

REPORT

# Human Rights in Serbia during the First Wave of Coronavirus:

from denial of danger  
to state of emergency





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## 1 INTRODUCTORY REMARKS

Paying special attention to human rights protection standards, this analysis contains an overview of important events and measures in Serbia related to the COVID-19 epidemic, during the first five months after the first registered case of infection in Serbia, i.e. from 6 March 2020. The aim of this analysis is, on the one hand, to identify acts and measures that infringed on human rights and to examine whether the limits of what can be considered justified and necessary have been exceeded, and on the other hand to identify situations in which there was no response from the state that was needed to prevent human rights violations.

Harmful consequences and violations of human rights during epidemics can occur due to failure to timely recognize and declare the state of the epidemic and take appropriate measures, as well as due to rigorous measures that exceed the limits of what can be considered justified and necessary given the seriousness of the epidemiological situation.<sup>1</sup> The review of events shows that in Serbia, both types of inadequate responses to the pandemic alternated.

In addition to health risks, the pandemic also had numerous socio-economic consequences. Although the socioeconomic impacts associated with the pandemic are various and affect many citizens of Serbia, the negative effects are particularly worrying among the members of vulnerable groups, especially among Roma from informal settlements, collectors of secondary raw materials and those engaged in the informal economy, where additional deterioration of already difficult position led to a serious threat to existence. Therefore, the analysis also addresses the question of how adequate the state's measures were when it comes to protecting

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<sup>1</sup> For more details see James W. Nickel, "Two Models of Normative Frameworks for Human Rights during Emergencies" in Evan J. Criddle (ed.), *Human Rights in Emergencies*, Cambridge University Press, 2016.

particularly vulnerable groups, both from health risks and from the socio-economic consequences of the pandemic and pandemic related measures and regulations. Particular attention will be paid to the issue of how movement bans have affected Roma who are forced to leave settlements to supply themselves with water and food for the current day.

Finally, the analysis examines the extent to which pandemic control measures and state of emergency management have provided transparency and the provision of accurate information on the pandemic, especially given the frequent change of measures to prevent the spread of the epidemic.

Showing the acts of the state starting from the end of February 2020, the analysis points to those that were contrary to human rights standards, acts that could reduce the effectiveness of the suppression of the epidemic, as well as failures to take measures necessary to protect human rights and vulnerable groups.

## **FIVE MONTHS OF THE COVID-19 EPIDEMIC IN SERBIA**

**The first extreme – denying the danger of coronavirus**

In the context of the epidemic and the protection of citizens from infectious diseases, serious problems can occur due to the failure to timely recognize the risks that the epidemic brings.<sup>2</sup> Therefore, the presentation of events depicting Serbia's response to the COVID-19 pandemic would begin a few days before the first registered case of COVID-19 virus infection in Serbia, i.e. from the press conference held on 26 February 2020, at which, in addition to Serbian President Aleksandar Vučić, doctors Predrag Kon, Mijomir Pelemiš, Branislav Todorović and Branislav Nestorović also took part, and which was dominated by a mocking tone towards the disease that took thousands of lives in the world at that time.<sup>3</sup> At the mentioned conference, the citizens of Serbia were misled that it was not a dangerous virus, although it was already obvious that it was dangerous,<sup>4</sup> because the World Health Organization declared a state of emergency at the global level on 30 January.<sup>5</sup> Paediatric pulmonologist Branislav Nestorović characterized the coronavirus as the funniest virus

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2 See James W. Nickel, "Two Models of Normative Frameworks for Human Rights during Emergencies", op. cit. 25.

3 See Katarina Živanović, "Neodgovorne izjave za uveseljavanje javnosti", *Danas Daily*, 12 March 2020, available at <https://www.danas.rs/drustvo/neodgovorne-izjave-za-uveseljavanje-javnosti/>, last visited on 14.8.2020. See, also Radmilo Marković, "Kratka hronika neodgovornosti - Zašto nam ne verujete, kad vas lažemo", *Vreme Weekly*, available at [link](#), last visited on 14.8.2020.

4 See Danica Vučenić, "Petrović Škero: Pravo na dostojanstvo ličnosti niko ne sme da nam ograniči", op. cit.

5 See World Health Organization, *Timeline of WHO's response to COVID-19*, available at [link](#), last visited on 14.8.2020, as well as World Health Organization, *WHO Director-General's statement on IHR Emergency Statement on IHR Emergency Committee on Novel Coronavirus (2019-nCoV)*, 30 January 2020, available at [link](#), last visited on 14.8.2020.

in the history of mankind,<sup>6</sup> adding that he was against ordering protective masks.<sup>7</sup> The women were told to be protected by estrogen and to travel freely to Italy, which was already affected by the coronavirus.<sup>8</sup> Nestorović also pointed out that there was no reason to panic, because more people were dying today of many other diseases in Serbia.<sup>9</sup>

Shortly afterwards, the first case of coronavirus infection in Serbia was registered on 6 March 2020.<sup>10</sup> On the same day when the first case of the coronavirus in Serbia was registered, President Aleksandar Vučić stated that 90,000 people had given their signatures to the SNS (Serbian Progressive Party) for the parliamentary and local elections, while the photos showed rooms of the party full of people who came to give their signatures.<sup>11</sup>

In the meantime, on 4 March 2020, parliamentary elections were called in Serbia, though scheduled for 26 April.<sup>12</sup>

## 2.1

### The other extreme - a state of emergency

The decision to declare the COVID-19 disease caused by the SARS-CoV-2 virus an infectious disease was made on 10 March 2020.<sup>13</sup> On 13 March 2020, the government established the COVID-19 Crisis Staff.<sup>14</sup> The conclusion on the establishment of that body and the list of its members was published four months later, on 27 July 2020.<sup>15</sup> The reason why the Crisis Staff for the Suppression of COVID-19 was established remained unclear, since the Law on the Protection of the Population from Infectious Diseases of Serbia envisages the establishment of the National Expert

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6 Radmilo Marković, "Kratka hronika neodgovornosti - Zašto nam ne verujete, kad vas lažemo", op. cit. See also Istinomer, "Nemojte da lažete, niko nije rekao da je korona najsmješniji virus": istinitost: kratke noge", March 2020, available at [link](#), last visited on 14.8.2020.

7 Ibid. Nestorović said: "I can't believe that the people who survived the sanctions, the bombing, all kinds of harassment, will be afraid of the funniest virus in the history of mankind, which exists on Facebook. I was against even ordering masks and testing at this meeting." I think it's completely pointless, mind you, if we didn't have a test, we wouldn't know it was an epidemic." Statement available at [link](#), last visited on 14.8.2020.

8 Ibid. Nestorović said: "Let me say about women... Estrogens definitely protect women, women have very mild forms, they practically do not die from this virus. Therefore, as far as women are concerned, you are free to go shopping in Italy, I hear that there will be big discounts there now, because no one alive will go there now." Statement available at [link](#), last visited on 14.8.2020.

9 Istinomer „Nemojte da lažete, niko nije rekao da je korona najsmješniji virus“, op.cit.

10 COVID-19 RS, "Registrovan prvi oboleli od COVID-19. Pacijent u stabilnom stanju, država spremna", 6 March 2020, available at [link](#), last visited on 14.8.2020.

11 Radmilo Marković, „Zašto nam ne verujete, kad vas lažemo“, *Vreme Weekly*, op.cit.

12 Slobodna Evropa, Vučić raspisao izbore za 26. april, 6 March 2020, available at [link](#), last visited on 14.8.2020.

13 The Official Gazette of RS, Nos. 23/2020, 24/2020, 27/2020, 28/2020, 30/2020, 32/2020, 35/2020, 37/2020, 38/2020, 39/2020, 43/2020, 45/2020, 48/2020, 49/2020, 59/2020, 60/2020, 66/2020, 67/2020, 72/2020, 73/2020, 75/2020, 76/2020, 84/2020, 98/2020, 100/2020 and 106/2020.

14 The official website of the Government of the Republic of Serbia, announcement "Obrazovan krizni štab za suzbijanje COVID-19", Belgrade, 13 March 2020, available at [link](#), last visited on 15.8.2020. The announcement about the establishment of the Crisis Staff states that the Prime Minister of Serbia Ana Brnabić, the Minister of Health Zlatibor Lončar, the Director of the Health Insurance Fund of the Republic of Serbia (hereinafter: HIFRS) Sanja Radojević Škodrić and the Provincial Secretary for Health Zoran Goković were appointed as its co-leaders and that members of that body are the directors of the relevant institutes and clinics, as well as the representatives of other relevant bodies. The same announcement stated that the Crisis Staff had been established to eliminate already occurred and to prevent possible harmful consequences of the infectious disease COVID-19 on the economy.

15 Conclusion on the establishment of the Crisis Staff for suppression of COVID-19 available at [link](#), last visited on 15.8.2020. See also Marija Janković, "Korona virus i Srbija: Ko su lekari koji sede u Kriznom štabu", *BBC in Serbian*, 30 March 2020, updated on 30 July 2020, available at [link](#), last visited on 15.8.2020.

Commission for the Protection of the Population from Infectious Diseases.<sup>16</sup>

On 15 March 2020, the President of the Republic of Serbia, Aleksandar Vučić, the President of the National Assembly, Maja Gojković, and the Prime Minister, Ana Brnabić, passed a **Decision on Declaring a State of Emergency**.<sup>17</sup> The next day, on 16 March 2020, the Government, with the co-signature of the President of the Republic, passed the **Decree on Measures during the State of Emergency**.<sup>18</sup> The epidemic was declared on 19 March 2020.<sup>19</sup>

From the initial allegations that the coronavirus is the funniest virus in the world (according to Branimir Nestorović from 26 February)<sup>20</sup> and that more people die every day from mosquito bites (according to Aleksandar Vučić from 6 March),<sup>21</sup> in a very short period of time, without adequate and detailed explanations for such actions, a state of emergency was declared in Serbia.

Problems related to the control of epidemics can be caused by untimely recognition of risks, as well as excessive reaction, which is driven by the need to achieve other, political goals.<sup>22</sup> There is no doubt that the original approach, and misleading citizens that the virus is not dangerous, even though it is a dangerous virus,<sup>23</sup> can create serious problems.<sup>24</sup> Due to the very short time gap between the two approaches and the lack of information that would make such a sudden reversal clearer, the question arises whether the other approach and the excessive reaction in the form of the introduction of a state of emergency was justified.

In this regard, the primary question is whether the declaration of a state of emergency was necessary, as well as whether the act imposing the

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16 Pursuant to Article 11 of the Law on Prevention of Infectious Diseases, in order to determine professional views on the preservation and improvement of health, prevention and suppression of infectious diseases, treatment and health care, as well as on the improvement and development of health service organization dealing with prevention, suppression and treatment of infectious diseases and support to patients based on evidence and international recommendations, the National Commission for the Protection of the Population from Infectious Diseases is established. The Commission, among other things, considers the current epidemiological situation of infectious diseases in the Republic of Serbia on the basis of the report of the Institute of Public Health, and gives conclusions and recommendations for improving the protection of the population from infectious diseases. Another ambiguity is that individuals who have been figuring for months as the most prominent members of the Crisis Staff, such as epidemiologist and deputy director of the Institute of Public Health of Serbia "Dr Milan Jovanovic Batut", Darija Kisić Tepačević, and immunologist Srđa Janković, are not members of the Crisis Staff at all, but are hired as experts assisting the Crisis Staff. On illogicality and irregularities related to the establishment and operation of the Crisis Staff, see, for example, Milica Radenković, "Nejasni poslovi kriznog štaba", *Danas Daily*, 30 July 2020, available at [link](#) and Sofija Mandić, "Crisis Staff, revealed", *Peščanik*, 30 July 2020, available at [link](#), last visited on 15.8.2020. More than 2,400 doctors signed the "United against COVID" petition demanding the removal of the Crisis Staff, appointing new members, and stopping the politicization of the profession and investigating allegations of covering up the number of the dead and infected with the corona virus. For more details, see, for example, Nevena Bogdanović, "The number of signatures for the dismissal of the Crisis Staff of Serbia is growing, the government sees the petition as an 'attack'", *Radio Slobodna Evropa*, 25 July 2020, available at [link](#), last visited on 15.8.2020.

17 *The Official Gazette of RS*, no. 29/2020 as of 15 March 2020.

18 *The Official Gazette of RS*, Nos. 31/2020, 36/2020, 38/2020, 39/2020, 43/2020, 47/2020, 49/2020, 53/2020, 56/2020, 57/2020, 58/2020 and 60/2020.

19 Order on declaring the epidemic of the infectious disease COVID-19, No. 512-02-00016/2020-10.

20 Statement of the pediatric pulmonologist Branislav Nestorović at the press conference on 26 February 2020, in which the President of the Republic of Serbia, Aleksandar Vučić, also participated. Statement available at [link](#), last visited on 14. 8. 2020. See also Istinomer, "Nemojte da lažete, niko nije rekao da je korona najsmješniji virus": istinitost: kratke noge", March 2020, available at [link](#), last visited on 14.8.2020.

