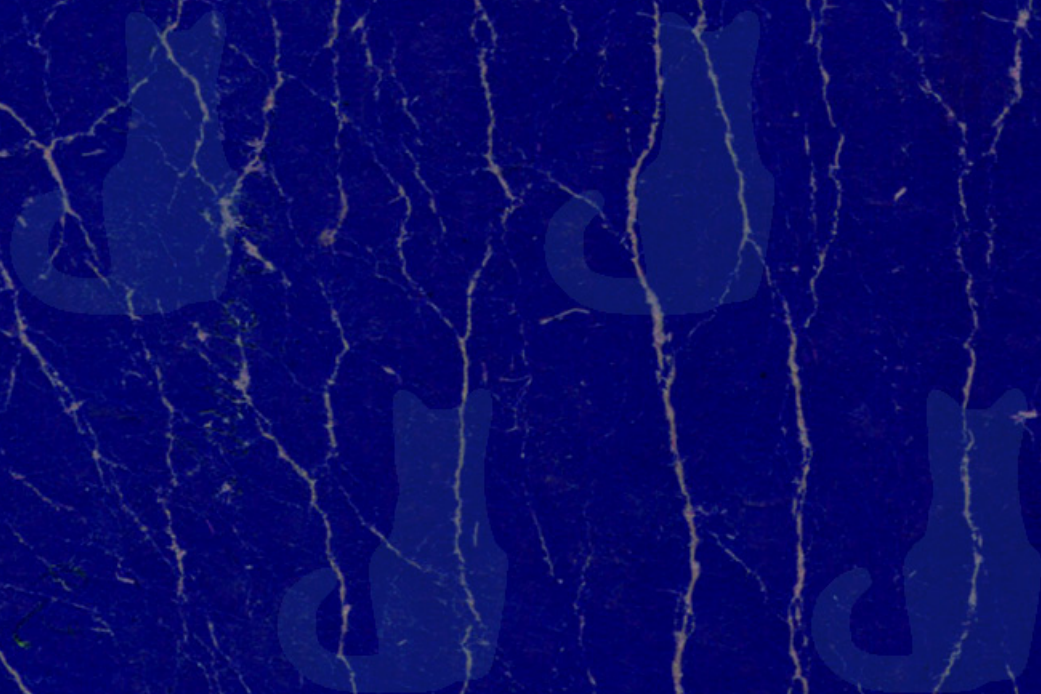


HUMAN RIGHTS IN SERBIA

January–June 2020



Series
Reports
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HUMAN RIGHTS IN SERBIA
January-June 2020
FOCUSING ON RESPECT FOR HUMAN RIGHTS
DURING THE STATE OF EMERGENCY

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Belgrade Centre for Human Rights
Belgrade, 2020

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Acronyms

- 2014-2019 Reports – BCHR 2014-2019 Human Rights in Serbia Reports
- AEAD – Act on the Election of Assembly Deputies
 - BCHR – Belgrade Centre for Human Rights
 - CC – Constitutional Court of the Republic of Serbia
 - CeSID – Centre for Free Elections and Democracy
 - CINS – Centre for Investigative Reporting of Serbia
 - CoE – Council of Europe
 - CPC – Criminal Procedure Code
 - EC – European Commission
 - ECHR – European Convention for the Protection of Human Rights and Fundamental Rights
 - EU – European Union
 - HJC – High Judicial Council
 - IJAS – Independent Journalists’ Association of Serbia
 - JAS – Journalists’ Association of Serbia
 - MDRI-S – Mental Disability Rights Initiative –Serbia
 - NPM – National Preventive Mechanism
 - ODIHR – OSCE Office for Democratic Institutions and Human Rights
 - PDPA – Personal Data Protection Act
 - PSG – Movement of Free Citizens
 - REC – Republican Election Commission
 - REM – Electronic Media Regulator
 - RTS – Radio Television of Serbia
 - RTV – Radio Television of Vojvodina
 - Serbian Constitution – Constitution of the Republic of Serbia
 - Sl. glasnik RS – Official Gazette of the Republic of Serbia
 - SNS – Serbian Progressive Party
 - SOC – Serbian Orthodox Church
 - SPC – State Prosecutorial Council
 - SPS – Socialist Party of Serbia
 - UN – United Nations
 - Venice Commission – CoE European Commission for Democracy through Law
 - YUCOM – Lawyers’ Committee for Human Rights

*

We hereby express our gratitude to all individuals involved in the preparation of this Report, who ensured that it comprise enough data and information relevant to a comprehensive analysis of the state of human rights in Serbiain first half of 2020, especially during the State of Emergency. This publication is the product of our team, comprising Lazar Stefanović, Snežana Lazarević, Vladica Ilić, Luka Mihajlović, Vesna Petrović, Dušan Pokuševski, Ivan Protić, Goran Sandić, Anja Stefanović, Milena Ančić, Bojan Stojanović, Aleksandar Marković, Ana Trifunović and Duška Tomanović.

I. DECISION ON THE PROCLAMATION OF THE STATE OF EMERGENCY – VIOLATION OF THE SERBIAN CONSTITUTION

1. Proclamation of the State of Emergency

The Serbian authorities proclaimed a state of emergency on 15 March 2020 to prevent the spread of the SARS-CoV-2 virus and its effects. The Decision on the Proclamation of the State of Emergency¹ was adopted by the Serbian President, National Assembly Speaker and Prime Minister. All measures derogating from the human and minority rights and freedoms enshrined in the Serbian Constitution were imposed by the executive authorities.² The Decision on the Proclamation of the State of Emergency was preceded by a Decision declaring COVID-19 caused by the SARS-CoV-2 virus a communicable disease, which enabled the Health Minister to issue, on 12 March 2020, the Order Prohibiting Assemblies in Indoor Public Spaces pursuant to Article 52 of the Act on the Protection of the Population from Communicable Diseases.

Article 200 (1 and 4) of the Constitution of the Republic of Serbia (hereinafter: Serbian Constitution)³ lays down that the National Assembly shall proclaim a state of emergency when the survival of the state or its citizens is threatened by a public emergency and allows the National Assembly to prescribe measures derogating from human and minority rights guaranteed by the Constitution during the state of emergency. Paragraph 2 of Article 200 of the Constitution limits the duration of the state of emergency to 90 days; upon the expiry of that period, the National Assembly may extend the validity of the decision proclaiming the state of emergency another 90 days. Under paragraph 3 of Article 200 of the Constitution, the National Assembly shall convene during the state of emergency without any special call for assembly and it may not be dissolved.

1 *Sl. glasnik RS*, 29/20.

2 Decisions imposing such measures were mainly adopted by the Government and co-signed by the President; some measures derogating from human rights were, however, imposed by ministerial decisions, in contravention of the Constitution (e.g. the Order Restricting and Prohibiting the Movement of Individuals in the Territory of the Republic of Serbia, *Sl. glasnik RS*, 34/20, 39/20, 40/20, 46/20 and 50/20).

3 *Sl. glasnik RS*, 98/06.

The authorities resorted to the constitutional exception regarding the state of emergency and imposition of measures derogating from human rights provided by Article 200(5) of the Constitution, which reads as follows: “When the National Assembly is not in a position to convene, the decision proclaiming the state of emergency shall be adopted by the President of the Republic together with the President of the National Assembly and the Prime Minister, under the same terms as by the National Assembly.” Article 200(6) of the Constitution also provides for a “reserve procedure” for the adoption of measures derogating from constitutionally guaranteed human and minority rights – “When the National Assembly is not in a position to convene, the measures which provide for derogation from human and minority rights may be prescribed by the Government, in a decree, with the President of the Republic as a co-signatory.”

The Constitution assigns the National Assembly the central role in running the country during a state of emergency. Article 200(8) on oversight of the executive authorities’ decisions adopted during a state of emergency reads as follows: “When the decision on the state of emergency has not been passed by the National Assembly, the National Assembly shall verify it within 48 hours from its passing, that is, as soon as it is in a position to convene. If the National Assembly does not verify this decision, it shall cease to be effective upon the end of the first session of the National Assembly held after the proclamation of the state of emergency.” Under paragraph 9 of Article 200, in the event “measures providing for derogation from human and minority rights have not been prescribed by the National Assembly, the Government shall be obliged to submit the decree on measures providing for derogation from human and minority rights to be verified by the National Assembly within 48 hours from its passing, that is, as soon as the National Assembly is in a position to convene. In other respects, the measures providing for derogation shall cease to be effective 24 hours prior to the beginning of the first session of the National Assembly held after the proclamation of the state of emergency.”

The relevant authorities are entitled to impose measures derogating from human and minority rights enshrined in the Constitution throughout the state of emergency. The measures adopted during the 2020 state of emergency impinged the most on the right to liberty and security of person, the freedom of movement, the freedom of assembly, the right to a fair trial, specific rights of defendants, the right to property and the freedom of entrepreneurship. However, the Constitution permits derogations from human and minority rights guaranteed by the Constitution only to the extent deemed necessary (Article 202(1), prohibits derogations from human rights resulting in discrimination (Article 202(2)), and enumerates the rights and freedoms that may not be derogated from under any circumstances (Article 202(4)). Furthermore, Article 202(3) of the Constitution lays down that measures providing for derogation shall cease to be effective when the state of emergency is lifted.

However, contrary to one’s expectations after reading the Constitution, the executive authorities – the Government and the President – rather than the legislature branch had the main say in proclaiming the state of emergency and imposing measures derogating from constitutionally guaranteed rights and obligations. The National

Assembly convened for the first time during the state of emergency on 28 April 2020 and confirmed the Decision on the Proclamation of the State of Emergency and all other regulations adopted during the state of emergency the following day.⁴ A week later, on 6 May 2020, the National Assembly abolished the state of emergency in Serbia and all the measures derogating from constitutionally guaranteed human and minority rights during the state of emergency ceased to be effective.⁵

On 6 May 2020, the National Assembly adopted an Act on the Validity of Decrees Adopted by the Government and Co-Signed by the President during the State of Emergency and Ratified by the National Assembly.⁶ Article 2 of the Act lists the decrees that are no longer valid, including the Decree on State of Emergency Measures that had restricted the greatest number of human rights. Article 3 lists the decrees to remain into force until the relevant laws are adopted. One of them is the Decree on Deadlines in Administrative Procedures during the State of Emergency, while the rest concern the economy.

2. Constitution without Protection – (Non-)Operation of the Constitutional Court during the State of Emergency

Article 166(1) of the Constitution lays down that the Constitutional Court shall be a state authority protecting constitutionality and legality, as well as human and minority rights and freedoms. In the context of protection of constitutionality during a state of emergency, the Constitutional Court's main duty is to rule on the compliance of laws and other general enactments with the Constitution, generally recognised rules of international law and ratified international treaties (Article 167(1)).

Given the way the state of emergency was proclaimed and the large number of regulations derogating from constitutionally guaranteed human and minority rights, which were adopted in a very short period of time, it comes as no surprise that 10 initiatives challenging the constitutionality of the Decision on the Proclamation of the State of Emergency and 41 initiatives challenging the constitutionality of other (general) enactments adopted since 15 March 2020 were filed with the Constitutional Court by 13 May 2020.⁷

The Constitutional Court's dormancy in the first half of 2020 was the most conspicuous as regards the initiatives challenging the constitutionality of the deci-

4 See: <https://europeanwesternbalkans.com/2020/04/30/the-national-assembly-of-serbia-confirmed-the-introduction-of-the-state-of-emergency/>.

5 See: <http://rs.n1info.com/English/NEWS/a596769/Serbian-parliament-lifts-state-of-emergency.html>.

6 *Sl. glasnik RS*, 65/20, available in Serbian at: <https://www.paragraf.rs/propisi/zakon-o-vazenju-uredaba-koje-je-vlada-donela-za-vreme-vanrednog-stanja-potvrda-skupstine.html>.

7 Constitutional Court's reply to BCHR's request for access to information of public importance.

sions and measures derogating from human and minority rights enshrined in the Constitution during the COVID-19 state of emergency. Sixty-seven days passed between the day the state of emergency was proclaimed and the day the Court first acted on them. In that period, the Constitutional Court publicly reacted only to allegations of its lethargy, claiming that it was “performing its duties during the state of emergency under a regime befitting the circumstances.”⁸ The Constitutional Court did not initiate any reviews of constitutionality or legality on its own motion during the state of emergency.

2.1. Constitutional Court Decision on Initiatives Challenging the Constitutionality of the Decision on the Proclamation of the State of Emergency

On 21 May 2020, the Constitutional Court dismissed as manifestly ill-founded a number of initiatives to review the constitutionality and legality of the Decision on the Proclamation of the State of Emergency.⁹ Its decision was criticised by eminent law professors, legal professionals and the Belgrade Centre for Human Rights.¹⁰

The Constitutional Court reviewed two issues in its decision: a) whether the requirements for the proclamation of the state of emergency had been fulfilled, and, b) whether the state of emergency had been proclaimed by the authority entitled to do so under the Constitution.

As per the first issue, the Constitutional Court held that the emergence of the communicable disease in the circumstances that existed at the time “could be considered an emergency significantly threatening the health of a large share of the population” and that the requirement for proclaiming the state of emergency – existence of a public emergency threatening the survival of the state or its citizens – had been fulfilled. The Constitutional Court took into account the prevalence of the disease in the world, the features and unknown cause of the disease, and “the fact that coronavirus cases had already been registered in the Republic of Serbia and that there was a tendency of the disease spreading at the time the decision to impose a state of emergency was taken.”

