

Human Rights in times of COVID-19

Identified omissions in
realization of human rights
in Bosnia and Herzegovina

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Banja Luka – Sarajevo, 2020

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Abbreviations

BiH - Bosnia and Herzegovina

RS - Republika Srpska

FBiH - Federation of Bosnia and Herzegovina

BD - Brčko District of Bosnia and Herzegovina

KPZ Zenica - Penitentiary Zenica

PWD - People with disabilities

CSR - Centers for Social Work

WHO - World Health Organization

Agency - Agency for Personal Data Protection
in Bosnia and Herzegovina

HNC - Herzegovina-Neretva Canton

§ - paragraph

Sl. - similar

Eg. - for example

Etc. - and so on

Et al. - and other

No.(nos.) - number(s)

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Background

The current COVID-19 pandemic has had and continues to have a significant impact on human rights worldwide, and Bosnia and Herzegovina (BiH) is no exception. The World Health Organization (WHO) declared the novel coronavirus a global pandemic on 11 March, and called for governments to take *urgent and aggressive action* to minimize consequences of the spread of this highly infectious virus.¹ To that end, States worldwide have enacted containment measures by imposing mobility restrictions (lockdowns, stay-at-home instructions, quarantines, mandatory home confinement) and discouraged close physical interaction ('social distancing' measures) which, in return, resulted in restrictions on individual rights and freedoms on an unprecedented scale.

In accordance with the international human rights standards, the limitation of certain human rights can be completely legitimate, but also legal if it is conducted in accordance with the established procedures and in compliance with the regulations governing the implementation of emergency measures introduced in order to protect health.² It is very essential that the limitation of human rights always comes as the last measure for defending society from a certain danger. It means that, if all other measures are not efficient, derogations from respect for certain rights may be introduced due to a major interest, which is health in this case.

Protecting public health and saving people's lives are the main priorities during a pandemic. However, when imposing restrictive measures States are required to strike a balance between protecting health and respecting individual human

1 WHO calls for urgent, aggressive actions to combat COVID-19, as cases soar in South-East Asia Region, [available at: <https://www.who.int/southeastasia/news/detail/17-03-2020-who-calls-for-urgent-aggressive-actions-to-combat-covid-19-as-cases-soar-in-south-east-asia-region>, (accessed on 11 July 2020 at 12.12)].

2 Thus, according to the Convention for the Protection of Human Rights and Fundamental Freedoms, so-called "relative rights" may be limited. For example, Article 11, paragraph 2 stipulates that the freedom of peaceful assembly will not be subject to any limitations other than those prescribed by law, which are necessary in a democratic society and serve, in this case, to protect health.

Also, when it comes to stricter limitations, Article 15 of the same Convention stipulates that in times of war or other public danger which threatens the survival of the nation, each State which acceded to the Convention may take measures derogating from its obligations under the Convention, to the extent required by the urgency of situation, provided that such measures are not inconsistent with its other obligations under the international law.

However, it is important to note is that, by the measures, the State cannot limit all human rights i.e. derogate from the application of all human rights but only those which are not so-called "absolute rights". Absolute rights are those that the State must respect unconditionally and completely, without derogating from them, such as: right to life, prohibition of torture, inhuman or degrading treatment or punishment, the right to prohibition of slavery and forced labor, right to punishment only on the basis of law etc.

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rights And while human rights instruments allow for limitation or derogation of rights for legitimate purposes, including to protect public health, there are strict criteria on when, how, and to what extent certain rights may be limited.³

To be consistent with human rights standards, any measure taken to protect the population that limits individual rights and freedoms must be:

- prescribed by law,
- necessary in a democratic society,
- based on solid scientific evidence,
- neither arbitrary nor discriminatory,
- subject to review,
- limited in time,
- proportionate to the aim to be achieved, and

Likewise, such a measure must not be arbitrary or discriminatory and its adoption must take into account the disproportionate impact on certain population and/or marginalized groups.

It is through this lens that the national response to COVID-19 is viewed in this paper. Unfortunately, the measures enacted by BiH authorities repeatedly failed to meet the above criteria, proportionality *in primis*. Thus, the limitations of human rights in BiH can be viewed in two ways. The first way is that the limitations seem to have been necessary because of the pandemic, and the other way is that the limitations were unnecessary, illegal and disproportionate and did not respect human rights standards.

This report is the result of cooperation between the Banja Luka Human Rights Centre and the OSCE Mission to Bosnia and Herzegovina (the Mission) and is largely based on the Mission's monitoring with regard to respect for human rights in BiH in times of the pandemic. The Mission has diligently monitored potential human rights violations since the beginning of the pandemic and this document will serve to outline and share the information on identified issues throughout the country and their impact on the enjoyment on human rights.

Being able to rely on cooperation with the Mission, in addition to citizens and authorities at all levels, allowed us to explore, to some extent, the aspects of the national response to the pandemic and to identify and tackle concerns that might have otherwise gone unreported. Additionally, we have considered

3 On the international level, the Siracusa Principles, adopted by the UN Economic and Social Council in 1984, and UN Human Rights Committee general comments on states of emergency and freedom of movement provide authoritative guidance on the issues of limitation of human rights for reasons of public health or national emergency. On the regional level, the European Convention on Human Rights allows for the states' interference with the exercise of certain rights for the protection of public health.

in our analysis decisions, acts, and other documents produced by relevant BiH institutions, as well as reports, press statements and other informative materials issued by major CSOs on covid-related human rights concerns. Finally, we monitored media outlets and included pertinent information in the present analysis. It was certainly impossible to fully address all issues of respect for human rights but we hope that we have addressed the most important issues with regard to the connection between the pandemic and limitation of human rights in BiH.

The first actions to limit the spread of the virus by BiH authorities date mid-March; a ban on public gatherings, closing of schools, suspension of all public transport, and intensified border controls, were some of the first instituted. The measures that followed were increasingly rigorous. The restrictions, elsewhere assessed as repression,⁴ BiH authorities imposed as a response to the pandemic might be a result of the awareness of the weakness of the health systems in the country, and of the fact that the uncontrollable spread of the virus would overwhelm hospitals. However, even in cases when it is necessary to preserve health and health care system, this should not serve as an excuse for disrespect and disproportionate limitation of human rights of individuals. Even if we take into consideration that the outbreak of the novel coronavirus has challenged the healthcare systems assessed as well-functioning and more resilient than those in this country, we can still argue that BiH was caught quite unprepared.⁵

It is worth noting that, while the measures adopted across the country have been similar, apart from a timid attempt to harmonize the response by the coordination body at the State level, the Entities (RS, FBiH), cantons and BD enacted the measures largely autonomously with little, if any, intra-State coordination. This resulted in political frictions throughout the country and, more importantly, created a differential treatment of the BiH population, often without justification. Likewise, such practice led to disproportional impact on realization of the rights of specific groups (minors, elderly, returnees).

4 Florian Bieber et al., *Policy Brief: The Western Balkans in Times of the Global Pandemic*, [The Balkans in Europe Policy Advisory Group, 2020].

5 “Prior to the outbreak of COVID-19, health systems in the Western Balkans faced critical financing and service delivery challenges. Per capita spending on health systems is considerably lower than the EU average, and the way in which scarce funds are spent is not efficient or aligned with the region’s disease profile. This makes the region vulnerable to future public health outbreaks, particularly given that patients with non-communicable diseases are more vulnerable.” *COVID-19’s Impact on Health Systems in the Western Balkans, Western Balkans Regular Economic Report*, [World Bank Group, 2020]. <http://documents.worldbank.org/curated/en/650491590681594215/pdf/The-Economic-and-Social-Impact-of-COVID-19-Health-Systems.pdf>

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State of natural or other disaster was declared at BiH level on 17 March,⁶ while the RS declared the emergency situation on 16 March and the state of emergency on 28 March,⁷ the FBiH⁸ and BD declared state of natural disaster and other incidents on 16 March. The introduction of different forms of restrictions and measures implied that, at different degree and with different practical implementation, rights and freedoms of BiH citizens have been severely affected and restricted for a relatively long period of time. There is no doubt that controlling the COVID-19 pandemic required decisive action from the authorities. However, we will discuss hereby the impact of these measures on the enjoyment of human rights, which all authorities in BiH, Entities, BD and Cantons are obliged to protect.

6 Council of Ministers of Bosnia and Herzegovina Holds Its 5th Extraordinary Session, *State of Natural or Other Disaster Declared in BiH*, [available at: http://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/default.aspx?id=32568&langTag=en-US (accessed: 26 June 2020)]; Decision on declaring the emergence of state of natural or other disaster at the territory of Bosnia and Herzegovina, [Official Gazette of Bosnia and Herzegovina, no. 18/2020].

The BiH Constitution does not contain a provision about proclamation of the state of emergency on the state level, and a state of emergency may be declared on the basis of the Law on Defense of BiH "when there is a threat to the existence of Bosnia and Herzegovina, a threat to the normal functioning of constitutional institutions or immediate danger of war."

