights, as the right to life. The fact is that on the same day – **June 10th, 2020** – the restrictions on the number of citizens who can gather ceased to be valid, that a derby was held in the presence of 25,000 persons at the stadium, that the ruling party decided not to hold pre-election rallies, and that, after it, pre-election and other rallies endangered people's lives and health, speaks in favor of that there were strong reasons for restricting freedom of assembly that were known but did not affect legal regulations until the beginning of the civil protests.

Serbia did not make any special effort to exercise freedom of assembly online during the election campaign, which was the recommendation of **the UN Special Rapporteur, Clément Nyaletsossi Voule**. Cases of restricting freedom of assembly following opposition protests in Serbia, with severe protesters' sanctioning, have confirmed the Special Rapporteur's *opinion* that many countries had adopted measures (although the restrictions are legitimate) more aimed at controlling and destroying opposition figures than securing public health.

2. 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 18th, 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.

Date	Amendments to the Ordinance on Restriction and Prohibition of Movement of Persons in the Territory of the Republic of Serbia
March 18 th , 2020	Complete ban on movement of persons who are 65 or older. The ban on movement of other persons is from 8pm to 5am.
March 21 st , 2020	Persons who are 65 or older are allowed to move on Saturdays from 3 to 8 am. It is prohibited movement in all parks and public areas intended for recreation and sports.
March 22 nd , 2020	The ban on movement of all persons is changed from 8 pm to 5 pm. 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.
March 28 th , 2020	At weekends, there is a ban on movement of all persons begins at 3 pm. It is prohibited to take pets for a walk.
April 3 rd , 2020	At weekends there is a ban on movement from Saturday at 1 pm to Monday at 5 am. 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 may be present at funerals.

The aforementioned Ordinance ceased to be valid on April 9th, 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**.

The right to freedom of movement was also restricted by the *Decision on declaring COVID-19 disease caused by the SARS-CoV-2 infectious disease*. The decision 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. This Decision has undergone numerous changes, changing the manner, time and place of isolation (isolation at home, isolation based on an oral solution, isolation in quarantine, isolation in special facilities, etc.).¹⁸

18 The Amendment of the Decision from [March 16, 2020](#), makes a difference whether or not someone comes from the country of the outbreak, and depending on that, 28 days of isolation are determined, i.e. 14 days under medical surveillance (home isolation). The Amendment of the Decision from [March 18th, 2020](#) for the first time, the obligation to orally pronounce the decision to a person entering the country was explicitly mentioned. [The Amendment](#) that followed, only a day after, introduced the term quarantine and it was determined the institution which those persons address to. The Amendment of the Decision 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 of the Decision from [March 31st, 2020](#) the measures of quarantine in previously decided established facilities are again replaced by the measure of 28 days home isolation, and persons entering the Republic of Serbia, who notice symptoms of infectious disease COVID-19, have been immediately addressed to the corresponding health institution.

The amendment from **April 22nd** has mitigated the measures of prohibiting and restricting movement in a way that they do not apply to domestic citizens and foreign citizens who perform agricultural work and have agricultural land on the territory of the neighboring state, and who are obliged to report crossing the state border to the Ministry of Agriculture, Forestry and Water Management. Also, they do not apply to domestic citizens who are employed on the territory of the neighboring country, as well as to foreign citizens employed on the territory of the Republic of Serbia with a regulated work permit. The amendments from **April 24th** have specified that the status of these persons is proven if they possess a proof of ownership of agricultural land or a statement of the owner of agricultural land that the person performs agricultural work on his land, or a document on employment as respects to foreigners employed in Serbia, i.e. our citizens employed abroad. Frequent amendments to the aforementioned Decision, and in particular the last two amendments, show that measures have sometimes been adopted without a careful analysis on how they could be implemented in practice.

It is important to note that in addition to frequent changes of the Decision, the problem was the inconsistency of terminology, i.e. the introduction of new terms that have not been previously presented in the positive regulations. Namely, 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*, nor other general acts, which the Decision refers to. *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 18th, 2020**.

The right to freedom of movement, through restrictions on entry and exit from Serbia, the Republic of Serbia restricted in the period from **March 12th, 2020 to May 21st, 2020**.¹⁹

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

The Amendment of the Decision from **April 1st, 2020** stipulates the manner of discharging cured persons and mandatory 14 days isolation for those persons. It is also prescribed 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, by a decision, suspend 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.

19 *The Decision to Close the Border Crossings* from March 12th, 2020, *the Decision to Close all Border Crossings for Entry into the Republic of Serbia*, from March 19th, 2020, *Decision on the termination of the Decision to Close all Border Crossings* and the *Decision to Close all Border Crossing for Entry into the Republic of Serbia*, from May 21st, 2020.

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 for Human Rights – YUCOM submitted a proposal to the Crisis Headquarters 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.

2.1. Issuing Movement Permits

The ban on movement did not apply to 1) health workers who had a valid license, 2) members of the Ministry of Internal Affairs, the Ministry of Defense, Army of Serbia and the security services, as well as 3) persons whom the MoI has issued a movement permit to. The order of the Minister of Internal Affairs prescribed that the MoI issues movement permits. However, the criteria for issuing it have not been prescribed during the state of emergency, therefore it stayed unclear based on what type of criteria the permits were issued. Also, state bodies' instructions for issuing permits were not unambiguous. In the instructions of the Ministry of Economy and the Ministry of Labor, Employment, Veterans and Social Affairs, it was envisaged that these ministries would mediate in issuing movement permits, while the Ministry of Internal Affairs would issue permits. However, in the instructions of the Ministry of Agriculture, the Ministry of Internal Affairs has not been mentioned as a body that issues movement permits during curfew. Police officers, who were on the ground during the state of emergency, revealed to BCSP that in practice, other ministries, public companies or municipal crisis headquarters were also issuing movement permits during curfew.²⁰

The problem of issuing movement permits for persons caring for elderly immobile relatives, persons with disabilities and children became evident immediately after declaring the state of emergency.

Namely, only a few days after introducing the state of emergency, parents have begun to address YUCOM regarding the difficulties in seeing their children in accordance with the models established in the divorce judgments. With the curfew introduced, seeing children became practically impossible. Parents, who were concerned about the possibility of endangering child's health as well as the transmission of the virus from one household to another when seeing the other parent, have also contacted us.

On **March 30th, 2020** regarding the different and contradictory information that parents received from the competent institutions, the Autonomous Women's Center (AWC) addressed a [letter](#) to the Mi-

20 Blog: Constituencies for Judicial Reform in Serbia, Sasha Djordjevic, [Movement during Curfew](#)

nistry of Justice and the Ministry of Labor, Employment, Veterans and Social Affairs with specific proposals to adopt clear instructions regarding maintaining personal contacts between children and parents. The Ministry of Labor, Employment, Veteran and Social Affairs did not respond directly to this letter from the AWC, and only on **April 5th, 2020** issued a [press release on](#) issuing movement permits during curfew, which referred to several categories of persons, including parents. After the initial difficulties in obtaining movement permits for people who take care of people with disabilities, the elderly and children, the Protector of Citizens also [addressed](#) the Prime Minister on **April 7th 2020**.

In addition to the unjustifiably long wait for solving the problem, which was the subject of numerous [appeals](#) by parents' associations, the established procedure for obtaining movement permits during curfew was unnecessarily complicated and long, and many children were practically denied seeing the parent they don't reside with until the end of the state of emergency.

The procedure involved three state bodies, and some local self-governments even refused to issue permits. The parents first applied to the local self-government units, which assessed the existence of reasons for issuing the permit. After that, the request was forwarded to the Ministry of Labor, Employment, Veteran and Social Affairs, which additionally checked it, and then forwarded it to the Ministry of Internal Affairs. The authority given to mayors and municipality presidents to assess the justification of the reasons for issuing a permit to see children was particularly inappropriate, even though it is a matter of rights and obligations determined by final court judgments.

On this occasion, on **April 10th, 2020**, the Protector of Citizens announced that he [called on authorities](#) to respect the guaranteed rights of the child. Namely, after finding out that some local self-government units refuse to consider parents' requests for permits to move during curfew, the Protector of Citizens warned the authorities that deviations from the guaranteed rights of a child to maintain personal relations with a parent whom he does not live with are not allowed, pursuant to the provisions of Article 64 and Article 202 of the [Constitution of the Republic of Serbia](#), in connection with Article 61 of the [Family Law](#).

The association "Justice for Dads" from Novi Sad has also addressed YUCOM in connection with this issue. YUCOM posed this question in the [media](#) and after that the centers for social work were given the authority to issue movement permits, enabling parents to exercise their right during curfew. However, this did not significantly speed up the permit process due to the lack of capacity of social work centers. Until the end of the state of emergency, the realization of personal contacts between children and parents was a long and arduous process, where the guaranteed rights of a child were threatened.

2.2. Prohibition of Movement and Vulnerable Groups

The ban on movement particularly affected vulnerable groups, the homeless, the socially endangered, citizens who have reached the age of 65 or 70, people with disabilities, migrants, and people with developmental disabilities.

Elderly

Although **not all were equally affected by this restriction**, all citizens of Serbia suffered due to restrictions on the right to freedom of movement during the state of emergency. The most vulnerable group and mostly affected by restrictions on freedom of movement were people over the age of 65 and 70, respectively. The practical abolition of freedom of movement imposed on this age

group by the *Ordinance on Restriction and Prohibition of Movement of Persons in the Territory of the Republic of Serbia* represented deprivation of liberty in accordance with the definition from OPCAT (Article 4.2).²¹ For comparison, persons serving prison sentences in their homes according to the Criminal Code of the Republic of Serbia have a wide range of opportunities to leave the house with permission (to provide medical care to them or family members, to go to work, to go to school, to care for elderly relatives etc.). A similar system of permits for the elderly has not been established, and regular medical examinations at home have not been provided. Although in this type of circumstances the obligation of the state to protect the right to life of persons deprived of their liberty is of the utmost importance, pensioners were only provided with assistance in the amount of 4000 dinars and a small package of food products. The only possibility to procure groceries on their own was to go out once a week in the early morning hours at a time which, according to *authorities' recognition* was chosen to discourage pensioners to go out.

At the local government level, volunteer services for food and medicine delivery have been established, but it remains unclear whether they had enough volunteers. One municipality has issued or it is withdrawn after public pressure unlawful decision on establishing a *work obligation of members of CSOs*. In some cases *work obligation was assigned to persons employed in preschool institutions*. It is worth noting that, in addition to closing of the soup kitchens to the public, prepared meals were still delivered to persons older than 65 years who receive *social assistance benefit*. However, the scope of this measure was limited due to the very restrictive conditions for social assistance benefit that still leave a part of socially disadvantaged people with low incomes out of the system. In addition, as this is a program funded by local self-governments, it has not been available in all municipalities. Thus, according to the latest information on the *website* of the Serbian Red Cross, the program of soup kitchens was realized only in 76 of 167 municipalities in Serbia during the period 2016/17.