21 Radmilo Marković, "Zašto nam ne verujete, kad vas lažemo", op.cit.

22 See James W. Nickel, "Two Models of Normative Frameworks for Human Rights during Emergencies", op.cit.

23 Danica Vučenić, "Petrović Škero: Pravo na dostojanstvo ličnosti niko ne sme da nam ograniči", op. cit.

24 See James W. Nickel, "Two Models of Normative Frameworks for Human Rights during Emergencies", op.cit.

state of emergency was in accordance with the Constitution.<sup>25</sup> Another question is whether the measures taken in response to the alleged state of emergency were justified and in line with the Constitution.<sup>26</sup>

When it comes to the first question, it was pointed out that **there was no need to declare a state of emergency** and that the regularly applicable legal framework was sufficient to respond to the challenges related to the control of the infectious disease COVID-19.<sup>27</sup> The Law on Protection of the Population from Infectious Diseases,<sup>28</sup> accompanying by laws and the powers that the Minister of Health has on the basis of the mentioned law,<sup>29</sup> enabled adequate measures to be taken in order to suppress the epidemic, without the need to declare a state of emergency. Furthermore, there is no adequate answer to the question **why an emergency situation was not declared instead of a state of emergency**, in accordance with the Law on Disaster Risk Reduction and Emergency Management.<sup>30</sup> Finally, the **Decision to Declare a State of Emergency was not made by a body that was authorized to do so by the Constitution**, i.e. National Assembly. Due to the alleged impossibility for the National Assembly to meet, the Decision to Declare a State of Emergency was made on the basis of Article 200, Paragraph 5 of the Constitution of the Republic of Serbia,<sup>31</sup> which stipulates that when the National Assembly is unable to meet, the decision to declare a state of emergency is made jointly by the President of the Republic, the President of the National Assembly and the Prime Minister. That the conditions for this way of declaring a state of emergency were not met and that there were no obstacles to the meeting of the National Assembly is best shown by the fact that it met 40 days later, although exactly the same measures were in force at the time.<sup>32</sup>

Contrary to the Constitution,<sup>33</sup> practice in other countries,<sup>34</sup> and EU recommendations, in Serbia the National Assembly was excluded from deciding on the state of emergency and measures to restrict human rights during the state of emergency.<sup>35</sup> When the National Assembly finally met, the acts passed in the meantime were confirmed. At its session on 29 April, the National Assembly passed the Decision on Confirmation of the Decision to Declare a State of Emergency and adopted the Law on Confirmation

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25 Oren Gross and Fionnuala Ni Aolain, *Law in Times of Emergency - Emergency Powers in Theory and Practice*, Cambridge University Press, 2006, 26

26 *Ibid.*

27 For more details, see Nikola Kovačević, *Analysis of Measures Derogating from Human and Minority Rights during the State of Emergency in the Republic of Serbia Caused by the Epidemic of Infectious Disease COVID-19*, The A 11 - Initiative for Economic and Social Rights, March 2020, available at [link](#), last visited on 15.8.2020.

28 *The Official Gazette of RS*, Nos. 15/2016 and 68/2020.

29 *Ibid.*

30 See, for instance, Sofija Mandić, "Vanredno stanje - uputstvo za upotrebu", op.cit.

31 *The Official Gazette of RS*, No. 98/2006.

32 See Marijana Pajvančić, Nevena Petrušić, Sanja Nikolin, Aleksandra Vladislavljević, Višnja Baćanović, *Gender Analysis of COVID-19 Response in the Republic of Serbia*, OSCE Mission to Serbia and the Women's Platform for Development of Serbia 2014-2020, March-May 2020, 22, available at [link](#). See also Miodrag Jovanović, *Ustavni sud u raljama karlišmitovskih pitanja*, Pešćanik, 29 May 2020, available at [link](#). On scepticism regarding the alleged impossibility of the National Assembly to meet in a hygienically responsible environment or with the observance of preventive measures, see also European Western Balkans, *Novo dno parlamentarizma u Srbiji*, 22 April 2020, available at [link](#), Sofija Mandić, "Vanredno stanje - uputstvo za upotrebu", Pešćanik, 16 March 2020, available at [link](#), last visited on 15.8.2020, Danica Vučenić, "Petrović Škero: Pravo na dostojanstvo ličnosti niko ne sme da nam ograniči", *Istinomer*, 18 March 2020, available at [link](#), last visited on 15.8.2020.

33 For more details, see M. Pajvančić et al., *Gender Analysis of COVID-19 Response in the Republic of Serbia*, op.cit., 20-21.

34 Vanja Dolapčev, *Nedostatak transparentnosti - Pandemija COVID-19 u Srbiji*, op.cit.

35 For more details, see M. Pajvančić et al., *Gender Analysis of COVID-19 Response in the Republic of Serbia*, op.cit., 20-21



of Decrees Adopted by the Government during the State of Emergency (a total of 44 decrees).<sup>36</sup> The adoption of these acts of the National Assembly was also accompanied by the lack of explanations.<sup>37</sup> Seven days after the confirmation of the Decision on Declaring a State of Emergency (29 April 2020), the National Assembly reached the Decision on the Abolition of the State of Emergency (6 May 2020). There was no adequate explanation of what changed during those seven days – the stated reasons for abolition of the state of emergency (as well as the epidemiological situation) were almost the same as the reasons why the state of emergency was maintained only seven days earlier.<sup>38</sup>

Due to irregularities in reaching the Decision on Declaring a State of Emergency, as well as due to the lack of conditions for declaring a state of emergency, initiatives were submitted to the Constitutional Court to assess the constitutionality of that act, but the Constitutional Court rejected them by a decision on 21 May 2020.



## **The situation in the Constitutional Court is regular – there is no need to examine (whether there were) violations of the Constitution**

Several initiatives have been submitted to the Constitutional Court to challenge the constitutionality of acts adopted during the state of emergency,<sup>39</sup> including the Decision on Declaring a State of Emergency, which was challenged both due to non-fulfilment of conditions for declaring a state of emergency,<sup>40</sup> and the manner in which such decision was made.<sup>41</sup>

Regarding the initiatives for assessing the constitutionality of the Decision on Declaring a State of Emergency, on 21 May the Constitutional Court

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<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> For more details, see Sofija Mandić, “Sedam dana epidemije”, *Peščanik*, 6 May 2020, available at [link](#), last visited on 20.8.2020.

<sup>39</sup> Among other things, an initiative was submitted to review the constitutionality of the Decree on Misdemeanors for Violating the Order of the Minister of the Interior on Restriction and Prohibition of Movement of Persons on the Territory of the Republic of Serbia (for violating the *ne bis in idem* principle) and an initiative to assess the constitutionality of Article 3 of the Decree on Measures during the State of Emergency, and after the termination of the validity of that act, and for the assessment of the constitutionality of the Order on restriction of movement at the accesses to open space and facilities of reception centres for migrants and asylum centres (The Official Gazette of RS, No. 66/2020) due to arbitrary and discriminatory deprivation of liberty of refugees, migrants and asylum seekers who are prohibited from leaving asylum centres and reception centres.

<sup>40</sup> According to the Law on Protection of People from Infectious Disease, pandemic is considered as an elemental disaster due to which an emergency situation can be declared, and not a state of emergency. For more details, see Miodrag Jovanović, “Ustavni sud u raljama karlšmitovskih pitanja”, *Peščanik*, 29 May 2020, available at [link](#), last visited on 20.8.2020.

<sup>41</sup> Article 200 paragraph 1 of the Constitution stipulates that the decision to declare a state of emergency is made by the National Assembly. The state of emergency in Serbia was declared on 15 March by the Decision passed by the President of the Republic, the President of the National Assembly and the Prime Minister, referring to Article 200, Paragraph 5 of the Constitution, which authorizes them to make such a decision together *when* the National Assembly cannot convene. There were no obstacles for the National Assembly, in compliance with all necessary epidemiological measures, to meet and exercise its original constitutional competence to declare a state of emergency, so the conditions for the decision to declare a state of emergency to be reached by the President of the Republic, the President of the National Assembly and the Prime Minister instead by the National Assembly were not met. The Decision itself does not explain why the National Assembly cannot meet. The epidemic (which was declared on 19 March, i.e. four days after the declaration of the state of emergency) could not be an obstacle to the session, nor could the Order banning gatherings in public places in the Republic of Serbia because, from the standpoint of the principle of the separation of powers, an act of an executive body may not prohibit the gathering of MPs and the work of the National Assembly. See Miodrag Jovanović, “Ustavni sud u raljama karlšmitovskih pitanja”, op. cit, as well as Tanasije Marinković, “Pravo skupštine da se sastane jače je od odluke Vlade”, *Nova.rs*, 25 April 2020, available at [link](#), last visited on 20.8.2020.

issued a decision rejecting the initiatives because the Court concluded that the allegations of the applicants were not constitutionally grounded, i.e. that the reasons stated in the initiatives did not support the claim that there were grounds for initiating the procedure for assessing the constitutionality and legality of the Decision on Declaring a State of Emergency.<sup>42</sup> This is another in a series of decisions of the Constitutional Court rejecting initiatives for assessment of constitutionality with the explanation that there were not enough grounds to initiate the procedure of examining constitutionality, despite the fact that the reasoning of the Constitutional Court, with its extensiveness, significance of issues it refers to and the number of people it affects, indicates that there was a need to initiate proceedings to examine the constitutionality of the challenged act.<sup>43</sup>

The initiatives for the assessment of constitutionality also pointed out that a state of emergency was declared by an incompetent body, since that competence belongs to the National Assembly, and only when the National Assembly cannot meet, the decision is made jointly by the President of the Republic, the President of the National Assembly and the Prime Minister.<sup>44</sup> The disputed Decision does not contain an explanation as to why the National Assembly could not meet, nor how that impossibility was determined, so the Constitutional Court tried to offer an explanation for that.

It concluded that the President of the National Assembly was invited to make such a decision and, by his independent assessment, to deprive the National Assembly of the original authority to decide on declaring of a state of emergency.<sup>45</sup> Regarding the very reasons for the impossibility for the National Assembly to meet, it was lightly concluded that the Constitutional Court “cannot assess the organizational capacities of the National Assembly to meet without delay in conditions of danger to human life and health”.<sup>46</sup> If the Constitutional Court had referred to the fact that the National Assembly met on 29 April to confirm the Decision on Declaring a State of Emergency (when the same measures were in force as on 15 March, and a significantly higher number of infected and deceased), it would have realized that there was no real factual obstacles for the National Assembly to meet with respect for the necessary protective measures.<sup>47</sup>

In addition to the questions that the Constitutional Court was clearly not prepared to deal with – such as whether declaring the state of emergency in Serbia was in accordance with the Constitution of the Republic of Serbia – the question of whether the measures taken in response to the alleged state of emergency were justified and in accordance with the Constitution and human rights standards is also important. The question of whether the state has taken special measures to protect particularly vulnerable groups is equally important.

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<sup>42</sup> Constitutional Court, Iuo-42/2020 as of 21 May 2020, available at [link](#).

<sup>43</sup> For the shortcomings of the decision of the Constitutional Court rejecting the initiatives for assessing the constitutionality of the Decision on declaring a state of emergency, see M. Jovanović, “Ustavni sud u raljama karlišmitovskih pitanja”, op.cit., Goran Dajović, “Epitaf za srpski Ustav”, *Otvorena vrata pravosuđa*, 26 May 2020, available at [link](#), Bojan Spaić, “Literarni dometi Rešenja Iuo-42/2020”, *Cepris*, 18 June 2020, available at [link](#), last visited on 20.8.2020.

<sup>44</sup> M. Jovanović, “Ustavni sud u raljama karlišmitovskih pitanja”, op.cit.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*



After the initial assurances of the President of Serbia from 26 February that there will be no closing of the borders,<sup>48</sup> all border crossings for entering Serbia were closed on 19 March.<sup>49</sup> Amendments to the Decree on Measures during the State of Emergency as of 19 March suspended international air passenger traffic,<sup>50</sup> and amendments to the Decree as of 20 March prohibited the transport of passengers by bus, as well as rail and water passenger transport.<sup>51</sup> The mentioned measures and the suspension of international air traffic for passenger transport affected the right of many citizens of Serbia to return to their own country.<sup>52</sup> When it comes to the suspension of domestic traffic, it is not difficult to assume that this measure has hit more the inhabitants of rural and isolated areas who do not own cars, making it difficult for them to access social protection services or health facilities, as shown by examples of the members of vulnerable groups who addressed the A 11 Initiative.

*A.B. gave birth during the state of emergency. In addition to other pandemic related difficulties, A.B. faced the problem of how to get to a health institution for regular check-ups related to pregnancy, as public transport was abolished and her family, which lived in poverty, did not own a car. Finally, in order to go for check-ups, her family borrowed money from relatives and paid their neighbour 1,000 dinars to take them to the health institution. It was similar with going to a social welfare centre, where her husband tried to submit a request for financial social assistance since they were without income upon the breakout of the pandemic, which he used to earn by collecting secondary raw materials and doing other jobs in the informal economy.*<sup>53</sup>

This is just an introduction to a series of measures that, although seemingly neutral, affect vulnerable groups and the poor to a greater extent because their impact on vulnerable groups was not taken into account prior to their introduction.