The submitters of initiatives to review the constitutionality and legality of the Decision claimed that it would have sufficed to proclaim an emergency situation, provided for by the Public Health Act,¹¹ the Act on the Protection of the Population

8 See the Constitutional Court’s press release, available in Serbian at: www.ustavni.sud.rs/page/view/156-102622/reagovanje.

9 CC decision No. IUo-42/2020. Available in Serbian at: www.ustavni.sud.rs/page/view/156-102626/obavestjenje.

10 See: <http://www.bgcentar.org.rs/bgcentar/eng-lat/constitutional-court-invalidates-parliaments-role-in-state-of-emergency-proclamation-procedure/>. See also the views of Law Professor Dr. Miodrag Jovanovic, available in Serbian at: <https://www.cepris.org/licni-stavovi/jovanovic-ustavni-sud-u-raljama-karlsmitovskih-pitanja/>.

11 *Sl. glasnik RS*, 15/16.

from Communicable Diseases¹² and the Act on *Disaster Risk Reduction and Emergency Management*¹³. However, the Constitutional Court held that the intensity of the threat posed by coronavirus required the introduction of a state of emergency (rather than an emergency situation), adding that the state of emergency provided the state with greater legal capacity to effectively neutralise the public emergency caused by the disease (entitled it to derogate from constitutionally guaranteed human rights and freedoms).

The Constitutional Court disregarded the fact that the Act on the Protection of the Population from Communicable Diseases already sets the degree of intensity of communicable diseases required to introduce an emergency situation – the emergence of a new or insufficiently known communicable disease that may threaten the health and lives of people and where there is an immediate risk of the massive transmission of a communicable disease” (Article 51(1)). Nor did the Court offer evidence that the coronavirus epidemic was of the gravity requiring the introduction of a state of emergency. As per the state’s legal capacity to suppress the epidemic by recourse to its powers under the Act on the Protection of the Population from Communicable Diseases, the Constitutional Court failed to explain why the emergency measures to protect the population from communicable diseases under this law – ban on assemblies in public places, restriction of movement in areas in which an emergency situation has been declared and travel restrictions¹⁴ – would have been insufficient.

The Constitutional Court also answered in the affirmative the question on whether the state of emergency had been proclaimed by the relevant authority. It noted that the National Assembly Speaker on 15 March 2020 notified the President and the Prime Minister that the National Assembly was unable to convene, wherefore the requirements were fulfilled for the proclamation of the state of emergency by the President, Prime Minister and National Assembly Speaker.

Before responding to this question, the Constitutional Court should have answered two other questions – who was entitled to conclude that the National Assembly was unable to convene and which requirements needed to be fulfilled to declare such an inability. The Constitutional Court, however, replied only to the first question.

Relying on the Constitution, the National Assembly Act and the National Assembly Rules of Procedure, the Constitutional Court found that it was up to the Speaker to autonomously conclude that the National Assembly was unable to convene. The Constitutional Court took into account the Speaker’s constitutional powers: to represent the National Assembly and to call and chair its sessions and Article 244(1(5)) of the National Assembly Rules of Procedure,¹⁵ which lays down that the Speaker shall notify the President and the Prime Minister that the National Assembly is unable to convene in case of a state of war or a state of emergency.

12 *Sl. glasnik RS*, 15/16 and 68/20.

13 *Sl. glasnik RS*, 87/18.

14 See Articles 51–53, Act on the Protection of the Population from Communicable Diseases.

15 *Sl. glasnik RS*, 52/10 and 13/11.

The Constitutional Court did not only disregard the fact that the provision entitles the National Assembly Speaker to *notify* the President and Prime Minister that the National Assembly is unable to convene in case of a state of emergency, rather than autonomously ascertain this inability; it also neglected to review the role of the National Assembly Collegium in situations like this one. This body, convened by the National Assembly Speaker to coordinate and consult on the work of the parliament, is comprised of the Deputy Speakers and all the Chief Whips and is tasked precisely with assisting the Speaker on all issues within their remit (Article 34).

The Constitutional Court instead attached excessive importance to the National Assembly Speaker, specifying it could not go into the factual issues in this case and that it lacked constitutional or any other legal criteria under which it could bring into question the Speaker's notification of the Assembly's inability to convene.

It may be concluded that the Constitutional Court weakened rather than consolidated the parliament's role in decisions on the proclamation of a state of emergency, did the opposite. Its view that a single MP is entitled to autonomously decide on the work or suspension of the legislative body has invalidated the parliament's role and brought into question the people's sovereignty exercised through their freely elected representatives.

2.2. Constitutional Court's Decisions on Initiatives Challenging the Constitutionality of General Enactments Derogating from Constitutionally Guaranteed Human and Minority Rights and Freedoms

The Serbian Government adopted a number of decrees with the force of law during the state of emergency. Some of them derogated from the human and minority rights enshrined in the Constitution. Forty-one initiatives disputing the constitutionality or legality of general enactments adopted during the state of emergency were filed with the Constitutional Court by 13 May 2020.¹⁶ The Constitutional Court did not launch the review of constitutionality or legality in response to any of the initiatives; nor did it dismiss them. Although all these general enactments ceased to be effective when the state of emergency was lifted, Article 64 of the Constitutional Court Act nevertheless entitles the Constitutional Court to review their constitutionality or legality in the event the consequences of their unconstitutionality or illegality have not been eliminated.¹⁷

The BCHR filed three initiatives with the Constitutional Court to review the constitutionality of the general enactments during the state of emergency.

In its first initiative, submitted on 25 March 2020, the BCHR asked the Constitutional Court to review the constitutionality of Article 2 of the Interior Minister's

16 Constitutional Court's reply to BCHR's request for access to information of public importance.

17 *Sl. glasnik RS*, 109/07, 99/11, 18/13 – CC decision, 102/15 and 40/15 – other law.

Order Restricting or Prohibiting the Movement of Individuals in the Territory of the Republic of Serbia¹⁸ and its compliance with the European Convention on Human Rights (ECHR), because it provided for dual (criminal and misdemeanour) punishment of individuals violating the Order.¹⁹

In its second initiative of 31 March 2020, the BCHR challenged the constitutionality of several provisions of the Decree on State of Emergency Measures²⁰ and the Order Restricting or Prohibiting the Movement of Individuals in the Territory of the Republic of Serbia²¹ since they delegated the authority to impose measures derogating from constitutionally guaranteed right to liberty and security and the freedom of movement to the Ministry of Internal Affairs (MIA), in contravention of the Constitution.²² Although the Government amended the Decree on State of Emergency Measures and the Decree on Misdemeanour Violations of the Interior Minister's Order Restricting and Prohibiting Movement of Individuals in the Territory of the Republic of Serbia²³ ten days later, the violation of the *ne bis in idem* principle remained in the amendments to the Decree on State of Emergency Measures, prompting the BCHR to file another initiative with the Constitutional Court for a review of its constitutionality on 21 April 2019.

After the state of emergency was lifted, the BCHR initiated with the Constitutional Court a review of the constitutionality and legality of the Order Restricting Movement on Roads Leading to Asylum and Reception Centre Facilities and Grounds.²⁴

As opposed to the large number of initiatives to review the constitutionality or legality of general enactments adopted during the state of emergency, no proceedings to assess constitutionality were instituted by state, provincial or local authorities, 25 MPs or on the motion of the Constitutional Court itself (under Article 168(1) of the Constitution).

18 *Sl. glasnik RS*, 39/20.

19 See: <http://www.bgcentar.org.rs/bgcentar/eng-lat/category/news-from-the-center/page/2/>. The text of the Order is available in Serbian at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/uredba/2020/39/2/reg>.

20 *Sl. glasnik RS*, 31/20, 36/20, 38/20, 39/20, 43/20, 47/20 and 49/20.

21 *Sl. glasnik RS*, 34/20, 39/20, 4/20, 46/20 and 50/20.

22 See: <http://www.bgcentar.org.rs/bgcentar/eng-lat/category/news-from-the-center/page/2/>.

23 *Sl. glasnik RS*, 53/20.

24 See: <http://www.bgcentar.org.rs/bgcentar/eng-lat/saopstenja/page/2/>.

II. REPUBLIC OF SERBIA AND THE INTERNATIONAL COMMUNITY

1. State of Emergency and Serbia's Obligations to International Organisations

Serbia is bound by almost all major international human rights treaties adopted under the auspices of the United Nations.²⁵ Serbia is also a member of the Council of Europe (CoE) and a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).²⁶

Serbia did not submit any reports on the implementation of international treaties to UN bodies in the first half of 2020. The Government and its Human and Minority Rights Office only prepared the state report on the implementation of the Convention on the Elimination of All Forms of Racial Discrimination. Due to the coronavirus epidemic, the Human and Minority Rights Office had to cancel the scheduled public hearing at which it was to have presented the Draft 6th to 9th Periodic Report to the expert public in Serbia.

The World Health Organization (WHO) proclaimed the COVID-19 pandemic in March 2020 and all UN bodies and organisations suspended their activities. The Human Rights Council suspended the review of state reports under the Universal Periodic Review. UN Committees followed suit.

The Serbian authorities proclaimed the state of emergency on 15 March 2020. The state of emergency was accompanied by the imposition of measures derogating from rights enshrined both in the Serbian Constitution and the ratified international treaties. This meant that Serbia, as a State Party to the International Covenant on Civil and Political Rights (ICCPR), was under the obligation to act in accordance with Article 4 of the ICCPR and to immediately inform the other States Parties to the ICCPR, through the intermediary of the UN Secretary-General, of the provisions from which it has derogated and of the reasons by which it was actuated. Un-

25 The only UN Convention Serbia has not ratified yet is the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Serbia signed the Convention back in 2004.

26 Act Ratifying the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. glasnik RS*, 9/03.

der this Article, States Parties may take measures derogating from their obligations under the ICCPR to the extent strictly required by the exigencies of the situation.

The UN Treaty Collection website,²⁷ on which notifications re international treaties are posted, does not include Serbia's notification of derogation from specific obligations under the ICCPR to the Secretary-General. Since such a notice has not been posted on the websites of the relevant Serbian authorities either, the BCHR filed a request for access to information of public importance to the Serbian Government and Ministry of Foreign Affairs. The MFA responded to the request, but only after the Commissioner for Access to Information of Public Importance intervened.

According to the document the MFA forwarded to the BCHR, Serbia notified the UN Secretary-General in *Nota verbale* No. 6509 of 6 April 2020 of the introduction of the state of emergency and derogation from specific ICCPR rights to the extent strictly required by the exigencies of the epidemiological situation and medical necessity.²⁸ The document Serbia sent to the UN Secretary-General does not fulfil either the formal or the substantive requirements prescribed by Article 4 of the ICCPR.

Namely, Article 4 subjects States Parties derogating from the ICCPR to the international regime of notification, which must comprise information on which rights they derogated from and why. In its General Comment No. 29, the UN Human Rights Committee stated that such notification was essential not only for the discharge of the Committee's functions, in particular in assessing whether the measures taken by the State party were strictly required by the exigencies of the situation, but also to permit other States parties to monitor compliance with the provisions of the Covenant.²⁹

Furthermore, the Committee emphasised that "the notification by States parties should include full information about the measures taken and a clear explanation of the reasons for them, with full documentation attached regarding their law." Serbia, however, merely notified the UN Secretary-General in its *Nota verbale* that it had introduced a state of emergency to prevent the spread of the SARS-CoV-2 virus, that the measures introduced in response to COVID-19 derogated from rights enshrined in the ICCPR, and that all Government decisions were published in the Official Gazette and were available on the Government and the Legal Information System websites.

27 United Nations Treaty Collection, available at: https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en.

28 The MFA forwarded the *Nota verbale* under Ref. No. 7723 on 14 May 2020 to the BCHR, after the Commissioner intervened on its behalf in response to its complaint. The *Nota verbale* is on file with the BCHR.

29 UN Human Rights Committee, General Comment No. 29, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%-2fAdd.11&Lang=en.

Serbia thus failed to list all the key elements enumerated in Article 4 of the ICCPR and General Comment No. 29. Serbia not only failed to list the specific rights it derogated from, but the reasons therefor as well. Furthermore, it did not attach the full domestic legal texts and merely referred to the Government and the Legal Information System websites.³⁰

As far as substantive requirements of Article 4 of the ICCPR are concerned, the Human Rights Committee said in its General Comment that the obligation to limit any derogations to those strictly required by the exigencies of the situation reflected the principle of proportionality and that the necessity and proportionality of each measure derogating from the obligations States Parties assumed by ratifying the ICCPR were of crucial importance to preclude unwarranted restrictions of rights. This Report includes numerous examples of derogations from rights, from the freedom of movement to the right to a fair trial, which bring into question whether such rigorous measures were strictly required to achieve the goal – to halt the spread of coronavirus, i.e. whether the same result could have been achieved by measures interfering less in civil rights.

Serbia had similar obligations to report derogations under Article 15 of the ECHR. On April 7 2020, Serbia forwarded a Nota verbale to the CoE Secretary-General notifying the CoE that it introduced a state of emergency on 15 March 2020 and derogated from specific ECHR rights.³¹ The notification is identical to the one sent to the UN Secretary-General and does not specify which rights Serbia derogated from or why.