The Government, local governments, professional associations and others have established telephone lines for people who need psychological counseling.

The UN Independent Expert on the Rights of the Elderly, Rosa Kornfeld-Matte *called on all relevant actors to ensure the continued functioning of basic home support services in the communities without exposing the elderly and service providers to risk, concluding that "Communities and generations must come together to get through this crisis in solidarity".*

One month after the abolition of the freedom of movement, through amendments to the Regulation on **April 20th, 2020** people over the age of 65 were allowed to go out three times a week, for 30 minutes, no more than 600 meters from their place of residence. The amendments from **April 24th, 2020** also enabled a daily walk in the period (6 PM – 1 AM) for an hour.

Citizens over the age of 65 contacted us because, despite the possibility of going for a walk, were still unable to perform certain tasks, such as concluding a contract for the sale of real estate or driving

²¹ For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

a car. In one case, an enforcement officer, despite *public pressure*, still *attempted to evict* a family whose one member was a person over the age of 65.

Although information circulated in the public narrative that the elderly are more susceptible to the more severe consequences of the virus due to a weaker immune system, **there was no explanation** as to what led the Minister of the Internal Affairs and later the Government of the Republic of Serbia to set this age limit at 65 or 70. Although Serbian labor legislation prescribes 65 years as the age at which an old-age pension can be earned, many Serbian citizens over the age of 65 are still employed and this restriction has significantly affected their employment rights in addition to their right to movement. For that reason, **the issue of age discrimination and its justification can justifiably be raised.**

While the measures for other citizens, younger than 65, were **progressively tightened**, so the ban on movement, originally established from 20:00 to 05:00, was first tightened to 12 hours (from 17:00 to 05:00), **with the elderly the Government of the Republic of Serbia has not even tried to apply milder measures** (for example, restriction of movement in a certain period of time or in certain places).

“Older persons have become highly visible in the COVID 19 outbreak but their voices, opinions and concerns have not been heard. Instead, the deep-rooted ageism in our societies has become even more apparent. We have seen this in some cruel and dehumanizing language on social media and in the exclusive emphasis on older persons’ vulnerability ignoring their autonomy” also *stated independent UN expert, Kornfeld-Matte.*

Persons with Disabilities

Persons with disabilities after children represent the second vulnerable group that contacted us most often for the provision of free legal aid. Part of the observed problems was closely related to the ban on movement, i.e. obtaining a permit to move during curfew. On this occasion, citizens who take care of old and weakly mobile relatives, as well as parents of children with autism, who were negatively affected by curfew, came forward.

The UN Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas, in her *appeal* stated “Containment measures, such as social distancing and self-isolation, may be impossible for those who rely on the support of others to eat, dress and bathe. This support is basic for their survival, and States must take additional social protection measures to guarantee the continuity of support in a safe manner throughout the crisis.”

On **April 5th, 2020**, the Commissioner for the Protection of Equality, Brankica Jankovic *welcomed* the adoption of her initiative, which, on **March 26th, 2020** proposed ways to solve the movement of personal assistants of people with disabilities who provide a service in the evening, at the time of the prohibition of movement prescribed by measures for combating the spread of the epidemic. The initiative also referred to assistance and support services for people with disabilities, provided by informal careers, relatives or friends, who do not live in a joint household, as well as for citizens who are in the terminal phase of the disease and who use palliative care at home, as well as people

with dementia. These persons had the opportunity to obtain a *movement permit* at the time of the movement ban, upon request in the prescribed procedure.

The possibility of a large group of personal assistants in Belgrade *to lose their employment* threatened to prevent children with disabilities from exercising this right, but this was avoided through strong public pressure. One person under the age of 65, addressed us, believing that she was discriminated as she was not allowed to go out during curfew, as children with autism were allowed to do. She has a neuromuscular disease, problems with immunity and is visually impaired, so she moves with the help of her husband who suffers from leukemia, which is why they both belong to the risk group and the endangered category of citizens. She expressed fear that they would move at a time when all other citizens were allowed to do so. *Regulation on the Measures during the State of Emergency* did not provide an exception for this vulnerable group in relation to other citizens. Despite that, she had the opportunity to apply for a movement permit so that she and her husband could still avoid the risk of the virus.

Persons with Developmental Disabilities and Autism

As a vulnerable subgroup, children with disabilities were particularly affected by the ban on movement, and only after a two-week appeal by the parents of children with autism, these children and other children with disabilities were *allowed to go out* during curfew. After the reaction of the Commissioner for Equality and non-governmental organizations, with the amendments of the Regulation on the Measures during the State of Emergency from **April 9th, 2020** persons with developmental disabilities and autism were **allowed movement at the time of the prohibition of movement**, only if accompanied by an adult up to 200 m away from the place of residence or temporary residence.

Asylum Seekers and Migrants

Decision on Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Residing in the Asylum Centers and Detention Centers in the Republic of Serbia limited the movement of asylum seekers and irregular migrants and established the enhanced supervision and the security at these facilities, and they were only exceptionally and in justified cases (going to the doctor or for other justified reasons), allowed to leave, with the special permission of the Commissariat for Refugees and Migration. This measure is justified by prevention the spread of the virus among the migrant population. *The Army of the Republic of Serbia controlled* migrant camps.

The UN Special Rapporteur on Minority Issues, Fernand de Varennes, *warned* of the danger of excluding certain minority groups from certain rights and increased discrimination against migrants.

On **March 31st, 2020**, Belgrade Center for Human Rights submitted to the Constitutional Court of Serbia an *initiative* to initiate proceedings to assess the constitutionality of Articles 2 and 3 of the Decree on Measures during the State of Emergency as well as the Ordinance on Restriction and Prohibition of Movement of Persons on the Territory of the Republic of Serbia. By the disputed articles of the Decree on the Measures during the State of Emergency, the Government of the Republic of Serbia did not prescribe specific measures for derogation from human and minority rights, but it authorized the Ministry of Internal Affairs that, with the consent of the Government to make its own decision, which in the opinion of the Center could not be done.

On **May 12th, 2020**, a group of civil society organizations submitted to the Constitutional Court of the Republic of Serbia an *initiative* to assess the constitutionality and legality of the Ordinance on Restriction of Movement at Open Entrances and Facilities of Migrant Reception Centers and Asylum Centers, issued on **May 6th, 2020**. They believe that the ban on refugees, asylum seekers and irregular migrants from leaving reception centers and asylum centers in the Republic of Serbia, prescribed by this Ordinance, represents an unfounded and disproportionate restriction of the right to liberty and security of person, i.e. their deprivation of liberty. This Ordinance ceased to be valid on **May 14th, 2020**, and since then there have been internal instructions in the centers themselves on the time of movement outside the center.²²

3. The Right to a Fair Trial

The Constitution of the Republic of Serbia, in Article 32, guarantees the right to a fair trial, stipulating that everyone has the right to **an independent**, impartial and legally established **court**, in a fair and reasonable time, to **publicly** hear and decide on his/her rights and obligations, the grounds for suspicion which were the reason for initiating the proceedings, as well as the charges against him/her. Everyone is guaranteed the right to a free translator if he/she does not speak or understand the language officially used in court and the right to a free interpreter if he/she is blind, deaf or speech-disabled person. In accordance with the law, the public may be excluded during the entire proceedings before the court or from one part of the proceedings, only for the protection of the interests of national security, public order and morality in a democratic society, as well as for the protection of the interests of minors or the privacy of participants in the proceedings.

In addition, Article 33 of *the Constitution of the Republic of Serbia* prescribes **the special rights of the defendant**. Thus, anyone charged with a criminal offence has the right, in the shortest possible time, in accordance with the law, in detail and in a language which he/she understands, to be informed of the nature and grounds of the accusation, as well as of the evidence collected against him/her. Everyone who is charged with a criminal offence has the right to a defense and **the right to take a defense attorney-at-law** of his/her choice, **to communicate with him/her freely, and to have enough time and appropriate conditions to prepare the defense**. The defendant who cannot bear the costs of a defense attorney-at-law has the right to a free attorney-at-law, if, in accordance with the law, the interest of justice requires it. Everyone who is charged with a criminal offence and is available to the court **has the right to be tried in his/her presence and cannot be penalized, if he/she is not allowed to be heard and to defend himself/herself**. Everyone who is being tried for a criminal offence has the right to, by himself/herself or his/her defense attorney-at-law, present evidence in his/her own favor, to examine the prosecution witnesses and to request that the defense witnesses are examined under the same conditions as the prosecution witnesses as well as in his/her presence. Everyone who is on trial for a criminal offence has the right to be tried without delay. A person who is accused or who is being tried for a criminal offence is not obliged to give evidence against himself/herself or against persons close to him/her, or to admit guilt. All rights belonging to a defendant for a criminal offence, according to the law and in accordance with it, also belong a person against whom proceedings are

²² Belgrades Centre for Human Rights, *Right to Asylum in the Republic of Serbia Periodic Report for January – June 2020*

being conducted for another punishable offense. Articles 14 and 15 of *the International Covenant on Civil and Political Rights* stipulate that all persons are equal before the courts and courts of justice. Furthermore, it foresees the right of a person charged with a criminal offence to attend the hearing.

This right, in addition to **the right of access to a court**, includes the right to legal assistance, the right to a court established by the law, the right to independence and impartiality in the trial, the right to procedural equality of parties, to a public hearing, the right to adversarial proceedings, to a reasoned decision, to a trial within a reasonable time, to the effective enforcement of the judgment, as well as the right to legal certainty.

Measures, which were undertaken since declaring the state of emergency, in several ways affected exercising the right to a fair trial.

3.1. *The Right to Access to a Court*

The right to access to a court, is, in the state of emergency, considered from the perspective of the actual work of judicial institutions, to be the possibility of physical presence in court, or the possibility of submitting petitions to the court in order to exercise rights and obligations.

The Work of Judicial Institutions

The Decree on Organizing the Work of Employers during the State of Emergency from **March 16th, 2020** stipulates that the employer is obliged to enable employees to work remotely and work from home in all workplaces where those types of work can be organized. If that type of work has not been foreseen, the employer may, by the decision, allow the employee to perform activities outside the employer's premises if the organizational conditions allow. Furthermore, intending to ensure the protection and health of employees, workers and clients, it has been established the obligation of employer to provide all general, particular and extraordinary measures related to the hygienic safety of facilities and persons in accordance with *the Law on the Protection of the Population from Infectious Diseases* and to provide employees and employed persons who are, in direct contact with the clients or share a multi-person workspace, with enough quantity of protective equipment in accordance with certain regulations.