7 Law on Defense of Bosnia and Herzegovina, [Official Gazette of Bosnia and Herzegovina, no. 88/2005], Articles 40-42. On 28 March, behind closed doors, the RS National Assembly adopted with vast majority the Decision on proclamation of the state of emergency in RS due to the epidemiological situation caused by the COVID-19. The opposition parties (SDS, PDP) abstained, while Bosniak MPs were against. The former expressed concern that the ruling majority might abuse the power given by introduction of the state emergency, while the latter conditioned the adoption of the Decision with endorsement of their conclusions, inter alia, stipulating that "the state of emergency would not be used for restriction of movement across the inter-entity boundary line." Although the Decision did not itself provide for any new measure, it effectively suspended the National Assembly which gives the RS President broader authorization, such as enacting the decrees with the force of law. However, this enactment of decrees was assessed by certain legal circles as exceeding the constitutional powers, which will be decided by the RS Constitutional Court. The Decision came into force on 03 April 2020.

8 Decision on declaring a state of emergency for the territory of the Republika Srpska, [Official Gazette of the Republika Srpska, No. 31/2020]. <https://www.covid19.ba/files/d00d69450877930deca5717b6bfadd22.pdf>

I Right to Impart and Receive Information

Insufficient communication by the authorities regarding the extraordinary measures imposed was identified as one of the first human rights issues which emerged in the national response to the Covid-19 pandemic. How state authorities provide up-to-date, scientifically-proven, complete, and comprehensive information about the overall situation is an important factor in assessing whether the measures imposed are justified or might represent a violation of human rights.

Restrictions were seemingly enacted without clear justification and, generally, information on the measures undertaken and the situation in the country was scarce and insufficient. At the very beginning of the virus outbreak in BiH, one of the three Ombudspersons in BiH, Ms Jasminka Džumhur tackled directly this issue in an interview saying that citizens have been deprived of important information by the authorities.⁹

Such attitude of the authorities towards citizens opened a room for misinformation and by repressive and punitive measures resulted in restrictions of the right to expression thus impacting on the enjoyment of human rights. The Ombudsman also called for the authorities to provide timely and quality information thus contributing to fighting misinformation and creating trust towards the system,¹⁰ however, even after this call, the authorities did not stand out much in the proper, timely and quality provision of information to citizens.

While the BiH authorities tasked to contain the spread of the virus have not been too zealous in providing accurate and comprehensive information about the situation and explanation/justification for the measures enacted, as will be noted throughout this paper, information about persons affected by COVID-19 has been hastily made available

In the beginning, the RS took a more serious approach to informing the citizens and the pandemic itself. The Minister of Health and Social Protection

9 Ombudperson Džumhur pointed out that the public has not been informed whether there are sufficient tests and respirators available in the country, that too few persons were tested, in general, and that the tests have been performed selectively, among other things. *Ombudsman Jasminka Džumhur: If coronavirus testing is limited, then the detection of cases is also limited*, [available at: <https://interview.ba/interview/item/30346-ombudsmenka-jasmnika-dzumhur-ako-je-ograniceno-testiranje-na-koronavirus-onda-je-ograniceno-i-otkrivanje-slucajeva>, accessed on 27 May 2020 at 13.14)

10 *Ombudsman Jasminka Džumhur: If coronavirus testing is limited, then the detection of cases is also limited*, [available at: <https://interview.ba/interview/item/30346-ombudsmenka-jasmnika-dzumhur-ako-je-ograniceno-testiranje-na-koronavirus-onda-je-ograniceno-i-otkrivanje-slucajeva>, accessed on 27 May 2020 at 13.14)

| Right to Impart and Receive Information

was often in charge of public disclosure of certain information to citizens. However, as time was passing by, information became more inaccessible and through attempts to punish those who reported certain deficiencies in the system, the public confidence was declining.

In addition, conspiracy theorists were given "a perfect moment" and through their theories, over social networks and media, they incited a feeling of fear and distrust in the institutions and the system. The State authorities did not have an adequate response to this, which additionally complicated the situation regarding the right to receive quality and truthful information.

All of this has led to citizens being confused most of the time, not knowing whom to trust, what information are true, why certain measures are being taken and how to actually behave during a pandemic.

II Right to Privacy

In the early days of the pandemic in BiH, the right to privacy was on several occasions severely violated. Authorities in Canton 10 started to regularly publish highly personal information such as name, surname, year of birth, city/town, date of isolation, and telephone number of all persons under compulsory self-isolation. The similar practice has been undertaken by the authorities of several BiH municipalities (Trebinje, Konjic, and Čelić), while the RS disclosed the names of citizens who violate the self-isolation measure.

Shortly after such practice began, the BiH Personal Data Protection Agency (Agency) issued a decision stating that the public exposure of data of persons who tested positive to coronavirus and of those who under self-isolation, but not breaching those measures, cannot be considered as being in the public interest. Persons who potentially contracted the virus, for example, could be less inclined to report to medical authorities, achieving the opposite of the intended effect. The Agency then ordered the removal of such lists.¹¹

Also, the Agency expressed the opinion that it is not illegal to disclose the minimum data about persons who violate the laws, i.e. certain prohibitions introduced by the competent authorities. It was justified with the fact that this is an obvious violation of the laws, namely those laws which protect and save people's lives. Thus, the public interest overcame the right to protection of personal data, and the person who violated the law actively contributed to that.¹²

In the following period, the names of persons who breach the isolation measures continued being published. Due to the situation in which the personal data of persons who do not comply with the prohibition measures related to the COVID-19 pandemic were generally and proactively published on certain official websites of public authorities, and then the same personal data were taken over by different portals, the Agency issued a new press release expressing the opinion that a general and pre-emptive publishing of personal data on the websites of various BiH institutions about individuals violating prohibition measures is in violation of the *Law on protection of personal data*.¹³

11 *Decision*, [Agency for Personal Data Protection in Bosnia and Herzegovina, Sarajevo, March 24, 2020].

12 *Statement*, [Agency for Personal Data Protection in Bosnia and Herzegovina, Sarajevo, March 23, 2020].

13 *Statement*, [Agency for Personal Data Protection in Bosnia and Herzegovina, Sarajevo, April 10, 2020].
http://www.azlp.ba/Default.aspx?langTag=bs-BA&template_id=147&pageIndex=1

II Right to Privacy

While it is crucial for authorities to identify cases for the purpose of controlling the contagion, in doing so they need to ensure the right to privacy and confidentiality of persons and avoid exposing their identity in an unjustifiable attempt to hold persons with COVID-19 under public scrutiny.

The control of persons in self-isolation should certainly be provided in another way, if it is possible at all, because disclosure of personal data should really be a solution to reach for only after all other possible options have been exhausted. The European Court of Human Rights is of the opinion, *in the cases of Z. v. Finland*¹⁴ and *Mokuta*¹⁵ *v. Lithuania*, that the data confidentiality protection for the persons infected with the virus is very important; disclosure of such data may dramatically affect the private and family life of that person, as well as his status in society and employment if that person is exposed to shame and risk of persecution; without the provision of privacy protection, those in need of medical assistance could be deterred from disclosing the personal data necessary to receive appropriate medical treatment, thus endangering their health and, in case of infectious diseases, the health of the community.

A further concern about infringement of the right to privacy pertains to the request made by the RS Ministry of Education and Culture asking for the list of employees who signed the statement on salary deduction in favour of the Solidarity Fund established by the RS Government as part of the measures to mitigate the socio-economic impact of the pandemic. After Transparency International in BiH (TI BiH) reported to the Agency that these lists were compiled without any legal basis and could serve as a means to pressure and discriminate against those who did not agree to devolve part of their salary towards the Fund, the Agency forbid the list-making and ordered their elimination.¹⁶

14 *Z. v. Finland*, [Application no. 22009/93, Strasbourg: 25 February 1997].

15 *Mockutė v. Lithuania*, [Application no. 66490/09, Strasbourg: 27 February 2018].

16 *Upon the report filed by TI BiH: the Ministry of Education and Culture of RS was ordered to destroy the lists of employees indicated to give up their salary*, [available at: <https://ti-bih.org/nakon-prijave-ti-bih-ministarstvo-prosvjete-i-kulture-rs-mora-unistiti-spiskove-radnika-koji-se-odricu-licnih-primanja/?lang=en>, (accessed on 18 May 2020, at 11.30)].

III Stigmatization, Hate Speech, and Discrimination

Stigmatization and discrimination of persons associated with COVID-19 was on the rise at the initial stage of the outbreak, and the aforementioned exposing of personal data was contributing to it.¹⁷ Persons who tested positive, those under self-isolation, and even those working closely with persons who might be positive, like medical staff, were subjected to threats, hate speech on social media, and evictions.

On 29 March, local portals and *Oslobođenje* daily newspaper¹⁸ published a story about a person from Lukavac who worked on a cruiser and was one of the first two patients positive to COVID-19 in Tuzla Canton. Immediately after the news about her condition had been published, it triggered a wave of stigmatization and hate speech on social networks. The individual stressed that she respected all recommended measures of self-isolation and stayed alone in a rented apartment in Lukavac. After her symptoms openly manifested she was hospitalized, but was subsequently prevented to return to her rented apartment by the landlords. The authorities, however, including Lukavac Mayor, and Tuzla Hospital, played a decisive role in preventing further mistreatment. Tuzla Canton Health Minister Dajana Čolić publicly praised the person as exemplary of how one should react and behave if arriving from abroad or having any symptom of infection.