Restrictions on freedom of movement followed, which for some categories of citizens represented deprivation of liberty.

Pursuant to Article 2 of the Decree on Measures during the State of Emergency,<sup>54</sup> the Minister of the Interior, with the consent of the Minister of Health, **issued on 18 March 2020 an Order on Restriction and Prohibition**

<sup>48</sup> R. Marković, "Zašto nam ne verujete, kad vas lažemo", op.cit.

<sup>49</sup> See Decision on Decision on closing all border crossings for entry into the Republic of Serbia, The Official Gazette of RS, No. 37/2020 as of 19.3.2020.

<sup>50</sup> Decree amending the Decree on Measures during the State of Emergency, The Official Gazette of RS, No. 36/2020 od 19.3.2020.

<sup>51</sup> Decree amending the Decree on Measures during the State of Emergency, The Official Gazette of RS, No. 38/2020 od 20.3.2020.

<sup>52</sup> For more details, see N. Kovačević, *Analysis of Measures Derogating from Human and Minority Rights during the State of Emergency in the Republic of Serbia Caused by the Epidemic of Infectious Disease COVID-19*, op. cit.

<sup>53</sup> FB and AB addressed the A 11 Initiative in April 2020 because they did not manage to submit a request for financial social assistance and on that occasion, they also complained about the difficulties in reaching health care institutions and social welfare centres at all.

<sup>54</sup> Article 2 of the Decree on Measures during the State of Emergency read: "The Ministry of the Interior, in agreement with the Ministry of Health, may temporarily restrict or prohibit the movement of persons in public places, as well as order certain persons or groups of persons infected or suspected that they are infected with the infectious disease COVID-19 to stay at the address of their permanent or temporary residence, with the obligation to report to the competent health institution, until the suspicion is eliminated, i.e. until the results of testing for the SARS-CoV-2 virus are obtained."

of Movement of Persons on the Territory of the Republic of Serbia (hereinafter: The Order). The Order first **completely forbids movement in public places, i.e. outside houses and residential facilities to persons over 65 or more years of age** (in populated areas over 5,000 inhabitants), **or persons over 70 years of age or older** (in populated areas up to 5,000 inhabitants). **All persons were forbidden to move between 8:00 pm and 5:00 am.** The Order and the restrictions of freedom of movement introduced by it changed on several occasions. Starting from **22 March 2020**, the **ban on movement** for all persons (or, colloquially, “curfew”) started **od at 5:00 pm**, instead of 8:00 pm, and exceptionally, it was allowed to take pets for a walk in the period from 8:00 pm to 9:00 pm, at most 200 meters away from their place of permanent or temporary residence.<sup>55</sup> Starting from **28 March**, the **ban on movement on Saturdays and Sundays began at 3:00 pm.**<sup>56</sup> The new amendments to the Order **as of 3 April**, in addition to the ban on movement on weekdays from 5:00 pm to 5:00 am, stipulated that **the ban on movement on weekends lasted from Saturday at 1:00 pm to Monday at 5:00 am.**<sup>57</sup>

The Order on Restriction and Prohibition of Movement of Persons on the Territory of the Republic of Serbia and subsequent amendments to that act **regulated a matter that could not be the subject of an order** of a minister, but could only be the subject of a decree issued by the Government and signed by the President, in accordance with the Article 200, Paragraph 6 of the Constitution.<sup>58</sup> After pointing out at these shortcomings, on 9 April 2020, the Order on Restriction and Prohibition of Movement of Persons on the Territory of the Republic of Serbia ceased to be valid with the amendments to the Decree on Measures during the State of Emergency.<sup>59</sup> Subsequently, freedom of movement was restricted pursuant to the Article 1a<sup>60</sup> of the Decree of Measures during the State of Emergency which was amended several times. Starting from 9 April, the Decree provided that the ban on movement at weekends lasted from Friday from 5:00 pm to Monday until 5:00 am.<sup>61</sup> Based on the amendments to the Decree as of 16 April 2020, in addition to previous bans on movement on weekdays, during the Easter holidays the movement was prohibited from Friday, 17 April at 5:00 pm to Tuesday, 21 April at 5:00 am.<sup>62</sup> It was also the longest movement ban for all citizens, which lasted 84 hours in total. Amendments to the Decree as of 24 April 2020, during the May Day holidays, prohibited movement from Thursday, 30 April at 6:00 pm, until Monday, 4 May at 5:00 am.<sup>63</sup> As for persons older than 65 and 70, they were subject to a complete

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<sup>55</sup> Order amending the Order on Restriction and Prohibition of Movement of Persons on the Territory of the Republic of Serbia, *The Official Gazette of RS*, No. 40/2020 od 22.3.2020.

<sup>56</sup> Order amending the Order on Restriction and Prohibition of Movement of Persons on the Territory of the Republic of Serbia, No. 46/2020 od 28.3.2020

<sup>57</sup> Order amending the Order on Restriction and Prohibition of Movement of Persons on the Territory of the Republic of Serbia *The Official Gazette of RS*, No. 50/2020 od 3.4.2020.

<sup>58</sup> For more details, see Cepris, *Marinković: Neustavna naredba o zabrani kretanja*, 2 April 2020, available at [link](#), last visited on 16.8.2020.

<sup>59</sup> See Article 6 of the Decree amending the Decree on Measures during the State of Emergency, *The Official Gazette of RS*, No. 53/2020 od 9.4.2020.

<sup>60</sup> Article 1a of the Decree on Measures during the State of Emergency was added to amendments of this act on 9 April 2020 (*The Official Gazette of RS*, No. 53/2020), and based on that article it continued with the restrictions on freedom of movement which were previously regulated by the Order of the Minister of the Interior (The Order on Restriction and Prohibition of Movement of Persons on the Territory of the Republic of Serbia).

<sup>61</sup> Article 1a of the Decree amending the Decree on Measures during the State of Emergency, *The Official Gazette of RS*, No. 53/2020 as of 9.4.2020.

<sup>62</sup> Article 1a of the Decree amending the Decree on Measures during the State of Emergency, *The Official Gazette of RS*, No. 57/2020 as of 16.4.2020.

<sup>63</sup> Article 1a of the Decree amending the Decree on Measures during the State of Emergency, *The Official Gazette of RS*, No. 4.2020. 60/2020 as of 24.4.2020.

ban on movement during this entire period, except in a few exceptional cases.<sup>64</sup>

Therefore, after pointing out at the unconstitutionality of the Order, which reflected in the fact that the ban on movement could not be introduced by the Minister of the Interior, the restriction of freedom of movement continued on the basis of a Government Decree. However, warnings were ignored<sup>65</sup> indicating that the essential shortcomings of the Order could not be remedied by translating its text into the text of a Government Decree. Significant shortcoming, i.e. violations of human rights and obligations related to protection against discrimination, which had previously taken place under the Order, continued under the Decree on Measures during the State of Emergency. Along with the restrictions on freedom of movement that applied to all citizens, first on the basis of the Article 3 of the Decree on Measures during the State of Emergency, and then on the basis of the Order of the Minister of Health,<sup>66</sup> refugees, migrants and asylum seekers in reception centres and asylum centres are illegally and arbitrarily deprived of liberty, on the basis of discriminatory criteria.<sup>67</sup>

Due to the disturbed daily routine and habits, the ban on movement severely affected children with autism, which is why the Commissioner for the Protection of Equality submitted an initiative to the Ministry of Labour, Employment, Veterans and Social Affairs to allow the movement for a limited time to parents and guardians of children and adults with autism, near the place of their residence,<sup>68</sup> and it was acted upon this initiative and allowed to move no more than 200 meters away from the place of residence or stay.<sup>69</sup>

Another vulnerable group disproportionately affected by the ban was Roma, especially collectors of secondary raw materials and inhabitants of informal settlements without water.



## Impact of bans on movement on the position of Roma from informal settlements

Neither pandemics nor pandemic control measures affect all citizens in the same way.<sup>70</sup> They do not affect different vulnerable groups in the same way either. Movement bans that occasionally lasted for several days

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<sup>64</sup> For instance, by amending the Order on Restriction and Prohibition of Movement of Persons on the Territory of the Republic of Serbia as of 21 March 2020 (*The Official Gazette of RS*, No. 39/2020), they were allowed to move on Sundays from 3:00 am to 8:00 am, and by amendments as of 3 April 2020 (*The Official Gazette of RS*, No. 50/2020) they were allowed to move on Saturdays from 4:00 am to 7:00 am.

<sup>65</sup> Cepriš, Marinković: *Neustavna naredba o zabrani kretanja*, op.cit.

<sup>66</sup> Order Restricting Movement at Accesses to Open Areas and Facilities of Reception Centres for Migrants and Asylum Centres, *The Official Gazette of RS*, No. 66/2020 as of 6 May 2020.

<sup>67</sup> For more details, see Nikola Kovačević, *Deprivation of liberty of refugees, asylum seekers and migrants in the Republic of Serbia through measures of restrictions and measures of derogation from human and minority rights made under the auspices of the state of emergency*, The A 11 – Initiative for economic and social rights, available at [link](#), last visited on 20.8.2020.

<sup>68</sup> The Commissioner for Protection of Equality, Initiative to allow movement for persons with autism, 13 April 2020, available at [link](#), last visited on 21.8.2020.

<sup>69</sup> Article 1a of the Decree on Measures during the State of Emergency.

<sup>70</sup> For more details on the impact of emergency situations on vulnerable groups, see, for instance, Mariangela Bizzari, "Protection of Vulnerable Groups in Natural and Man-Made Disasters" in Andrea de Guttry et al. (eds.), *International Disaster Response Law*, Asser Press, 2012. For the impact of pandemic COVID-19 on Roma, see particularly forthcoming publications produced as part of the research "Marginality on the Margins of Europe – The Impact of COVID-19 on Roma Communities in Non-EU Countries in Eastern Europe" (research conducted by the European Centre for Minority Issues and the University of Leicester in the period from 15 June to 15 July 2020).



were justified by the need to prevent the spread of COVID-19 disease. Paradoxically, in some informal Roma settlements, movement bans brought additional health risks – because the state overlooked that in substandard Roma settlements, restricting freedom of movement means restricting access to water – which is key to preventing the spread of infection.

Two circumstances in particular contributed to Roma being more severely affected by these measures: living conditions in informal Roma settlements, as well as poverty and the way they earn their living, which includes collecting secondary raw materials and working in the informal economy – sector that remained invisible to the state when anticipating measures to mitigate the economic consequences of the COVID-19 epidemic.

### **Bans on movement and access to water**

One of the key measures to protect against the epidemic is frequent hand washing.<sup>71</sup> In many Roma settlements, living conditions are such that they were prevented from applying these preventive measures,<sup>72</sup> and the ban on movement further exacerbated the already unenviable situation with regard to water supply.

When it comes to access to water, in 38% of substandard Roma settlements, none of the houses is connected to the water supply network, and in 30% of settlements, about 30% of houses are not connected to the water supply network.<sup>73</sup> It is estimated that at least 5,000 Roma families, i.e. about 25,000 Roma men and women, do not have drinking water, nor can they apply basic hygiene measures.<sup>74</sup> The state has overlooked that by banning their movement it also restricts the access to water to the inhabitants of these settlements.

Difficulties related to water access and implementation of preventive measures are evidenced by a special report of the Protector of Citizens on living conditions in ten Roma settlements visited during the state of emergency, which states that, with the exception of one of the visited settlements, all other settlements have problems with water supply, and especially drinking water.<sup>75</sup> Most of the inhabitants are forced to bring water in balloons from fountains or other facilities near the place of their residence.<sup>76</sup> Since the movement bans in certain periods lasted throughout the weekend, and during the Easter and May Day holidays even longer, this means that the **inhabitants of informal Roma settlements without water were prevented from being supplied with water for several days.**

The mentioned difficulties are illustrated by the example of the informal Roma settlement Čukarička šuma in Belgrade, where about 270 internally displaced Roma live and which is not connected to the water supply network.

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<sup>71</sup> See, for instance, recommended measures of protection from corona virus, published on the website COVID19.rs; Instruction for prevention measures for coronavirus – COVID-19, available at [link](#).

<sup>72</sup> See, for instance, Robert Kasumović, “Kad živiš u podstandardnom naselju ostajanje kod kuće te ne štiti od zaraze”, *Mašina*, 26 March 2020, available at [link](#), last visited on 16.8.2020 and Stephan Muller, Fikrija Tair, Bashkim Ibishi and Dragan Gracanin, “Roma: Europe’s neglected coronavirus victims”, BIRN, 1 April 2020, available at [link](#), last visited on 21.8.2020.

<sup>73</sup> Lj. Živković, A. Đorđević, *General Characteristics of Substandard Roma Settlements in Serbia and a Proposal for Further Development Initiatives for the Improvement of the Living Conditions of the Roma Community*, OSCE Mission to Serbia, Belgrade, 2015, 25, available at [link](#), last visited on 16.8.2020.

<sup>74</sup> See the A 11 – Initiative for Economic and Social Rights, “Proposed measures for prevention and mitigation of coronavirus consequences for socially excluded and especially vulnerable categories of the population”, op. cit, [link](#); Mila Đurđević, Selma Boračić-Mršo, “Pandemija i neuslovna naselja: ‘Nemamo ni sapun, ni prašak’”, *Radio Slobodna Evropa*, 25 March 2020, available at [link](#), last visited on 18.8.2020.