On **March 17th, 2020**, the Minister of Justice issued *Recommendations for the Work of the Courts and Public Prosecutor's Offices during the State of Emergency Declared on March 15th, 2020*. In paragraph 1, it is recommended that, during the state of emergency, the judges of the Supreme Court of Cassation, the Commercial Court of Appeal and the Courts of Appeal, work on cases should be performed at home, except when it is necessary to hold court sessions and other urgent cases. Judges of higher, basic, commercial and misdemeanor courts work on cases in the court building, unless it is possible to perform work from home, by the decision of the president of the court. Presidents of courts are advised to issue instructions in accordance with the law and the Court Rules of Procedure.

Direct communication of the parties with the courts of first instance is foreseen in cases that can not be delayed, for the courts of second instance, written documents can only be submitted via post, and information on the cases is available on [the website of the Ministry of Justice](#).

On the occasion of the appeal of the Bar Association of the Republic of Serbia and the Bar Association of Vojvodina and different interpretation of item 6 and 7 of the aforementioned Recommendations, *the*

High Judicial Council Conclusion from March 18th, 2020 was adopted, and according to it **only trials that can not be delayed will be held during the state of emergency**. In all other cases, starting from **March 19th, 2020** until the end of the state of emergency, the main hearings / hearings are adjourned.

In criminal matter, first instance trials were held in detention cases, for criminal offenses under Articles 245, 248 and 249 of the Criminal Code (regarding non-compliance with health regulations at the time of the epidemic), towards juvenile offenders or where an aggrieved party is a juvenile in relation to criminal offences against sexual freedom, pertaining to domestic violence, where there is a risk of obsolescence, criminal offenses committed during the state of emergency and are related to the state of emergency and in those involving decisions on banning the distribution of the press and dissemination of information in the media.

The total number of criminal cases where the main trials were held during the state of emergency is at least 945.²³ The largest number of cases was conducted for criminal offenses – illegal actions towards to health regulations during the epidemic, at least 132, domestic violence, at least 105 cases and aggravated theft, 36 cases.

In civil matters, a small number of trials were held.²⁴ In response to *the appeal of Judges' Association of Serbia, an Ordinance on Time Limits in Court Proceedings during the State of Emergency Declared on March 15th, 2020* was adopted on **March 20th, 2020**, and according to the Ordinance deadlines for filing a lawsuit in a civil proceeding, a private lawsuit in a criminal proceeding, a motion to initiate a non-contentious or enforcement and security proceeding, filing a lawsuit in an administrative dispute and filing a constitutional complaint, as well as deadlines for filing legal remedies or for undertaking other procedural actions, cease to run during the state of emergency. Furthermore, in criminal and misdemeanor proceedings, as well as in the proceedings for economic offenses, the deadlines for lodging an appeal against decisions on terminating the proceedings - cease to run during the state of emergency. **This Ordinance is important for maintaining the right of access to a court, particularly for those who were unable to move during the state of emergency.**

On **March 24th, 2020** *an Ordinance on Time Limits in Administrative Proceedings during the State of Emergency* was adopted and according to the Ordinance, parties in proceedings before state authorities and organizations, bodies and organizations of provincial autonomy and local self-government units, institutions, public enterprises, special bodies which the regulatory function is exercised through and legal and natural persons entrusted with public authority, during the state of emergency in the Republic of Serbia, cannot bear the consequences of its failure to act within the time limits prescribed or determined in accordance with the laws governing administrative procedure or special administrative procedures.²⁵

23 Based on data obtained from 65 basic courts in the territory of the Republic of Serbia. The possibility of a minor variation from this number is left because on the question about the number of cases some courts answered with information on the number of main hearings – and in that case the number of cases may differ from the submitted data. For detailed information on the number of cases, see Annex 1.

24 Trials where an interim measure should be decided on, where it should be decided on measures for protection from domestic violence, where it should be decided on committing someone to a healthcare institution in field of neuropsychiatry and, enforcement of the documents related to family relations.

25 Blog: Constituencies for Judicial Reform in Serbia, Savo Djurdjic, *The Work of the Courts in a State of Emergency*

It is important to note that, except for requests for interim measures, the courts did not act, therefore many citizens, who lost their jobs during the epidemic, or were denied the right to earnings for performed work or other right from employment act, had to claim alternative remedies to solve their economic situation.

According to *the Conclusion of the High Judicial Council*, work in the courts with the Rules of Conduct for employees and parties in the courts normalized on **May 11th, 2020**.

The United Nations Guidance *Emergency Measures and Covid-19* pointed out that some rights such as the right to life, the prohibition from torture and the principle of legality in criminal law, cannot be derogated from even during states of emergency. Ordinary courts should maintain their jurisdiction to adjudicate complaints for violations of non-derogable rights. The principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency.

3.2. The Right to Legal Aid

During the state of emergency, due to the large number of attorneys who were unable to pursue the profession for various reasons, the Bar Associations undertook measures to allow the effective appointment of ex officio defense attorneys-at-law.

The detainees were able to communicate with defense attorneys-at-law to prepare their defense. The Ordinance of the Director of the Administration for the Execution of Criminal Sanctions from **March 30th, 2020** stipulates that attorneys-at-law have the right to visit their clients in detention only if they have a trial scheduled in the next 7 days, but for a maximum of 30 minutes and with the possibility to during those seven days, they use the right to visit every day in order to prepare the defense. There were situations where the persons in detention came into first contact with the defense attorney-at-law ex officio at the first scheduled main trial via Skype. In those situations, a hearing was postponed in order to have the defense prepared.

The Protector of Citizens demanded that communication between the defendant and the defense attorney-at-law need to be enabled in a separate room, without the presence of third parties, with surveillance only by watching and not listening, without limiting the duration of the conversation to 30 minutes, in order to provide the conditions required for confidential conversation and preparation of defendant's defense.²⁶ This recommendation has been adopted.

Legal aid services in local self-government units had been providing legal support via e-mail.

During the state of emergency, YUCOM's legal team has received 226 inquires²⁷ in regard to a large number of topics which involved possible violations of various human rights, such as the right to legal certainty, the right to a fair trial, the right to work, and many other human rights. Citizens have

²⁶ See: <https://www.ombudsman.rs/index.php/2011-12-11-11-34-45/6554-ishlj-nj-z-sh-i-ni-gr-d-n-upuc-n-inis-rs-vu-pr-vd>.

²⁷ See: Lawyers' Committee for Human Rights – YUCOM, *Annual Report 2019-2020*, No. 7-8, Belgrade, June 2020

addressed Yucom both individually and on behalf of larger groups. *A major problem was the frequent amendments to regulations, and as a result citizens were not adequately aware of their rights and obligations, although the sanctions for violating those regulations were often very strict and high.*

A large number of citizens have contacted us with questions related to the obligation of self-isolation at home and the consequences of violating it. While many citizens were not sure whether they were obliged to respect self-isolation, others contacted us concerning the attendance to the funeral of a deceased husband, provision of emergency care, changing the place of self-isolation after the rental agreement run out, food delivery, reporting theft and other issues. As before declaring the state of emergency, in YUCOM's practice issues related to labor law, termination of employment contracts, reduced earnings and use of annual leave were also dominant ones. The novelty were questions related to providing workplace safety equipment, the rights of chronic patients as a risk category and parental work absence for taking care of children under 12. Questions related to facilitating visits to children during the curfew, but also the payment of legal support, have been particularly singled out, as many parents lost their jobs and income. In addition to the instruction of the Chamber of Public Enforcement Officers regarding the temporary suspension of execution during the state of emergency, citizens contacted us with allegations that their pensions were still being decreased for that purpose.

Protection of Victims

The ban on movement, as well as imposing numerous measures of isolation, have opened numerous issues related to the protection of victims in the proceedings, and most of all victims of domestic violence. The questions related to the manner of implementing emergency measures, particularly the emergency measure of relocating the perpetrator of domestic violence from the apartment. On **April 1st, 2020**, the Lawyers' Committee for Human Rights – YUCOM had sent a Request for access to information of public importance to the Ministry of Internal Affairs of the Republic of Serbia asking how many urgent measures were ordered by members of the Ministry of Internal Affairs, based on [the Law on the Prevention of Domestic Violence](#) during the first two weeks of the state of emergency, but we did not receive the answer from the Ministry. According to the [data](#) that the Autonomous Women's Center presented, the number of newly reported cases of domestic violence in the Group for Coordination and Cooperation has been halved.

The danger of neglecting the rights of victims during the epidemic has been pointed out in several international appeals:

- [UN Experts Call for Urgent Measures to Mitigate the Increased Risk of Violence against Children](#)
 - [States Must Prevent Domestic Violence in the Context of the Restricted Right to Move during the COVID-19 Epidemic](#)
 - [General Comment of the UN Committee on Economic, Social and Cultural Rights](#)
-

Since courts and prosecutors have acted only in urgent cases, persons who have been victims of other criminal offences (acts that do not represent domestic violence or criminal offences where the suspect has not been remanded in custody) will have to wait for judicial protection of their rights after the state of emergency.

3.3. *The Right to Impartial and Independent Adjudication*

On **March 17th, 2020**, the Ministry of Justice gave *recommendations* to the judicial authorities in Serbia to act in cases where persons, without respecting self-isolation measures, **commit a criminal offense of Failure to comply with health regulations during the epidemic and a criminal offense of Transmission of infectious disease during the state of emergency**. It was recommended to the public prosecutor's offices to necessarily request detention²⁸ for all persons who violate the measure of self-isolation that they have been ordered to by the competent institutions (Ministry of Health, Ministry of Internal Affairs). The Administration for the Execution of Criminal Sanctions of the Ministry of Justice has provided three special facilities within the Department where the abovementioned persons will be accommodated. These facilities are located in Vrsac, Pozarevac and Pirot, and will be secured by members of the prison guard and police. The recommendation of the Ministry of Justice was also that while ordering detention, the competent authorities will not only take into account the deadlines under *the Criminal Procedure Code*, but also health quarantine regulations.

Furthermore, the Ministry of Justice gave *recommendation* to the Republic Public Prosecutor, in case of non-compliance with the stated instructions, to file a disciplinary report against the competent public prosecutor, i.e. the deputy public prosecutor.

During the state of emergency, three General Mandatory Instructions of the Republic Public Prosecutor were issued in the first month – two instructions refer to organizing work of the Prosecutor's Office with the purpose of preserving the health of employees, and one *instruction* on establishing policy of criminal prosecution for criminal acts *Failure to comply with health regulations during the epidemic* under Article 248 of the Criminal Law²⁹ and *Causing panic and disorder* under Article 343 of the Criminal Law³⁰.