The Head of Tuzla Canton Institute for Public Health, Maida Mulić, expressed her concern about the existing stigmatization of persons who contracted coronavirus, she publicly condemned any kind of stigmatization and invited all citizens to follow preventive measures and to be respectful of each other and pointed out that stigmatization and discrimination do not help anyone but prevent professionals from addressing real problems.¹⁹

17 Why are COVID-19 patients stigmatized?, [available at: <https://www.slobodnaevropa.org/a/za%C5%A1to-se-stigmatiziraju-obiljeli-od-covid-19-/30561550.html> (accessed on 18 May 2020 at 11:51)].

18 Infected girl from Lukavac Sandra Šahat: I am getting threats because I have coronavirus, [available at: <https://www.oslobodjenje.ba/vijesti/bih/obiljela-djevojka-iz-lukavca-sandra-sahat-dobijam-prijetnje-zato-sto-imam-koronavirus-543807> (accessed on 18 May 2020 at 12:36)].

19 It is not good that the stigmatization of corona patients is happening, [available at: <https://startbih.ba/clanak/dr-maida-mulic-nije-dobro-sto-nam-se-dogada-stigmatizacija-obiljelih-od-korone/125319>, (accessed 18 May 2020 at 12.36)]. <https://www.vitez.info/dr-maida-mulic-nije-dobro-sto-nam-se-dogada-stigmatizacija-obiljelih-od-korone/>

III Stigmatization, Hate Speech, and Discrimination

Initial concerns about **scapegoating** have been confirmed by reports of **hate speech** directed against the migrant, refugee, and asylum seeker (MRA) population and discriminatory barring of these people from accessing shops and private accommodation. Prejudices were brought to the forefront this time as well, and because of them migrants were blamed to be COVID-19 carriers. Certain officials cautioned BiH citizens against interacting with MRAs which gave individuals justification for behaving in a discriminatory manner. One example was seen when on 21 March, information was received that in response to the evolving Coronavirus situation, Robot market in Bihać banned MRAs to enter this market. Allegedly, there was a poster placed at the entrance door saying "Immigrants not allowed entry in market".

IV Freedom of Movement

While scientists worldwide work tirelessly on the development of a viable vaccine and to find effective treatments for the novel coronavirus, as said at the beginning of this paper, restrictions on mobility and 'social distancing' have been recognized as the most efficient non-pharmaceutical measures to minimize the transmission of the virus among the population. It should come as no surprise then that a vast number of human rights concerns identified relate to restrictions to **freedom of movement**. Measures imposed to limit movement by BiH authorities in the context of the current pandemic took the forms of curfew, mandatory home confinement, and quarantine. These measures have been particularly contested and some were found as violation of human rights.

We will start with a blanket ban on movement that was contested before the Constitutional Court of BiH. FBiH and RS authorities imposed harsher restrictive measures on specific age groups throughout the country. In particular, persons older than 65 and, only in FBiH those younger than 18,²⁰ were put under mandatory home confinement, completely restricting their freedom of movement.²¹ This blanket ban on movement for children under 18 negatively affected their mental wellbeing, and has had a disproportionate impact on children with disabilities (for instance, for those on the autistic spectrum) and hardened conditions for parents.²² The ban on movement of the elderly further pushed them into a situation of vulnerability forcing them to become dependent on their family members, CSOs or social welfare centers to get basic supplies such as food and medicine, and created a real challenge to have access to services such as health care.

Mandatory home confinement for persons older than 65 was eased in the RS on 30 March,²³ while it remained in force in FBiH until 24 April, when it was adjusted following the decision of the Constitutional Court. On 22 April, in fact, more than a month after the imposition of the aforementioned ban in FBiH, the BiH Constitutional Court ruled that the blanket restriction on movement for minors and persons older than 65 in FBiH represents a

20 These measures were introduced in FBiH on 20 March, in RS on 21 March

21 BD did not impose similar measures on their residents.

22 *Case of Lejla Džanić and A. B. - Decision on Admissibility and Merits*, [Constitutional Court of Bosnia and Herzegovina, AP-1217/20], § 57. http://www.ustavnisud.ba/dokumenti/AP-1217-20-1234093.pdf?fbclid=IwAR3pFZAuWqgA-SNIFfOmOtaP-B2RgJS_dlpfx7tFMOC6Z62XCu08EedcJk para. 57

23 Relaxation was announced by the Serb member of the BiH Presidency Milorad Dodik saying that as of 30 March the elderly (over 65 of age) would be permitted to go out on Thursdays and Fridays from 7.00 to 10.00 am.

IV Freedom of Movement

violation of human rights and ordered the FBiH government to change the measure within 5 days.²⁴

It is worth noting that the ruling of the Constitutional Court finds that the order did not respect the proportionality principle and mentions clearly the poor quality of the decisions on which the Crisis Headquarters based the discussed order (lack of explanation of the reasons for the total ban on movement to the general public, no sources for the decision provided, impossibility to assess whether the decision was based on scientific data, no time-bound for the measure, and consequently no regular review of the measure that would provide the ground for a possible relaxation of the measure), and calls for an increased supervision by the political authority (FBiH government) over the FBiH Civil Protection HQ.²⁵

The BiH CC Decision has provided solid criteria to assess the decision-making processes in devising human rights compliant measures in times of emergency. The Court decision seemingly coincided with a more favourable epidemiological situation in the country and the authorities started easing many of the measures imposed.

In doing so, however, it seems that they failed to interiorize the lessons from the Court Decision and executed the relaxation measures hastily, without intra-state coordination, leaving parts of the country under more severe constraints, and without a serious attempt to provide justification for the relaxation of measures. A month later, the infection “curve” started constantly increasing and BiH started to register the highest number of positive cases daily since late May. Going back to one of the very first measures restricting freedom of movement in BiH, on 22 March Canton 10 passed the decision banning BiH citizens from entering the territory of the canton in an attempt to prevent the spreading the COVID-19. This measure was harshly criticized as unconstitutional and created much of a political upheaval,²⁶ and was withdrawn within a few hours.²⁷

Before that, on 19 March, on eight border crossings, tent camps with the aim to serve as quarantine premises for persons entering BiH were being set

24 *Case of Lejla Dragnić and A. B. - Decision on Admissibility and Merits*, [Constitutional Court of Bosnia and Herzegovina, AP-1217/20] http://www.ustavisud.ba/dokumenti/AP-1217-20-1234093.pdf?fbclid=IwAR3pFZAUWqgA-SNIFfOmOtaP-B2RgJS_dlpfx7tFMOC6Z62XCu08EedcJk

25 *Case of Lejla Dragnić and A. B. - Decision on Admissibility and Merits*, [Constitutional Court of Bosnia and Herzegovina, AP-1217/20]. http://www.ustavisud.ba/dokumenti/_bs/AP-1217-20-1234093.pdf

26 *Scandalous decision: Canton 10 banned the entry to BiH citizens*, [available at: <http://ba.n1info.com/Vijesti/a418543/Skandalozna-odluka-Kanton-10-zabranio-ulazak-drzavljanima-BiH.html> (accessed 03 April 2020 at 11.14)]. BiH Minister of Security threatened to press charges against Canton 10 authorities. This is not 1992 and the war, this is the separatism which we will defeat, [available at: <https://www.oslobodjenje.ba/vijesti/bih/radoncic-najavljuje-tuzbu-ovo-nije-1992-i-rat-ovo-je-separatizam-kojeg-cemo-pobijediti-541349> (accessed 03 April 2020 at 11.14)].

27 *Repealing the Order*, [available at: <http://www.vladahbz.com/stavljanje-van-snage-zapovijed/>, (accessed 03 April 2020 at 11.21)]

to become operational.²⁸ Quarantine facilities have been envisaged as physical places where repatriated persons would spend their mandatory isolation period but they were also meant to serve as a punitive measure for those who violate isolation orders. It seems plausible that this aspect along with systemic neglect of the respect for human dignity influenced the general sentiment concerning the quarantine measures imposed.

The facilities designated for quarantine in some cases lacked basic utilities (hot water, Internet, heating) and relevant authorities would not timely inform persons placed in quarantine facilities about their health status or provide any information at all concerning their stay in quarantine. A number of violent incidents have been reported, directed towards facilities (not persons), which could arguably signal frustration and dissatisfaction with the accommodation.

Since the very beginning, the establishment of quarantines on the borders presented numerous weaknesses. Firstly, while at the state level the tripartite Presidency of BiH agreed to send the BiH Armed Forces to set-up the camps, the BiH Council of Ministries did not discuss the closure of other border crossings, thus weakening the overall effort to regulate and monitor the arrivals in the country.

Meanwhile, the RS authorities started the screening of persons entering BiH through a few border crossings on their territory by using the camps as triage centres, while those crossings under the competence of the FBiH became operational almost a month after quarantine camps had been established in RS. This not only additionally contributed to intra-Entity tensions, but open border crossings with no quarantine camps were used to avoid staying in the camp tents.