2. Serbia and EU Accession

In early February 2020, the European Commission presented the new accession methodology, under which the talks will be organised within six clusters covering all 35 chapters. The methodology aims to speed up the talks and show whether or not the candidate countries are prepared for rapid changes.³² It provides for faster completion of the talks because it puts in place conditions for more dynamic alignment with the EU *acquis*. However, Serbia and Montenegro, which have already launched the accession talks, are not under the obligation to adopt the new methodology, because the EU is of the view that rules should not be changed mid-way through the process, but that these two countries are able to opt in if they wish.

30 The latter website (pravno-informacioni-sistem.rs) does not include English translations of the relevant decisions, while the Government website posted merely basic general information on the state of emergency measures in English (see, e.g. <https://www.srbija.gov.rs/vest/en/151917/several-decrees-adopted-governing-management-in-state-of-emergency.php>).

31 Available at: <https://rm.coe.int/09000016809e1d98>.

32 *Politika*, “What’s New in the EU’s Proposed Methodology,” 23 February 2020, available in Serbian at: <http://www.politika.rs/sr/clanak/448113/Pogledi/Sta-je-novo-u-predlozenoj-metodologiji-prosirenja-EU>,

The day after the new methodology was published, the European Enlargement Commissioner Olivér Várhelyi visited Serbia, met with Serbian officials and said that the EU should not forget the Western Balkans, emphasising that the citizens should feel the advantages of accelerated reforms if the countries of the region committed to the successful implementation of the priority reforms.³³

The Serbian authorities did not immediately take a view on this issue. The state of emergency was introduced soon after Várhelyi's visit and accession was not in the Government's focus. The state of emergency halted the process of alignment with European standards, which had publicly been qualified as slow even before 15 March; Serbia opened only 18 of the 35 chapters and closed only two chapters in the six years since it launched the accession talks.

Serbia was forced to revise its Action Plan on the Implementation of Chapter 23, which is crucial for establishing the rule of law and improvement of human rights and freedoms, due to the serious delays in the fulfilment of the set deadlines. The Ministry of Justice organised consultations on the revised Plan with the Chapter 23 Working Group of the National Convention on the EU (NKEU) in the latter half of February 2020. The Report on the second round of consultations forwarded to the Working Group in early June showed that around 45.4% of the Group's recommendations (over 150 of them) were not upheld. The Working Group expressed concern about the authorities' attitude towards its recommendations regarding the judiciary, claiming that the essence of the important proposals was distorted because they were incorporated partly or inadequately.³⁴ The Working Group also appealed to the Government not to adopt this document of strategic importance to EU accession before the parliamentary elections because its mandate had expired and it lacked full legitimacy.³⁵

Despite the slowdown in talks, Serbia has still been extended support through IPA funds. A contract on €138.5 million under IPA 2019 project funding was signed in early February 2020; €18 million were earmarked for the judiciary and the fight against corruption and organised crime.³⁶

33 *Blic*, "Várhelyi: Western Balkan Countries Should be Treated as Future Members," 10 February 2020, available in Serbian at: <https://www.blic.rs/vesti/politika/varheli-jemlje-zapadnog-balkana-tretirati-kao-buduce-clanice/cg61cnz>.

34 Most of the members' objections regarded the section of the Action Plan on the amendment of the Constitution and judicial laws; they insisted that the relevant parliamentary committee develop the new draft and ask the Venice Commission and other relevant CoE bodies to comment it. They also insisted on the adoption of a new war crimes prosecution strategy or the revision of the valid one.

35 The NKEU Working Group's press release of 5 June 2020 is available at: <http://en.yucom.org.rs/press-release-of-the-nceu-working-group-for-chapter-23-on-the-occasion-of-concluding-public-consultations-related-to-the-revision-of-the-action-plan-for-chapter-23/>.

36 Ministry of European Integration, "Joksimović: Serbia receives about EUR 200 million from IPA 2019," 7 February 2020, available at: <https://www.mei.gov.rs/eng/news/1159/189/335/details/j-joksimovic-serbia-receives-about-eur-200-million-from-ipa-2019/>.

The EU continued helping Serbia during the state of emergency. The EC pledged over €3.3 billion of EU financial support to the benefit of the Western Balkans' citizens. This package aims to address the immediate health and resulting humanitarian needs of the COVID-19 pandemic, as well as help with social and economic recovery. It includes **€750 million of Macro-Financial Assistance** and a **€1.7 billion package** of assistance from the **European Investment Bank**.

Serbian officials' sharp criticisms of EU's assistance in response to the crisis at the onset of the state of emergency elicited the following comment from Co-Chair of the European Council on Foreign Relations Carl Bildt: "I noted the fact that [the Serbian government] made the big splash, whatever, out of the fairly limited Chinese aid. President Vučić was there at the airport, and I see they have posters up in Belgrade saying, 'Thank you to China,' while I haven't seen any corresponding 'Thank you' for the far more substantial help [that came] from the European Union."³⁷

The Zagreb Declaration³⁸ issued after the EU-Western Balkans Summit in May 2020 expresses the EU's solidarity with its Western Balkans partners and its commitment to actively support their efforts to combat the coronavirus outbreak and reaffirms support to the WB countries' accession efforts. It emphasises the importance of the Prespa Agreement with Greece and the Treaty on Good-Neighbourly Relations with Bulgaria, welcomes the appointment of the EU Special Representative for the Belgrade-Priština Dialogue and stresses the importance of EU-WB cooperation in fighting against organised crime and tackling migration challenges.

2.1. European Commission's Non-paper

The Serbian media reported in mid-June 2020 that the European Commission prepared its fifth Non-paper on the state of play regarding chapters 23 and 24 for Serbia.³⁹

Given that progress in these two chapters is crucial for Serbia's headway in the accession talks, the EC's general assessment – that Serbia made progress in a number of areas while facing serious delays in others and that it needed to accelerate reforms in the key areas of judicial independence, the fight against corruption, media freedom,

37 *Radio Free Europe*, "Ex-Envoy Bildt Questions Serbia's and Hungary's Use of China Card amid Covid-19 Crisis," April 2 2020, available at: <https://www.rferl.org/a/ex-envoy-bildt-questions-serbia-and-hungary-use-of-china-card-amid-covid-19-crisis/30525795.html>.

38 European Council, Zagreb Declaration, 6 May 2020, available at: <https://www.consilium.europa.eu/media/43776/zagreb-declaration-en-06052020.pdf>.

39 N1, "EC: Serbia Making Progress in Many Areas but Also Lagging in Implementing Reforms," 11 June 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a608956/Non-pejper-Evropske-komisije-o-Srbiji.html>. The European Commission's.

the domestic handling of war crimes and the fight against organised crime – is discouraging. The EC also said that the COVID-19 pandemic created additional challenges in this area, while also contributing to certain objective delays in Serbia's work on its rule of law agenda.

The EC said that amendment of the constitutional provisions on judicial independence was still on hold and that the delay had repercussions on the drafting and adoption of the implementing legislation. It noted that the constitutional reform process needed to be continued in a transparent and inclusive manner. The need to consistently implement the reforms to ensure judicial independence is also corroborated by the EC's assessment that Government officials, some at the highest level, as well as members of parliament, continued to comment publicly on a regular basis on ongoing investigations or court proceedings, or on individual judges and prosecutors and that articles in tabloid newspapers targeted and sought to discredit members of the judiciary.

As per the fight against corruption, the EC observed serious delays in the adoption of amendments to the Act on the Financing of Political Activities to ensure its full compliance with ODIHR recommendations and in the adoption of amendments to the Free Access to Information of Public Importance Act. On the other hand, the EC noted the adoption of the new Act on Origin of Property, the implementation of which "needs to be non-discriminatory and not susceptible to corruption". It underlined that specific results have been achieved in the prosecution of corruption, but that the number of high-profile convictions fell in 2019 compared to 2018 and 2017. The EC said that the introduction of the special departments for combating corruption in the Higher Public Prosecution Services was starting to yield results and that the number of first instance convictions, following prosecution by the special departments, was increasing, but that impact on high-level corruption cases was not yet tangible.⁴⁰

As per fundamental rights, the EC said that the adoption of legislation on the Ombudsman, anti-discrimination, gender equality, and juvenile offenders was seriously delayed and that the media situation remained a concern.⁴¹

Notwithstanding the conclusions in the Non-paper about the halt in reforms in many areas that have to be implemented if Serbia is to make headway towards embracing European standards, Serbia's EU Integration Minister Jadranka Joksimović said that she was convinced that the EU would agree to open talks on at least one of the five chapters Serbia was prepared for. Her expectations, however, did not materialise.

40 European Commission, Non-paper on the state of play regarding chapters 23 and 24 for Serbia, June 2020, available at: https://www.mei.gov.rs/upload/documents/eu_dokumenta/Non_paper_Ch_23_24_June_2020.pdf.

41 More in Chapter IV.

3. Assessments of Democratic Processes and Freedoms in Serbia

In addition to the EC, which regularly prepares reports on Serbia's progress in EU accession, the situation in Serbia has also been monitored by other international organisations and institutions, which have been assessing the degree of democracy, the reforms and the human rights situation in all the countries in the world. Serbia's ranking in these reports has been slipping for years now.

In its Freedom in the World 2020 Report, Freedom House ranked Serbia among the 30 or so countries that registered the greatest decline in freedoms in the past decade.⁴² Serbia now ranks in the category of hybrid regimes, including countries in which elections are held regularly but the ruling parties enjoy substantial and undeserved advantages or where there are independent media but they are under major pressure from and targeted by government officials or individual interest groups.⁴³

This report did not prompt introspection on the part of the Serbian Government, Prime Minister Ana Brnabić sent an 18-page letter to Freedom House President Michael Abramowitz including a detailed analysis of the report and refuting claims of Serbia's democratic regression; she said that the data did not coincide with the results of other internationally recognised democracy indices, that the allegations were unsubstantiated and groundless, and that the report gave a one-sided and partial assessment of the reality.⁴⁴ Abramowitz dismissed the accusations saying that Freedom House has for years been successfully applying its tried and tested methodology.⁴⁵

A group of 21 Members of the European Parliament (MEPs) alerted to the situation in Serbia in their letter to Enlargement Commissioner Olivér Várhelyi, in which they warned of the "extremely concerning" situation regarding respect for constitutional and human rights in Serbia⁴⁶ and said that the government "wanted

42 *Freedom House*, *Freedom in the World 2020: A Leaderless Struggle for Democracy*, March 2020, available at: <https://freedomhouse.org/report/freedom-world/2020/leaderless-struggle-democracy>.

43 *BIRN*, "Brnabić Says Freedom House Report is "Biased" Against Serbia," 15 May 2020, available at: <https://balkaninsight.com/2020/05/15/brnabic-says-freedom-house-report-is-biased-against-serbia/>.

44 Serbian Government, Prime Minister Brnabić's letter to Freedom House, 13 May 2020, available at: <https://media.srbija.gov.rs/medeng/documents/freedom-house-nations-in-transit2020-analysis130520.pdf>.

45 *Voice of America*, "Freedom House Stands by Report Conclusions on Serbia," 19 May 2020, available in Serbian at: <https://www.glasamerike.net/a/fridom-haus-izvestaj-srbija-odgovor/5426179.html>.

46 *European Western Balkans*, "MEPs Warn Várhelyi of Serious Situation in Serbia in Regard to Human Rights," 16 April 2020, available at: <https://europeanwesternbalkans.com/2020/04/16/meps-warn-varhelyi-of-serious-situation-in-serbia-in-regard-to-human-rights/>.

full control over the press, in order to broadcast only filtered, mostly fake information and defamation against the European Union". The signatories asked Varhelyi whether he monitored the extremely serious developments in Serbia and anti-EU rhetoric and what he thought about it, and urged him to recommend political steps that the European Commission could make with regard to the EU membership prospects of Serbia in case its government refused to revoke its repressive policies and to fully honour common European values.⁴⁷

⁴⁷ *European Western Balkans*, "Serbian Authorities' Reaction to MEPs' Letter Resembles pre-1989 Regimes," 27 April 2020, available in Serbian at: <https://europeanwesternbalkans.rs/reakcija-srpskih-vlasti-na-pismo-evropskih-poslanika-podseca-na-rezime-pre-1989/>.

III. RULE OF LAW AND SEPARATION OF POWERS

Over three years have passed since the launch of the constitutional reform, which was to have improved the status of the judiciary and ensured its independence from the legislative and, especially, the executive branches of government. The Chapter 23 Action Plan envisaged the completion of the process in 2017. A debate⁴⁸ on the draft amendments to the Serbian Constitution, drafted by the Ministry of Justice (which is not authorised to initiate the amendment of the Constitution), lasted from March 2017 to December 2018, when the Serbian Government forwarded the draft constitutional amendments to the National Assembly. The National Assembly did not initiate the constitutional amendment procedure until mid-2020.⁴⁹ Guarantees of judicial independence are not in place and the operations of the authorities securing them indicate that the independence of the judiciary, as a branch of government, is increasingly deteriorating.

1. Long-Standing Uncertainties about the Judiciary's Constitutional Status

1.1. Judicial Independence

Judicial independence is enshrined in the Serbian Constitution. In its 2007 Opinion on the Serbian Constitution, the Venice Commission said that some of its

48 Constitutional law professors and experts and representatives of judges, prosecutors and the civil sector openly voiced their dissatisfaction with the proposed amendments during the debate, warning that they did not improve the status of the judiciary and that some of the draft amendments even brought into question the courts' independence secured by the valid constitutional provisions. See more in the *2017 Report*, I.3.2, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2018/03/Human-rights-in-Serbia-2017.pdf> and the *2018 Report*, III.1.2, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Human-Rights-in-Serbia-2018.pdf>.