Public officials did not refrain from announcing the strictest penalties for violating the measures prescribed during the epidemic and interfering with the judge's free conviction. [The President of the Republic of Serbia](#) and [Minister of Internal Affairs](#) have stated that those who violate self-isolation

²⁸ According to the Criminal Procedure Code, Article 211, detention may be ordered against a person whom there is a reasonable suspicion that he/she has committed a criminal offense if: 1) his identity is hidden or cannot be established or he apparently avoids the trial if there are other circumstances that indicate a danger of escaping; 2) there are circumstances that indicate that they will destroy, conceal, alter, or forge evidence or evidence of the crime or if special circumstances indicate that they will interfere with the proceedings by influencing witnesses, accomplices or concealers; 3) special circumstances indicate that in a short period of time he/she will repeat the criminal offense or complete the attempted criminal offense or commit the criminal offense he/she threatens; 4) a sentence of imprisonment of more than ten years or a sentence of imprisonment of more than five years for a criminal offense with elements of violence or a sentence of five years or more severe imprisonment, and the manner of execution, have been prescribed for the criminal offense charged against him/her or the severity of the consequences of the offense have led to public outrage that may jeopardize the smooth and fair conduct of the criminal proceedings.

²⁹ A sentence of up to three years in prison or a fine is threatened to anyone who, during an epidemic of any dangerous infectious disease, does not act in accordance with regulations, decisions or orders which determine measures for its suppression or prevention.

³⁰ The basic form of the criminal offense of causing disorder and panic is a person who, by presenting or spreading false news or allegations, causes panic or serious disturbance of public order or peace, or thwarts or significantly hinders the implementation of decisions and measures of the state. The penalty for the basic form is imprisonment from 3 months to 3 years and a fine. The qualified form of this criminal offense is prescribed by the second paragraph of the article, stipulating that a person who causes panic and disorder through the media or other media sources or at a public gathering will be sentenced by imprisonment from six months to five years. This form is often done through social networks. Considering that the citizens have limited movement due to the measures due to the Corona virus, and that probably many homes have access to the Internet, and that citizens increasingly communicate via social networks, the danger of committing this type of criminal offense in this way is certain.

will be severely penalised. The media daily reported information on the number of detainees. The reason for detention in most cases was the special circumstances indicating that the suspects will repeat the criminal offense in a short period of time.

Date	Number of detainees in special units of the Administration for the Execution of Criminal Sanctions for violating self-isolation measures
March 25 th , 2020	75
March 25 th , 2020	90
March 26 th , 2020	108
March 27 th , 2020	112
March 28 th , 2020	119
March 30 th , 2020	129
March 31 st , 2020	137
April 4 th , 2020	139

According to the response of the Administration for the Execution of Criminal Sanctions³¹, in the moment of lifting the state of emergency, on **May 6th, 2020**, 17 persons were detained in special units in Pozarevac, Vrsac and Pirot, as they had been suspected of committing the criminal offense of failing to comply with health regulations at the time of the epidemic. In addition to the criminal offense under Article 248 of the Criminal Code, all these persons were charged with another criminal offense, mainly: domestic violence, theft, aggravated theft and grievous bodily harm.

The position of detainees who were in custody for violating health regulations during the state of emergency had been specifically regulated. In addition to the fact that these persons were accommodated in special facilities of the Administration for Execution of Criminal Sanctions, according to the [statement](#) of the Secretary of State of the Ministry of Justice from **March 20th, 2020**, detention could also be extended to persons if detainees who have been in detention with them are suspected of being infected with the corona virus. According to detainees' [statements](#) from this period, they had not been set in solitary confinement, but several detainees had stayed in dormitories, which is why they were in suspense for a long time about the potential infection. The detainees had not been tested for the corona virus, despite the fact that they had been placed in special facilities due to the possibility of spreading the infection among other detainees.

³¹ Available in YUCOM's archive.

However, according to *the statement* of judicial institutions, not all persons were detained, which means that the recommendations of the Ministry of Justice were not fully respected, but also that the number of prosecuted persons is higher than the number of detained persons. On **March 27th, 2020**, the Second Basic Public Prosecutor's Office in Belgrade prosecuted 15 persons for non-complying with health regulations during the epidemic, where a plea agreement was concluded with one person, and six defendants were banned from leaving the apartment (home detention), a misdemeanor charge was filed against six, while one person will be heard in the prosecution. Also, on **April 6th, 2020** the Basic Court in Novi Sad *reported* that indictments were filed against 46 people for failing to comply with health regulations during the epidemic, 14 of them were filed for violating self-isolation measures. A measure of restraining order of leaving the apartment was issued against 37 persons, while 9 persons were detained and these persons were placed in detention units with special sanitary-quarantine measures in Vrsac and Pozarevac.

The grounds of the imprisonment in all these cases was the danger of repeating the criminal offense, that is, the possible spread of the COVID-19 infection by persons who could not be certainly defined as carriers of the virus upon their return from abroad. Although this basis could have simply been ruled out by testing the detainee, according to available information, this was not performed, and in some cases the prosecution *appealed* against decisions to terminate detention even the mandatory home-isolation period has expired, that is, when it was already certain that the detainee was not infected.

The UN High Commissioner for Human Rights, Michelle Bachelet stated in her *appeal*: "In some states, thousands of people have been detained for violating movement bans, which is both unnecessary and unsafe. Prisons are high-risk environments and states should provide that all those who can be safely released, to be released, rather than depriving more people of liberty".

It is stated in *the United Nations Guidelines for Emergency Measures and COVID-19* that when assessing whether it is appropriate to deprive a person of his/her liberty, states should pay particular attention to the public health implications of overcrowding the institutions where deprived persons stay at and the special risks to persons deprived of their liberty which are the consequences of COVID-19. States should deprive persons of their liberty only as a last measure, in accordance with the grounds established by the law, and with corresponding procedural guarantees. Deprivation of liberty must be appropriate, necessary and proportionate in the given circumstances, even in the state of emergency.

In this regard, the recommendation of the Ministry of Justice from **March 17th, 2020** on compulsory detention, which was followed by concrete measures of setting up special units for their execution, as well as the respect of these recommendations to a certain extent, by judicial institutions, is contrary to UN guidelines.

3.4. Right to a Public Hearing and the Principle of Immediacy

A few days after the declaration of the state of emergency, on **March 26th, 2020**, the Ministry of Justice sent a *Recommendation* to the courts, who were supposed to conduct proceedings against persons who had violated self-isolation measures where it is stated that they organize these trials via video link,

in order to protect both employees and persons against whom proceedings are being conducted.³² In those first verdicts, the most severe sentences of up to three years in prison were imposed.³³

Nongovernmental organizations, as well as the Bar Association of Serbia colloquially called the trials via video-link the Skype trials, and characterized them as unlawful. It took until **April 1st, 2020**, for the Government of the Republic of Serbia to adopt *The Decree on the Mode of Participation of the Defendant at the Main Trial in the Criminal Procedure Held during the State of Emergency from March 15th, 2020*. In accordance with this Decree, it was allowed for the defendant in the first instance of criminal proceedings to participate at the main hearing via technical means for the transfer of sound and picture, in case the court considered that the direct presence of the defendant in detention would increase the threat of the spread of the contagious disease. We should remind that the right to a public hearing, as part of the right to a fair trial includes presence of the defendant at the main hearing, as well as efficient participation in it. Criminal Procedure Code of the Republic of Serbia does not envision this derogation from the principle of directness and the principle of publicity, and the professional public³⁴ considered it to be significantly contrary to the Constitution of the Republic of Serbia and the European Convention for Protection of Human Rights and Fundamental Freedoms.

During the state of emergency, 84 main hearings were held via “Skype” application in 33 basic courts in the Republic of Serbia.³⁵

On **April 7th, 2020**, YUCOM sent the letter to the addresses of 15 courts requesting monitoring of the cases for the criminal offence referred to in Article 248 of the Criminal Code – Failure to Act Pursuant to Health Regulations during Epidemic. On **April 9th, 2020**, the High Judicial Council rendered *the Conclusion*, stating that the trials via “Skype” application could be held only for the individuals detained for the criminal offences referred to in Articles 245, 248 and 249 of the Criminal Code.

In four courts where YUCOM was allowed to monitor the trials via “Skype” application, as of **April 15th, 2020**, the measure of detention to all persons were abolished. The Administration for the Execution of Criminal Sanctions informed YUCOM that at the moment of lifting the state of emergency, on **May 6th, 2020**, there were 17 individuals in detention who, in addition to the criminal offense under Article 248, were charged with at least one other criminal offense.³⁶

Monitoring “Skype” Trials

In the courts where we were allowed to observe the trials via conference connection via “Skype” application, we were met with understanding of the need to consistently comply with the principle of publicity of the trials and cooperation of both the presidents of the courts, and the relevant judges. The main hearings were held in presence of the relevant judge, typist, public prosecutor, defendant’s attorney, and in some courtrooms, person in charge of technical support in the courtroom. During the trial, the defendant was not in the courtroom, but in another city, in a special detention unit. From

32 Blog: Constituencies for Judicial Reform in Serbia, Savo Djurdjic, *Is it legal and possible to perform the trial and interrogation of the accused via video link?*

33 RTS, *“First verdicts for violating self-isolation, three people were sentenced to prison”*, March 27th, 2020

34 N1, *“First “Skype trials” were held, the profession warns - the rights of the accused are being violated”*, March 31st, 2020

35 Lawyers’ Committee for Human Rights, *Analysis – Restriction of Movement and the Trials during the State of Emergency*, July 2020

36 Lawyers’ Committee for Human Rights, *YUCOM’s Annual Report 2019-2020, no. 07-08*, July 2020

the special room of the detention unit, via “Skype” application, the defendant followed the course of the trial via video and audio link. During the hearing, a member of the security staff would be present in the room with the defendant, except in the cases when the court allowed confidential conversation between the defendant and the defense attorney, when the court would warn the security officer to monitor the defendant only visually.

All the participants in the proceeding, including defendants, had suitable protective equipment. In certain proceedings, depending on the position of camera in the courtroom, the defendant could only see the judge, while in others, the defendant could also see the defense attorney and the public prosecutor. With the exception of direct presence of the defendant in the courtroom, the course of the proceeding was regular. In all the proceedings we monitored, including the citizens who addressed us for legal support, the defendants had a selected or assigned defense attorney. When requested, a confidential conversation with the defense attorney was enabled via “Skype” application. The hearing would also be postponed because there was not enough time for defense. Depending on the method of organization and technical possibilities, the right to contradictory procedure was accepted in certain cases.

The most common proposals of the defense referred to the abolition of the detention measure, especially in the period when it has expired 28 days from the date when measures, that defendants violated, had been imposed. It often happened that the public prosecutor’s office presents this proposal. According to YUCOM’s findings while the trials were monitored, the courts have the detention measure lifted starting from **April 15th, 2020**.