In fact, on border crossings without quarantine facilities, persons would be sent in self-isolation to their homes or placed in one of the designated quarantine facilities in their place of residence. This not only complicated the possibility for the authorities to track obedience of self-isolation measures in place, but, most significantly, created unjustified differential treatment among the citizens.

As BiH citizens returned to the country from other parts of Europe amid the COVID-19 pandemic, the situation around border entry points in Una-Sana Canton became increasingly concerning. Extremely long wait times to enter the country, as well as unacceptable conditions inside the quarantine tents at border entry points. Dissatisfaction with conditions in the tents led to

²⁸ As of 25 March, BiH CoM banned entrance to the country to non-nationals (diplomats, medical and other staff working on mitigating the coronavirus pandemic in BiH were exempted from this ban).

IV Freedom of Movement

some “residents” burning down three quarantine tents at the Velika Kladuša border entry²⁹ in the early hours of 12 April. Other quarantine locations for newly arrived BiH citizens, including a madrasa in Cazin, have also been reported as inadequate, unhygienic and mismanaged. Similarly, 65 students that returned from Germany and a group returning from France were placed in a quarantine facility in Tuzla and supposed to stay in quarantine 28 days. Upon their arrival the facility lacked basic utilities. Only after the students complained publicly about the poor conditions (no internet, no hot water) on social media and some web portals shared their messages were these utilities restored. In the same facility (Hotel Tuzla) violent incidents occurred with police intervening to calm the situation.

When the prospect of a mandatory quarantine was brought to discussion by the authorities at the very beginning of the pandemic, BiH residents who worked in neighbouring countries were very worried about how it would affect their jobs. For example, there is a large number of Trebinje citizens who work in Dubrovnik on a daily basis. With the closure of the borders, shortly afterwards, the issue was further complicated.

Another important issue that emerged with the border closure pertains to medicine and pensions accessibility, particularly in places from which people normally buy medicines in Serbia at a more convenient price than in BiH. In addition, there were reports that people from the area who used to work in Serbia and are therefore receiving pensions in Serbia were unable to travel and access their funds due to the lockdown. The issue has been solved creatively for some (through private contacts), but not for most.³⁰ Luckily, the borders reopened and the situation returned to its usual course.

While a daily curfew was imposed on the whole territory of BiH (with similar although not identical time-frame in RS, FBiH and BD),³¹ the Crisis Management Headquarters in the Herzegovina-Neretva Canton (on 9 April) and in West-Herzegovina Canton (on 12 April) put the cantons as a whole in quarantine, by fully restricting the movement of their residents and banning them from leaving their places of residence due to the rapid growth of

29 *Three Triage Tents burned at Bosnian Border Crossing*, [available at: <https://www.sarajevotimes.com/three-triage-tents-burned-at-bosnian-border-crossing/>] (accessed 03 April at 13.21) *Three Triage Tents burned at Bosnian Border Crossing*, [available at: <https://www.sarajevotimes.com/three-triage-tents-burned-at-bosnian-border-crossing/>] (accessed 03 April at 13.21)

30 According to HoD for Economy and Social Affairs in Bratunac, Sevko Karic, there are a certain number of people with this problem in Bratunac. He explained that individuals are finding a way to get medicine from Serbia (like in Skelani, via border police officers, the ones in Serbia taking medicament and transferring to their BiH colleagues). Karic added that the Bratunac mayor and municipal administration tried to find a solution with the administration from Ljubovija (neighbouring municipality in Serbia), proposing to collect money and give it to BiH border police officers, who should give it to Serbian border police officers to buy what was needed and bring it back, but the initiative was deemed not possible.

31 On 20 March in FBiH, 21 March in RS

COVID-19 patients on their territory.³² The RS imposed a similar measure, limiting the movement of its citizens on weekends.

On 29 March, the village Špionica Srednja in Canton Tuzla with its 460 inhabitants was quarantined by the Srebrenik Civil Protection HQ with deployment of police forces at its entrance. The residents accused Srebrenik Civil Protection HQ of overreaching their authority when they put in quarantine all 460 inhabitants of Špionica Srednja, causing them both material and non-material damage. Furthermore, residents claim to have been denied any information regarding the overall epidemiological situation and the testing procedure, nor had they received any instructions on how to proceed in the given situation. Additionally, a quarantine facility was equipped in near-by Srebrenik that could have accommodated the 130 infected people from Špionica Srednja, but the authorities opted to quarantine the whole village, instead.

These restrictions posed human rights concerns, with questions of their legality, proportionality and respect for human dignity coming to play. Furthermore, the imposition of quarantines to entire communities has inevitably had economic impacts on residents of these areas.

Related to freedom of movement, we call attention to the State's response toward Bosnian citizens abroad. The BiH Minister of Security discouraged the Diplomatic and Consular offices of other countries to send Bosnian citizens back to their home country, which appears to be contrary to Article 12, p. 4 of the ICCPR which states “No one shall be arbitrarily deprived of the right to enter his own country.”³³ This was one in the line of seemingly arbitrary attempts made by the authorities to hinder the freedom of movement of its citizens.

32 On 20 May, BiH Constitutional Court published its decision to reject as inadmissible the Application filed by Slaven Raguž and Ivan Džalto (AP 1485/20) challenging the orders of the HNC Crisis Headquarters on 9 April and its amendments dated 10 April that banned the movement of citizens of HNK outside their place of residence. The Application was rejected due to changed legal circumstances, i.e. the contested orders were in the meantime revoked. The HNC government and the Crisis HQ interpreted the Court's text to say that the decisions had been correctly made in the interest of public health and evaluated the appeal as a political game by the political opposition (i.e. Croat Republican Party). The appellants, however, noted that the Court did find violation of human rights despite the change of circumstance - which is what the appellants had intended.

33 *The International Covenant on Civil and Political Rights*, [United Nations General Assembly, Res. A/RES/21/2200, Paris: 1966], Article 12, paragraph 4.
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

V Freedom of Expression

It seems that this extraordinary situation provided for an excellent opportunity to the authorities to impose restrictions to freedom of expression. Roughly a month before the WHO declared the outbreak of the COVID-19 a pandemic, concerns were raised regarding the diffusion of misinformation about the coronavirus. In mid-February, the WHO Director-General, Tedros Adhanom Ghebreyesus, warned that along with fighting an epidemic, “we're fighting an infodemic”, referring to a massive circulation of false news about the novel coronavirus that “spreads faster and more easily” than the virus itself.³⁴ These serious concerns about the spread of misinformation have been, however, matched by the awareness of human rights experts that authorities might use it as an excuse to restrict individual rights, thus silencing dissenting voices.³⁵

One among several instances where this was called into question was when the Prijedor Police Administration filed misdemeanour charges against Maja Stojić Dragojević, a cardiologist and a member of the opposition SDS Party, due to violation of the Decision on Punishing False News and Spreading Panics as adopted on 19 March. The charges were filed in response to her writing that there were not enough ventilators, beds, or intensive care services in the RS, and for claiming that the RS was unprepared for what is to come. She was charged with spreading false news and was ordered to pay a fine of 1000 BAM.³⁶ Furthermore, immediately after RS declared the state of emergency, the RS President issued a Decree Law prohibiting the media and the general public from spreading false news that incites panic, and prescribes significant fines for those who do so.³⁷

The OSCE Representative on Freedom of the Media, Harlem Désir, and the Head of the OSCE Mission to Bosnia and Herzegovina, Kathleen Kavalec, commented on this decree and stated that “such a decree could lead to censorship and self-censorship, as well as to arbitrary and disproportionate

³⁴ *UN tackles 'infodemic' of misinformation and cybercrime in COVID-19 crisis*, [available at: <https://www.un.org/en/un-coronavirus-communications-team/un-tackling-%E2%80%98infodemic%E2%80%99-misinformation-and-cybercrime-covid-19>] (accessed 05 April at 11.24)

³⁵ See for example the statement by UN experts “COVID-19: States should not abuse emergency measures to suppress human rights” available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E> (accessed on 05 April 2020 at 11.33)

³⁶ Danijel Kovacevic, *Bosnia Trying to Censor Information About Pandemic, Journalists Say*, [available at: <https://balkaninsight.com/2020/04/08/bosnia-trying-to-censor-information-about-pandemic-journalists-say/>]; (accessed 05 April 2020 at 14.23) Ljiljana Kovačević, *Spreading the Truth or Panic: The Corona Virus as an Alibi for Police Repression*, [available at: <https://zurnal.info/novost/22882/korona-virus-kao-alibi-za-policijsku-represiju->] (accessed 05 April 2020 at 14.33)

³⁷ *Decree with legal force on the prohibition of causing panic and riots during the state of emergency*, [“Official Gazette of the Republic of Srpska”, no. 32/20].

V Freedom of Expression

penalties, which could undermine media freedom and the fundamental human right of freedom of expression.”³⁸ Furthermore, particular concern was raised by the fact that the decree law did not provide concrete details on how these acts would be determined or on which jurisprudence they are based, and Désir and Kavalec called on the authorities to withdraw the decree. Thereby they underlined that the better solution was proactive, regular and clear information provision by public authorities.