<sup>75</sup> Protector of Citizens, *Special Report of the Protector of Citizens: Conditions in Roma settlements during the state of emergency and application of measures during the epidemic of corona virus (COVID-19)*, 19 May 2020, 18, available at [link](#), last visited on 16.8.2020.

<sup>76</sup> *Ibid.*

The inhabitants of that settlement are supplied with water at a public fountain on the market, which was closed during the state of emergency, in order to prevent the spread of the corona virus.<sup>77</sup> Since the beginning of the state of emergency, they have been forced to walk several kilometres to the neighbouring settlement in order to fill the canisters with clean water.<sup>78</sup> There are two fountains with technical water in that settlement, but that water is not drinkable.<sup>79</sup> This means that at weekends, when the bans on movement during the state of emergency lasted for several days, the entire settlement with about 270 inhabitants was left without the possibility to be supplied with clean water and drinking water.

There is no doubt that the ban on movement, in addition to the difficulties faced by other citizens, hindered the access to water for Roma from informal settlements, which in the context of the epidemic and the inability to take preventive measures requiring access to water can have serious health consequences.

Not only did the state ignore the situation in informal Roma settlements when introducing the ban of movement, but it also ignored warnings and proposed measures that pointed to the need to improve hygiene in informal Roma settlements without water in order to protect vulnerable groups from the effects of the pandemic – sanitary conditions, among other things, through the provision of drinking water and water for maintaining hygiene, which would be delivered by utility companies.<sup>80</sup>

Bearing in mind that about 30% of Roma settlements do not have water and that access to water is one of the key preconditions for applying protection measures against coronavirus, the question arises whether the state had any positive obligations regarding providing access to water for Roma settlements.

The World Disaster Report 2000 refers, inter alia, to the guarantees of the right to life under Article 6 of the International Covenant on Civil and Political Rights (hereinafter: ICCPR) to point out that “negligence in the event of natural or technological disasters can lead to the de facto death penalty”, i.e. violation of human rights.<sup>81</sup> Similarly, in epidemic situations, where the lives and health of many people are exposed to serious risks,<sup>82</sup> the negligence and passive attitude of institutions towards the serious health risks to which vulnerable groups are exposed can lead to human rights violations. Given the link between access to water and the possibility of applying coronavirus protection measures, the passive attitude of the state, and in particular state measures that further impede access to water, can lead to violations of the right to health and the right to life, especially for individuals

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<sup>77</sup> Information received by the A 11 Initiative from the inhabitants of the settlement Čukarička šuma during visits as of 10 and 23 April 2020.

<sup>78</sup> Ibid.

<sup>79</sup> Protector of Citizens, *Special Report of the Protector of Citizens: Conditions in Roma settlements during the state of emergency and application of measures during the epidemic of corona virus (COVID-19)*, op.cit. It is useful to remember that one of the key measures to protect the population during an epidemic is to use only water from safe sources. See, for example, The IDNDR Secretariat of the United Nations (The International Decade for Natural Disaster Reduction) and Emercom (The Ministry of Russian Federation for Civil Defence, Emergencies and Elimination of Consequences of Natural Disasters), 1999, p. 23, available at [link](#), last visited on 21.8.2020.

<sup>80</sup> For more details, see the A 11 – Initiative for economic and social rights, *Podnet predlog mera za sprečavanje i ublažavanje posledica korona virusa po socijalno isključene i posebno ranjive kategorije stanovništva*, 9 April 2020, available at [link](#), and proposed measures available at [link](#), last visited on 17.8.2020.

<sup>81</sup> See also Bojana Čučković, “Međunarodni standardi zaštite ljudskih prava u slučajevima prirodnih katastrofa”, *Pravni život*, 12/2017.

<sup>82</sup> European Committee of Social Rights, Statement of interpretation on the right to protection of health in times of pandemic (adopted by the Committee on 21 April 2020), available at [link](#), last visited on 21. 8. 2020.

who have health conditions that increase the likelihood of developing a more serious condition or death in the event of a coronavirus infection. It is pertinent to mention the decision of the European Court of Human Rights (hereinafter: ECtHR and the Court) in the case of *Hudorovič and Others v. Slovenia*, which referred to the access to water in informal Roma settlements (outside the context of the pandemic). Although no violation of rights has been established in this particular case, the decision states that **Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms** (hereinafter: the ECHR) **may create positive obligations for the state in terms of providing access to clean water.**<sup>83</sup> The Court notes that the long-lasting inability to access clean drinking water may have detrimental consequences for health and human dignity, affecting the very core of the right to privacy and the enjoyment of home within the meaning of Article 8 of the Convention. Therefore, even outside the context of a pandemic, the Court did not rule out the possibility of emergence of a positive obligation for the state to provide access to water under Article 8, whereby any positive obligations and their eventual content would depend on the circumstances of the concrete case, the legal system and economic and the social circumstances of the state. In the context of the pandemic, the direct link between access to water and the possibility of implementing measures to protect against infection would undoubtedly be a factor in favour of a positive obligation of the state to provide access to water, not only under Article 8 but also under Article 2 of the European Convention guaranteeing the right to life.

In some settlements, the state provided tanks with drinking water, but that was not enough to meet the existing needs.<sup>84</sup> When it comes to the movement ban itself, it is important to point out that the restrictions introduced on the basis of the Order of the Minister of the Interior would fail the ECtHR's test of compliance with domestic regulations and decision-making procedures, since these prohibitions originated from the body which was not authorized to introduce them.<sup>85</sup>

**Restricting access to water through the prohibition of movement is also contrary to article 12 of the International Covenant on Economic, Social and Cultural Rights** (hereinafter: ICESCR), which guarantees the right to the enjoyment of the highest attainable standard of physical and mental health. The obligation to respect the right to health implies the obligation of states to refrain from directly and indirectly obstructing the enjoyment of the right to health, which certainly includes the obligation of the state to refrain from negatively affecting individual components of the right to health, such as access to drinking water or water necessary for applying preventive measures during the epidemic. As an example of a breach of this obligation, the Committee on Economic, Social and Cultural Rights in General Comment no. 12 states the suspension of the law or adoption of laws or policies that jeopardize the enjoyment of *any component of the right to health*.<sup>86</sup> Access to safe water and drinking water is an important determinant of the right to health, which has become even more important

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<sup>83</sup> *Hudorovič and Others v. Slovenija*, Applications nos. 24816/14 and 25140/14, Judgment of 10 March 2020, para. 116. For more details, see Valeska David, "The Court's first ruling on Roma's access to safe water and sanitation in Hudorovic et al. V. Slovenia: reasons for hope and worry", *Strasbourg Observer*, 9 April 2020, available at link, last visited on 17.8.2020.

<sup>84</sup> This is also evidenced by the special Reports of the Protector of Citizens on the situation in Roma settlements during the state of emergency. See Protector of Citizens. *Special Report of the Protector of Citizens: Conditions in Roma settlements during the state of emergency and application of measures during the epidemic of corona virus (COVID-19)*, op.cit.

<sup>85</sup> See Cepriš, Marinković: *Neustavna naredba o zabrani kretanja*, op.cit.

<sup>86</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the right to health (Art. 12). On the State's obligations regarding the right to water, see also General Comment No. 15: The right to water (arts. 11 and 12 of the Covenant on Economic, Social and Cultural Rights).



in the context of a pandemic. Therefore, measures that jeopardize the enjoyment of the right to access to water (such as the ban on movement in Serbia) may lead to a violation of the obligation to respect the right to health, in terms of the Article 12 of the ICESCR.

*The existence and fulfilment of the state's obligations regarding access to water also depends on the economic and social conditions in the country. However, the example of the already mentioned informal Roma settlement Čukarička šuma shows that the problems with access to water for Roma settlements during the pandemic did not arise due to insufficient resources, but due to the passive attitude of the state towards the problems of informal settlements.*

*Due to living conditions and the lack of drinking water in that settlement and the pile of garbage that surrounded the settlement (which can even be seen on satellite images),<sup>87</sup> the A 11 Initiative initiated a procedure before the European Court of Human Rights to impose temporary measures. The request was made on behalf of two persons who, due to their health condition (both applicants had cancer, heart problems and diabetes), were at risk of developing more serious complications and death in the event of a coronavirus infection. The temporary measure, among other things, requested that a tank with water be provided in the settlement and that regular garbage collection be provided (previously, these measures were requested from the state on two occasions, but the requests remained unanswered).<sup>88</sup> In the end, the Court withdrew from imposing an interim measure and referred the applicants to contact the local authorities in the Municipality of Čukarica, who were not aware of the problems in that settlement, which the A 11 Initiative did. Only after addressing the Protector of Citizens, who sent a letter to the mayor of Čukarica, and more than a month after the declaration of the epidemic and declaring of a state of emergency, the inhabitants of the settlement Čukarička šuma were provided with a water tank. Although the procedure itself did not make it possible to see the Court's position on access to water in informal settlements in the context of the COVID-19 pandemic, it provided insight into the State's attitude towards the problem. Having in mind the difficult situation in the settlement, and especially the position of the applicants whose lives would be endangered by the spread of the infection in the settlement, the hesitation of the state to provide a water tank is beyond comprehension, and the reasons given by the state are especially incomprehensible. Thus, regarding the allegation that due to the ban on movement, the inhabitants were denied the access to water, the state pointed out that the inhabitants could request special permits for movement during the curfew.*

*The state's argument that the inhabitants of the settlement of Čukarička šuma, in order to be supplied with water, could require special permits that allow movement during curfew, only testifies to the lack of adequate efforts to protect the endangered inhabitants of these settlements. This further means that the protection of the applicants' physical and mental integrity, as well as their lives, depends on the ability of about 70 vulnerable Roma households (with many members being illiterate and without access to electricity, internet and relevant information) to apply for a special permit for free movement during curfew. Above all, special permits that allowed movement during curfew, could be obtained only in cases where there is a need to provide social assistance services, in accordance with*

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<sup>87</sup> Danilo Ćurčić, "Solidarnost nije ista za sve", *Vreme Weekly*, 23 May 2020.

<sup>88</sup> First, on 9 April 2020, the Proposal of Measures for Prevention and Mitigation of the Consequences of the Corona Virus for Socially Excluded and Particularly Vulnerable Categories of the Population was sent (available at [link](#)), and then an urgency letter was sent, which also remained without response.

the Law on Social Protection, i.e. for “personal assistant” services (Article 40, Paragraph 2 of the Law on Social Protection) and service “home care” (Article 40, Paragraph 3 of the Law on Social Protection). Therefore, the conditions for inhabitants of informal settlements to obtain these permits were not met, and information on this procedure was not publicly or easily accessible.<sup>89</sup>

It is useful to refer here to the statement of the Committee on Economic, Social and Cultural Rights regarding the COVID-19 pandemic, which reminds that measures to prevent or mitigate the effects of the pandemic must be in line with human rights standards, because otherwise there is an obvious risk that the measures taken will violate economic, social and cultural rights and expose the most vulnerable groups to even greater suffering. It is necessary to have in mind that both the ECtHR<sup>90</sup> and the Human Rights Committee<sup>91</sup> have taken the view that violations of the right to life may occur even when no loss of life has occurred. In addition, exposure to a constant fear of losing one’s life may result in the violation of the Article 3 of the ECHR and a prohibition of inhuman and degrading treatment. The state should keep all these circumstances in mind when designing future measures for protection against coronavirus.

### Prohibition of movement as a cause of loss of income

Another circumstance contributed to the fact that the Roma were particularly hit by the movement bans, and that is widespread poverty and the way they earn income. Most Roma rely on income earned in the informal economy,<sup>92</sup> and the most vulnerable among them (undocumented persons who are almost exclusively members of the Roma national minority) depend entirely on precarious income from the informal sector and activities such as collecting secondary raw materials. These persons were left without any means of subsistence during the state of emergency. This is also pointed out in the report of the Protector of Citizens on the situation in ten Roma settlements visited during the state of emergency. During the visit to the settlement of Čukarička šuma, the inhabitants of that settlement told the representatives of the Protector of Citizens and the A 11 Initiative that after the state of emergency was declared, they were unable to collect secondary raw materials, and that they found themselves in an even more difficult situation.<sup>93</sup> The situation is not different in other informal Roma settlements, the number of which is about 580 in total. Their most vulnerable inhabitants are so poor that they cannot afford to quit their work for a few days and do not have savings that would allow them to provide food

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<sup>89</sup> For instance, the A 11 Initiative had to ask for the information on how to apply for these licences by email from the Ministry of Interior.

<sup>90</sup> Despite the slow penetration of the principles of precaution and prevention into the practice of the Court, in the decision *Kolyadenko and Others v. Russia* (Application nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, Judgment of 28 February 2012), the Court established that it was possible to apply the Article 2 of the Convention notwithstanding that no loss of life had occurred. See Bojana Čučković, “Međunarodni standardi zaštite ljudskih prava u situacijama prirodnih katastrofa”, op.cit. 324-325.