49 Under the Preliminary Draft of the Revised Chapter 23 Action Plan, Activity 1.1.1.1., entitled Implementation of the Constitutional Amendment Procedure, was to have been completed in the second and third quarters of 2019. In its Report on Public Consultations with Members of the Chapter 23 Working Group of the National Convention on the European Union, the Serbian Government said that the last quarter of 2021 was the new deadline for the implementation of this activity. The Preliminary Draft of the Revised Chapter 23 Action Plan and the Report on Public Consultations are available in Serbian at: <https://www.mpravde.gov.rs/tekst/26437/nacr-revidiranog-akcionog-plana-za-poglavlje-23.php> and <https://www.mpravde.gov.rs/tekst/30034/izvestaj-o-javnim-konsultacijama-sa-nkeu-pg-23-05062020.php>.

provisions were a “recipe for the politicisation of the judiciary”. The Venice Commission also noted that specific provisions left the impression of excessive influence of the legislative and executive branches on the judiciary. The various judicial reforms that ensued were unsuccessful.

Under the Constitution, first-time judges are nominated by the High Judicial Council (HJC) and elected by the National Assembly, while permanent judges are appointed by the HJC.⁵⁰ However, the degree in which the judiciary depended on the legislative authorities became apparent already at the beginning of 2020. Namely, in October 2019, the HJC forwarded to the National Assembly the list of its nominations of 74 Basic and Misdemeanour Court Presidents after launching the process by advertising the vacancies in March 2019. These Courts have been managed by Acting Presidents throughout this period and even longer. At the proposal of the Serbian Progressive Party (SNS) Chief Whip Aleksandar Martinović, the parliamentary Committee on the Judiciary, State Administration and Local Self-Governments unanimously decided at its session in February 2020 to strike the HJC nominations off the agenda; the Committee recommended that the HJC withdraw the nominations and re-advertise the vacancies.⁵¹

The Judges’ Association of Serbia (JAS) criticised the Committee’s decision, specifying that the objections concerned only a small number of nominees, that each of them individually needed to be discussed and elected, and that a large number of courts would still be managed by Acting Presidents if the HJC complied with the Committee’s recommendation.

The Supreme Court President and *ex officio* HJC Chairman Dragomir Milojević qualified the Committee’s move as unprecedented. “There’s no reason for seventy plus colleagues to suffer because one of them does not pass muster. We don’t have any information that any judges are members of political parties. Whoever has such information should report it to the HJC,” said Milojević.⁵² At its session on 25 February 2020, the HJC discussed the Committee’s recommendation, decided to withdraw the nominations of just four candidates and notified the National Assembly thereof.

The MPs’ views of judges is illustrated by their debate during the extraordinary parliament session that had only one item on the agenda: election of first-time judges. The MPs discussed the nominees for the posts of court president although

50 Articles 146 and 147 of the Serbian Constitution.

51 Martinović explained that one of the nominees had won only one vote in her court, her own; that a 2016 strictly confidential crime police report he had insight in stated that another nominee and her husband had met in restaurants with intermediaries of criminally prosecuted individuals and took money from them; and that one nominee was a member of a Democratic Party committee. He claimed that there were other examples like these, wherefore it was expedient to withdraw all the nominations.

52 *Danas*, “HJC Will Reply to the Parliament after the Holidays,” 12 February 2020, available in Serbian at: <https://www.danas.rs/drustvo/odgovor-vss-parlamentu-posle-praznika/>.

the election of court presidents was not on the agenda; specific court and prosecutorial cases; the work of judges who had not applied for the vacancies; and personal relations between MPs and the judiciary. They also criticised the work of the HJC and the State Prosecutorial Council (SPC). The majority of the MPs voted for the Committee proposal to put off the election of the court presidents, which was not on the agenda either. The MP, who had made the proposal at the Committee session, elaborated it again in detail at the plenary session.

Serbian President Aleksandar Vučić did not refrain from berating the judiciary either. He criticised and commented the courts' and prosecutors' actions in specific cases, thus gravely jeopardising the constitutional order and the separation of powers. For instance, during his appearance on *TV Prva*, he said he had had "enough of judges and prosecutors" and that "I can't dismiss them at the moment because both you and Europe would scream blue murder."⁵³

During his appearance on *TV Pink's* news, Vučić condemned the prosecutors for discontinuing an investigation due to lack of evidence. He simultaneously violated the presumption of innocence of the released suspect, Filip Korać, whom he qualified as "the most notorious and dangerous criminal".⁵⁴ The President clearly is not authorised to comment an active case; the investigation against the suspect had been discontinued but the deadline for challenging the decision had not expired yet. All comments of the case amounted to direct pressure on the appellate prosecutor who was to rule on any complaints of the first-instance prosecutor's decision.

A statement by Justice Ministry State Secretary Radomir Ilić in January 2020 provoked much public concern and comment.⁵⁵ During his appearance on *TV Prva*, he said that the Constitution needed to be amended to ensure external oversight of the judiciary, because the courts and prosecution services have become "an irresponsible branch of government" and "closed systems looking solely after themselves". He suggested that President Vučić appoint judges and said that there was a lot of hubbaloob about interference in judicial independence.⁵⁶ Ilić's statement demonstrates that some representatives of the executive, even in the Justice Ministry, obviously believe that the safeguards of judicial independence need to be diminished.

53 RTV, "Serbian President: What happens when it is confirmed that my brother has nothing to do with Jovanjica?" 17 January 2020, available in Serbian at: https://www.rtv.rs/sr_lat/drustvo/predsednik-potvrdice-se-da-moj-brat-nema-veze-s-jovanjicom-i-sta-onda_1085180.html.

54 *TV Pink News*, 14 January 2020. YUCOM and BCHR press release: "President Undermining Prosecutorial Autonomy and Public Trust in Judicial Institutions," 15 January 2020, available in Serbian at: <http://www.yucom.org.rs/predsednik-urusava-samostalnost-tuzilastva-i-poverenje-gradana-u-institucije-pravosuda/>.

55 The BCHR's press release in response to the State Secretary's statement is available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/topmost-state-officials-statements-are-in-direct-violation-of-the-principles-of-the-rule-of-law-separation-of-powers-and-the-independence-of-the-judiciary/>.

56 See more in Serbian at: <https://www.slobodnaevropa.org/a/vucic-sudije-tuzioci-izbor/30387739.html>.

Similar allegations were made by a number of MPs during the 23rd extraordinary parliamentary session held on 12/13 February 2020. They said that the old system should be restored, that the HJC should be abolished and disbanded, and that judges should be appointed by the Justice Minister or the President. They claimed that prosecutors and judges elected themselves, that some of them were party members, foreign mercenaries and traitors.⁵⁷ The growing sentiments against judicial independence in both the executive and legislative branches give rise to fears that the constitutional amendments will result in their even greater influence on the judiciary.

The HJC condemned such conduct by state officials, members of the executive and legislative authorities. In its statement issued in late January, the HJC emphasised that all state authorities and officials were under the obligation to maintain trust in the independence and impartiality of judges and courts both in word and deed, and that they were prohibited from abusing their public offices and public appearances to influence the course and outcome of court proceedings. The HJC stressed that it was inadmissible to publicly declare anyone guilty or innocent before the court delivered its final decision, or to publicly criticise judges for the legal views they expressed in final court decisions.⁵⁸

1.2. Equality before the Court and Fair Trials

1.2.1. Public Character of Court Hearings

The Constitution guarantees the public character of court hearings (Art. 32), but it does not explicitly guarantee the public pronouncement of court judgments. The Constitution lists the instances in which the public may be excluded from all or part of the court proceedings in accordance with the law.⁵⁹ All procedural laws lay down that rulings excluding the public must be reasoned, made public, explain why the court departed from the general rule on publicity of hearings and satisfy the proportionality requirement.

Two days after the state of emergency was proclaimed, on 17 March 2020, the Justice Ministry issued recommendations on the homebased work of judges and court staff wherever feasible. It recommended that the courts rule on criminal cases in which pre-trial detention has been ordered or was requested, cases against juvenile offenders, cases in which minors were victims, domestic violence cases, cases in which the statutes of limitations were about to expire, etc. As per civil cases, the

57 The video recording of the session is available at: http://www.parlament.gov.rs/Dvadeset_tre%C4%87e_vanredno_zasedanje_Narodne_skup%C5%A1tine_Republike_Srbije_u_Jedanaestom_sazivu.38654.941.html.

58 CEPRIS, "HJC Condemns Conduct of State Officials," 28 January 2020, available in Serbian at: <https://www.cepris.org/reakcije/vss-osudio-ponasanje-drzavnih-funkcionera/>.

59 To protect national security, public order and morals in a democratic society, the interests of minors or the privacy of parties to the proceedings.

Ministry recommended the adjournment of the hearings, with the exception of cases that were urgent under the law, proceedings concerning legal and international legal aid in cases involving the legalisation of documents, bankruptcy and reorganisation cases, decisions on motions to ban the distribution of the press and dissemination of information by the media, paternity and maternity disputes, and cases of discrimination and harassment at work. The Ministry issued similar recommendations with respect to misdemeanour proceedings.

The HJC issued a Conclusion elaborating paragraphs 6 and 7 of the Justice Ministry's Recommendations, specifying which trials were to be conducted and which were to be adjourned during the state of emergency.

On 26 March 2020, the Justice Ministry issued a recommendation to courts⁶⁰ to organise video link trials of individuals who allegedly violated the self-isolation measures in order to protect all the participants in the proceedings, and to the courts' IT staff to put in place all the technical requirements for such trials. The first judgment after such a trial was delivered already on 27 March 2020, by the Dimitrograd Basic Court, which convicted the defendant to the maximum sentence – three years' imprisonment.⁶¹

The public character of court hearings is an integral part of the right to a fair trial under Article 6 of the ECHR and Article 32 of the Serbian Constitution. Paragraph 4 of the Article 202 of the Constitution, which provides for derogations from human and minority rights during a state of war or a state of emergency, explicitly prohibits derogation from the rights enshrined in Article 32 of the Constitution. Hence, the Justice Ministry clearly had no legal grounds to issue a memo restricting the directness principle and, in particular, the public character of trials, especially since the Criminal Procedure Code (CPC) does not provide for conducting first-instance proceedings by video and audio link.

The Serbian, Vojvodina and Belgrade Bar Associations issued press releases alerting that such proceedings violated human rights.⁶² Interestingly, the Protector of Citizens also spoke out against such trials on 31 March 2020 and noted that the Justice Ministry needed to provide the defendants and their counsels with the possibility of conferring in private in case of so-called Skype trials as well.⁶³

60 *Danas*, "Ministry of Justice: Video Link Trials of Individuals Who Violated the Self-Isolation Measures," 26 March 2020, available in Serbian at: <https://www.danas.rs/drustvo/ministarstvo-pravde-sudjenja-preko-video-linka-za-lica-koja-su-prekrasila-mere-samoizolacije/>.

61 *NI*, "First Convictions for Violating Self-Isolation," 27 March 2020. Available in Serbian at: <http://rs.n1info.com/Vesti/a582637/Prve-presude-zbog-kršenja-samoizolacije.html>.

62 *NI*, "Serbian Bar Association against Skype Trials," 30 March 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a583657/Advokatska-komora-Srbije-protiv-sudjenja-putem-Skajpa.html>.

63 *RTS*, "Protector of Citizens Reminds of the Right to a Fair Trial," 1 April 2020, available in Serbian at: <https://www.rts.rs/page/stories/sr/story/9/politika/3909023/korona-virus-zastitnik-gradjana-sudjenje-.html>.

Although Skype trials restrict the right to a fair trial, which is impermissible under the Serbian Constitution, it was only on 1 April 2020 that the Government adopted (and the President co-signed) the Decree on the Participation of Defendants in the Main Hearings in Criminal Proceedings during the State of Emergency providing for such trials and derogating from specific human and minority rights.⁶⁴

The courts were obviously not entitled to hold Skype trials until this Decree was adopted. The Decree's compliance with Article 202(4) of the Constitution is yet to be established. Furthermore, the courts will in all likelihood deal with complaints of violations of the right to a fair trial, especially the public character of trials, since quite a few such trials were conducted. On 30 March 2020, the Police Director said that criminal reports had been filed against 678 people who have allegedly violated the self-isolation measures and that 123 had been detained on remand.⁶⁵

Given the above decrees, conclusions, recommendations and court practices during the state of emergency, the public character of trials and the directness principle obviously had not been complied with also with respect to the availability of information on the trial schedules, the judges assigned the cases and the number of cases the courts heard; this may be understandable but it is not justifiable, since the public character of trials is one of the main safeguards of democracy and an important principle of the right to a fair trial.

1.2.2. Case Law Harmonisation

Divergent case law violates the constitutional principle under which everyone shall be equal before the law. Departures from case law are possible and normal, but they cannot be of such proportions so as to result in opposite results on identical or nearly identical facts. Therefore, courts have to deliver thoroughly reasoned judgments in every single case and thus provide the parties with the right to reasoned court decisions.

The state of emergency Skype trials, during which the courts did not publicly pronounce the reasons for their judgments, gave rise to public perceptions of hay-wire case law, since the courts handed down different penalties for the same crimes. These offences included, notably: violations of the measures restricting and prohibiting movement and banning assemblies in indoor and outdoor public spaces, and non-compliance with health regulations during the epidemic.

64 *Sl. glasnik RS*, 49/20.