According to our findings, no one was punished following provisions of this Decree Law. The intention of the RS authorities to punish the opposition and journalists seems to have been the primary goal as this Decree Law was among the first adopted after the RS proclaimed the state of emergency. The decree was redacted on 16 April. The RS Ministry of Interior also announced that all violation reports issued during the decree's enforcement period for panic spreading shall be annulled. The RS Government justified the aforesaid by stating that the citizens mostly obeyed all measures and did not fall under the influence of false news. Nevertheless, many media reported that such action by the RS was undertaken due to critics they received from the International Community and civil society organizations.³⁹

Furthermore, BD also adopted similar measures, and there was also a rather clumsy attempt to emulate the RS Decree by the Crisis Unit in the Municipality Stari Grad in Sarajevo, but due to its unlawful overreach, the Decree never entered into force.

Facilitating proactive, transparent, open, and regular channels of information flow from reliable sources might be the best antidote to the detrimental consequences caused by false news, without the necessity for the authorities to recur to restriction on rights to fight misinformation.

In the time of great pandemic, correct and accurate information are crucial for informing citizens about their permitted actions and behaviors. Preventing the circulation of such information and pointing out the shortcomings of the system is a serious violation of freedom of expression and often leads to a loss of trust in the authorities who prevent getting the information different from those which they provide. And as we mentioned earlier, the authorities did not present the information to the citizens in the best possible way.

38 *OSCE concerned about decree against “fake news” in Republika Srpska, Bosnia and Herzegovina, and calls on authorities to withdraw it*, [available at: <https://www.osce.org/representative-on-freedom-of-media/450115>], (accessed 05 April 2020 at 15.15)].

39 See e.g. *Protect whistleblowers during the COVID-19 pandemic and withdraw the Decree on causing panic*, [available at: <https://ti-bih.org/zastititi-zvzdace-tokom-pandemije-covid-19-i-povuci-uredbu-o-izazivanju-panike/?lang=en>], (accessed 05 April 2020 at 15.27)] and *BiH journalists - Stop the censorship of information about COVID-19 and institutional repression of freedom of expression*, [available at: <https://bhnovinari.ba/bs/2020/04/07/bh-novinari-zaustavite-cenzuru-informacija-o-covidu-19-i-institucionalnu-represiju-nad-slobodom-izrazavanja/>], (accessed 05 April 2020 at 15.29)]

VI Freedom of Peaceful Assembly

The BiH authorities decided to try preventing the spread of the virus among the population by prohibiting gatherings in the open and closed areas, and with this aim the authorities made decisions on prohibitions and cancellations of gatherings, as well as absolute prohibition of gatherings.⁴⁰

With absolute prohibitions of gatherings, the problem of disproportion arises again. Namely, the prohibition of gatherings followed as one of the first measures in combating COVID-19, without taking into account certain less stringent measures, such as prescribing that at the public gatherings people should keep social distance, wear a mask and get as little physical contact as possible, etc.

The absolute prohibition of gatherings should be the last option of the government, e.g. after less stringent measures would not be efficient in order to combat COVID-19. The authorities did not even try reducing the flow of the virus with less stringent measures, but immediately decided to limit one of the basic rights of citizens.

In addition, such measures may prevent the free expression of opinions and the "silencing" of opposition voices, which should not be allowed in a democratic society. In addition, certain gatherings attended by political actors were held despite being prohibited, without excessive interference by the State authorities, which further undermined the trust of citizens and led to public opinion that the regulations are not equal for everyone.

⁴⁰ See, for example, *inter alia*, the Conclusion on the mandatory implementation of measures to respond to the occurrence of diseases caused by the new coronavirus (COVID-19) in the Republika Srpska, [1-3 / 20, March 17, 2020]; Order on prohibition of gatherings in one place for more than 5 persons, and prohibition of movement in the period from 22:00 to 5:00, [12-40-6-148-155 / 20, April 29, 2020]; Order on prohibition of assembly and joint movement,, [01.1-1141SM-045/20, 23 March 2020].

VII Freedom of Religion

In a certain way, the public authorities in BiH interfered in the enjoyment of the religious rights of the citizens by the decisions they brought and implemented.⁴¹ Religious gatherings were not completely prohibited i.e. when they were not opposed to the regulations on public gatherings, since it was possible to organize them in compliance with the measures generally prescribed for gatherings.

However, different attitude toward certain believers was perceptible. Namely, certain persons who did not comply with the measures were punished based on the decisions, while others were not punished. Thus, those punished were discriminated against compared to those who were not punished, and citizens who complied with all measures and did nothing against the regulations were also discriminated against, because for certain reasons they could not exercise their constitutional rights which were reduced by the decisions. On the other hand, those who are not punished for violating the measures exercise their rights to full extent.

Thus, for example. in certain churches, believers gathered to celebrate Easter, and officials did not punish them for violating measures prohibiting gatherings and movements. The police did not react adequately to the reports sent by the citizens. On the other hand, certain persons who also violated the prohibition measures were punished for gatherings and violations of the prohibitions, while those who complied with the measures stayed in their homes and were thus denied the exercise of their religious rights.

⁴¹ See, for example, *inter alia*, *Order on Prohibition of Assemblies and Joint Movement*, [01.1-1141SM-045 /20, 23 March 2020]. Conclusion on the ban on movement on Easter days [Republic Headquarters for Emergency Situations of the Government of the Republic of Srpska, no. 21-6 / 20, 15 April 2020].

VIII Attitude towards prisoners

All BiH authorities, which work with persons deprived of their freedom, are obliged to ensure the right to health for prisoners, as well as to ensure that they are not treated in a way that could endanger their right. Before addressing the disproportionate impact of the national response on specific groups, we want to address briefly a complaint done by the prisoners detained in one of Zenica penitentiary.

Any place where preventive measures such as 'social distancing' and enhanced personal hygiene cannot be observed to reduce COVID-19 transmission represents an increased threat to its residents and "a possible disaster zone and ought to be treated as such."⁴² This is equally true for penitentiary institutions, immigration centres, psychiatric hospitals, social care homes, and newly established quarantines, to name a few. This is, regrettably, true also for Roma settlements, often overcrowded and without basic commodities (the dire position of Roma will be addressed further in this paper).

In this context, the complaint of prisoners detained in the Zenica Penitentiary is very important.

Although we will not go into the detail of the issue, the prisoners' complaint about the lack of protective equipment (masks and disinfectants) in Zenica penitentiary requires to be analyzed in this paper, both for the possible severity of violations and legality-related concerns. As a response to their complaint, the prison Director allegedly said that "there was no need for the prisoners to wear masks as they could be infected only by prison staff, because all visits were prohibited to prevent the infection in the prison."⁴³

While it is not clear whether this was a blanket ban on visits, which is contrary to CoE recommendation,⁴⁴ it is utmost disturbing that staff members who might have been in contact with persons with COVID-19 are supposed

42 Mandate of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings, *COVID-19 and Protection of right to life in places of detention*, [available at: https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch_2_PlacesofDetention.pdf, (accessed 07 April 2020 at 10.26)]

43 *Convicts in the Zenica prison do not wear protective masks*, [available at: <http://ba.n1info.com/Vijesti/a424787/Osudjenici-u-zenickom-zatvoru-ne-nose-zastitne-maske.html>, (accessed 07 April 2020 at 10.32)]

44 *COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe*, [available at: <https://www.coe.int/en/web/commissioner/-/covid-19-pandemic-urgent-steps-are-needed-to-protect-the-rights-of-prisoners-in-europe>, (accessed 07 April 2020 at 10.38)]

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to take a 15-day leave before returning to work,⁴⁵ without any testing. Likewise, it is evident that there are no implementable protocols (crisis plans) which comply with the human rights law to safeguard both the incarcerated persons and staff. To date, we have no additional information on the issue, but staying alert is critical, since widespread community transmission of COVID-19 within a correctional institution is likely to result in a disproportionately high COVID-19 infections and mortality rate.⁴⁶

45 Many other legal issues are called into question, such as: what if persons did not have 15 days for a leave or did not want to use their days off and have been forced to, etc.

46 "COVID-19 in Correctional Settings: Unique Challenges and Proposed Responses", [available at: <https://amend.us/wp-content/uploads/2020/03/COVID-in-Corrections-Challenges-and-Solutions-1.pdf>; (accessed 07 April 2020 at 11.25), see also Brie Williams at all., "Correctional Facilities In The Shadow Of COVID-19: Unique Challenges And Proposed Solutions," available at: <https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/> (accessed 07 April 2020 at 14.25)

IX Increased vulnerability

1. Migrants and refugees

The confluence of the mixed migration and COVID-19 crises implicates a unique set of concerns, given the vulnerability of the already marginalized and underserved migrant/refugee population. We expect these new circumstances to exacerbate existing issues and present new ones, especially as certain measures taken to prevent the further spread of COVID-19 may have unintended and disparate consequences for migrants and refugees. The reallocation of resources, such as those earmarked for housing, food, and sanitation may result in a drastic decline in the living conditions of migrants and refugees. Early indicators of such shifts included a halt to the registration of new arrivals of migrants and refugees, along with bans by certain authorities on the distribution of food by civil society to migrants and refugees.⁴⁷

Legally speaking, various measures have been adopted to limit the rights of migrants, refugees and asylum seekers in accordance with the level of government which adopted them. The measures referred to bans on movement for a certain period of time, bans on gatherings, bans on the entry of foreign citizens into BiH, compliance with health guidelines, etc.⁴⁸ They were aimed at BiH citizens, as well as at refugees and migrants for whom a special decision was adopted at the BiH level restricting movement and residence in order to protect the health of citizens.⁴

In order to limit contact between migrants and refugees and the general public, officials, especially those in cantons with larger migrant/refugee populations, restricted the movement of migrants and refugees, turning

47 *Save the Children* was vocal in criticizing the food distribution ban because of the minors put further at risk.