<sup>91</sup> Decision of the Human Rights Committee in the case of *Toussaint v. Canada* shows that states can be held liable for violations of the right to life even if (non-) acting of the state in a particular case does not lead to loss of life. UN Human Rights Committee, *Toussaint v. Canada*, CCPR/C/123/D/2348/2014, 24 July 2018, para. 11.3.

<sup>92</sup> See, for example, Mila Đurđević and Selma Boračić-Mršo, “Pandemija i neuslovna naselja: ‘Nemamo ni sapun, ni prašak’”, *Radio Slobodna Evropa*, 25 March 2020, available at [link](#), as well as Robert Kasumović, “Kad živiš u podstandardnom naselju ostajanje kod kuće te ne štiti od zaraze”, op.cit.

<sup>93</sup> Special Report of the Protector of Citizens: Conditions in Roma settlements during the state of emergency and application of measures during the epidemic of corona virus (COVID-19), op.cit.

for the whole family for a few days during the movement ban.<sup>94</sup> For those living in such poverty, it is illusory to talk about the possibility of obtaining protective masks, gloves and means for hygiene and disinfection. Families who are not beneficiaries of financial social assistance and persons who support themselves by collecting secondary raw materials were in a particularly difficult situation because they could not work during the state of emergency, and were left without income.<sup>95</sup> Some Roma – collectors of secondary raw materials who found themselves on the street during the movement ban received misdemeanour charges which, given the poverty in which they live, they will certainly not be able to pay.<sup>96</sup> Additional difficulties were brought about by the reduced purchase price of secondary raw materials and the amount of secondary raw materials that can be collected on the street, due to the reduced movement of people.<sup>97</sup>

The ban on movement, in addition to more impeded access to water, also meant reduced opportunities for Roma to provide a livelihood. Here, it is useful to refer to the statement of the European Committee of Social Rights, which reminds that states must not leave people without minimum means of subsistence due to the lockdowns and lack of economic activity during a pandemic.<sup>98</sup> It should also be borne in mind the General Comment of the Committee on Economic, Social and Cultural Rights No. 14 in relation to the right to health, which states that the reference in article 12 (1) of the Covenant to “the highest possible standard of physical and mental health” is not limited to the right to health care. Determining the normative content of the right to health, the Committee further emphasizes that the right to prevention, treatment and control of disease includes the creation of an emergency medical care system in case of accidents, epidemics and similar health hazards, as well as providing assistance in case of accidents and humanitarian assistance in case of emergency.<sup>99</sup>

Although some Roma settlements were covered by the distribution of food and hygiene packages, mostly through the Red Cross, this assistance was not sufficient, nor did it reach all persons in need. A special report by the Protector of Citizens on the situation in Roma settlements during the state of emergency states that two out of ten visited settlements did not receive any kind of assistance, while in all others “there was a great need for additional assistance” and some vulnerable families were left out during the distribution. Thus, for example, in the settlement of Mali rit 1, in Pančevo, during the visit of the Protector of Citizens, it was determined that “since the beginning of the state of emergency, they have not received aid packages. As they stated, they did not receive food packages or hygiene packages, and none of the representatives of the competent authorities visited them. Inhabitants stated that they needed packages and that the situation in the settlement was very difficult, which was confirmed by the

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94 See, for example, Mila Đurđević and Selma Boračić-Mršo, “Pandemija i neuslovna naselja: ‘Nemamo ni sapun, ni prašak’”, op. cit. and Robert Kasumović, “Kad živiš u podstandardnom naselju ostajanje kod kuće te ne štiti od zaraze”, op.cit.

95 Protector of Citizens: *Special Report of the Protector of Citizens: Conditions in Roma settlements during the state of emergency and application of measures during the epidemic of corona virus (COVID-19)*, op.cit.

96 See, for instance, interview with inhabitants of the settlement Čukarička šuma in for Insajder, available at [link](#), last visited on 21.8.2020.

97 R. Kasumović, “Kad živiš u podstandardnom naselju ostajanje kod kuće te ne štiti od zaraze”, op.cit.

98 European Committee of Social Rights, Statement of interpretation on the right to protection of health in times of pandemic (adopted by the Committee on 21 April 2020), op. cit.

99 General Comment No. 14, Para. 16. See also, Andrea de Guttry, Marco Gestri, Gabriella Venturini (eds.), *International Disaster Response Law*, Asser Press, The Hague, 2012.



representatives of the Protector of Citizens during the visit”.<sup>100</sup> In some settlements where packages were distributed, not all vulnerable people received them, but only beneficiaries of financial social assistance, as was the case in the Đurđevo Rupe settlement in Požarevac, where families in a difficult situation were left out, including a woman with six children, two of whom are babies.<sup>101</sup> In the settlement Kanal in Kostolac, the Red Cross distributed packages only to the users of financial social assistance, as a result of which a large number of families did not receive the packages, and they needed them.<sup>102</sup>

The distribution of humanitarian aid should be needs-based and guided by the degree of vulnerability. Inhabitants of Roma settlements visited by representatives of the Protector of Citizens and the A 11 Initiative, who are not beneficiaries of financial social assistance, were recognized as particularly vulnerable, but they were left out during the distribution of humanitarian aid packages. In the container settlement Makiš, in the Municipality of Čukarica, the representatives of the Red Cross tried to distribute packages only to inhabitants who have a contract with the City of Belgrade, i.e. the legal basis for the use of containers.<sup>103</sup> Out of solidarity with the neighbours who should have been left out, everyone refused to accept help.<sup>104</sup> NGO Praxis also warned that access to the soup kitchen, one-time financial assistance in food and hygiene packages remained unavailable to persons who did not have personal documents or did not have registered residence in the place where they actually lived, because they were invisible to the system.<sup>105</sup> The distribution of assistance took place according to the available records of local self-government bodies or the records of social welfare centres, from which persons without documents or residence were excluded.<sup>106</sup>

As an example, that illustrates the impossibility of obtaining assistance due to non-fulfilment of the previously mentioned conditions, the example of the City Municipality of Voždovac can be cited. There, undocumented Roma were also excluded from the assistance that the Municipality of Voždovac granted to unemployed persons,<sup>107</sup> because the condition was that they were registered with the National Employment Service (hereinafter: NES), and undocumented persons could not register with the NES. They could not even count on the help that the municipality granted to persons older than 60 – there was also a condition that when applying for this type of help, a unique personal identification number, house number and

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<sup>100</sup> Protector of Citizens: *Special Report of the Protector of Citizens: Conditions in Roma settlements during the state of emergency and application of measures during the epidemic of corona virus (COVID-19)*, op.cit., 11.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> Residents of the settlement published a video in which it was explained that the Red Cross intended to distribute aid packages only to those residents of the container settlement who have a legal basis for living in containers, i.e. a contract with the City of Belgrade, although it is the same settlement and persons living in the equal state of vulnerability (video available at [link](#)).

<sup>104</sup> *Ibid.*; Activist and former author of the street magazine Liceulice, Vuk Vuckovic, published the following information on his Facebook profile on 10 April: “Today, the inhabitants of Makish1 and Makish2 had an unpleasant experience with members of the Cukarica Red Cross. Namely, the people from the Red Cross first listed all the inhabitants of the settlement, and then said that they only had food for those who had a contract with the city (a contract to have a legal container in the settlement). After that, the inhabitants of the settlement rebelled with the words that they were all people, regardless of the fact that some did not have contracts, and in the end, they refused the aid that was intended only for a few. A lesson in solidarity by the Roma brothers!”

<sup>105</sup> *Praxis, Appeal to the government of the republic of Serbia: Assistance in food for the most vulnerable urgently needed*, 3. april 2020, available at [link](#), last visited on 19.8.2020.

<sup>106</sup> *Ibid.*

<sup>107</sup> Municipality of Voždovac, *Paketi pomoći za nezaposlene Voždovčane*, 27 April 2020, available at: [link](#), last visited on 18.8.2020.

telephone number were submitted.<sup>108</sup> By setting such conditions, a large number of Roma are excluded, especially those from informal settlements.

If we look at one of the goals of humanitarian aid, which is to save lives in emergencies, remove suffering and preserve human dignity, it seems unacceptable that this type of assistance is provided within the same settlement, depending on whether or not vulnerable people have concluded a contract on the use of a mobile housing unit and whether they are beneficiaries of financial social assistance.<sup>109</sup> Arbitrary exclusion of vulnerable individuals in the allocation of humanitarian aid can lead to violations of human rights and human dignity.<sup>110</sup>

It is also clear that the allocation of one or a few food and hygiene packages is not enough to provide a means of survival during the state of emergency (which lasted almost two months), and the epidemic continued for months after the state of emergency was abolished. Therefore, the question arises as to what other measures the state has taken in order to mitigate the economic and social consequences of the epidemic and epidemic-related measures among members of vulnerable groups.



## Measures to mitigate the economic consequences of the COVID-19 epidemic in Serbia and other measures and failures during the state of emergency that affected vulnerable groups

As one of the measures to mitigate the economic consequences of the pandemic,<sup>111</sup> on 10 April 2020, the Government of Serbia adopted the **Decree on fiscal benefits and direct benefits to economic entities in the private sector and financial assistance to citizens in order to mitigate the economic consequences of COVID-19.**<sup>112</sup>

The key problem with this Decree, i.e. the state's approach to mitigating the economic and social consequences of a pandemic, is the neglect of vulnerable categories, such as those engaged in the informal sector, who are severely affected by the pandemic, and especially derogation measures during the state of emergency. When it comes to measures to mitigate these consequences, no measure was aimed at people who are particularly at risk of losing their livelihood during a pandemic, and those who earn income in the informal economy.

The majority of members of the Roma national minority in Serbia, around 70%, work in the grey zone,<sup>113</sup> and one of the reasons for that is discrimination on the labour market.<sup>114</sup> Legally invisible persons and other undocumented

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<sup>108</sup> Danas Daily, *Opština Voždovac počela da isporučuje besplatne pakete najstarijima*, available at [link](#), last visited on 18.8.2020.

<sup>109</sup> See also A. Creta in A. De Guttery et al, *International Disaster Response Law*, 364. See also A/Res/43/131 and A/Res/45/100.

<sup>110</sup> *Ibid.* See also Guiding Principles on the Right to Humanitarian Assistance, and particularly Principles 1 and 3 (a), available at [link](#).

<sup>111</sup> Other measures will be the subject of a separate analysis within the same project, and therefore this one will present only basics of the measures that could have been of significance for vulnerable groups.

<sup>112</sup> *The Official Gazette of RS*, No. 54/2020 and 60/2020.

<sup>113</sup> Žarko Šunderić, *Analiza razloga rada značajnog broja Roma u sivoj ekonomiji: problemi i moguća rešenja*, Beograd, 2016, 11; Mila Đurđević, Selma Boračić Mršo, "Pandemija i neuslovna naselja: 'Nemamo ni sapun, ni prašak'", *Radio Slobodna Evropa*, 25. mart 2020, available at [link](#).

<sup>114</sup> Members of Roma community have significantly less access to the labour market and fewer chances to get employed. See, for example, Euractiv, *Ogromna većina Roma radi u sivoj zoni*, 11.12.2018., available at [link](#), last visited on 19.8.2020. See also Amnesty International, *Europe at a Crossroads - Dos and don'ts for authorities when responding to the COVID-19 pandemic*, 2020, 8, available at [link](#), last visited on 19.8.2020.

persons or those without their permanent residence registered, who are almost exclusively Roma,<sup>115</sup> depend entirely on precarious income from the informal economy and activities such as collecting secondary raw materials, as they cannot be employed without documents. Persons who provide livelihoods in this way, and who lost their income during a state of emergency and a pandemic, are not covered by unemployment insurance. Along with collectors of secondary raw materials, legally invisible Roma are particularly at risk of being left without the possibility to provide means of subsistence. In addition to not being able to get employed and exercise social protection rights that are normally available to other citizens, they were also excluded from the assistance measures introduced during the pandemic, as is the case with a **one-time cash benefit of 100 euros**,<sup>116</sup> which could be obtained by all adult citizens of Serbia who had an ID card.<sup>117</sup> Persons who do not have a unique personal identification number and an ID card, and most often those are members of the Roma national minority, could not exercise the right to this assistance. This measure is one of the most obvious examples of the exclusion of vulnerable Roma from measures aimed at mitigating the economic consequences of the COVID-19 pandemic.

Excluding persons who do not have an ID card from the possibility of receiving a one-time financial assistance in the amount of 100 euros is in essential contradiction with the recommendations of the Committee for Economic, Social and Cultural Rights regarding the COVID-19 pandemic and economic, social and cultural rights. The Committee recalls that Member States are obliged to allocate the maximum available resources for the full realization of all economic, social and cultural rights, including the right to health.<sup>118</sup> As the pandemic and the measures taken to combat it have a disproportionate negative impact on the most marginalized groups, states must make all efforts 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 marginalized groups*.<sup>119</sup> Quite the opposite, Serbia has allocated significant resources for the allocation of one-time financial social assistance to all adult citizens (with a valid ID card), many of whom are certainly not in a state of vulnerability. Completely contrary to the principle of social justice, this assistance could not be received by those who are most marginalized and most vulnerable, who do not have access to all other types of assistance and who during the pandemic, state of emergency and restraint of movement were left without opportunities to earn for living previously available, and that is in the informal economy or by collecting secondary raw materials. In addition to being contrary to the recommendation on the fair distribution of resources, the compliance of this measure with the prohibition of

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<sup>115</sup> See, for instance, Praxis, Institute on Statelessness, European Roma Rights Centre, *Joint Submission to the Human Rights Council at the 29th session of the Universal Periodic Review*, 2017, 7, available at [link](#).