3.6. The Right to Legal Certainty

12 citizens sought legal support from the Lawyers’ Committee for Human Rights because they or a person close to them had difficulty filing a criminal complaint for violating the measure of mandatory home isolation. Most of these persons claimed that they never received any decision, nor that they signed the record on delivering the oral decision. One person claimed to have been arrested at a police station while applying for new documents, one person was arrested after police has told him he could have gone out and bought groceries, and one member of a military force was arrested after helping to equip a mobile hospital. From the point of view of legal security, it was particularly dangerous that some persons contacted the sanitary inspection, who provided them information that they were not obliged to comply with the isolation measure. At the time of asking the question, this information was correct, but the decisions have been subsequently changed, and the persons related to those decisions, were not adequately informed about it. This practice has caused extremely great legal uncertainty among citizens, particularly bearing in mind that the obligation of self-isolation, depending on the country which our citizens came from, has changed several times, as the hotspots of the epidemic changed. Thus, some persons who came from countries that did not represent hotspots, even received criminal charges, even though they did not know that they had the obligation of home isolation³⁷. A

37 Decision on declaring COVID-19 disease caused by the SARS-CoV-2 infectious disease 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 (home isolation), and the amendment that followed, only

large number of persons found out that they were obliged to adhere to the measure of home isolation just after a telephone call from a member of the Ministry of Internal Affairs when checking whether the person whom the measure had been imposed to was at home. Lawyers' Committee for Human Rights, identifying this as a systemic problem, addressed to the Crisis Headquarters of the Government of the Republic of Serbia, appealing that the procedure of submitting oral decisions needs to be in accordance with the Law on General Administrative Procedure, emphasizing that citizens who the measures are related to, have to be informed on: who are those measures imposed to, the reasons for implementing measures, the rights and obligations of the person the measures are implemented to, the duration of the measures as well as the right to a legal remedy. Shortly after this appeal, we were contacted by citizens who received a Note on Oral Decision from the Ministry of Health when entering the country, which contained all information related to citizens' rights.

From the point of view of the right to legal certainty, an additional problem arose due to the fact that in the period from **March 18th** to **April 9th, 2020** *the Ordinance on Restriction and Prohibition of Movement of Persons in the Territory of the Republic of Serbia*, was valid, and on **March 21st, 2020** *the Decree on Misdemeanor for Violation of the Ordinance of the Minister of the Internal Affairs on Restriction and Prohibition of Movement of Persons in the Territory of the Republic of Serbia*³⁸ was also passed.

In addition, Article 2 of the aforementioned Ordinance stipulates that proceedings may be instituted for this misdemeanor even if criminal proceedings have been instituted against the perpetrator for a criminal offense that includes the characteristics of that misdemeanor, in spite of the prohibition in Article 8, paragraph 3 of the Law on Misdemeanors, which created the danger of double penalization of citizens – in criminal and misdemeanor proceedings, explicitly forbidden by the principle, and guaranteed by Article 34 of the Constitution of the Republic of Serbia, which prescribes the principle of legal certainty in criminal law.³⁹ The Belgrade Center for Human Rights has filed an initiative with the Constitutional Court of the Republic Serbia to review the constitutionality of this Ordinance.⁴⁰ The Constitutional Court of the Republic of Serbia did not act on this initiative until this analysis has been published.

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. <http://en.yucom.org.rs/wp-content/uploads/2020/04/HUMAN-RIGHTS-AND-COVID-19.pdf>

38 (Official Gazette of the Republic of Serbia no. 39/20)

39 See: <http://www.bgcentar.org.rs/podneta-inicijativa-ustavnom-sudu-za-ocenu-ustavnosti-i-saglasnoti-sa-evropskom-konvencijom-o-ljudskim-pravima-clana-2-uredbe-o-preksaju-za-krsenje-naredbe-ministra-unutrasnjih-poslova-o-ogranicenju/> (Accessed on April 29th, 2020).

40 See: <http://www.bgcentar.org.rs/podneta-inicijativa-ustavnom-sudu-za-ocenu-ustavnosti-i-saglasnoti-sa-evropskom-konvencijom-o-ljudskim-pravima-clana-2-uredbe-o-preksaju-za-krsenje-naredbe-ministra-unutrasnjih-poslova-o-ogranicenju/> (Accessed on April 29th, 2020).

3.6. Misdemeanor Proceedings

By **April 13th, 2020**, 3 330 citizens were fined on different legal bases related to the prohibition of movement during the epidemic with fines totaling RSD 136 million⁴¹. It is important to note that the *Decree on Misdemeanor for Violation of the Ordinance of the Minister of the Internal Affairs on Restriction and Prohibition of Movement of Persons in the Territory of the Republic of Serbia* a fine in the amount of RSD 50,000 to 150,000 was prescribed, which is not appropriate for the standard of living in Serbia.

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According to *the United Nations Guidelines on Emergency Measures and COVID-19* fines need to be in accordance with the gravity of the committed offense. Measuring the appropriate financial amount of fines, personal circumstances, including gender-specific effects, should be taken into account. This is important for those unemployed persons or persons who do not have income due to extraordinary measures.

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As the *Decree on Time Limits in Court Proceedings during the State of Emergency* was passed and according to it in these cases the deadlines for appeal do not run, it is justified to ask what will happen to the possible actions on appeals which are going to be declared after the abolition of the state of emergency, when by the force of the Constitution, the acts passed during the state of emergency, served as a basis for misdemeanor penalty of citizens, will cease to apply.

4. The Right to Health Care

Article 68, paragraph 1 of *the Constitution of the Republic of Serbia* stipulates that everyone has the right to protection of their physical and mental health, while health insurance, health care and the establishment of health care funds are regulated by the law. The Constitution divides competencies in providing health care between the republic, the autonomous province and local self-government units. Article 12 of *the International Covenant on Economic, Social and Cultural Rights* recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The measures to be taken by the States Parties to the present Covenant to ensure the full realization of this right should include those necessary for: the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; improvement of all aspects of environmental and industrial hygiene; prevention, treatment and control of epidemic, endemic, occupational and other diseases; creation of conditions which would assure to all medical service and medical attention in the event of illness.

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⁴¹ See: <https://mondo.rs/Info/Drustvo/a1310619/Policijski-cas-za-vikend-prekrсило-800-ljudi-Stefanovic.html> (Accessed on April 29th, 2020).

Joint Statement of the Chair of the United Nations Committee on the Rights of Persons with Disabilities on behalf of **the Committee on the Rights of Persons with Disabilities** and **the Special Envoy of the United Nations Secretary-General on Disability and Accessibility** set forth that Agenda 2030 set targets for responding to epidemics, especially by achieving universal, comprehensive health care, ensuring the availability of medicines and vaccines, improving mental health and well-being and strengthening the capacity of all states for early warning, risk reduction and risk management in health at the domestic and international levels.

The Law on Patients' Rights prescribes patients' rights to access to health care, information, preventive measures, the right to be informed, the right to safety, the right to quality standards of health care, the right to free choice, other professional opinion and the right to privacy and confidentiality.

Citizens' rights to health care provided by the Constitution and legal regulations were limited in several ways during the state of emergency.

4.1. Access to Health Care

Access to health care was limited in two ways. The first, in fact, was a consequence of the restriction of movement prescribed by *the Decree on Measures during the State of Emergency*, which was drastically and long-lasting for older persons aged 65, and 70 in rural areas, while for younger persons the restriction was more permissive and allowed access to health care centers. Persons who **urgently needed medical assistance** and maximum two persons accompanying them could go to health care centers, in spite of the ban on movement.

Another way of limiting the access to health care was reflected in limiting non-epidemic services, in a way that almost all forms of providing health care were postponed, except emergency services.

On **March 17th, 2020**, the Ministry of Health of the Republic of Serbia informed all health care institutions that all persons suffering from oncological and hemato-oncological diseases continue with regular treatment without delay.⁴² Healthcare institutions were informing patients about the new work regime. Therefore, all non-emergency surgeries, control specialist check-ups and diagnostic examinations (e.g. magnetic resonance examinations) were postponed. In most medical institutions, doctors had been providing only emergency and urgent medical care.

The Republic Health Insurance Fund has adopted certain technical measures in order to **facilitate access to health** care. Therefore, **on March 17th, 2020** a letter was addressed to all health care institutions stating that it is allowed to access health care without a certified document on health insurance (automatic extension of the health booklet expiration date). Also, the letter from the same day automatically extended the sick leave. In that sense, it was also adopted the conclusion of the

⁴² Letter no. 500-01-296-1/2018-02 Sector for the Organization of the Health Service of the Ministry of Health, addressed to the heads of health care institutions on March 17th, 2020

Government of the Republic of Serbia on extending the validity of prescriptions for renewable dispensing of medicines for another nine dispensations.

During the state of emergency, Yucom was addressed by the wife of a patient from Nis who could not be admitted to the Clinical Center in Nis, since the entire Clinical Center building had been turned into a Covid Hospital. According to her, a part of the hospital that was not Covid Hospital, did not provide any health care services at all. The patient had a problem with the prostate and in that regard the required intervention had to be performed, therefore the doctor referred him to the Military Hospital in Nis as it was almost empty, and equipped with all the necessary professional, personnel and technical capacities. They barely managed to do all the required analyzes in private practice, and the patient was admitted to the military hospital for treatment. However, after three days, it was determined that he was not a military health insured, and that there was no agreement on the treatment of civilians in that hospital, therefore he had to leave the military hospital without any intervention performed. Although they were sent to Clinical Center Nis again, it was clear that he would not be admitted there because he was not a Covid patient, as it happened. The patient died a few days later.

It turned up news in [the media](#) that a student from Kenya died as he had been denied the right to adequate health care because he had not had symptoms of COVID-19.

Patients who were going on dialysis during the state of emergency [testified that dialysis](#) lasted shorter than it is the practice, which was justified by the time taken for the equipment to be disinfected for the next patients.

According to [the research](#) on the impact of the Covid-19 pandemic on the position of the LGBT community in Serbia, 20.8% of members of this community had a problem with access to medicines and other forms of long-term therapy, as well as access to mental health care. Also, 15.7% of respondents stated that they had problems, both with finding therapy for chronic diseases, and with scheduling examinations.

4.2. Quality of Health Care for Potential COVID-19 Patients

Quarantine Accommodation

The quality of health care has been reduced by a decree that allows the establishment of temporary hospitals despite the fact that they do not meet legal requirements. Namely, Article 31 paragraph 1 of [the Law on Health Care](#) stipulates that a health institution may perform health care activities if it meets the conditions prescribed by this Law and regulations adopted for the implementation of this Law, and then thoroughly lists everything necessary in terms of health workers, health associates, prescribed diagnostic, therapeutic and other equipment, facilities and quantities of medicines and medical devices, required to perform the health activity which the health institution has been established for.

Article 3a of [the Decree on Measures during the State of Emergency](#) stipulates that in order to provide the missing capacities for isolating and treating persons suffering from the infectious disease COVID-19 or infected with the SARS-CoV-2 virus, **by the decision of the Government, temporary hospitals may be established**, their work organized and material obligation set up to the subjects, whose activity is important for temporary hospitals to function, determined, **even though the conditions prescribed** by Articles 31–33 of [the Law on Health Care](#) have not been met.