48 See e.g. *Conclusion on mandatory implementation of measures to respond to the emergence of disease caused by the new corona virus (COVID-19) in the RS*, [Republic Emergency Headquarters, no. 01-3/ 20]; *Conclusion on the mandatory implementation of measures to respond to the emergence of disease caused by the new corona virus (COVID-19) in the RS*, [Republic Emergency Situations Headquarters, no. 26-1 / 20]; *Conclusion on the prohibition of entry of foreign citizens into BiH*, [Republic Headquarters for Emergency Situations, no. 06-3/ 20]; *Conclusion on restriction and prohibition of movement on the RS territory*, [Republic Headquarters for Emergency Situations, no. 16-3 / 20], *Conclusion on restriction and prohibition of movement of persons on the RS territory*, [Republic Headquarters for Emergency Situations, no. 26-2/ 20]; *Order on prohibition of the movement of persons under the age of 18 and over the age of 65 in the FBiH territory*, [Federal Civil Protection Headquarters, no. 12-40-6-148-34 / 20]; *Order on the introduction of prohibition of the citizens' movement in the FBiH*, [Federal Civil Protection Headquarters, no. 12-40-6-148-36 / 20]; *Order on prohibition of gatherings in one place for more than 5 persons, and prohibition of movement in the period from 22.00 to 5.00*, [Federal Civil Protection Headquarters, no. 12-40-6-148-155/ 20].

49 *Decision on restriction of movement and stay of foreigners in BiH*, [BiH Council of Ministers, Official Gazette of BiH, no. 26/20]; *Order on suspension of visits and exits of migrants*, [Federal Civil Protection Headquarters, no. 12-40-6-148-47/ 20].

accommodation facilities into *de facto* detention centers. A new tent camp in Una-Sana Canton was opened, camp Lipa, which was hastily put together at the outset of the COVID-19 outbreak. It is a tent settlement and does not have running water or sewerage. The conditions in the camp are below any decent standard, and migrants and refugees are forcibly kept there.

In times of crisis, the violation of the human rights of migrants only spilled over from the "usual situation": Thus, with the bans on movement, discrimination, inhumane conditions, the bad attitude of the authorities towards this population only continued.⁵⁰

2. Persons with Disabilities

Persons with disabilities (PwD) have also faced extraordinary challenges due to COVID-19. Adult persons with disabilities are much represented among the older populations who are known to be at increased risk in the COVID-19 pandemic. Furthermore, while children overall seem to be less likely to show symptoms of COVID-19, both adult and children with disabilities have a higher likelihood of underlying health conditions and are, therefore, more at risk of complications due to the virus infection. Likewise, PwD are more likely to be living in poverty, which adds to their vulnerability.⁵¹

Even in 'normal' times, people with disabilities in BiH face significant obstacles in accessing health and social care services that are already of poor quality. There is no official data collection on the needs and actual status of different PwD groups and individuals and, therefore, it makes it harder for them to fully enjoy their rights through access to healthcare prevention, treatment, rehabilitation, care services, items and medicaments tailored to their specific needs.

Measures of social distancing and self-isolation represent a challenge to PwD since certain number of them are either not self-sufficient or depend in various ways on external support. Following the suspension of essential services, no alternatives to daily centers or caregiving/medical treatment have been provided, thus severely impacting on PwDs' rights and wellbeing. *The Convention on the Rights of Persons with Disabilities* establishes that States parties shall take all possible measures to ensure the protection and safety of persons with disabilities in the national response to

⁵⁰ *Written statement to UN Human Rights Council 44th session (June/July 2020)*, [available at: https://www.wilpf.org/wilpf_statements/hrc44-written-statement-on-bosnia-and-herzegovina/], (accessed 07 April 2020)

⁵¹ *COVID-19 response - Considerations for People with Disabilities*, [available at: http://www.international_htiw_elpoep_rof_snoitaredisnoc_esnopser_1-divoc/selfi/tluafed/setis/gro.ecnailaytilibasil disabilities_190320.pdf], (accessed 07 April 2020 at 17.13)]

IX Increased vulnerability

situations of risk and humanitarian emergencies.⁵² This comprises measures in all areas of life of persons with disabilities, including the protection of their access to the highest attainable standard of health without discrimination, general wellbeing and prevention of infectious diseases and measures to ensure protection against negative attitudes, isolation, and stigmatization that may arise in the midst of the crisis.⁵³

The restriction of movement of PwDs and people who accompany them, and restricted access to social services and support have had a disproportionate impact on PwDs, making the legality of adopted measures questionable. The channels of communication regarding the measures and steps taken by the local authorities and, more importantly, by the Civil Protection Headquarters to the PwDs have never been put in place. None of the adopted measures imposed by the RS, FBiH, BD and cantonal Headquarters took into account the specific needs of these persons thus placing them in an even more challenging position. There is also a lack of engagement with organizations of persons with disabilities in designing and delivering prevention and response plans and absence of participation of PwD organizations in the local and national coordination mechanisms.

Furthermore, the initial total ban on movement for minors and persons over 65 of age in FBiH⁵⁴ proved to have a disproportionate impact on PwDs, and on children with disabilities, in particular. For example, since children are forced to stay at home, they have minimized physical activity which caused major insomnia issues. This has put an extra burden on parents who remained the sole caretakers since they cannot rely on the usual support system. Similarly, children with autism spectrum disorders, highly reliant on their daily routine, struggled to adjust to a new, and more challenging, reality which cause them enormous distress. Associations of parents of children with disabilities were vocal in asking the authorities to ease the ban on movement for children, and on 27 March, the order was amended to allow children with disabilities to go outdoors within the range of 100 meters of their home.

Additionally, with therapeutic institutions closed, medical and other treatments have been disrupted, while access to critical medicines not available in the country became an issue. There are no institutionalized supply providers through which certain medication is available, so parents

52 *Convention on the Rights of Persons with Disabilities*, [United Nations General Assembly, New York: 2006],
53 *Joint Statement: Persons with Disabilities and COVID-19 by the Chair of the United Nations Committee on the Rights of Persons with Disabilities, on behalf of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility*, [available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25765&LangID=E>, (accessed 07 April 2020 at 18.48)].

54 Later challenged, see Constitutional Court Decision.

regularly turn to private channels, which were unavailable due to movement restrictions, to get the medicine needed in neighbouring countries.

After the school buildings were closed, authorities organized distance learning through TV programmes, online classes and/or social media. Specific equipment required (like a PC or a tablet) and internet access are, however, not available to all students, especially not to those from families with low income and children in rural areas, like children with disabilities often are. Furthermore, parents play a significant role in distance learning and are often asked to facilitate this process.⁵⁵ And while any parent can struggle to perform this task, parents of children with disabilities are obviously faced with additional hardship.

Furthermore, there are no adjustments to work processes for parents of children with disabilities taking into account the riskiness of this population. The Rulebook on the manner of exercising rights under mandatory health insurance does not comply with the Labor Law, which leads to the fact that parents of children with disabilities cannot exercise the right to sick leave in order to ensure a sufficient level of care for their children. Finally, educational contents available are not tailored to the needs of children with disabilities. In the sporadic occasions where educational activities were addressing children with disabilities, this was done in segregation-type education, without an effort to include them in the regular course of educational activities, which is in direct violation of article 24, of the *Convention on the Rights of Persons with Disabilities (UN, 2006)*, where it establishes that the right to education is the right to an inclusive education.

3. Roma

The Roma community was also placed further in to a situation of vulnerability during this period. According to the data of the UN Development Programme, the employment rate for Roma in BiH is as low as 11%,⁵⁶ while most Roma 'make their ends meet' in alternative ways. Trade in scrap materials and other goods represents the only source of income for most Roma, and restrictions of movement imposed as a result of the COVID-19 crisis have severely impacted their livelihood. The incoming reports are all highlighting the fact that Roma families are struggling in accessing basic commodities (food and hygiene products, running water), while local

55 *Adverse consequences of school closures*, [available at: <https://en.unesco.org/covid19/education-response/consequences>, (accessed 07 April 2020 at 19.28)].

56 *Regional Roma Survey 2017: Country fact sheets*, [available at: <https://www.eurasia.undp.org/content/rbec/en/home/library/roma/regional-roma-survey-2017-country-fact-sheets.html>, (accessed 24 April 2020 at 11.19)].