<sup>116</sup> Article 15 of the Decree on Fiscal Benefits and Direct Benefits to Private Sector Companies and Financial Assistance to Citizens to Mitigate the Economic Consequences of COVID-19 stipulates that all adult citizens of the Republic of Serbia be paid one-time financial assistance in the amount of 100 euros in dinars equivalent.

<sup>117</sup> The method of application for this type of aid and the method of payment are regulated by the Rulebook on the method of application and method of payment of one-time financial aid (*The Official Gazette of RS*, No. 73/2020, 76/2020 and 78/2020). Article 4 of that Regulation provided that when submitting an application for this type of assistance, data on the unique personal identification number (JMBG) and the registration number of a valid ID card should be submitted.

<sup>118</sup> Committee for Economic, Social and Cultural Rights, *Announcement on COVID-19 pandemic and economic and social rights*, 6 April 2020, available at [link](#), last visited on 21.8.2020.

<sup>119</sup> *Ibid*, Paragraph 14.



discrimination is questionable, especially if we keep in mind that persons without ID cards and documents, which this measure excluded, in addition to being among the most vulnerable in Serbia are also recognizable by another feature, and that is belonging to the Roma national minority.

The positive sides of the one-time financial assistance were that beneficiaries of financial social assistance and pensioners were paid the money automatically, without the need to apply for it separately, and to persons who did not have a bank account, a bank account was opened in a bank they chose on their own.

One-time financial **assistance for pensioners in the amount of 4,000 dinars** was among the first measures introduced to mitigate the economic consequences of the pandemic.<sup>120</sup> Although there is no doubt that the position of pensioners is very difficult, it is necessary to point out that even this assistance could not be received by elderly people who had no income, and were not pensioners either.

One of the first mentioning of socially vulnerable persons was in the notifications by which the Post of Serbia informed them that the payment of social benefits would be suspended.<sup>121</sup> Payments were not suspended,<sup>122</sup> but due to the concern raised by this notice, they should be noted as a reminder why it is important to provide accurate information during the pandemic and do everything possible to ensure that socially disadvantaged people have the access to the support and assistance they had before the outbreak of epidemics.

In addition, persons over 65 encountered **difficulties in withdrawing cash social assistance**. They themselves could not withdraw the financial social assistance, due to the ban on movement for people over the age of 65, and their children could not do it on their behalf at the Post Office.<sup>123</sup> On 26 March, 2020, the Government of the Republic of Serbia adopted the proposal of the Ministry of Labour, Employment, Veteran and Social Policy that social benefits for persons aged 65 and over be paid in the same way as pensions, in accordance with the Instruction on temporary payment of pensions.<sup>124</sup>

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120 The official website of the Government of the Republic of Serbia, announcement, "Obrazovan krizni štab za suzbijanje COVID-19", Belgrade, 13 March 2020, available at [link](#), last visited on 15.8.2020.

121 On 19 March 2020, at the entrances to the facilities of the Post of Serbia, a notice was posted with the following content: "Dear beneficiaries, we would like to inform you that, due to the current epidemiological situation and the prevention of the spread of Covid-19 coronavirus infection, the following payments of social benefits and cash benefits will be suspended until further notice: - child allowance, - disability benefits, - financial social assistance, - another person care and assistance, - special cash benefit, - family accommodation benefit, - parental allowance, - unemployment benefit - labour market. Your Post Office." These are financial benefits to which vulnerable citizens are entitled precisely because of their vulnerability, and the suspension of the payment of these benefits could have extremely negative consequences for them, especially in the context of a pandemic.

122 Portal O21, "Zbrka sa isplata socijalne pomoći, reagovao ministar Đorđević", 20 March 2020, available at [link](#), last visited on 21. 8. 2020.

123 Several persons older than 65 from Novi Sad addressed the A 11 Initiative in March 2020 because of this problem.

124 Ministry of Labour, Employment, Veteran and Social Policy, *Isplata socijalne pomoći za korisnike preko 65 godina biće u skladu sa Instrukcijom o načinu privremene isplate penzija*, 26 March 2020, available at <https://www.minrzs.gov.rs/sr/aktuelnosti/vesti/isplata-socijalne-pomoci-za-korisnike-preko-65-godina-bice-u-skladu-sa-instrukcijom-o-nacinu-privremene-isplate-penzija>. Instruction on temporary manner of payment of pensions (available at [link](#)) envisaged that persons older than 65 can withdraw their pension by giving someone a power of attorney to withdraw money from their account or by asking for their pension to be paid at their home address.

Since due to the state of emergency and the ban on movement, some citizens were not able to pay their bills on time, EPS made a **decision to extend the deadline for paying bills.**<sup>125</sup> The deadline for paying the bills was extended until the end of June. However, the question arises as to how individuals and families who were left without income after the introduction of the state of emergency will pay the accumulated bills.<sup>126</sup>

The measure that probably brought the most benefits to socially endangered persons was the **decision to automatically extend the validity of the decision on financial social assistance** during the state of emergency.<sup>127</sup> Specifically, the Government of the Republic of Serbia, at the proposal of the Ministry of Labour, Employment, Veteran and Social Policy, passed a Conclusion that the right to social benefits to beneficiaries whose right to payment of this benefit expires on 15 March 2020 and later, and the competent authority had not decided on further use of rights, should be extended on the basis of previously issued decisions, for a maximum of three months, i.e. during the state of emergency. This was undoubtedly a useful measure and referred to financial social assistance, child allowance, allowance for assistance and care of another person and compensation based on special child care.

However, difficulties were faced by those who were left without means of subsistence during the pandemic and were forced to apply for financial social assistance, as well as persons who were still waiting for decisions on their requests at the time of the declaration of the state of emergency. They were mostly left without financial social assistance during the state of emergency. Their position was influenced by another regulation passed during the state of emergency, and that is the **Decree on the application of deadlines in administrative procedures during the state of emergency.**<sup>128</sup> The Decree, among other things, stipulates that the deadlines that expire during the state of emergency, which refer to undertaking administrative actions, ending administrative procedures and deciding on lodged legal remedies, will be considered expired when 30 days from the end of the state of emergency expire.<sup>129</sup> This means that if someone lost income during the state of emergency and tried to apply for financial social assistance, the competent social welfare centre was not obliged to make a decision on his or her request as long as the state of emergency lasts and 30 days after the end of the state of emergency.

*Sanja,<sup>130</sup> a single mother with five children, found herself in that situation. She submitted a request for financial social assistance in March, but she received a decision approving financial social assistance only in mid-July. Throughout that period, she was without any income.*<sup>131</sup>

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<sup>125</sup> For more details, see, for instance, N1, EPS: *Svim građanima se produžuje rok za plaćanje i za ostvarivanje popusta*, 26 May 2020, available at [link](#), last visited on 18.8.2020.

<sup>126</sup> See publications produced as part of the research "Marginality on the margins Europe: The impact of COVID-19 on Roma communities in non-EU countries in Eastern Europe", conducted in the period from 15 June to 15 July by European Centre for Minority Issues and University of Leicester (forthcoming).

<sup>127</sup> Ministry of Labour, Employment, Veteran and Social Policy, *Produžava se isplata prava na socijalna davanja na osnovu ranije donetih rešenja*, 24 March 2020, available at [link](#), last visited on 18.8.2020. Decisions on loan repayment delays were made on two occasions, but according to the experience of the A 11 Initiative, these measures did not have much practical significance for vulnerable groups.

<sup>128</sup> *The Official Gazette of RS*, No. 41/2020 and 43/2020.

<sup>129</sup> Article 3, Paragraph 1 of the Decree on Deadlines in Administrative Procedures during the State of Emergency.

<sup>130</sup> Names have been changed.

<sup>131</sup> Information received from S.M. on 10 April 2020 and 16 July 2020.

During the state of emergency, the A 11 Initiative was addressed by socially disadvantaged individuals, mostly Roma, who were unable to submit requests for financial social assistance. These difficulties were not caused by the mentioned Decree on deadlines in administrative proceedings, but by the (non) functioning of social welfare centres that stopped receiving beneficiaries. One of them was Florian.

*Before the state of emergency, Florian earned his living by finding occasional jobs in the informal economy, but at the beginning of the state of emergency he was left without any engagement, so he, his unmarried wife who was in an advanced stage of pregnancy and their two-year-old child were without any income. Therefore, he tried to apply for financial social assistance. Florian addressed SWC Čukarica for the first time at the beginning of April, but they refused to accept him and explain to him how he could submit a request for financial social assistance. In mid-April, he tried to contact SWC Čukarica again and ask them to give him a form of request for financial social assistance, in order to submit the request by mail. They did not want to give him a request form and told him to come another day, with gloves and a mask. He told them that he would immediately try to get a mask and gloves and that he would return, but they still told him to come another day. When he asked which day, they did not answer. A few days later, he went to the Social Welfare Centre with a mask and gloves, but again failed to submit the request. Therefore, at the end of April, the A 11 Initiative forwarded Florian's request and copies of his documents to the SWC Čukarica by e-mail.<sup>132</sup> The e-mail also explained the difficult situation in which the applicant found himself. No answer was received for a month, so the A 11 Initiative again addressed the SWC Čukarica at the end of May and asked for urgent acting upon the request. Only at the beginning of June, the SWC called Florian and asked him for additional evidence, an excerpt from the death register for his mother and her unique personal citizen's number. His mother died in Kosovo a few days after his birth, the death registers for that year were destroyed, and there is no evidence sufficient for registration in the reconstructed death registers. Therefore, Florian could not submit the requested evidence of his mother's death, which was stated in his response to the notice to submit additional evidence. For more than four months after the declaration of the epidemic in Serbia, Florian and his family have no income, and they have not yet managed to exercise the right to financial social assistance.*



## Availability of education during the pandemic

In addition to the fact that the needs of Roma from informal Roma settlements were neglected when adopting measures to mitigate the health and socioeconomic risks of the pandemic, the specific needs of vulnerable Roma were also neglected when it comes to access to education.

After school and preschool institutions were closed and teaching in schools was replaced by distance learning, i.e. by organizing classes through the television channels of Radio Television of Serbia (RTS) and the internet learning platform,<sup>133</sup> no measures were taken to enable children from

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<sup>132</sup> An e-mail was sent at the address, which according to information received from SWC Čukarica by phone, was intended for receiving requests during the state of emergency.

<sup>133</sup> See Decision on Suspension of Teaching in Higher Education Institutions, Secondary and Primary Schools and Regular Work of Preschool Education Institutions, *The Official Gazette of RS*, No. 30 as of 15 March 2020.



informal Roma settlements and other children who do not have electricity, internet and needed devices to attend online school. The difficulties of Roma pupils were also neglected when organizing the final test and preparing for the final test for eighth grade primary school pupils, which were also conducted online.

It is estimated that about 36% of Roma households in Serbia own computers, while at the national level that percentage is about 63.<sup>134</sup> About 11% of Roma households do not have electricity, compared to 0.1% of the general population.<sup>135</sup> The situation is particularly bad in informal collective centres, where 47% of households do not have access to electricity.<sup>136</sup>

The Protector of Citizens also pointed out at the problems of Roma children in accessing education, warning that “it is anticipated that the inhabitants of informal settlements, of which there are nearly six hundred in Serbia, do not have access to water, electricity or the Internet and that they are unable to maintain basic hygiene, and even less able to enable their children to attend online classes”.<sup>137</sup> The A 11 Initiative addressed the Ministry of Education, Science and Technological Development regarding the inability of Roma children to attend online school at the end of April 2020, but no response has ever been received from the Minister, nor did it take measures to make education available to children who do not have conditions to attend online school.

All these warnings and data on Roma children who do not have the conditions to attend online school did not prevent the Minister of Education from concluding that online teaching is “impeccably organized”.<sup>138</sup> The Minister of Education pointed out that 99% of high school students and 99.3% of primary school students and “as many as 88% of Roma children” were covered by online classes, and added that “we did absolutely everything flawlessly”.<sup>139</sup>

Based on the quoted statement, the minister in charge of education considers it acceptable that significant percent of Roma students remain excluded from classes. Warnings that a large number of Roma students remained excluded from the education system during the pandemic did not prevent the Minister of Education from concluding that classes were organized flawlessly.<sup>140</sup> Such a conclusion is a clear indication of the state’s unwillingness to make efforts to make education accessible to Roma children during the pandemic, creating thus the risk of further widening the gap between Roma and non-Roma children when it comes to access to education.

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<sup>134</sup> UNDP Regional Survey, Roma at Glance, Serbia, April 2018, available at [link](#), last visited on 28.8.2020. Videti takode i Stephan Muller, Fikrija Tair, Bashkim Ibishi and Dragan Gracanin, “Roma: Europe’s neglected coronavirus victims”, *BIRN*, 1 April 2020, available at [link](#), last visited on 21.8.2020.