Some temporary hospitals served as quarantine facilities because they housed persons who were not confirmed to be infected with the corona virus at the time of accommodating them, which is contrary to *the Law on Protection of the Population from Infectious Diseases*, which, in Article 31, paragraph 8 stipulates that quarantine shall be carried out in facilities that meet the conditions prescribed for the implementation of that measure. *The Rulebook on Detailed Conditions and Manner of Implementing Quarantine Measures and Conditions that must be met by facilities for that purpose* prescribes the conditions that the facility must meet, therefore Article 4 prescribes that quarantine measures are implemented in facilities that meet the prescribed sanitary-hygienic and epidemiological conditions, as well as conditions for fast and consistent communication (telephone, fax, electronic communication, accessibility to roads).

Medicines and Medical Devices

The quality of health care in terms of standards applied to medicines and medical devices has been reduced by adopting a decree that bypasses the standards in the procurement, use and application of medical devices and medicines.

On **April 6th, 2020**, in its *Statement on the Covid-19 Pandemic and Economic, Social and Cultural Rights* **the Committee on Economic, Social and Cultural Rights UN** stated that in order to ensure the protection and exercise the rights and obligations from the Covenant during this crisis, states should undertake a series of urgent measures, principally to protect public health, and for that reason a response to a pandemic **should be based on “most reliable available” scientific data**.

The Law on Medicines and Medical Devices regulates strict conditions and procedures for selling medicines and medical devices, which it is possible to vary from, according to the decision of the Government, in case of epidemic, i.e. epizootic, as well as in other emergency situations, in order to prevent severe consequences for public health.

Pravilnikom o uvozu medicinskih sredstava koja nisu registrovana u članu 3 predviđeno je da Agencija može da odobri uvoz neregistrovanog medicinskog sredstva koje je namenjeno određenom pacijentu ili grupi pacijenata, uvoz neregistrovanog medicinskog sredstva kao donacije ili humanitarne pomoći, odnosno programa donacije u Evropskoj uniji, u slučaju vanredne situacije, u skladu sa zakonom, ali **mora da bude izvršeno ocenjivanje usaglašenosti, odnosno ekvivalentna procena sigurnosti i performansi**. Takođe članom 3, ali *Pravilnika o dokumentaciji i načinu uvoza lekova koji nemaju dozvolu za lek, odnosno medicinskih sredstava koja nisu upisana u Registar medicinskih sredstava* predviđen je uvoz neregistrovanog leka, između ostalog u slučajevima kad je potrebno obezbediti dovoljne količine i vrste lekova za vreme nastupanja epidemija, elementarnih nepogoda i drugih vanrednih prilika, u skladu sa zakonom.

The Rulebook on Import of Unregistered Medical Devices in Article 3 stipulates that the Agency may approve the import of an unregistered medical device intended for a specific patient or group of patients, the import of an unregistered medical device as a donation or humanitarian aid, or a donation program in the European Union, in the event of an emergency, in accordance with the law. However, **a conformity assessment must be carried out, i.e. an equivalent safety and performance assessment**. In addition, Article 3, of the *Rulebook on Documentation and Manner of Import of Medicines that do not have a License For a Medicine, i.e. Medical Devices that are not entered in the*

Register of Medical Devices provides for the import of unregistered medicine, among other things in cases when it is necessary to provide sufficient quantities and types of medicines during epidemics, natural disasters and other emergencies, in accordance with the law.

The Decree on Special Technical Requirements, Standards and Use of Medical Devices during the State of Emergency Caused by COVID-19 SARS-CoV-2 Virus stipulates that during the State of Emergency declared due to the appearance and spread of COVID-19 disease caused by SARS-CoV virus -2, and for the purpose of effective suppression of the epidemic and treatment of patients with COVID-19 disease, **medical devices that are not manufactured in accordance with the prescribed standards may be procured, put into use and used in treatment**, under the condition that the manufacturer or distributor provides a copy of the description of the technical characteristics and manner of use of the medical device, with a translation into Serbian; attach a statement that the use of the medical device ensures its effectiveness in treatment, i.e. that the device meets the conditions of effective treatment, same as the appropriate device produced according to the prescribed standard; submit a statement that it will train health workers who will provide health services with that device; to make a statement undertaking to provide service and spare parts for the medical device and stating the period of validity of the obligation. Article 3 of the same Decree stipulates that the Decree also **applies to medicines**.

Therefore, laws and bylaws regulating the area of production and marketing of medicines and medical devices provide an opportunity to deviate from certain rules that regulate this area under certain circumstances (epidemic, natural disaster, state of emergency). It is important to emphasize that this Decree was applied for procurement from the Republic of Serbia, while all other donations of medical equipment and funds were under the regular legal regime, which means that they meet all the prescribed conditions. This regulation did not apply to *donations from the European Union and the Kingdom of Norway* which were regulated by EU and Norwegian regulations.

In order to provide more vivid presentation of the complexity and scope of numerous regulations which regulate in great detail the field of production and marketing of medicines and medical devices in the Republic of Serbia, the table below lists the bylaws regulating the subject area, which are to a large extent limited by this Regulation.

Regulations that regulate the production and placing medicines and medical devices on the market

Rulebook on the Content of the Request, i.e. Documentation for the Approval of a Clinical Trial of a Medicine and a Medical Device, as well as the Manner of Conducting a Clinical Trial of a Medicine and a Medical Device

Rulebook on the Manner of Quality Control of Medicines and Medical Devices

Rulebook on Conditions for Wholesale Trade in Medicines and Medical Devices, Data Entered in the Register of Issued Licenses for Wholesale Trade in Medicines and Medical Devices, as well as the Manner of Entry

Rulebook on the Content and Manner of Labeling the Outer and Inner Packaging of the Medicine, additional Labeling, as well as the Content of the Instructions for the Medicine

Rulebook on the Conditions, Content of Documentation and Manner of Approval or Amending a License for Placing Medicine on the Market

Rulebook on the Manner of Reporting, Collecting and Monitoring adverse Medicine Reactions

Rulebook on Documentation and Manner of Import of Medicines that do not have a License for a Medicine, i.e. Medical Devices that are Not Registered in the Register of Medical Devices

Rulebook on the Content of the Certificate of Good Laboratory Practice, Data Entered in the Register of Issued Certificates, as well as the Manner of Keeping the Register

Rulebook on the Content of the License for Placing Medicine on the Market

Rulebook on the Content of the Request and Documentation, as well as the Manner of Obtaining a License for Placing the Medicine on the Market

Rulebook on the Conditions for the Production of Medicinal Products, the Content of the Form of the License for the Production of Medicine and the Register of Issued Licenses for the Production of Medicines

4.3. *The Right to Health and Particularly Vulnerable Groups*

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UN High Commissioner for Human Rights, Michelle Bachelet urged the states to take steps for the inclusion of persons with disabilities, with the words "People with disabilities not only face greater risks from COVID-19, they also are disproportionately affected by response measures, including lockdowns. To address this double risk, we need to be engaging persons with disabilities in the COVID-19 response, and adapting plans to address their needs." "Persons with disabilities face even greater threats in institutions, as care facilities have recorded high fatality rates from COVID-19 and horrific reports have emerged of neglect during the pandemic. Now is the time to support community-based arrangements, wherever possible."

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The Committee on Economic, Social and Cultural Rights in its *Statement* called on the Member States to devote their maximum available resources to the full realization of all economic, social and cultural rights, including the right to health. As this pandemic and the measures taken to combat it have had a **disproportionately negative impact on the most marginalized groups**, States must make every effort to mobilize the necessary resources to combat COVID-19 in the most equitable manner, in order to avoid imposing a further economic burden on these marginalized groups. Allocation of resources should prioritize the special needs of these groups. All States parties should, as a matter of urgency, adopt special, targeted measures, including through international cooperation, to protect and mitigate the impact of the pandemic on

vulnerable groups such as **older persons, persons with disabilities, refugees and conflict-affected populations, as well as communities and groups subject to structural discrimination and disadvantage**. Such measures include, among others, providing water, soap and sanitizer to communities that lack them; taking specially tailored measures to protect the health and livelihoods of vulnerable minority groups, such as **the Roma**.

The UN Independent Expert, Rosa Kornfeld-Mate in the *Appeal* from **March 27th, 2020**, supported by experts from the UN asked for a better protection of **the elderly**, who are most at risk from pandemic Covid-19. The expert stated that she is deeply concerned that decisions around the allocation of scarce medical resources such as ventilators in intensive care units may be made solely on the basis of age, denying older persons their right to health and life on an equal basis with others.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its *Statement of Principles Relating to the Treatment of Persons Deprived of Their Liberty in the Context of the Coronavirus Disease (COVID-19) Pandemic* emphasized the specific and intense challenges for staff working in various places of deprivation of liberty, including police detention facilities, penitentiary institutions, immigration detention centers, psychiatric hospitals and social care homes, as well as in various newly-established facilities/zones where persons are placed in quarantine.

As close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. This type of approach is imperative, in particular, in situations of overcrowding. Furthermore, authorities should make greater use of alternatives to pre-trial detention, commutation of sentences, early release and probation; reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever appropriate, residents of social care homes; and refrain, to the maximum extent possible, from detaining migrants.

While it is legitimate and reasonable to suspend nonessential activities, the fundamental rights of detained persons during the pandemic must be fully respected. This includes in particular the right to maintain adequate personal hygiene (including access to hot water and soap) and the right of daily access to the open air (of at least one hour). Furthermore, any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication.

The initiative for the rights of persons with mental disabilities MDRI-S [appealed](#) to the authorities to, wherever possible, rapidly transfer users from institutions to private accommodation – to their families, relatives, foster families.

The mother of a child with disabilities addressed the Lawyers' Committee for Human Rights. A child was accommodated in a social protection institution and she encountered obstacles in trying to bring

the child home during the State of Emergency, given that all visits, including the purpose of taking children, were *banned*.

The disease has spread to *several homes for the elderly*.

The Platform of Organization for Cooperation with the United Nations Human Rights Mechanisms *appealed* that persons with mental disabilities who are placed in social protection institutions are treated in accordance with the recommendations of the World Health Organization. According to the information from the employees, some homes completely forbid the users to go out in the yard, in the fresh air and the sun during the epidemic, while contacts with close persons were denied even through video calls.

The Commissioner for the Protection of Equality *appealed* for the needs of people with autism to be taken into account regarding the possibility of obtaining movement permits, facilitating access to medicines and reviewing the need for institutionalization during the state of emergency.

Out of 29 institutions for the execution of criminal sanctions, 84 persons infected with COVID-19 were identified in *one*.

Initiatives for Economic, Social and Cultural Rights A 11 *appealed* to the Government to provide living and health conditions for 70 Roma families in an informal Belgrade neighborhood living without water, electricity and organized garbage collection, surrounded by forests. Due to the lack of a quick reaction, Initiative A 11 submitted a request for an interim measure of the European Court of Human Rights against the Republic of Serbia. The European Court immediately initiated a procedure against Serbia, to which the Protector of Citizens reacted, and basic hygienic living conditions were provided.