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authorities (municipalities) have been providing little or no support to the Roma population despite the overwhelming need, since most Roma live without regular income. Assistance has come instead from the international community, NGOs, and Roma diaspora living abroad.

Another issue was the lack of access to distance learning many Romani children faced. Many Roma families have no internet, computer or electricity, or live in houses that rarely have a separate room where children could follow the lessons without distractions. Furthermore, Roma parents might be illiterate themselves and thus unable to help with home schooling. In this sense, Roma children are left behind, and it can be expected that this crisis will contribute to an already high drop out of Romani children from education.

While it is certainly good news that the virus did not spread in the Roma communities, we want to conclude this section with a reflection on the Roma situation by Dalibor Tanić, a Romani journalist and activists. He wrote that Roma were not decimated by the virus, as he and many other predicted and feared, because Roma were already kept at physical distance by the majority of the population. In his words, the basic pre-condition for the transmission of the virus - social interaction - was actually missing.⁵⁷ The statement might seem provocative, even exaggerated, but is in line with the data found in the recent *Mission survey on public perception, attitudes, and experiences of discrimination in BiH*.⁵⁸

4. Social Protection Beneficiaries

The COVID-19 health emergency exposed the fragility of the social protection system in BiH and challenged the ability of the system to guarantee basic rights and services. Social welfare centers (SWC) and, especially, social workers are under unprecedented pressure because of the COVID-19 pandemic. This pressure can only rise, given the bleak economic prospects (unregulated increase in prices for certain goods, massive lay-offs, pressure towards employees to sign the requests for unpaid leave during the closing of business, etc.).

Since the outbreak of the pandemic, Social Welfare Centres (SWCs) have been faced with many challenges in the provision of services for their beneficiaries. From the first half of March to the second half of May, SWCs had to adjust their work to the COVID-19 crisis and the restrictive measures

57 Dalibor Tanić, The other side of the story: Why COVID-19 did not “enter” Roma communities, [available at: <http://www.portal-udar.net/druga-strana-price-zasto-covid-19-nije-ulazio-u-romske-zajednice/>, (accessed 24 April 2020 at 11.42)]

58 2019 OSCE Survey on Discrimination in Bosnia and Herzegovina: Public Perceptions, Attitudes, and Experience, [available at <https://www.osce.org/files/f/documents/6/0/448852.pdf>, (accessed 24 April 2020 at 17.36)]

imposed by the authorities. Some SWCs, like the Banja Luka centre, stopped receiving clients as a measure for preventing COVID-19 spreading. The public was informed that they could address the Institution via mail, email and telephone. Other SWCs, such as the centres in Brcko District, Pale, Maglaj, Capljina, Nevesinje, Bileća, Čelić or Teočak, organized their work in shifts or shorter working hours and there were no interruptions in their regular operations other than the decreased and controlled direct contacts with beneficiaries. In most cases, also the field visits were limited to humanitarian actions.

SWCs in Capljina, Srebrenica, Bratunac, Bijeljina, Banja Luka, Doboј, Prijedor and Maglaj, contributed to delivering humanitarian help, assistance and packages of food, hygienic supplies and medicaments to the most vulnerable categories of the population (e.g. elderly, persons with chronic diseases, persons with difficulties in movement, persons with disabilities, pregnant women and persons with weaker immune system) in co-operation with the local municipalities/cities/ communities, NGOs (mostly Red Cross), or private companies. In many locations, SWCs were active members in some the local crisis headquarters, but not in all. SWCs are aid providers and a fundamental component in ensuring human rights in the country but as they were not included or consulted in the HQ working groups they were unable to provide adequate guidelines and unable to organize to fully assist their beneficiaries.

SWCs and Associations for Social Workers (ASWs) raised on many occasions their concern regarding the lack of personal protective equipment and hand sanitizers available to minimize risks, both to their staff and the people they support. As mentioned earlier, States are required to guarantee the right to health, which related to a pandemic crisis means States need to take all steps necessary for the prevention, treatment and control of diseases. BiH authorities have issued a number of decisions imposing or recommending measures that everyone needs to comply with. However, if the State requires the use of certain preventive measures (masks, gloves) it needs also to ensure that everyone can access them and failed to do so.

SWCs and ASWs are expecting a significant raise in the number of families in need of income support due to the increase in unemployment since the beginning of the COVID-19 crisis. This has been already observed in places like Ljubuški, Banja Luka or Gradiška. The increase refers primarily to persons of working age who apply for one-off assistance to cover the costs of medicines, medical treatments, food and clothes. The SWC Ljubuški observed approximately a 10% increase in the overall sum of one-off assistances in 2020, compared to the previous year. It is estimated that

IX Increased vulnerability

difficulties in the provision of social assistance will be problematic and some SWCs like the one in Bileća are already reporting difficulties and delays regarding financing rights from the municipal budget.

X Rights Related to Labour

The right to work and, in particular, rights at work⁵⁹ bear strong links with the right to health in the current pandemic. State authorities have imposed lockdowns but the “essential” personnel have been working harder than ever. Individuals from specific professions have sustained disproportionate burden in the effort to contain the spread, protect people's health and lives, and make sure our basic needs are met.

These *frontliners* are, most prominently, medical and non-medical staff with workplace exposure to infected patients,⁶⁰ but include social workers, protective service workers (police), workers in grocery stores, production, food processing, and food delivery workers, agricultural workers, and taxi and truck drivers. The protective measures authorities undertook to safeguard these persons have not always been appropriate.

On 31 March, a medical worker employed in SKB Mostar sent a complaint, noting non-implementation of a 16 March FBiH Government CZ Crisis Head Quarter Recommendation to employers in FBiH to allow a parent of children under 10 years old to stay at home and take care of the children, in case both parents are working. According to the complaint, Mostar Hospital, the employer of both the complainant and his wife, is insisting that both of them remain working, even after the complainant was order to self-isolate for being in contact with a suspected COVID-19 patient. The HNK Crisis Head Quarter urged Mostar hospital to respect its recommendation.

On 2 April, the President of RS Union of Syndicates issued a public statement on the topic of protecting workers' rights during the COVID-19 crisis. The reported concern is related to the pressure placed on workers to sign voluntary termination of employment contracts or to claim for unpaid leave. The workers will not be entitled to financial support, health and other benefits in case of voluntary termination of contract. RS Union of Syndicates insists and requires the RS Government and the Crisis Staff to take all measures and activities against unlawful initiatives.

59 The right to dignified working conditions; the right to work that is freely chosen or accepted; the right to adequate remuneration; the right to a limited workday and remunerated periods of rest; the right to equal pay for work of equal value; the right to equal treatment; and the right to safe and hygienic working conditions.

60 This includes doctors and nurses, but also respiratory therapists and any other healthcare workers required to enter the room while an infected patient is present as well as essential non-medical personnel, such as custodians who clean and sanitize the rooms of infected patients daily, maintenance, dietary, nursing assistants, patient care techs, and administration; all those who regularly go to work in facilities with infected patients to perform vital services.

There are proposed amendments to the FBiH labour law in the parliamentary procedure which aim to support employers in overcoming the economic hardship of the current period, but said amendments pose a serious risk to human rights. Of particular concern is a provision introducing a salary in the amount of 75% of minimum wage. In addition, the provisions did not take into account protection of employees and enjoyment of their rights and only rely on the implementation of the law and good faith (bona fide) of the employers. If introduced, the provisions of the Law should be only temporary and last as long as the state of natural and other disaster is declared and should not be extended to longer period as an excuse for any prolonged actions against employees.

XI Access to Healthcare

An issue that is particularly relevant in areas with significant returnee population is access to healthcare. Access to healthcare was identified as a primary human rights concern, especially given the results of the recent Mission survey on discrimination in BiH in which more than 50% of BiH residents considered that discrimination is present to a substantial degree in access to healthcare.⁶¹

BiH does not have universal basic health coverage for its citizens and individuals opt to be insured in the part of the country where they are a majority, often because they fear discrimination. During the COVID-19 situation, coronavirus related healthcare treatment was ensured for all citizens throughout BiH free of charge.

However, due to different regimes of restriction of movement for persons aged over 65 in the country, in the first week of April it has been reported by the Orthodox priest from Zavidovići that some returnees were concerned about accessing healthcare and pensions in Doboj. As said, although the cantonal authorities ensured healthcare related to COVID-19 to all citizens regardless of their place of residence, it was pointed out that the returnees have other medical needs normally addressed by their doctors in Doboj.

The priest contacted the authorities and the Police Administration of Zavidovići to explore potential solutions. Although no systematic solution was offered, he was assured that returnees from Zavidovići travelling to Doboj for medical examinations or collecting pensions would not be fined for violating the instructions of the FBiH Crisis Staff on restrictions of movement for citizens over 65. This raises serious concerns about possible arbitrary practices and violations, and it is evident that the measure was poorly conceived, as confirmed by the mentioned judgment of the Constitutional Court.