<sup>135</sup> Strategy for social inclusion of Roma men and women in the Republic of Serbia for the period 2016–2025, 36, available at: [link](#), last visited on 19.8.2020.

<sup>136</sup> See A 11 – Initiative for economic and social rights, *What life looks like in informal collective centres*, 2020, available at [link](#), last visited on 19.8.2020.

<sup>137</sup> Protector of Citizens, Saopštenje Zaštitnika građana povodom Međunarodnog dana Roma, 7 April 2020, available at [link](#). For more details about the problems of Roma children in accessing the right to education during pandemic, see ECMI and University of Leicester, *Marginality on the Margins of Europe – The Impact of COVID-19 on Roma Communities in Non-EU Countries in Eastern Europe*, (is being prepared).

<sup>138</sup> *Danas Daily*, “Šarčević: Besprekorno organizovana onlajn nastava, obuhvaćeno 99 odsto učenika”, 2 June 2020, available at [link](#), last visited on 19.8.2020.

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

Timely and adequate information is an important link in attempts to combat the consequences of the epidemic, while contradictory information and concealment of information can lead to public distrust and concealment of corrupt practices, and reduce the overall effectiveness of efforts to suppress and mitigate the consequences of the epidemic.

The right to health is closely related and dependent on the exercise of other human rights, including access to information.<sup>142</sup> This right is an integral part of the right to health. Access to information, as a component of the right to health, includes the right to seek, receive and provide information and ideas relating to health.<sup>143</sup> States should also refrain from censoring, withholding or deliberately misplacing health information. The Committee on Economic, Social and Cultural Rights reaffirms that among the priority obligations related to the right to health is the provision of access to information relating to the major health problems of the community, including methods of their prevention and control. Examples of breaches of the obligation to respect the right to health include intentional non-disclosure or misplacement of information necessary for health protection or treatment.<sup>144</sup>

Healthcare professionals have a key role to play in protecting the population from epidemics and in early warning of the spread of diseases such as COVID-19 and in making recommendations for effective prevention and treatment measures.<sup>145</sup> However, instead of early warnings, Serbian citizens were misled at the first press conference regarding the pandemic that the corona virus is not dangerous, and instead of giving recommendations on how to protect themselves, they were recommended to behave in a way that increases the risk of infection.<sup>146</sup> Although after that first press conference on the occasion of the COVID-19 pandemic, the way of informing (at least seemingly) changed, the citizens of Serbia still faced the problem of insufficient and contradictory information and recommendations regarding protection against coronavirus,<sup>147</sup> as well as attempts to retain information.

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<sup>141</sup> Part of the SMS message of the Crisis Staff, which instead of providing verified information, contributed to the increase in anxiety and which can serve as an indicator of the situation regarding information during the pandemic. For more details, see note 158 and accompanying text.

<sup>142</sup> Committee for Economic, Social and Cultural Rights, *General comment No. 14*, op.cit. In the Constitution of the Republic of Serbia, the right to be informed is regulated by the Article 51, which stipulates that everyone shall have the right to be informed accurately, fully and timely about issues of public importance and that media shall have the obligation to respect this right, and in the Paragraph 2 of the same Article it is stated that everyone shall have the right to access information kept by state bodies and organizations with delegated public powers.

<sup>143</sup> Committee for Economic, Social and Cultural Rights, *General Comment No. 14*, op.cit.

<sup>144</sup> *Ibid.* On the importance and violation of the right to information and the right to access information of public importance during the COVID-19 pandemic, see in particular Nemanja Nenadić, “Korona i pristup informacijama”, *Otvorena vrata pravosuđa*, 10 July 2020, available at [link](#), last visited on 19.8.2020.

<sup>145</sup> Committee on Economic, Social and Cultural Rights, *Announcement on COVID-19 pandemic and economic, social and cultural rights*, 6 April 2020, available at: [link](#), last visited on 19.8.2020.

<sup>146</sup> See statements of the pediatric pulmonologist Branislav Nestorović at the press conference on 26 February 2020, in which the President of the Republic of Serbia, Aleksandar Vučić, also participated (Notes 7 and 8).

<sup>147</sup> See, for instance, Portal 021, *Sve krize kriznog štaba - Od najsmešnijeg virusa do ne znamo šta radimo*, [link](#), last visited on 20.8.2020. The state of emergency was abolished on 6 May 2020, and a pulmonologist and a member of the Crisis Staff, Branimir Nestorović, stated on the same day that it was the right time for everyone to become infected. Another member of the Crisis Staff, epidemiologist Kon, reacted the next day, stating that the epidemiologist should not recommend infection on any occasion.

The conclusion of the Government of the Republic of Serbia from 29 March 2020 envisages that the COVID-19 Infectious Disease Crisis Staff is in charge of informing the public about the condition and consequences of the infection.<sup>148</sup> It envisages the obligation of the mayor, i.e. the presidents of municipalities and local self-government units (LSGU) to *direct all information regarding the condition and consequences of the infectious disease COVID-19 “exclusively to the Crisis Staff, which will ensure that the necessary checks are performed and appropriate measures are taken to inform the public in a timely and accurate manner”*, and a similar obligation is provided for health care institutions, health care workers or legal entities that perform health care activities.<sup>149</sup> The conclusion also stipulates that notifications on undertaken health measures and other information related to the treatment of COVID-19 given to the public by unauthorized persons cannot be considered accurate and verified, with the possibility of applying regulations relating to liability and legal consequences for dissemination of misinformation during the state of emergency.<sup>150</sup>

An important obligation of states regarding respect for the right to health is to refrain from censoring and withholding health information,<sup>151</sup> and judging by its wording, this was the goal of the Government’s Conclusion on Information: by this Conclusion, the Government authorised only the Crisis Staff to inform the public, obliged LSGU and health care institutions and workers to submit all information related to COVID-19 exclusively to the Crisis Staff, for the purpose of “necessary verification”, and declared information from all other sources inaccurate and unverified in advance, with sanction threats. After the reactions of journalists and the professional public,<sup>152</sup> the Government withdrew the disputed Conclusion.<sup>153</sup> Although the Conclusion was in force for only a few days, it seems to have achieved at least one of the goals for which it was adopted, as local self-government units and health care institutions largely stopped publishing data on the situation and consequences of COVID-19,<sup>154</sup> despite formally withdrawn Conclusion ordering them to “direct” this information to the Crisis Staff. Informing the public continued for some time at press conferences, at which doctors from the Crisis Staff, and occasionally government representatives, spoke.<sup>155</sup>

Absurdly, only two days after the adoption of the disputed Conclusion on information, by which obtaining verified and accurate information about COVID-19 was declared an absolute imperative and therefore entrusted

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<sup>148</sup> Paragraph 1, Item 1) of the Conclusion of the Government of the Republic of Serbia 05 number 53-2928/2020, The Official Gazette of RS as of 29 March 2020.

<sup>149</sup> Paragraph 1, Items 3) and 4) of the Conclusion of the Government of the Republic of Serbia of RS as of 29 March 2020.

<sup>150</sup> Paragraph 1, Item 5) of the Conclusion of the Government of the Republic of Serbia as of 29 March 2020.

<sup>151</sup> Committee for Economic, Social and Cultural Rights, *General Comment No. 14*, op.cit. See also Amnesty International, *Europe at a Crossroads - Dos and don'ts for authorities when responding to the COVID-19 pandemic*, op.cit.

<sup>152</sup> See, for instance, Nikolija Čodanović, “Zaključak Vlade miriše na cenzuru”, *Istinomer*, 1.4.2020, available at [link](#), as well as Danas Daily, *NDNV: Zaključak Vlade Srbije je pokušaj uvođenja cenzure*, 1 April 2020, available at [link](#) and O21, *Novinarska udruženja: Povuci zaključak Vlade o informisanju, uvodi se cenzura*, 1 April 2020, available at [link](#), last visited on 19.8.2020.

<sup>153</sup> *Paragraf.net, Conclusion of the Government 05 number 53-2928/2020 on informing citizens on the state and consequences of infectious disease COVID-19 caused by virus SARS-CoV-2 in conditions of declared state of emergency: Government of RS Withdrew the Conclusion*, 2 April 2020, available at [link](#), last visited on 19.8.2020.

<sup>154</sup> One of the reasons why BIRN sent a request to the Institute “Batut” for access to information of public importance on the number of patients was precisely because the local media could not find out the situation in their places. See Natalija Jovanović, “Korona: The number of the dead and infected is many times higher than officially announced”, *Javno.rs*, 22. jun 2020, available at [link](#), last visited on 19.8.2020.

<sup>155</sup> N. Nenadić, *Korona i pristup informacijama*, op.cit.



to the Crisis Staff, the body in charge of “timely and accurate” informing the public<sup>156</sup> was behind sending a message which resulted in a state of anxiety among some citizens,<sup>157</sup> and for which it remained unclear on what data it was based. Specifically, in the evening hours of 31 March 2020, a large number of users of the MTS mobile network received an SMS message that read: “**The situation is dramatic.** We are approaching the scenario from Italy and Spain. Please stay at home. COVID-19 Infectious Disease Crisis Staff”. At a press conference the next day, the Crisis Staff explained that it was intended to influence citizens to stay at home, but there was no explanation as to why it was concluded that Serbia, where 900 people were infected and 28 died of coronavirus, was approaching the scenario from Italy and Spain, in which at that time there were about 100,000 patients and 10,000 dead.<sup>158</sup> This further contributed to the impression that epidemic related recommendations and decisions were based on Crisis Staff’s suggestions and irrelevant data instead of laws and relevant data.<sup>159</sup>

The lack of adequate information accompanied the procurement of medical equipment needed for the treatment and suppression of COVID-19 disease, illustrated by the manner of procurement and notification of the number of respirators. A day after the public was informed that Serbia had enough respirators, the media revealed on 12 March that the Ministry of Health had announced an urgent procurement of 15 respirators for the Clinical Centre of Serbia.<sup>160</sup> The Prime Minister Ana Brnabić stated that the **number of respirators was a “state secret”**, while the Minister of Health said on the same day that the respirators were being counted and that their number would be known in the evening.<sup>161</sup> President of the Republic of Serbia, Aleksandar Vučić, addressed the public that evening, and explained that he did not want it to be known how many respirators there were because he “wanted to present that we had much fewer, so that we could take more respirators, from various sources”.<sup>162</sup> The number of respirators was presented (1008), and two days later, it was announced that the number of respirators had become a state secret again and that the President of Serbia, Aleksandar Vučić, would personally procure them, noting thereby: “We have paid in advance for additional respirators, in a black [market], under-the-counter, I will not say even where they are from”.<sup>163</sup>

We can assume that concealing the number of respirators and presenting “that we have much fewer (respirators) so that we can take more respirators, from various sources” should have been an indicator of an effective pandemic response and resourcefulness in procuring scarce and important medical equipment such as respirators. Unfortunately, such an approach, apart from being another confirmation of non-transparent acting, is also an indicator of misunderstanding of the key preconditions for an adequate global response to the pandemic, and these preconditions certainly include solidarity (both at national and international level)

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<sup>156</sup> At that time, disputable Conclusion of the Government on Informing was not withdrawn yet.

<sup>157</sup> See, for instance, Vanja Dolapčev, *Nedostatak transparentnosti – Pandemija COVID-19 u Srbiji*, CEP blog, 29. April 2020, available at [link](#), last visited on 19.8.2020.

<sup>158</sup> See, for instance, Marija Vučić, *Vlada Srbije o dramatičnom SMS-u: Namera bila da ljudi ostanu kod kuće, Raskrinkavanje*, 1 April 2020, available at [link](#), last visited on 19.8.2020, as well as 021, *Advokat: Telefon je lična stvar, Krizni štab slanjem SMS izazvao paniku*, 2 April 2020, available at [link](#), last visited on 20.8.2020.

<sup>159</sup> See, for instance, Dejan Ilić, “Opstanak”, *Peščanik*, 17 July 2020, available at [link](#), last visited on 19.8.2020.

<sup>160</sup> Radmilo Marković, “Kratka hronika neodgovornosti: Zašto nam ne verujete, kad vas lažemo”, *Vreme Weekly*, op. cit.

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.*

and cooperation. Concealing data on medical equipment to facilitate its procurement is not a good basis for an adequate global response to a pandemic.<sup>164</sup>

At the domestic level, the publication of data on the conducted procurement of medical equipment, in addition to preventing corruptive practices, would also contribute to strengthening trust between citizens.<sup>165</sup> Nevertheless, since the outbreak of the epidemic in Serbia, the introduction, implementation and frequent change of measures have been accompanied by a lack of adequate information, which has raised suspicions that decisions and measures were not based on needs and relevant data.

Contrary to the principles of public administration, according to which government decisions should be prepared in a transparent manner, based on professional judgment of the administration and made under parliamentary supervision, during the state of emergency in Serbia, most decisions were made “behind closed doors”, without any insight and contributions of citizens or their representatives in the Assembly, and with the lack of adequate explanation and supporting data.<sup>166</sup> The transition to mitigation of measures and a sudden return towards ignoring of the seriousness of the pandemic was not accompanied by adequate explanations and information either.