65 The Belgrade-based NGO Lawyers' Committee for Human Rights (YUCOM) tested the fulfilment of the fair trial standards and the principle regarding the public character of trials. It wrote to a number of courts asking them to allow it to monitor the trials. YUCOM's findings are available in its publication "HUMAN RIGHTS AND COVID-19. Analysis of the changes in legal framework during a state of emergency and impact on enjoying human rights, The Right to a Fair Trial" available at: <http://en.yucom.org.rs/wp-content/uploads/2020/05/HUMAN-RIGHTS-AND-COVID-The-right-to-a-fair-trial.pdf>.

Information about the number of delivered judgments and the imposed penalties published by numerous media indicates that the case law was extremely disparate. Namely, some defendants were handed down the harshest penalty – three years’ imprisonment – for not complying with the order restricting and prohibiting movement, while others were only referred to home imprisonment. Hence the impression that the courts’ case law on the same misdemeanours and crimes differed with respect to various categories of people. Courts delivering judgments not specifying why they pronounced a specific penalty for a specific crime or misdemeanour are in violation of the right to a fair trial.

1.2.3. Judicial Efficiency and Duration of Proceedings

The state of emergency measures have evidently impinged on the duration of proceedings and judicial efficiency. The courts complied with the Justice Ministry’s recommendations and the HJC conclusion and adjourned most of the hearings *sine die*. New hearings have not been scheduled, with the exception of precisely specified urgent proceedings. Courts unable to fulfil all the standards required to ensure the safety of all parties to the proceedings have neither been scheduling nor holding trials.

1.2.4. Expiry of the Statute of Limitations

The state of emergency precluded public access to courts and trials, which might also result in an increase in the number of cases closed as out of time. The Serbian Government thus adopted a Decree on Deadlines in Court Proceedings during the State of Emergency, effectively suspending the running of the statute of limitations in most cases.

The Justice Ministry recommended to the courts and prosecution services to act on criminal cases where there was a risk of expiry of the statute of limitations. The HJC specified in its Conclusion that such cases fell in the category of first-instance cases that could not be suspended in order to prevent the risk of the expiry of the statute of limitations due to the introduction of the state of emergency.

Both the Criminal Procedure Code and the Misdemeanour Act obligate the court to compensate the defendants’ costs in the event the proceedings against them are discontinued as out of time. Proceedings conducted during the state of emergency may become out of time or be discontinued – the defendants will, of course, be compensated from the budget.

IV. MEDIA FREEDOMS IN SERBIA

1. Assessments of the Media Situation

The media situation in Serbia deteriorated further in 2020, a trend present since 2012. The number of attacks and pressures on reporters continued increasing, as the authorities stepped up their rhetoric against impartial outlets. The authorities continued funding pro-government media although most complaints of violations of the Press Code of Conduct, the law and ethical principles were filed against them.

In its Non-paper on the state of play regarding chapters 23 and 24 (justice and human rights), which was published on 11 June 2020, the European Commission said that the media situation needed to improve. It noted that threats and violence against journalists remained a concern and that the overall environment for the exercise of freedom of expression without hindrance needed to be further strengthened. The EC went on to say that “[A]n unbalanced representation by public service broadcasters of the plurality of political views was observed” in the first half of the year. The Non-paper also said that the independence of the Electronic Media Regulator (REM) needed to be strengthened to enable it to efficiently safeguard media pluralism. The EC said that political and economic influence over the media continued to be a source of concern.⁶⁶

In their letter to Enlargement Commissioner Olivér Várhelyi, a group of European Parliament MEPs, including Tanja Fajon, who chairs the EP Delegation to EU-Serbia Stabilisation and Association Parliamentary Committee, said that the Serbian Government wanted full control of the press. Fajon said that the EU was particularly concerned by the hate speech and fake news in Serbia, especially when coming from the ruling party and the key media.”⁶⁷

Similar assessments were made by numerous international organisations monitoring the media situation and freedom of expression in the world. Serbia slid three places and now ranks 93rd on the 2020 World Press Freedom Index of the Re-

66 *Danas*, “New European Commission Report: Violence against Journalists Continues,” 15 June 2020, available in Serbian at: <https://www.danas.rs/drustvo/novi-izvestaj-evropske-komisi-je-nastavlja-se-nasilje-nad-novinarima/>.

67 JAS, “ENEX Conference on Media Freedoms: EU Not Seeing Expected Headway in Serbia,” 7 March 2020, available in Serbian at: <http://www.uns.org.rs/sr/desk/vesti-iz-medija/94953/konferencija-enex-o-slobodi-medija-eu-ne-vidi-ocekivani-pomak-u-srbiji.html>.

porters without Borders. This organisation qualified the situation in Serbia as “worrying” and concluded that “Serbia has become a country where it is often dangerous to be a journalist and where fake news is gaining in visibility and popularity at an alarming rate.”⁶⁸

Serbia dropped 31 places on the World Press Freedom Index since 2016. The authorities’ attitude towards these findings is, however, surprising: the Ministry of Culture and Information State Secretary Aleksandar Gajović qualified some of the arguments in the report as “cynical”. The Ministry should thoroughly review the reports of relevant international organisations, the findings of which are monitored and used by many international institutions, and make serious efforts to improve the situation in the media. Instead, the State Secretary said that this report and the Freedom House 2020 Report were politicised and that “Reporters without Borders are unfair or jealous of this Government’s results,” and that it was “unfair to mention media freedoms now, during this huge fight (against COVID-19), because Serbia is in a state of emergency, not in an ordinary state.”⁶⁹

Sweden-based Civil Rights Defenders (CRD) came to a similar conclusion about the media situation in Serbia. In its Internet Freedoms in the Western Balkan Region Report, it said that technical attacks against online media outlets in Serbia were rather frequent and that violations included: distributed denial of service (DDoS) attacks, unauthorised access, unauthorised alterations of content, malware injection, etc., and that the targets were often media organisations critical of the Government’s actions.⁷⁰

The Serbian authorities dismissed such allegations, claiming that the media situation was now better than in 2011 and that political motives and pressures were behind the foreign reports. For instance, during a panel debate on media involvement in the election process organised by the Norwegian Embassy in March 2020, Serbian Prime Minister Ana Brnabić said that there were media in Serbia that were critical of the government; she cited the following positive steps: the results achieved by the Commission charged with investigating assassinations of journalists, the establishment of the parliamentary committee tasked with monitoring media conduct during the election campaign, the election of five REM members and the adoption of the Media Strategy.⁷¹

The executive authorities’ attitude toward the media is demonstrated by development of the 2020–2025 Media Strategy. This Strategy was adopted by the Gov-

68 *Danas*, “Serbia Drops to 93rd Place on Reporters without Borders Index,” 21 April 2020, available in Serbian at: <https://www.danas.rs/drustvo/srbija-pala-na-93-mesto-na-rang-listi-reportera-bez-granica/>. The Reporters without Borders report is available at: <https://rsf.org/en/serbia>.

69 *Danas*, “Increasing Pressures on Journalists in Serbia,” 22 April 2020, available in Serbian at: <https://www.danas.rs/drustvo/u-srbiji-sve-veci-pritisci-na-novinare/>.

70 IJAS, “CRD Research: Western Balkan Governments Undermining the Freedom of Expression,” 12 April 2020, available in Serbian at: <http://www.nuns.rs/info/news/47765/istrazivanje-crd-vlade-zapadnog-balkana-ugrozavaju-pravo-na-slobodu-izrazavanja.html>. The CRD Report is available at: <https://crd.org/2020/04/09/internet-freedoms-in-the-western-balkan-region-report-released/>.

71 *Danas*, “Brnabić: Situation in Media Better Today than in 2011,” 9 March 2020, available in Serbian at: <https://www.danas.rs/drustvo/brnabic-situacija-u-medijima-bolja-nego-2011/>.

ernment on 30 January 2020 after almost four years of work, innumerable interruptions and amendments to the text, and clashes with press associations.⁷² After its adoption, Brnabić said that the Action Plan for its implementation would be adopted by 16 May and that she was proud that the Working Group comprised nine representatives of press associations and nine representatives of the state.⁷³ The Action Plan was not adopted by the end of the reporting period.

2. State of Emergency and the Freedom of Expression

The continuous and growing problems between the government and the media loyal to it, on the one hand, and the outlets critical of the authorities, on the other, escalated during the state of emergency proclaimed in response to the COVID-19 epidemic, although one would have expected them to intensively work in concert and provide prompt and accurate information in the service of public interest.

Article 46 of the Serbian Constitution guarantees the right to freedom of opinion and expression, which includes the right to seek, receive and impart ideas and information. The Constitution allows restrictions of the freedom of expression *by the law* in order to protect the rights and reputation of others, maintain the authority and impartiality of the judiciary and protect public health, morals of a democratic society and the national security of the Republic of Serbia.

Article 50 of the Constitution on the freedom of the media lays down in paragraph 3 that there shall be no censorship in Serbia. Namely, exclusively the relevant courts may prevent the dissemination of information via media “only when this is necessary in a democratic society to prevent inciting to violent overthrow of the system established by the Constitution or to prevent violation of territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence, or to prevent advocacy of racial, ethnic or religious hatred enticing discrimination, hostility or violence.”

The right to be informed is governed by Article 51 of the Constitution, under which everyone is entitled to be informed of issues of public importance accurately, thoroughly and promptly and the media are under the obligation to respect this right. This Article also entitles everyone to access information kept by state authorities and organisations vested with public powers, in accordance with the law.

During the state of emergency, the Serbian Government enacted a number of decrees imposing various bans and measures. Some of these decisions directly violated the right to be informed. Pressures on media especially increased when the Government on 28 March 2020 adopted a Conclusion allowing only the Prime

72 More on the development of the Media Strategy in the *2014 Report*, III.9.2.

73 RTS, “Brnabić: 16 May Deadline for Adoption of Media Strategy Action Plan,” 9 March 2020, available in Serbian at: <https://www.rts.rs/page/stories/sr/story/125/drustvo/3881139/brnabic-medijska-strategije-rok-16-maj.html>.

Minister, the Crisis Headquarters and persons designated by it to disclose information about the virus; the decision was adopted in order to avoid the dissemination of fake news and public anxiety.⁷⁴

This Conclusion caused an avalanche of protests both in Serbia and abroad and the Government soon revoked it “at the explicit request of the President”, as Prime Minister Brnabić explained.⁷⁵ Journalists had a lot of trouble obtaining important information about the situation in the medical institutions and the number of COVID cases and deaths in many Serbian cities and towns (Bečej, Valjevo, Niš, Kragujevac, Sombor, Novi Sad, Zaječar, Pančevo, Leskovac, Subotica, Vranje, et al.).

The Government probably adopted the impugned Conclusion because journalists, mostly those working in local media, were trying to obtain information from representatives of local self-governments and directors of health institutions across Serbia that were turned into COVID-19 hospitals, in order to accurately report on the number of hospitalised, infected and closed cases, rather than rely exclusively on the information provided by the members of the Crisis Headquarters.⁷⁶

Namely, the Crisis Headquarters started holding daily press conferences in the latter half of March, at which it presented the aggregate data on the number of infected and tested people and the death toll. However, the journalists’ questions on the situation in the country and the relevant institutions usually went unanswered. The discomfort critically-minded journalists caused the Crisis Headquarters members was evident; all press questions about inadequate conduct of public officials or non-compliance with the imposed measures were qualified as political and ignored.

The Crisis Headquarters news conferences, which were carried live by all Serbian media, testified to the lack of professionalism of some journalists and absence of even minimal solidarity between reporters. Journalists of pro-government media publicly attacked their colleagues working for media not supporting the authorities, who were asking questions in order to provide accurate information to the public, accusing them of lying, treason, being foreign mercenaries, even of hoping that coronavirus would beat Serbia’s citizens. The organisers of the news conferences did not react to such outbursts at all.⁷⁷

74 Government Conclusion 05 Ref. No. 53–2928/2020. *Sl. glasnik RS*, 48/20. *Vreme*, “State Championship in Ignominy,” 9 April 2020, available in Serbian at: <https://www.vreme.com/cms/view.php?id=1771911>. See more in CINS, “Government Attempts to Restrict Reporting on Coronavirus,” 1 April 2020, available at: <https://www.cins.rs/en/government-attempts-to-restrict-reporting-on-coronavirus/>.

75 Serbian Government, “Government to Withdraw Conclusion on Information in State of Emergency,” 2 April 2020, available at: <https://www.srbija.gov.rs/vest/en/153089/government-to-withdraw-conclusion-on-information-in-state-of-emergency.php>.

76 Questions about the actual numbers of coronavirus cases and deaths were asked as soon as the 21 June elections were over, after suspicions arose that there were other records showing much higher numbers than the ones on the official COVID-19 website.

77 *Danas*, “Regime Media Don’t Care about Situation in Serbia, They Attacked Independent Media,” 23 April 2020, available in Serbian at: <https://www.danas.rs/drustvo/stanje-u-srbiji-nebitno-rezimskim-medijima-napadali-nezavisne/>.