5. Freedom of Expression

Article 46 of the *Constitution of the Republic of Serbia* guarantees **the right to freedom of opinion and expression**. This right includes freedom to seek, receive and impart information and ideas either orally, in writing, in the form of art or through any other media of choice. The Constitution itself prescribes that the right can be subject to restriction if it is prescribed by the law and required to: protect the rights and reputation of others, protect the authority and impartiality of the court and protect public health, morality of a democratic society and national security of the Republic of Serbia.

Article 50 of the *Constitution of the Republic of Serbia* guarantees **the right to freedom of the media**. This article prescribes that there is no censorship in the Republic of Serbia. The competent court may prevent the dissemination of information and ideas through the media only if it is necessary in a democratic society to prevent incitement for the violent destruction of the constitutional order or violation of the territorial integrity of the Republic of Serbia, to prevent the propagation of war or incitement to direct violence, to prevent any advocacy of national, racial or religious hatred, that constitutes incitement to discrimination, hostility or violence.

The exercise of the right to correct false, incompletely or inaccurately published information that violated someone's right or interest and the right to respond to the published information is regulated by law.

The right to be informed is regulated by Article 51 of the Constitution of the Republic of Serbia. This article guarantees that everyone has the right to be truthfully, fully and timely informed about issues of public importance and the media are obliged to respect this right.

Everyone has the right to access to information held by public authorities and organizations entrusted with public authority, in accordance with the law.

Article 19 of the International Covenant on Civil and Political Rights guarantees:

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - a) *For respect of the rights or reputations of others;*
 - b) *For the protection of national security or of public order (ordre public), or of public health or morality.*

The measures that had been adopted during the state of emergency affected the citizens of the Republic of Serbia to exercise these rights in several ways.

5.1. Freedom of Opinion and Expression

In a state of emergency, [a binding instruction](#) of the Republic Public Prosecutor was issued, which prescribes urgent action in cases of certain criminal offences, including the criminal offense of Causing Panic and Disorder. For this criminal offence, citizens, who were spreading so-called [fake news](#) through social media, were mostly prosecuted, but [one journalist](#) was arrested and detained on suspicion of committing this criminal offence as she published the text about the lack of protective equipment for employees at the Clinic Center of Vojvodina. The criminal charges against the journalist were subsequently rejected. In some cases, due to this type of criminal offence, [detention](#) was ordered, and [official announcements of the Ministry of Internal Affairs](#) kept us informed about these arrests every day.

During the first month of the state of emergency for the criminal offense of Causing Panic and Disorder, in cases where detention was ordered, trials were held, where the defendant was present through Skype application. On **April 3rd, 2020** the Higher Court in Novi Sad announced that one person, who had been ordered into detention on suspicion of committing the criminal offense of Causing Panic and Disorder, was waiting for trial through a conference call.

From April 9th, 2020, the trial for these crimes takes place in the courtroom with their presence.⁴³

Disputable issue, related to the proceedings of the criminal offences of Causing Panic and Disorder, is [the inability to determine the consequences of this type of criminal offence](#), as an important element of a criminal offence, particularly of those offences committed through social media.

⁴³ More at: [HUMAN RIGHTS AND COVID-19 – Analysis of the changes in legal framework during a state of emergency and impact on enjoying human rights – The Right to a Fair Trial](#), YUCOM, May 5th, 2020

5.2. Freedom of Media

The Law on Public Information and Media prescribes that public information is free and it is not subject to censorship, while discrimination of journalist is forbidden. The free flow of information through the media or the editorial autonomy of the media, especially by putting pressure, threatening or blackmailing editors, journalists or sources of information, must not be jeopardized.

At the very beginning of the state of emergency, on **March 18th, 2020**, the Independent Journalists' Association of Serbia issued *recommendations for the work of journalists* as well as *Guide for Journalists on Topics on Public Health*.

During the first month of the state of emergency, media freedom was the focus of both the domestic and international public. The arrest of the journalist, Ana Lalic, and her being held in the custody of the police, as well as *the Conclusion of the Government of the Republic of Serbia* from **March 28th, 2020**, which the public became familiar with only a few days later, on **March 31st, 2020**, when it was published in the Official Gazette of Serbia. According to Article 46 of the Law on the Government, **the conclusion shall be published if it is determined by the law or other regulation or if the Government decides in that manner during its adoption.**

This Conclusion, under the explanation that it protects citizens from spreading false news, **centralizes informing the public** in the jurisdiction of the Crisis Headquarters for the Suppression of Infectious Disease COVID-19, headed by the Prime Minister. The Conclusion obliges mayors, i.e. presidents of municipalities and emergency headquarters of local self-government units, as well as health institutions, health workers and legal entities who perform health activities to submit information directly or through health institutes to the Crisis Headquarters of the Government of the Republic of Serbia.

The Conclusion also contained a provision:

Information on health measures and other information related to the treatment of COVID-19 caused by the SARS-CoV-2 virus, which unauthorized persons announced in public, cannot be considered accurate and verified, with the possibility of applying regulations related to responsibility and legal consequences for spreading misinformation during the state of emergency.

On **April 2nd, 2020**, after the reactions of *associations of journalists*, many *civil society organizations*, but also *international organizations*, under pressure of the domestic and international public, the Prime Minister of the Republic of Serbia *announced the decision* to *withdraw the disputed Conclusion*.

The Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye *reminded* that back in 2017, it was stated that prohibitions on the dissemination of information in order to suppress "false news" or "non-objective information" are incompatible with human rights law and should be abolished.

Arrests of journalists, pressure, censorship

"A chilling effect on freedom of expression arises when an interference with this right causes fear, leading to self-censorship and ultimately the impoverishment of public debate, which is to the detriment of society as a whole. Accordingly, State authorities should avoid taking measures or

imposing sanctions that have the effect of discouraging participation in public debate.”, the Council of Europe emphasized in the recommendations of the Committee of Ministers to member states on the protection of journalism and the safety of journalists and other media actors.⁴⁴

Issues with arrests of journalists, police raids on media offices and journalists’ homes, involving seizure of equipment, have been OSCE’s subject of concern, which in its Safety of Journalists Guidebook highlighted this as an example of bad practice.⁴⁵

In addition to the journalist, Ana Lalic, who was arrested on suspicion of committing the criminal offence of Causing Panic and Disorder under Article 343 of the Criminal Code of the Republic of Serbia due to the text *Clinic Centre Vojvodina is about to collapse: There is no protective equipment for nurses*, on suspicion of committing the criminal offence of Failure to Act Pursuant to Health Regulations During Epidemic, *a cameraman and a journalist from the Zrenjanin television KTV* were arrested and detained and their equipment was confiscated. Even though they were not the means by which the criminal offence was committed, but work equipment, *the camera and telephone have not been returned to the television staff* after they were released. Police also raided Ana Lalic’s apartment and on that occasion her laptop computer and both mobile phones were seized.

Former ambassador of the Republic of Serbia, Vladeta Jankovic, also pointed out the censorship on the public service broadcaster RTS, after, according to his allegations, RTS had refused to publish a written interview with him on its website due to one answer to a question.

Many journalists have been the subject of organized verbal attacks on social networks, among them, the Facebook page *COVID-19 Serbia* has attracted the most attention, which sponsored insulting posts against the media outlet N1, journalist, Ana Lalic and the organization *Don’t Let Belgrade D(r)own*.

On the occasion of reporting on the state of emergency and the epidemic, the journalist of the daily newspaper Danas, Snezana Chongradin, was also attacked, for whom a member of parliament stated in a show on a private television with a national frequency that *she should be arrested*.

*Article 8 of the Law on Public Information and Media stipulates that **the elected, appointed, i.e., assigned holder of public office shall be obliged to be subjected to the expression of critical opinions that pertain to the results of their performance, i.e., the policy they implement, and the opinions are in relation to performing their function – regardless of whether they feel personally affected by the expression of these opinions.***

However, state officials *did not refrain* from a targeted attack on certain media, and the Prime Minister of the Republic of Serbia, as a guest on the national public service broadcaster, *stated* that some journalists “were spreading lies”. Due to the attack on the daily newspaper Danas by the Prime Minister, *the South East Europe Media Organisation* also published its announcement. The Minister of Defense, *Aleksandar Vulin*, accused the editor-in-chief of the weekly magazine NIN of attacks on the president of the state as well as other news agencies, but also of deliberately making it difficult for the state to fight the corona virus. The platform of non-governmental organizations *Three Free-*

⁴⁴ Recommendation CM/Rec(2016)4[1] of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, the Committee of Ministers, April 13th, 2016

⁴⁵ Osce Safety of Journalists Guidebook, OSCE, 2012, p. 55

doms, which had been actively monitoring and recording human rights violations during the state of emergency, also noted many attacks of the President of the Republic and other state officials, as well as media houses where public officials have often been present as guests in the shows. This platform in its report from **April 14th, 2020** states:

Pro-government tabloids and the portals "Informer" and "Kurir", as well as "Pink" television, continued their campaign against media outlets and journalists reporting from Crisis Headquarters press conferences or addresses by top state officials. The trigger for such attacks was questions about the causes of the small number of people tested in Serbia, the incidence of infections in hospitals, and questions about whether the government is using a state of emergency to deal with independent media. The latest in a series of attacks followed a question by President Vucic about whether he would go into self-isolation after his son was found to be infected with the virus. In response to the issue, allegations were made by the aforementioned media that "The media with a tycoon sign is not interested in fighting corona virus, but eliminating Vucic from political life" as well as new insults by editor-in-chief of "Informer" Dragan Vucicevic.⁴⁶

Article 6 para. 2 of the Law on Public Information and Media stipulates: *In order to protect competition and diversity of ideas and opinions, any form of monopoly in the field of public information is forbidden.*

Outside of Belgrade, numerous local government journalists complained about discrimination against journalists and the media and favoring certain media outlets. This was the case in *Novi Pazar*, where the media received a note from the city Crisis Headquarters that they could find out **all new information on the program of one television, Regional TV**. The media from *Kragujevac* and *Kraljevo* also pointed out the issues with reporting on the COVID-19 virus and how restrained the representatives of the institutions were from talking with journalists.

The Journalists' Association of Serbia also pointed out the issue of *economic endangerment* of journalists during the state of emergency, and according to *the survey* which the Independent Journalists' Association of Serbia conducted at the beginning of April, journalists needed protective equipment the most, which 58% of surveyed journalists opted for.

The UN High Commissioner for Human Rights, Michelle Bachel, expressed *concern over the repression of the media by the member states* and emphasized that some countries used the pandemic of the virus to prevent the spread of information. She pointed out that some countries used the outbreak of the coronavirus as a pretext to restrict information and stifle criticism. She also pointed out that some political leaders made statements aimed at journalists, creating a hostile environment that affects their security and the ability to do their job.