A devastating indicator of the situation regarding media freedom, on which the right of citizens to information depends, was the arrest of journalist Ana Lalić, who was arrested after the publication of an article pointing out at problems at the Clinical Centre of Vojvodina regarding the lack of basic equipment and chaotic working conditions at the time of the pandemic.<sup>167</sup>

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<sup>164</sup> In this way, access to vital equipment for the world's poorest pandemic victims can be hampered. Obviously, the Committee on Economic, Social and Cultural Rights was also aware of this states' weak point, reminding states that they have extraterritorial obligations regarding global efforts to control the COVID-19 disease. See Committee on Economic, Social and Cultural Rights, *Announcement on COVID-19 pandemic and economic, social and cultural rights*, op. cit., page 20.

<sup>165</sup> For more details on the importance of transparency and about lack of transparency in the procurement of medical equipment, see Nemanja Nenadić, “Javne nabavke u doba vanrednog stanja ili vanredno stanje u javnim nabavkama?”, as well as Danas Daily, *Zašto je nabavka medicinske opreme i dalje „strogo poverljiva“?*, 8. August 2020, available at [link](#), last visited on 20.8.2020.

<sup>166</sup> Vanja Dolapčev, *Nedostatak transparentnosti – Pandemija COVID-19 u Srbiji*, CEP blog, 29 April 2020, available at [link](#), last visited on 19.8.2020.

<sup>167</sup> For more details on this case, as well as the situation regarding freedom of expression, media freedom and the right to information, see the Belgrade Centre for Human Rights, *Human Rights in Serbia: January – June 2020*, Belgrade, 2020, 37 and on, and YUCOM – The Lawyers' Committee for Human Rights, *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 opinion and expression, freedom of the media, the right to information*, Belgrade, 2020.

**Decision on the abolition of the state of emergency declared on 15 March was made on 6 May 2020.**<sup>169</sup>

After some of the most rigorous measures to prevent the infection were initially implemented in March and April, a reversal followed in early May. While in other European countries the restrictive measures were gradually eased, Serbia opted for a steeply faster process, allowing mass gatherings.<sup>170</sup> A football match between Partizan and Crvena zvezda was held in Belgrade on 10 June 2020, which was attended by over 15,000 people and which represented the most massive gathering and the first event of its kind in Europe since the beginning of the pandemic.<sup>171</sup> *During the May Day holidays*, Serbian citizens **were forbidden to move for four days**,<sup>172</sup> i.e. from 30 April to 4 May (when the **number of newly infected was 93**),<sup>173</sup> and a little more than a month later, a football match with over 15,000 spectators was allowed. Five days before the football match, **the number of newly infected was 96**,<sup>174</sup> but it still was **allowed to hold a match with over 15,000 spectators**.

It is therefore not surprising that holding elections and creating the appearance of a normalized situation, in which mass gatherings, including elections, are normal, is imposed as the main reason for mitigating measures.<sup>175</sup>

Parliamentary elections in Serbia were held on 21 June 2020. The day after the elections in Serbia, the Balkan Investigative Reporting Network (BIRN) published an article explaining that **the number of people infected and dying from the coronavirus in Serbia was many times higher than the one officially announced**, that in the period from 19 March to 1 June in Serbia a total of 632 patients died of the coronavirus, which is 388 more than the officially announced number for that period, and that the number of infected people a few days before the elections ranged between 300 and

<sup>168</sup> N1, Radovanović: Izbori važniji od zdravlja, jasno je bilo da brojevi nisu tačni, 24 June 2020, available at [link](#), last visited on 20.8.2020.

<sup>169</sup> The Official Gazette of RS, 65/2020 od 6.5.2020.

<sup>170</sup> Patrick Kingsley, Serbia Protest Meets Violent Response in Europe's 1st Major Virus Unrest, New York Times, available at [link](#), visited on 28.7.2020; Istina: Niko nije rekao da smo pobedili korona virus – neistinito, available at: [link](#), last visited on 28.7.2020.

<sup>171</sup> Portal 021, Svetski mediji: Derbi u Beogradu najveći skup u Evropi od ukidanja mera, bez opreza među navijačima, 11 June 2020, available at [link](#), last visited on 20.8.2020. As the Italian Prime Minister testified before the leading prosecutor over the cataclysmic scenario in the Bergamo district and the loss of control over the epidemic after the Milan game, Serbian authorities staged a similar game for thousands of their potential voters as part of the election campaign. Sandra Petrušić, "Reservoirs of irresponsibility – Voting is safe unless proven otherwise", NIN 18 July 2020, page 29.

<sup>172</sup> Article 1 of the Decree Amending the Decree of Emergency State Measures, The Official Gazette of RS, No. 60/2020 od 24.4.2020.

<sup>173</sup> COVID-19.rs, Information on Corona Virus COVID-19, 04.05.2020 at 15:00, available at [link](#), last visited on 20.8.2020.

<sup>174</sup> N1, Dvostruko veći broj zaraženih nego prethodnog dana, preminula još jedna osoba, 5 June 2020, available at [link](#), last visited on 20.8.2020.

<sup>175</sup> N1, Radovanović: Izbori važniji od zdravlja, jasno je bilo da brojevi nisu tačni, op.cit. In an interview on 24 June 2020, epidemiologist Zoran Radovanović stated that the elections were more important than health and that it was clear that the data presented to the public after the abolition of the state of emergency were false. Radovanovic said that the members of the Crisis Staff had to know that what they were doing after the abolition of the state of emergency, especially by allowing mass and election gatherings, was catastrophic and critical; that they were acting contrary to basic epidemiological principles; that it was necessary for all members of the Crisis Staff to resign. That the whole approach in publishing data can be boiled down to – we lie, so what. See Sofija Mandić, "Lažna evidencija i stvarni krivci", Peščanik, 25 June 2020, available at [link](#), last visited on 20.8.2020.



340 a day, which is far more than the official data of 97 new cases.<sup>176</sup>

Already on the first morning after the elections, experts announced that the epidemiological situation in Serbia was threatening and that the virus was reigniting.<sup>177</sup> The number of infected and dead (according to official data as well) began to grow<sup>178</sup> and the President of Serbia, Aleksandar Vučić, announced the possibility of reintroducing the “curfew” in Belgrade. An attempt to return to movement bans due to the bad epidemiological situation, caused by a series of irresponsible actions by the authorities and concealment of relevant data, resulted in several days of protests, which began on 7 July in Belgrade, to which police responded with excessive force.<sup>179</sup>



## CONCLUDING REMARKS

The first five months of the epidemic show that in Serbia there were two inadequate responses to the epidemic, from denying and ignoring the severity of the epidemic, to applying some of the strictest measures in Europe, where the transition from one way to another was not accompanied by adequate explanations nor grounded on the data. The Decision to Declare a State of Emergency and other acts and measures taken under the auspices of the state of emergency were marked by a series of irregularities, ranging from unauthorized adoption to non-compliance with human rights standards. In terms of access to information, the response of the state was marked by shortcomings both in terms of legislation and practice. The National Assembly was not involved in making decisions on the restriction of human rights and its inactivity left more room for irregularities and violations of the Constitution.

When planning and implementing measures to prevent the consequences of the epidemic, the needs of vulnerable groups were either not prioritized or not taken into account at all. On the other hand, restrictive measures have hit them hard, especially Roma from informal settlements, leaving many without any income, without access to education and making it difficult for them to access social protection. Access to

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<sup>176</sup> See Natalija Jovanović, “Korona: Broj umrlih i zaraženih višestruko veći od zvanično saopštenog”, *Javno.rs*, 22. jun 2020, available at [link](#), last visited on 19.8.2020.

<sup>177</sup> Nikolija Čodanović, “Policijski čas za ‘pobedeni virus’”, *Istinomer*, 7 July 2020, available at [link](#), last visited on 20.8.2020.

<sup>178</sup> So, two weeks after the elections, on 7 July 2020, the number of infected was 299, and 13 persons died. *Ibid.*

<sup>179</sup> On the use of excessive force at protests, see, for instance Petra Živić, *Protesti u Srbiji: Kako zakoni definišu prekoračenje ovlašćenja policije*, BBC News in Serbian, 9 July 2020, available at [link](#), last visited on 30.7.2020. The mentioned text also points to the case of the journalist of the Beta agency, Zikica Stevanović, who was beaten even though he was holding his ID and shouting: “Journalist! Journalist!” Journalist!, whom the policeman continued to curse and beat even after he fell to the ground, and who was later found to have two head injuries and several injuries to his body at the Emergency Centre. It is estimated that about 100 people were arrested during the protest, and that at least 19 people were injured during the protest on 10 July 2020. By the time this report was concluded, the Belgrade Center for Human Rights and A 11 Initiative had jointly collected data and filed a total of 39 criminal charges against police officers. For more details, see Danilo Ćurčić, “Tortura u ime naroda”, *Peščanik*, 16 July 2020, available at [link](#); NI, “Inicijativa A 11 podnela krivične prijave protiv policajaca zbog nasilja”, 9 July 2020, available at [link](#); Insajder, “Na sinošnjem protestu u Beogradu povredeno više od 19 osoba”, 11 July 2020, available at [link](#), last visited on 21. 8. 2020; Cepriš, “Sudstvo između nezavisnosti i javne odgovornosti”, available at [link](#), last visited on 7. 9. 2020. The protests and the prosecution of the protesters are worth being the subject of a special analysis.

water was also restricted to some Roma settlements, as they were unable to leave the settlements for several days to be supplied with water due to movement bans. One of the rare types of assistance for vulnerable citizens – the distribution of food and hygiene packages – was not always based on needs and unjustifiably excluded socially vulnerable citizens who needed this assistance. A one-time financial assistance in the amount of 100 euros, brought to mitigate the economic consequences of the epidemic, excluded those who are most vulnerable – Roma without documents. Legally invisible persons and other undocumented Roma have been reached only by restrictive measures, reducing their ability to generate income in the only way they could before the pandemic, in the informal economy.

When it comes to restrictive measures to prevent the spread of the epidemic, the most rigorous restrictions were imposed on people over 65 and 70, refugees, asylum seekers and migrants in reception centres and asylum centres. The deprivation of liberty of refugees, asylum seekers and migrants continued even after the ending of the state of emergency,<sup>180</sup> and the acts by which these persons were deprived of their liberty were contrary to the state's obligations regarding the prohibition of discrimination.<sup>181</sup> It remains to be seen whether domestic institutions, such as the Constitutional Court and the Commissioner for the Protection of Equality<sup>182</sup> will have any role in recalling the obligation to respect the prohibition of discrimination. Otherwise, their role will be to be just another example that confirms that domestic human rights institutions in some countries are not ready to deal with injuries that occur during the state of emergency,<sup>183</sup> and that this role will have to be taken over by international judicial and quasi-judicial institutions that deal more effectively with these difficulties.<sup>184</sup>

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180 Based on the Article 52, Paragraph 1, Item b) of the Law on Protection of People from Infectious diseases, and Article 15, Paragraph 3 of the Law on State Administration, the Minister of Health, upon the proposal of Republic Expert Commission for Protection of People from Infectious Diseases and Public Health Institute "Batut", reached Order Restricting Movement at Accesses to Open Areas and Facilities of Reception Centres for Migrants and Asylum Centres (*The Official Gazette of RS*, No. 66/2020 as of 6 May 2020). Based on that Order, it was continued for some time with the deprivation of liberty of refugees, asylum seekers and migrants, which had previously taken place on the basis of the Decree on Measures during the State of Emergency. After several non-governmental organizations submitted initiatives to assess the constitutionality of this Order, it was withdrawn.

181 For more details, see N. Kovačević, *Deprivation of liberty of refugees, asylum seekers and migrants in the Republic of Serbia through measures of restrictions and measures of derogation from human and minority rights made under the auspices of the state of emergency*, op.cit.

182 For instance, the A 11 Initiative submitted a complaint to the Commissioner for the Protection of Equality against the Government of the Republic of Serbia, requesting to establish that Article 3 of the Decree on Measures during the State of Emergency, as well as actions taken on the basis of that Decree discriminated against refugees, migrants and asylum seekers accommodated in reception centres and asylum centres. In addition, several individual complaints were filed on behalf of persons who had been discriminated against by these acts. In addition to the initiatives for assessing the constitutionality of the Decree on Measures during the State of Emergency and the Order of the Minister of Health, constitutional complaints were also filed on behalf of two persons affected by these acts to the Constitutional Court.

183 On avoiding the responsibility of domestic courts in situations when they are called to review government acts and decisions made during a state of emergency, see Oren Gross and Fionnuala Ni Aolain, *Law in Times of Crisis - Emergency Powers in Theory and Practice*, Cambridge University Press, 2008, 77-78 and 265.

184 George J. Alexander, "The Illusory Protection of Human Rights by National Courts during Periods of Emergency", *Human Rights Law Journal*, 1984, according to Oren Gross and Fionnuala Ni Aolain, *Law in Times of Crisis - Emergency Powers in Theory and Practice*, op.cit. The access to justice and the functioning of national human rights institutions during the COVID-19 epidemic will be the subject of a separate analysis within the same project.



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