61 2019 OSCE survey on Discrimination in Bosnia and Herzegovina: Public Perceptions, Attitudes, and Experience, [(available at <https://www.osce.org/files/f/documents/6/0/448852.pdf>, (accessed 24 April 2020 at 17.36)]

XII Malpractice

Corruption undermines directly the principle of equality and can have devastating impacts on the availability, quality and accessibility of human rights-related goods and services.⁶² Furthermore, disadvantaged persons and groups suffer disproportionately from corruption as they are often more reliant on public goods and services and have limited means to look for alternative private services.⁶³

It has been recognized that “the COVID-19 outbreak increases corruption risks, the health sector being specifically exposed, in particular owing to surges in the immediate need for medical supplies and the simplification of procurement rules, overcrowded medical facilities and overburdened medical staff.”⁶⁴ In the current pandemic, assurance of enhanced transparency in the public sector is of vital importance, while authorities at all levels need to be subject to constant oversight and accountability for the adopted measures.⁶⁵ Furthermore, whistle-blowers need additional protection in these challenging times.⁶⁶

While it is not our intention to present an exhaustive picture of instances of possible mismanagement in the current situation, we wish to shed a light on those issues that have particular relevance in the domain of human rights. Furthermore, we will highlight the oversight role of institutions like the ombudsman, but also of civil society and the media.

There have been several cases of malpractice, alleged corruption, and many episodes of public officials (politicians, doctors) not abiding by the COVID-19 measures, or arguably taking advantage of the situation for personal illicit gain.

Following some media articles, social media statements and citizens' complaints on gatherings of believers in churches in Banja Luka for Orthodox Easter during the curfew, as well as some inappropriate behavior of politicians who disrespected the prescribed epidemiological measures and did not face any legal consequences, NGO Banja Luka Centre for Human

62 *Corruption and HR*, [available at: <https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx>, accessed 27 April 2020 at 11.36]

63 *Ibid.*

64 *COVID-19 pandemic: The GRECO published Guidelines aimed at preventing corruption*, [available at: <https://www.coe.int/en/web/human-rights-rule-of-law/-/covid-19-pandemic-the-group-of-states-against-corruption-greco-warns-about-corruption-risks>, (accessed 27 April 2020 at 17.07)].

65 *Ibid.*

66 *Ibid.*

XII Malpractice

Rights sent a letter to Ombudsman Institution on 20 April asking for determination of violation of human rights by the competent authorities in the sense of violating prohibition from discrimination. On 21 April, Ombudsmen stated for the media that the Institution already issued several recommendations to the BiH authorities on all levels and that it reached a decision to create a special document containing all measures introduced by all HQs for the state of emergency in the aim of analyzing it and evaluating potential human rights violations. They also stated that they receive citizens' complaints in regards to the state of emergency and that they will be able to provide their conclusions following cancellation of the state of emergency.

On 27 April, an article was published in the media about an alleged illegal procurement of tests and respirators purchased by the FBiH Government. The case reached the judicial authorities and in their initial report, on the basis of their expertise, the prosecutors said in a statement that the imported ventilators “do not meet even a minimum of necessary characteristics for adequate treatment” of coronavirus patients and that “it is not advisable to use those ventilators in the intensive care units.”⁶⁷ And while the case is under investigation, the head of the FBiH Civil Protection Administration, Fahrudin Solak, before being suspended from his duties because of this affair, told the Prosecution to investigate the media and the journalists who published the article, in a blatant attempt to put the Prosecution under pressure and intimidate the journalist.⁶⁸ Similarly, on his facebook page, the owner of the agricultural company under investigation, the story was “commissioned” to the journalist in an attempt to refocus the public attention.

Nevertheless, it is thanks to the work of independent media that the public learned that the overly-expensive respirators do not meet the necessary standards for the intensive care units they were bought for and would endanger the lives of the most sever COVID-19 patients. There are allegations of other instances of malpractice and corruption in the country in relation to public procurement processes, but providing an exhaustive analysis on the issue is beyond the scope of this paper. Our intention here was to present some of the cases and underline how the supervisory role of free and independent media gains prominence in times of increased power of the executive branch.

67 Prosecutor's Office of BiH received an expertise within the case of "respirators", [available at: <http://www.tuzilastvobih.gov.ba/?id=4482&jezik=b>, (accessed on 23 May 2020 at 10.55)].

68 Maja Beker, Journalist who discovered the story of respirators: I'm not a heroine, [available at: <http://ba.n1info.com/Vijesti/a429951/Novinarka-koja-je-otkrila-pricu-o-respiratorima-Nisam-heroina.html>, (accessed 23 May 2020 at 11.17)].

Additionally, throughout the pandemic there have been questions of privileged access to healthcare. In Mostar, there was a case where a patient was allegedly hospitalized through private connections. The patient was COVID-19 infected, but did not go through any triage to access the institution, thus endangering all patients and medical staff of the hospital. The cantonal prosecutor's office opened an investigation on this situation.

Conclusion

We have monitored various human rights concerns arisen from the national response to the COVID-19 pandemic and the issues identified were presented in this paper. Overarchingly, lack of coordination proportional response, respect for human dignity and attention to the needs of the most vulnerable marred the government's response to the situation.

Fragmented authorities issuing orders independently without intra-state coordination created confusion for the citizens, especially those who live in one entity but enjoy their benefits in the other (health insurance for example) and created unjustified differential treatment among the citizens.

The distortions of the BiH system have been exacerbated by the restrictive measures and have had a disproportionate impact on specific groups, such as of returnees, who are mostly older persons. Experts have warned that the COVID-19 pandemic could increase corruption risks and, as BiH authorities were caught unprepared and ill-equipped to meet the need for protective equipment, tests, and ventilators, new opportunities for corruption and illegal actions arose as different levels of governments rushed to get the supplies.

The oversight role of the Ombudsman Institution, the media, and CSOs proved to be one of bonds which partly ensures a better work of the authorities, but it clearly is not enough and much better coordination and accountability is needed, as well as the inclusion of major number of citizens in a sort of civil supervision of work of the authorities.

It is very important in the overall situation that it was not possible to assess what were the bases for the restrictive measures introduced by the authorities during the pandemic, as there was no public information on the justification or decision-making process shared.

The golden rule is that when the acts restricting human rights are adopted, which are adopted in such situations, the population should be reasonably convinced why they should respect certain measures, why the measure is absolutely necessary, why human rights are limited, and not only to prescribe proper behavior, with the threat of punishment if someone does not comply with it.

Conclusion

One sentence, which reads that the measure is taken to prevent the spread of the COVID-19, should not be enough to explain the necessity of restrictions, and often the measures are explained with just one such sentence. Therefore, the authorities which adopted the measures had to explain them much better, but also, as soon as the opportunity appears, replace the measures with less stringent measures or abolish them altogether. If the time has not yet come for the restrictions on rights to be mitigated or abolished, then the authorities should also explain why the situation is such at the moment.

It is clear that certain measures should exist, which, after all, was stressed by the BiH Constitutional Court "considering the current situation and the fact that there is certainly a great public interest to introduce certain restrictions."⁶⁹ Even if the authorities did not take active care, i.e. did not take actions and react in a timely manner with certain measures, it would mean that they violate their positive obligation to protect other human rights. However, it is not clear why the government chose restrictive measures. Whether it is due to the fear of the fast spread of the virus, impossibility of hospitalizing a large number of citizens, lack of funds for treatment or something else, it is really difficult to presume it.

Measures implemented were fairly restrictive, proving to some extent efficient in containing the spread of the virus and fulfilling, again to some extent, the broad obligations to right to health in the country. However, these imposed limitations were apparently not based on scientific data, nor were less restrictive measures considered, and often the limitations were not time-bound, resulting in human rights violations. Authorities missed the opportunity to transform the mentioned BiH CC decision into a lesson learned. The measures that followed did not take into consideration the proportionality principle. The subsequent relaxation of measures, in fact, followed the same *modus operandi* of the limitations and as a result, mistrust increased towards the authorities of the general population. This in turn, may hamper citizens' respect of measures introduced in the future.

Certain problems also existed because an ordinary citizen often had not known where to find relevant information due to the overflow of "clickbait panic media" and groups on social networks, where superscience is promoted and trust in the information provided by the State was not at the highest possible level.

⁶⁹ *Case of Lejla Dragnić and A. B. - Decision on Admissibility and Merits*, [Constitutional Court of BiH, AP-1217/20].

The needs of PWDs have been totally neglected by the relevant authorities and resulted in a disproportionate impact on this specific group such as by affecting their healthcare and education access.

Additionally, during the pandemic the inequalities and marginalization of Roma were especially evident, because they were disabled to provide the bare necessities for their families.

A special problem in the overall situation regarding the pandemic in BiH is also the questionable legality and constitutionality of decisions made by the authorities at various levels, as well as the lack of limited time for individual decisions, which with exceeding the competences and disproportionate restriction of human rights enjoyment, represents a major legal and factual violation of laws and the constitution in BiH, as well as taking too much power by the State bodies to the detriment of citizens.

While each issue was of concern, those that have impacted the already vulnerable are the most dire and require continued monitoring, engagement, and response. With no end in sight for the COVID-19, situations can be expected to deteriorate further and the impact on vulnerable populations will only worsen.

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