Interestingly, pro-Government analyst Nebojša Krstić called on the state to temporarily shut down Twitter, Facebook and YouTube as soon as the state of emergency was proclaimed. He explained that such a campaign, which he dubbed “pest control”, was necessary to counter organised groups “spewing venom, fake news and misinformation 24/7”.⁷⁸

On 10 April 2020, as the number of COVID cases increased on a daily basis, the authorities said that journalists could no longer attend the Crisis Headquarters’ press conferences in person, that they should send their questions by e-mail and that the conferences would be covered by the public service broadcaster RTS and the state news agency *Tanjug* (which has continued operating although it was abolished under the media laws back in 2014).⁷⁹

The authorities said that the measure was introduced to protect the health of the reporters and due to fears that some of them were infected, although a poll conducted by the Journalists’ Association of Serbia (JAS) showed that no journalists or media professionals in Belgrade had caught the virus. News agency *FoNet*⁸⁰ decided against continuing with the absurd practice of asking its questions by e-mail; the daily *Danas*,⁸¹ news agency *Beta*, the weekly *Vreme*⁸² and the *Insajder* portal⁸³ followed suit. The authorities changed their minds on 21 April and allowed journalists of all media to attend the press conferences, again under public pressure, not because they realised that both the government and the media had to work exclusively in public interest, especially during the state of emergency.⁸⁴

The climax of the authorities’ irregularities during the state of emergency was the arrest of reporter Ana Lalić on 2 April 2020, after the Vojvodina Clinical Centre (VCC) accused her of causing public anxiety and damaging its reputation because she published a text *Nova.rs* portal alleging that VCC had problems with “chronic

78 N1, “Serbian Pro-Government Expert Calls for Ban on Social Media,” 17 March 2020, available at: <http://rs.n1info.com/English/NEWS/a578881/Serbian-pro-government-expert-calls-for-ban-on-social-media.html>.

79 *Vreme*, “Epidemic of Targeting Journalists,” 22 April 2020, available in Serbian at: <https://www.vreme.com/cms/view.php?id=1776617>.

80 N1, “FoNet Will No Longer Ask the Crisis Headquarters Online Questions,” 16 April 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a589309/FoNet-nece-vise-da-postavlja-Stabu-onlajn-pitanja-nisu-dobili-sve-odgovore.html>.

81 *Danas*, “No Questions at Regular News Conferences,” 18 April 2020, available in Serbian at: <https://www.danas.rs/drustvo/beta-bez-pitanja-za-redovne-konferencije-za-novinare/>.

82 *Vreme*, “Weekly Vreme will no long e-mail questions to the Crisis Headquarters,” 18 April 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a590392/Nedeljnik-Vreme-nece-vise-slati-pitanja-mejlom-Kriznom-stabu.html>.

83 *Insajder*, “Why Insajder isn’t e-mailing its questions to the Crisis Headquarters: answers without questions and questions without answers,” 17 April 2020, available in Serbian at: <https://insajder.net/sr/sajt/stav/17956/>.

84 IJAS, “Government: Journalists may take turns attending Crisis Headquarters news conferences, every other day,” 21 April 2020, available in Serbian at: <http://nuns.rs/info/news/47909/vlada-od-utorka-prisustvo-novinara-konferencijama-o-epidemiji-naizmenicno-svaki-dru-gi-dan.html>.

lack of basic equipment and totally chaotic working conditions during the pandemic". The reporter said that she had tried to get a comment from the relevant VCC authorities and the Vojvodina Health Secretary, but that none of them answered her questions.⁸⁵ Lalić's apartment was searched and the police seized her laptop and cell phone, insisting that she disclose her source of information. She was ordered into 48-hour custody.

Lalić was released in response to major pressures by the international and Serbian public and accusations of censorship.⁸⁶ President Vučić said that her arrest had been a mistake,⁸⁷ while Prime Minister Ana Brnabić described professional journalists, including Lalić, as enemies of the state and all citizens, accusing them of spreading misinformation and disseminating panic; she described media reporting in public interest as "the tycoons' media."⁸⁸

Several days later, the *Reuters* TV crew was allowed to visit the VCC only to find that the situation was almost idyllic. The VCC conducted an in-house investigation to find out who had leaked information to the portal. *Nova.rs* learned that the investigation had been ordered by Vojvodina Health Secretary Zoran Gojković, who denied the allegation, albeit unpersuasively.⁸⁹ Oddly, the VCC did not avail itself of Article 50(4) of the Constitution allowing it to require the correction of untrue, incomplete or inaccurately imparted information resulting in a violation of its rights or interests.

Fortunately, the prosecutors dismissed the criminal report against Lalić. Some members of the Crisis Headquarters publicly admitted that there was not enough protective gear at the start,⁹⁰ while pro-government tabloids and individuals on social networks voiced numerous grave accusations against Lalić.

Freedom of expression was under threat during the state of emergency whenever the authorities invoked Article 343 of the Serbian Criminal Code incriminating

85 *Danas*, "Police Come after *Nova.rs* Reporter because of Article on Vojvodina Clinical Centre," 1 April 2020, available in Serbian at: <https://www.danas.rs/drustvo/kc-vojvodine-obavestio-policiju-i-tuzilastvo-o-izvestavanju-portala-nova-rs/>.

86 *Global Voices*, "Serbian Government Revokes Controversial COVID-19 Related Decree Used as Pretext to Arrest Journalists," 7 April, 2020, available at: <https://globalvoices.org/2020/04/07/serbian-government-revokes-controversial-covid-19-related-decree-used-as-pretext-to-arrests-journalists/>. See also the *Radio Free Europe* report, available in Serbian at: <https://www.slobodnaevropa.org/a/vlada-srbija-hapsenje-novinarka-ana-lalic-brnabic-nova/30525262.html>.

87 *N1*, "Vučić: Information Decree Was a Mistake. So Was Reporter's Custody," 8 April 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a586725/Vucic-Uredba-o-informisanju-bila-greska-kao-i-drzanje-novinarke-u-pritvoru.html>.

88 IJAS, "Dangerous Statements by Prime Minister Brnabić," 8 April 2020, available in Serbian at: <http://www.nuns.rs/info/statements/47671/nuns-opasne-izjave-premijerke-brnabic.html>.

89 *Nova.rs*, "Investigation Launched in VCC: Gojković Looking for Ana Lalić's Sources," 14 May 2020, available in Serbian at: <https://nova.rs/drustvo/pokrenuta-istraga-u-kcv-gojkovic-trazi-izvore-ane-lalic/>.

90 *Danas*, "Lalić: Authorities Admit Mistake as Public Pressures Prevailed," 28 April 2020, available in Serbian at: <https://www.danas.rs/drustvo/lalic-pobeda-pritiska-javnosti-i-priznanje-greske-vlasti/>.

dissemination of panic and disorder. Under this Article, imprisonment ranging between three months and three years and a fine await anyone who disseminates panic or seriously disrupts public law and order or frustrates or significantly impedes the enforcement of decisions of the state authorities or organisations vested with public powers by disclosing or disseminating untrue information or allegations; if the offence is committed through media or by similar means or at a public event, the offender shall be punished by imprisonment ranging between six months and five years.

The chief state prosecutor, Zagorka Dolovac, issued General Binding Instructions⁹¹ ordering urgent prosecution of people suspected of violating Article 248 (non-compliance with health regulations during epidemics) and Article 343 of the Criminal Code during the state of emergency. In many cases, it was difficult to ascertain whether publication of specific information actually did cause panic.⁹²

3. State Capture of the Media through Project Co-Funding

Apprehensions that the new Media Strategy would not improve the media situation seemed very real given the numerous problems surrounding its development and the fact that the 2011 Media Strategy and the 2014 media laws did not bring positive changes. Media project co-funding has been one of the major stumbling blocks over the past few years. Namely, the state relinquished its ownership of media under the prior Strategy and the 2014 laws (with the exception of public media services, minority language media and media providing information to citizens in Kosovo and Metohija).

The state formally withdrew from media ownership but in the meantime opened other effective channels to control the media and support those toeing its line. Co-funding of media content of public interest has become the best tool for financing “government-friendly” outlets and even for funnelling large amounts of financial aid to the ruling coalition’s cronies to buy up the remaining non-privatised media, mostly local outlets.

Co-funding has often been the only ticket to survival in the oversaturated media market. Data show that over 2,500 outlets were registered in Serbia by 1 March 2020 – they included over 900 newspapers, nearly 800 Internet portals, around 330 radio and 240 TV stations, and almost 30 news agency services.⁹³ Many of them lacked

91 The General Binding Instructions are available in Serbian at: <https://www.paragraf.rs/koronavirus/strucni-komentari/uputstvo-republickog-javnog-tuzilastva.html>.

92 More in Chapter VI.1.

93 *Raskrikavanje*, “Almost €13.5 Million for Media in 2019; Money Still Going to Violators of the Code,” 18 June 2020, available in Serbian at: <https://www.raskrikavanje.rs/page.php?id=Skoro-135-miliona-evra-za-medije-u-2019-novac-i-dalje-ide-prekrsiocima-Kodeksa-683>.

regular sources of funding and were barely making ends meet. One of the ways to keep their heads above water was to obtain co-funding from the local or state budget.

However, like in the previous years, publishers of tabloids *Alo*, *Kurir*, *Srpski telegraf* and *Informer* were granted nearly 26 million RSD for media project co-funding in the first five months of the year, although the Press Council's monitoring results show that they violated the Press Code of Conduct 3,903 times in the latter half of 2019 alone.⁹⁴ The commissions distributing the funds yet again turned a blind eye to the provision in the rulebook on co-funding laying down that they must take into account whether the applicants violated the law and the Press Code of Conduct in the last 12 months. The composition of the commissions remained questionable as well; they included members of unknown or newly-formed associations, and even local public officials (which is against the law) rather than members of the most representative press and media associations.

A vivid illustration of indirect abolition of media pluralism in Serbia was the move by the *Telekom Srbija* cable operator, in which the state has a majority stake, to remove *TV N1* from its offer in January 2020, before the election campaign. The decision depriving one million people of the chance to watch this station was taken after the talks between United Media AG, which holds the distribution rights, and *Telekom Srbija* failed.⁹⁵ United Media AG said in its press release that cable operator SBB has been prevented from installing fibre-optic cables and expanding its network for a long time, that this move discriminated against Serbian citizens, who did not have the possibility of freely choosing their cable operators, and that the talks were simulated and aimed at torpedoing a deal.⁹⁶

4. Journalists and Media Targeted – Slow Trials – Difficult Access to Justice

The increase in the number of incidents against reporters and media in the first half of 2020, corroborated by the data of the Independent Journalists' Association of Serbia (IJAS), was particularly concerning. Seventy-two incidents of (attempted) violence and intimidation were reported until mid-May: six concerned physical assaults, six attacks on property, 42 complaints regarded various pressures

94 JAS, "Violate the Code Several Thousand Times and You'll Get Millions," 25 May 2020, available in Serbian at: <http://uns.org.rs/sr/desk/UNS-news/99126/prekrsi-kodeks-par-hiljada-puta-i-do-bij-milione.html>.

95 *N1*, "Some Million People Cannot Watch *N1* after State-Owned Operators Remove the Channel from Their Offer," 24 January 2020, available at: <http://rs.n1info.com/English/NEWS/a563590/Some-million-people-cannot-watch-N1-after-state-owned-operators-remove-the-channel-from-their-offer.html>.

96 *N1*, "United Group: Failed negotiations with Telekom increase media darkness," 20 January 2020, available at: <http://rs.n1info.com/English/NEWS/a562100/UNITED-GROUP-Failed-negotiations-with-Telekom-increase-media-darkness.html>.

and 18 threats or verbal attacks.⁹⁷ A total of 119 attacks and pressures on journalists were registered in 2019.

The trial of Grocka Mayor Dragoljub Simonović, charged with ordering the burning down of *Žig info* editor and journalist Milan Jovanović's house in December 2018, was still pending. The hearing scheduled for 1 July was adjourned, like many before it, this time because the defendants' counsel did not show up. They notified the court that they were in self-isolation because they had contact with people infected with coronavirus.⁹⁸

Most of the insults and verbal attacks targeted reporters and media critical of the government. They were the targets of hackers as well.⁹⁹

Reporters were attacked on social media as well. In April 2020, Twitter shut down over 8,000 accounts promoting SNS and its leader.¹⁰⁰ Fake Facebook page COVID 19 Serbia spearheaded attacks against reporters; the initiative Don't Let Belgrade D(r)own said it served as the "SNS platform for disseminating amply sponsored announcements attacking, maligning and inciting violence against unsuitable public figures and media".¹⁰¹

The Facebook group *Zavisni novinari* (Dependent Journalists), which has registered as a media/news company but does not provide any contact or other details on its Facebook profile, has been pursuing a similar mission. The group is clearly rolling in money since it has been publishing sponsored posts. Its insults and threats against individual journalists and public figures definitely warrant an investigation by the prosecutors.¹⁰²

Defence Minister Aleksandar Vulin's reaction to an op-ed his predecessor Dragan Šutanovac e-mailed to the weekly *Nedeljnik*, but which was never published,¹⁰³ gave rise to suspicions that media professionals were followed. None of the

97 *Danas*, "Increasingly Frequent Attacks and Pressures on Journalists," 21–22 June 2020, available in Serbian at: <https://www.danas.rs/drustvo/vladavina-prava/napadi-i-pritisici-na-novinare-sve-ucestaliji/>.

98 *Radio 021*, "Simonović Trial Adjourned till 24 August," available in Serbian at: <https://www.021.rs/story/Info/Srbija/247302/Sudjenje-Simonovicu-odloženo-za-24-avgust.html>.

99 Hackers repeatedly attacked the websites of *N1* (on 30 January and 4 June), *GM info* (1 and 4 May), *Radio 021* (2 May and *Indijka kafe* (on 25 May).