Freedom of Movement of Journalist

Since the ban on movement was in force during the state of emergency in Serbia, journalists were recognized as persons who needed to move even when other citizens were not allowed to. This was permitted for all journalists who, by **March 18th, 2020** filled in and sent the form-table to the press

⁴⁶ *Three Freedoms under the Magnifying Glass: April 10-13th, 2020*, Civic Initiatives, April 14th, 2020

service of the Government of the Republic of Serbia for work during the curfew.⁴⁷ However, some media outlets and journalists complained that accreditations were selectively granted to journalists and that not all media outlets that submitted duly filled forms received accreditations. A dozen media from Leskovac and Jablanica district announced that they had not received accreditations. *According to their claims*, the Government of the Republic of Serbia sent accreditations only for two media from Leskovac and two media from Preshevo.

Press Conferences of the Crisis Headquarters and the Government of the Republic of Serbia

On **April 10th, 2020**, the Office for Cooperation with the Media of the Government of the Republic of Serbia *issued a statement* informing the public of Serbia that journalists will no longer be able to attend press conferences, explaining that in this way journalists are protected from the virus. At the time of creating this analysis, the statement was no longer on the website of the Government of the Republic of Serbia. We were not able to find out in what form of decision the Government decided this, since according to the Law on the Government of Republic of Serbia, the Government is not obliged to publish all the decisions it makes. *Some media* considered it to be harsh censorship, and *professional associations* also reacted to this decision.

Some media outlets refused to submit questions by e-mail and boycotted press conferences organized for media but without media, after their questions were selectively answered. *The European Federation of Journalists* also spoke about this form of reporting, emphasizing this decision as a very bad practice.

Ten days later, on April 21st, 2020, journalists were allowed again to attend the press conferences of the Crisis Headquarters and the Government of Serbia.

5.3. The Right to Be Informed

Article 16 of *the Law on Free Access to Information of Public Importance* prescribes deadlines for the actions of public authorities, thus defining a general deadline for responding to a request of 14 days. **However, if the request relates to information that can be presumed to be important for the protection of public health** and the environment, the authority must inform the applicant it holds such information, grant access to the document containing the requested information, or issue a copy of the document **no later than 48 hours of receiving the request**.

The importance of *the Decree on Time Limits in Administrative Procedures during the State of Emergency* for the right to be informed is primarily reflected in the fact that it refers to the deadlines prescribed by the Law on Free Access to Information of Public Importance, but also to the actions of *the Commissioner for Information of Public Importance and Personal Data Protection*.

Despite this Decree, a number of public authorities and organizations entrusted with public authority have responded to requests for access to information of public importance which the Lawyers'

47 More available at: 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, YUCOM, April 26th, 2020

Committee for Human Rights – YUCOM sent to them. We were deprived of the response of the Ministry of Internal Affairs regarding the measures of protection against domestic violence, therefore in principle, we can conclude that the public authorities treated information of public importance to a large extent as they generally treat during the time out of the state of emergency.

From the moment of declaring the state of emergency until **March 22nd, 2020**, the Ministry of Health twice a day published information on infected persons and deceased from the COVID-19 virus, at 8 AM and 6 PM. After **March 22nd, 2020**, the information were published at a press conference once a day at 3 PM. In order to inform the public about the epidemiological situation, a website <https://covid19.rs> was created, where statistical data and official information about the virus were published on a daily basis. Although the website have been updated several times a day and was a useful source of information, its content essentially corresponded to the content that could be heard at the daily press conferences of the Crisis Headquarters of the Government of the Republic of Serbia.

Experts from the United Nations, the Inter-American Commission on Human Rights and the Organization for Security and Co-operation in Europe have issued a joint appeal *Governments must promote and protect access to and flow of information during pandemic*. In this appeal it is emphasized that human health depends not only on readily accessible health care, it also depends on access to accurate information about the nature of the threats and the means to protect oneself, one's family, and one's community. The right to freedom of expression, which includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any media, applies to everyone, everywhere, and may only be subject to narrow restrictions. In this connection, we urge the following: "First, it is essential that governments provide truthful information about the nature of the threat posed by the coronavirus. Governments everywhere are obligated under human rights law to provide reliable information in accessible formats to all, with particular focus on ensuring access to information by those with limited internet access or where disability makes access challenging."

On **June 22nd, 2020**, Balkan Investigative Reporting Network (BIRN) published a [research text](#) on its portal javno.rs where it states that the number of people infected and died of the COVID-19 virus in Serbia is much higher than it was published through official state channels. This data, as BIRN claims, was obtained as the information base of the official state information system COVID19 had been inspected. According to BIRN: *In Serbia, from March 19th to June 1st, 2020, 632 patients died of the corona virus, which is 388 more than the officially announced number for that period, which amounts to 244.*

This information has extremely disturbed the public, whose trust in the official data on the number of infected and sick people had already been shaken due to the sudden easing of protective measures, parliamentary and local elections and a large number of public events and gatherings held since the state of emergency had been lifted on **May 6th, 2020**. Although some members of the Crisis Headquarters gave the statements on this issue in the media, the Crisis Headquarters of the Government of the Republic of Serbia has never given a single official answer how this discrepancy in the number of sick and died had occurred, which further undermined the trust of Serbian citizens in published data and called into question citizens' right to be informed. Some members of the

Crisis Headquarters stated in public that they had not had access to this information system and *demanding the case to be investigated*.

Due to numerous uncertainties and state's rejection to institutionally declare itself on the issue of data that appeared in public, 88 non-governmental organizations on the initiative of the Coalition for Freedom of Access to Information sent a Request for access to information of public importance on **July 9th, 2020** calling for *Institute of Public Health of Serbia "Dr Milan Jovanovic Batut" to submit data* from the information database COVID-19. It was requested the data on the total number of tested, on persons whose results have been positive or negative, on the number of hospitalized, as well as those on home treatment, on persons who were sentenced to self-isolation, cured, and on deaths according to the dates when the system had been established. The organizations also requested information on what authorities and individuals have had direct access (username and password) to IS covid-19, i.e. what state bodies and institutions the Institute has been submitting data to, what type of data and how. The data were requested in compliance with the Law on Personal Data Protection, without stating the personal data of natural persons.

In the response of the Institute, received on **July 13th, 2020**, the organizations were referred to publicly available data from the database <https://covid19.data.gov.rs/> for most of the requested information, which it cannot be unambiguously concluded from that it is precisely about the data that had been requested. For some data, it is stated that the system does not contain the stated information, as information on hospitalized persons, although the Government Conclusion has prescribed it, or an additional deadline for submitting information was requested, without specifying which information it refers to.

On **July 17th, 2020**, these organizations also filed a complaint to the Commissioner for Information of Public Importance and Personal Data Protection, since the response they received had not included a response to the requested information. On the same day, a request for access to information of public importance was submitted to the Office for Information Technologies and eGovernment of the Government of the Republic of Serbia and the Ministry of Health as they have been those who process the data which have been presented to the public.

Although directly after the state of emergency had been lifted, the National Assembly of the Republic of Serbia passed *the Law on Confirmation of Decrees Adopted by the Government with the Co-Signature of the President of the Republic passed during the state of emergency and confirmed by the National Assembly* which explicitly stipulates that until the entry into force of the current law the provisions of numerous regulations continue to apply, including the Decree on the Application of Deadlines in Administrative Proceedings during a State of Emergency, this Decree cannot be applied in a certain case when Law on Free Access to Information of Public Importance prescribes a period of 48 hours for information related to the protection of the health of Serbian citizens, particularly bearing in mind the importance of this information for citizens' behavior and the epidemiological situation as a whole, because this would be a gross violation of the right to be informed prescribed by Article 51 of the Constitution of the Republic of Serbia.

On **July 10th, 2020**, the **UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye**, after analyzing the negative impact of the pandemic on freedom of opinion and expression, **appealed to** states to specifically strengthen access to information and to share as much as possible on infectious disease and instruments which people can use to protect themselves and the community.

During the presentation of the Report on *Disease Pandemics and the Freedom of Opinion and Expression* he stated that people died because governments faked, hid information, criminalized individuals on the grounds that they “were spreading false information”. The Special Rapporteur pointed out that many people suffer the consequences because some governments shielded themselves from criticism instead of allowing people to share information, learn about the epidemic, and allow them to find out what officials have or have not done to protect them.

The state of the right to information in Serbia shows that Serbian authorities have been acting contrary to the appeals of **the UN Special Rapporteur on freedom of opinion and expression**.

07

Conclusion

The response of the Republic of Serbia to the epidemic must be considered from the aspect of the system of division of power and the capacity of institutions to respond to tasks within their competences.

In a situation of weak citizens’ trust in institutions determined by the Constitution to manage this type of situations, establishing a closed centralized system of epidemic management, without control, did not, in the beginning, cause great citizens’ resistance.

The Constitutional Court, as the control function holder of the constitutionality of decisions, remained completely passive during the state of emergency, in addition to a large number of initiatives for the control of the constitutionality of measures. A more active approach had to be undertaken, considering that the official epidemic management policy was implemented through adopting imperative regulations. Opposite to the practice of many European countries, which managed the epidemic through a system of recommendations, severe and expeditious sanctioning for violating regulations required the presence of the Constitutional Court in its control role.

Restrictions on freedom of assembly, freedom of movement, the right to a fair trial, the right to health care and freedom of expression required, in addition to assessing the legitimacy of the restrictions, additional efforts by the state to eliminate the damage which citizens suffered from in case of legitimate restrictions. Thus, the United Nations pointed out that freedom of assembly had to be relocated to the Internet, considering that this was a key freedom for the democratic election campaign, which was also held in Serbia during the epidemic. Restrictions on freedom of movement did not pass the test of proportionality, while the right to a fair trial, although absolute, was violated both at the systemic level (through the adopting regulations) and at the individual level, in certain proceedings led against citizens. The right to health care was threatened by the very fact of restricting access to health care facilities.

The analysis shows certain consequences of the introduced measures for vulnerable groups, which confirms the statement expressed by the United Nations that the epidemic management system must be inclusive. Inclusion implies the involvement of civil society organizations, who directly working with citizens have direct insights into their problems and needs. In order to establish this type of system, it is necessary to respect the right to be informed in accordance with international standards. In respect to public health, this means that citizens must have complete, timely and truthful information. The Republic of Serbia did not fully respond to these requests, resulting with consequences on the behavior of citizens, but also a loss of trust in the response of the Republic of Serbia to the epidemic.

Sudden changes in the COVID-19 epidemic management policy have affected citizens' trust in the decisions of the Crisis Headquarters to be lost. Citizens' trust is the basis of the fight against the epidemic because it conditions citizens' behavior and their respect for recommended and prescribed measures. The consequence of the weak trust was precisely citizens' resistance to state's decisions—demonstrations throughout Serbia, refusing to wear protective masks and a large number of different misinformation that spread like a virus around social networks. When restrictions on human rights have not been passed to the extent necessary to fulfill their purpose, as a rule, they turn against the purpose which they have been prescribed for.

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