100 *N1*, "Twitter Shuts down Accounts Promoting Serbia's Vucic," 2 April 2020, available at: <http://rs.n1info.com/English/NEWS/a584862/Twitter-shuts-down-accounts-promoting-Serbia-s-Vucic.html>.

101 *N1*, "NDMBGD: Fake Facebook COVID 19 Serbia Page Platform for Attacking Opponents," 14 April 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a589071/NDMBGD-Fejsbuk-stranica-COVID-19-Serbia-platforma-za-napad-na-neistomisljenike.html>.

102 IJAS believes that the Facebook profile was created by an individual who has for a long time now been jeopardising the safety of reporters and public figures. IJAS alerted the relevant authorities to his wrongdoings, but apparently to no avail. More in *Danas*, "Fresh Targeting of Reporters Criticising Government," 17 June 2020, available in Serbian at: <https://www.danas.rs/drustvo/novo-targetiranje-novinar-a-koji-kritikuju-vlast/>.

103 *Danas*, "Šutanovac: Vulin proved existence of para-services reading e-mails," 18 February 2020, available in Serbian at: <https://www.danas.rs/drustvo/sutanovac-vulin-dokazao-postojanje-parasluzbi/>.

state authorities confirmed or denied the allegations, with the exception of the Military Security Agency, which said that it had not implemented any particular procedures or measures with respect to the former Defence Minister.¹⁰⁴

The trend of taking the press and journalists to court, mostly for libel, continued in the first half of 2020. Like in 2019, the courts ruled on cases against tabloids frequently front-paging fake news and falsehoods, and harming the honour and reputation of public figures, opposition politicians and critical journalists.

The court, for instance, prohibited the tabloids *Kurir* and *Informer* from publishing insults against TV N1 Programme Director Jugoslav Ćosić and information violating the dignity of opposition leader Dragan Đilas.¹⁰⁵ These decisions, however, do not suffice to conclude that the publication of falsehoods and insults and violations of professional standards are effectively prosecuted.

On the other hand, trials of attackers on journalists are rare, take long and are obstructed in various ways, while criminal reports against pro-government journalists are dismissed. For instance, the prosecutors dismissed the criminal report against TV Hepi Chief Editor Miodrag Marić for insulting University Professor Danijel Sinić on ethnic grounds; they were of the view that there were no grounds to suspect Marić of inciting ethnic, religious or racial hatred, which is prosecuted *ex officio*.¹⁰⁶

A verdict brought by a Vranje court in March 2020 illustrates the length of trials of attackers on journalists. It took the court eight years to convict four men (one of them a police inspector) indicted for beating up B92 reporter Tanja Janković's family back in September 2012; the motion to indict was submitted in 2014. The penalties it handed down were much too lenient (ranging from a four-month prison sentence suspended for two years to one-year home imprisonment).¹⁰⁷

5. Unprofessional Media Conduct

The number of grave violations of the professional code of conduct, ethical standards and the law continued growing in the first half of 2020. Although data covering the first six months of the year were not systematised by the end of the reporting period, the existence of the trend can be inferred from some other data.

104 More in Chapter VIII.1.

105 See N1 reports of 28 May and 9 June 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a604120/Sud-zabranio-Kuriru-objave-i-uvrede-o-Jugoslavu-Cosicu-do-okoncanja-postupka.html> and <http://rs.n1info.com/Vesti/a608213/SSP-Visi-sud-zabranio-Informeru-da-objavljuje-neistine-o-Djilasu.html>.

106 *Danas*, "Marić's Insults are not a Crime," 27 February 2020, available in Serbian at: <https://www.danas.rs/drustvo/mariceve-uvrede-nisu-krivicno-delo/>.

107 RTV, "Court Sentences Inspector to One Year of Home Imprisonment for Attacking Vranje Journalists' Family," 5 March 2020, available in Serbian at: https://www.rtv.rs/sr_lat/drustvo/presuda-za-napad-na-porodicu-novinarke-u-vranju-inspektoru-godinu-dana-kucnog-zatvora_1099683.html.

Press Council's statistics showed that the Press Code of Conduct was violated 5,076 times in the second half of 2019, an increase of 17% over 2018.¹⁰⁸ The tabloids *Alo*, *Kurir*, *Srpski telegraf* and *Informer*, the same ones the state allocated the most money to for co-funding content of public interest, topped the list of wrongdoers.

The media have most frequently been violating the presumption of innocence. They have been increasingly publishing reports presenting opinions and presumptions as indisputable facts, often citing anonymous sources. Furthermore, the media have often violated the right to privacy, personality rights, the prohibition of discrimination and the obligation to protect the identity of minors.

The most drastic violations of the Press Code of Conduct provisions on minors were perpetrated by tabloids reporting on the abduction of a 12-year-old girl, Monika Jovanović from Niš. They even published TV footage and records of the interrogation of Ninoslav Jovanović, the man suspected of and subsequently charged with abducting and raping the girl. Dozens of complaints were filed with the Press Council, including by the girl's parents, regarding the front pages and articles published in *Srpski telegraf*, *Informer*, *Alo* and *Kurir* on 9 January, after Jovanović was questioned by the Niš prosecutors. The Press Council Commission unanimously concluded that all of these tabloids had committed multiple violations of the Press Code of Conduct.¹⁰⁹ The relevant state authorities, however, did not take them to task. Instead, the Ministry of Culture and Information filed misdemeanour reports against the weeklies *Vreme* and *Nedeljnik* for publishing the tabloids' front-pages alongside articles about their flagrant violations of the professional code.¹¹⁰

Hate speech, fear mongering and fake news also increased in frequency. Forty-three fake news published 241 times by Serbian traditional and online media were identified in just one month, from 12 March to 12 April 2020. Most of them, 71%, were created in Serbia; although their inaccuracy was proven, over 95% were still present in the domestic media.¹¹¹ **A fake news story is shared 927 times on average in Serbia**, using different pages and profiles, an IREX expert told *Voice of America* on 24 May 2020.¹¹² Tabloids published numerous falsehoods about Serbian nation-

108 *Danas*, "Tamara Skrozza: Media Looking for Increasingly Gory Content," 21 February 2020, available in Serbian at: <https://www.danas.rs/drustvo/tamara-skrozza-mediji-traze-sve-krvavi-je-sadrzaje/>.

109 *Raskrikavanje*, "Press Council Churning Out 'Verdicts' over Monika Karimanović Case," 30 May 2020, available in Serbian at: <https://www.raskrikavanje.rs/page.php?id=Pljuste-presude-Saveta-za-stampu-zbog-slucaja-Monike-Karimanovic-560>.

110 *Danas*, "Authorities Trying to Equate Tabloids with Serious Media," 1–2 February 2020, available in Serbian at: <https://www.danas.rs/drustvo/vlast-pokusava-da-izjednaci-tabloide-sa-ozbiljnim-medijima/>.

111 *Vreme*, "Two-Thirds of Fake News on Coronavirus Created in Serbia," 1 May 2020, available in Serbian at: <https://www.vreme.com/cms/view.php?id=1779930>.

112 *Euractiv*, "A fake news story is shared 927 times on average in Serbia," 25 May 2020, available at: https://www.euractiv.com/section/all/short_news/a-fake-news-story-is-shared-927-times-on-average-in-serbia/.

als who returned to Serbia during the epidemic, including claims that thousands of them were infected with the coronavirus.¹¹³

Press associations warned that domestic media were still bombarding the readers with terrifying front-pages, fake news and health advice from quacks and that the authorities were not reacting to tabloid articles disseminating panic, which is a crime under Serbian law, adding that the prompt provision of reliable information the public could trust was the best way to fight fake news and fear mongering.¹¹⁴ The Ministry of Defence awarded certificates of appreciation to outlets that contributed to the fight against the coronavirus, including tabloids *Alo* and *Informer*, although as a member of the Press Council Complaints Commission Vida Škero said, this body registered a higher number of complaints during the state of emergency, most of which regarded the tabloids awarded the certificates.¹¹⁵

113 See e.g. *Informer*: ONLY IN TODAY'S INFORMER! DANGER! Epidemic about to Explode: 100,000 gastarbeiters entered Serbia, at least 6,000 of them infected with coronavirus!," 20 March 2020, available in Serbian at: <http://informer.rs/vesti/srbija/501595/samo-dan-asnjem-infomeru-opasno-preti-nam-eksplozija-epidemije-srbiju-uslo-100-000-gastarba-jtera-njih-bar-000-ima-koronavirus>.

114 *Danas*, "Authorities Not Seeing what Pro-Government Media are doing," 23 March 2020, available in Serbian at: <https://www.danas.rs/drustvo/vlast-ne-vidi-sta-rade-provladini-mediji/>.

115 *Danas*, "Certificates of Appreciation to Tabloids for Sowing Confusion," 20 May 2020, available in Serbian at: <https://www.danas.rs/drustvo/zahvalnice-tabloidima-za-stvaranje-konfuzije/>.

V. ELECTION RIGHTS AND CIVIC PARTICIPATION

1. 2020 Election Process

The Serbian President on 4 March called the parliamentary elections for 26 April 2020 and the National Assembly Speaker scheduled the local elections for the same day. Provincial elections were also called for 26 April.¹¹⁶ The outbreak of the COVID-19 epidemic and the proclamation of the state of emergency led to an interruption of the 2020 election process, wherefore all election activities and the work of the election administration¹¹⁷ were officially suspended for nearly two months. In practice, campaigning continued throughout this period. The election campaign, which resumed after the state of emergency was lifted, was not as intense or extensive as usual, due to the measures imposed to prevent the spread of the epidemic, including the ban on public assemblies, and the fact that some opposition parties boycotted the elections. However, the legal framework was amended both before and after the state of emergency, a questionable practice considering that election law should not be changed in election year and in the absence of a public debate. The elections, fraught with irregularities, were held on 21 June 2020.

1.1. *Amendments of Election Law*

After the unsuccessful talks about the changes of election law between the representatives of the ruling parties and some opposition parties in 2019 and specific amendments adopted in late 2019,¹¹⁸ the authorities in early 2020 decided to

116 Danas, "BBC in Serbian: 2020 Elections: Elections Called in Serbia – Who is Entitled to Vote and for Who," 4 March 2020. Available in Serbian at: <https://www.danas.rs/bbc-news-serbian/izbori-2020-raspisani-izbori-u-srbiji-ko-moze-da-glasi-i-za-koga/>. The Decision on Elections did not apply to cities and municipalities in which early elections were held in the 2017–2019 period, notably Zaječar, Bor, Belgrade, Kosjerić, Lučani, Negotin, Arandelovac, Majdanpek, Mionica, Preševo, Medveđa, Kula, Doljevac, Kladovo and Smederevska Palanka.

117 Republican Election Commission, Ruling Suspending All Parliamentary Election Activities, 16 March 2020, available in Serbian at: <https://www.rik.parlament.gov.rs/vest/sr/2615/republika-izborna-komisija-donela-resenje-o-prekidu-svih-izbornih-radnji-u-sprovođenju-izbora-za-narodne-poslanike.php>.

118 More in the 2019 Report, IX.10.2.

make major changes to the legislative framework governing the election process. On 7 February 2020, the Serbian National Assembly adopted amendments to the Act on the Election of Assembly Deputies (AEAD)¹¹⁹ and the Local Elections Act,¹²⁰ lowering the threshold from five to three percent.¹²¹ The Assembly also upheld a proposal of Democratic Party MP Gordana Čomić, who took part in this session while the other MPs of most opposition parties continued boycotting the parliament, supported in an amendment filed by Serbian Progressive Party (SNS) MP Marija Obradović, increasing the quota of the less represented gender on the election tickets to 40 percent.¹²² Under the amendment, women have to account for at least two of every five candidates on the election tickets.¹²³

The parliament also adopted amendments proposed by minority parties. When proclaiming minority tickets, the Republican Election Commission (REC) is entitled, but not under the obligation, to request the opinion of the relevant National Minority Councils (NMCs) whether the parties that submitted the tickets can be considered representatives of the minority communities. Minorities may now enter the parliament even if they won less than 3% of the votes and the quotients of all tickets of national minority parties and coalitions are increased by 35% during the allocation of seats.¹²⁴

The adoption of such important amendments to election law during election year, without a public debate and in the absence of the opposition boycotting the parliament, is problematic since these amendments substantially changed the conditions for participation in the work of the legislature and the forming of a ruling majority. The ruling coalition qualified the lowering of the threshold as a step towards ensuring the more comprehensive representation of citizens in parliament. On the other hand, the opposition and some experts qualified the move as the ruling majority's ploy to create a semblance of an opposition comprising parties not standing a chance of passing the 5% threshold and to dampen the effects of the announced election boycott.¹²⁵ Experts also warned that the entry of a large number of small parties in the national and local parliaments would result in greater divisions in the parliaments, but not necessarily in the greater representation of various segments of society, and that the lower threshold might impinge on the stability of the parliaments and, in the longer term, of the executive govern-

119 *Sl. glasnik RS*, 35/2000, 57/03 – CC decision, 72/03 – other law, 75/03 – corr. of other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – CC decision, 36/11, 104/09 – other law and 12/20.

120 *Sl. glasnik RS*, 129/07, 34/10 – CC decision, 54/11 and 12/20.

121 Article 81, AEAD.

122 From 30%.

123 Article 40a.

124 Article 81(2–4), AEAD.

125 The Opposition Alliance for Serbia, one of the largest opposition groups, adopted its Boycott Declaration on 1 February by which it launched its election boycott campaign.

ment, facilitating broad coalitions and providing the small parties with blackmail potential.¹²⁶

The second set of amendments to election law was adopted after the state of emergency was lifted. The National Assembly adopted amendments to the AEAD¹²⁷ and the Local Election Act¹²⁸ provisions on the verification of signatures of voters backing election tickets.¹²⁹ Under the amendments, the signatures must be verified by notaries public of the city or municipal administrations, or by the Basic Courts, court units, or city or municipal administrations in cities and municipalities that have no notaries public.¹³⁰ Under the original provisions, the voters' signatures had to be verified by the relevant courts or notaries public under the Notaries Public Act.¹³¹ The REC accordingly adopted the amended Instructions on National Assembly Elections.¹³²

The Centre for Research of Transparency and Accountability (CRTA) reported that these amendments were important in the light of legal certainty and equality of all contestants. The signatures of citizens supporting the nine tickets submitted to the REC before the amendments were adopted were verified under the provisions in effect until 11 May, wherefore the submitters of those tickets had not been treated the same as the ones that collected signatures after the amendments were adopted. The latter could have their signatures verified by a much larger number of authorities and in a much larger geographic area.¹³³

1.2. Election Campaign

The election campaign began before the elections were called. Indeed, it was difficult to single out a period when it was not conducted given the public officials' abuse of their offices for party campaigning, abuse of public resources to promote the ruling parties and the huge airtime they were given by TV stations with nation-

126 *BBC in Serbian*, "2020 Elections: Lower Threshold and Local Elections – More Politically Colourful or Fragmented Assemblies," 10 February 2020, available in Serbian at: <https://www.bbc.com/serbian/lat/srbija-51442371?xtor=AL-73-%5Bpartner%5D-%5Bdanas.rs%5D-%5Blink%5D-%5Bserbian%5D-%5Bbizdev%5D-%5Bisapi%5D>.

127 *Sl. glasnik RS*, 68/20.

128 *Ibid.*

129 The amendments entered into force as soon as they were published in the Official Gazette for "particularly justifiable reasons".

130 CRTA, "2020 Elections – Long-Term Observation Report for the Period March 4th – March 16th and May 12th – May 24th", available at: <https://crt.rs/en/elections-2020-long-term-observation-report-for-the-period-march-4th-march-16th-and-may-12th-may-24th>.

131 *Ibid.*, pp. 11–12.

132 Available in Serbian at: <https://www.rik.parlament.gov.rs/tekst/1553/izborna-dokumenta.php>.

133 CRTA, "2020 Elections – Long-Term Observation Report for the Period March 4th – March 16th and May 12th – May 24th", available at: <https://crt.rs/en/elections-2020-long-term-observation-report-for-the-period-march-4th-march-16th-and-may-12th-may-24th>.

wide coverage. After the introduction of the state of emergency and the ban on public assemblies, the campaign “moved” almost entirely to TV stations, Internet portals and direct communication with the citizens.

Organisations monitoring the election process and individuals alerted over social media to the reappearance of campaigning practices present during the prior election cycles as well: suspicions of abuse of the citizens’ private data, telephone calls ruling party activists made to voters, especially the users of the *Telekom* mobile network, in the run-up to the elections, asking them whether they were satisfied with the COVID-19 response and the work of the Government and the President, and, on election day, when they called them up reminding them to vote.

Video clips of the SNS activists’ door to door campaigning across Serbia with lists of residents in their hands and no explanation of how they had obtained them, could be seen on social networks almost on a daily basis. In smaller towns, the voters recognised public company staff and local officials among the activists.¹³⁴ CRTA registered such campaigning in 11 out of 25 Serbian districts, notably in the Belgrade and Raška Districts.¹³⁵

Like in the past, the citizens complained to the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: Commissioner) that the parties were in possession of their personal data.¹³⁶ The law prohibits political parties from accessing the citizens’ personal data unless the latter had consented by e.g. leaving their personal details with the activists at the booths of the parties they support. The campaigners must notify the citizens what they will use their personal data for. Under the new Personal Data Protection Act (PDPA), all political parties must tell individuals how they came into possession of their personal data. Abuse of databases that may be accessed only by public officials is a crime warranting up to three years’ imprisonment.¹³⁷ Door to door campaigning, which exists in other countries, needs to be governed by law. Furthermore, Serbia lacks regulations on political marketing.

134 *NI*, “SNS Activists Start Knocking on Doors and Asking Who You’ll Vote for,” 2 March 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a574260/Aktivisti-SNS-a-krenuli-da-kucaju-na-vrata-i-pitaju-za-koga-cete-da-glasate.html>; *Južne vesti*, “SNS Launches Door to Door Campaign, Tensions Rise as Citizens Insist Their Names be Erased from the Lists,” 25 February 2020, available in Serbian at: <https://www.juznevesti.com/Politika/SNS-pred-vratima-Vladajuca-stranka-pocela-kampanju-od-vrata-do-vrata-pocela-i-napetosti-sa-onima-koji-ne-zele-da-budu-na-spisku.sr.html>.

135 In addition to party activists, the voters’ homes were visited by public officials; meetings with them were organised in one of the neighbourhood homes. See CRTA, “Elections 2020: Campaign before the Campaign, Full Report,” available at: <https://crt.rs/en/elections-2020-campaign-before-the-campaign-full-report>.

136 *NI*, “Petrović: Parties may not be in possession of citizens’ personal data without their consent,” 7 March 2020, available in Serbian at: <http://rs.n1info.com/Izbori-2020/a575766/Petrovic-Bez-saglasnosti-stranke-ne-smeju-da-imaju-podatke-o-gradjanima.html>.

137 The Commissioner filed over 40 criminal reports, but the courts handed down only one suspended sentence.

In its monitoring report,¹³⁸ CRTA drew attention to the political players' pro-active communication with voters, noting that the ruling parties lobbied the voters by emphasising their successes and making promises, while opposition activists made promises and campaigned for the boycott of the election. CRTA registered the public officials' abuse of their offices for party campaigning at all levels, abuse of public resources, pressures on voters that were particularly intensive in public companies, humanitarian drives and the parties' provision of other forms of assistance to the citizens, which could be qualified as voter bribery.¹³⁹ The Serbian Progressive Party was the most active – its activities accounted for as many as 92% of the registered drives.¹⁴⁰ Transparency Serbia registered intensive abuse of public offices for party campaigning in that period as well, noting that it was much more visible than party activities.¹⁴¹ CRTA registered 250 events in which public officials abused their offices to promote their parties during the second part of the campaign, after the state of emergency was lifted.¹⁴²

1.2.1. Media Coverage of the Election Campaign

Domestic and international stakeholders continued alerting to the troubling media situation in Serbia in 2020. Representatives of the academia filed several initiatives regarding media reporting at the beginning of the year. Over 140 of them called on the public service broadcaster, Radio Television of Serbia (RTS) to change its editorial policy and, inter alia, broadcast in its prime time slot a show impartially covering all the ongoing and relevant scandals.¹⁴³ When their request was dismissed, they demanded the dismissal of the RTS senior management; this demand went unheeded as well. Finally, in early March 2020, they forwarded a request to the Electronic Media Regulator (REM) to dismiss the members of the RTS Management Board and temporarily prohibit TV stations *Pink*, *Hepi* and *Studio B* from broadcasting news and political shows.¹⁴⁴ They said that these stations' reporting

138 CRTA, "2020 Election: Campaign before the Campaign, Full Report," available at: <https://crt.rs/wp-content/uploads/2020/03/Elections-2020-Campaign-before-the-Campaign-Full-report.pdf>.

139 *Ibid.* CRTA registered 170 cases in which the citizens were distributed humanitarian aid, provided with free medical examinations, assistance in households, et al. p. 19.

140 *Ibid.* The greatest problem was that these drives were almost always portrayed as donations by individuals, public officials and party members, wherefore they were not formally in contravention of the law.

141 Transparency Serbia, "Initial Results of Monitoring Public Officials' Activities during the Election Campaign (4–15 March) and during the "Suspended Election Campaign" (16 March–10 May)," available in Serbian at: https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_prvi_rezultati_monitoringa_funkcionerske_kampanje_2020.pdf.

142 *N1*, "Election Campaigning by Officials Typical for Serbia," 27 May 2020, available at: <http://rs.n1info.com/English/NEWS/a603956/Election-campaigning-by-officials-in-Serbia.html>.

143 *Beta*, "RTS Handed Demand to Change Its Editorial Policy," 22 January 2020, available at: <https://betabriefing.com/archive/news/9594-rts-handed-demand-to-change-its-editorial-policy>.

144 *N1*, "Serbian Intellectuals Call on REM to Dismiss RTS Board, Ban News on Three TV Stations," 7 March 2020, available at: <http://rs.n1info.com/English/NEWS/a577344/Serbian-intellectuals-call-REM-to-dismiss-RTS-board-ban-news-on-three-TV-stations.html>.

was uncivilised, that the stations violated media laws, covered up the scandals of the ruling clique, and served as the Serbian President's propaganda tool. They said that RTS' operations were in violation of Article 50 of the Serbian Constitution prohibiting censorship, as well as of Article 51 of the Constitution guaranteeing everyone the right to be accurately, fully and promptly informed of issues of public importance. The also emphasised that REM was under the obligation to oversee the work of the public service broadcaster.¹⁴⁵

After the state of emergency was lifted and the election campaign resumed, the European Commission issued its Non-paper on the state of play regarding chapters 23 and 24 for Serbia (justice and human rights)¹⁴⁶ on 11 June 2020, in which it said that political and economic influence over the media continued to be a source of concern, that an unbalanced representation by public service broadcasters of the plurality of political views was observed during the reporting period and that media ownership was not transparent. It recommended that REM's independence be strengthened to enable it to efficiently safeguard media pluralism.

TV stations with nationwide coverage devoted three-quarters of their airtime to the parties in power before the elections were officially called and at the start of the election campaign. Coverage of their activities was positive or neutral. The stations' coverage of actors calling for the boycott of the elections was negative, while their coverage of opposition parties that said they would run in the elections was neutral.¹⁴⁷

Government representatives reigned supreme on TV after the state of emergency was lifted as well; 60.4% of the airtime was devoted to them, 27.6% to parties running in the elections and 11.9% to parties boycotting the elections.¹⁴⁸ The former maintained their advantage throughout the campaign, both in the news on elections and in the news on other activities, while the representatives of the opposition featured only in reports on elections.¹⁴⁹

The SNS held two online conferences on *TV Pink* in May 2020; each lasted over 30 minutes. According to REM's election campaign monitoring report, the events were labelled as pre-election commercial content, although the duration of commercial content may not exceed 12 minutes an hour under the Advertising Act.¹⁵⁰

145 *Ibid.*

146 European Commission, Non-paper on the state of play regarding chapters 23 and 24 for Serbia, June 2020, available at: https://www.mei.gov.rs/upload/documents/eu_dokumenta/Non_paper_Ch_23_24_June_2020.pdf.

147 CRTA, "2020 Election: Campaign before the Campaign, Full Report," available at: <https://crt.rs/wp-content/uploads/2020/03/Elections-2020-Campaign-before-the-Campaign-Full-report.pdf>.

148 *Ibid.*

149 *Ibid.*

150 CINS, "Broadcast of Vučić's Event on Pink Was Commercial Content, CRTA Requires of REM to Launch Procedure against it," 28 May 2020, available in Serbian at: <https://www.cins.rs/prenos-vucicevog-skupa-na-pinku-komercijalni-sadrzaj-crt-trazi-da-rem-pokrene-postupak/>.

1.2.2. REM Reports and Activities

REM adopted the Rulebook on the Implementation of Public Media Service Obligations during Election Campaigns in early February 2020. The Rulebook, however, does not regulate the work of commercial stations, although the REM should adopt rulebooks governing the work of all broadcasters under the law.¹⁵¹ Although the Ministry of Culture and Information has held that the Electronic Media Act does not distinguish between public media services and other broadcasters, the Recommendation regarding commercial media REM adopted in early March is not binding in character, as opposed to the Rulebook. The new Rulebook does not extend to seven of the ten most popular TV stations in Serbia (*Hepi*, *Pink*, *Prva*, *B92*, *N1*, *Pink 2* and *Pink 3*).¹⁵² Furthermore, as per the broadcasters' obligation to provide the parties, coalitions and candidates running in the elections with representation without discrimination, the REM gave editors free rein to decide which of them were important and how much airtime to devote to them by specifying in the Rulebook that they should take into account "the importance of political parties and candidates or events they are participating in".¹⁵³

REM's report on the 11–15 May media coverage of the election campaign raised quite a few eyebrows. REM said that SNS' ticket "Aleksandar Vučić – For Our Children" had six hours, three minutes and ten seconds airtime, while the Alliance for Serbia (SzS), which decided to boycott the elections, had nine hours, 40 minutes and 29 seconds of airtime.¹⁵⁴ Media and election observers criticised REM's methodology.¹⁵⁵ REM member Olivera Zekić explained that REM applied the same methodology and would produce a report after the elections, which would include also an analysis of the tonality of the coverage "which is much more difficult than numerical measurement".¹⁵⁶

The Bureau for Social Research (BIRODI), however, said that REM's methodology was not in compliance with the international standards of the ODIHR, the Venice Commission or the European Commission's Human Rights Directorate, or

151 CRTA, "Media in Serbia: Defending the Status Quo," March 2020, available in Serbian at: https://crt.rs/wp-content/uploads/2020/03/Mediji-u-Srbiji_U-odbrani-postojeceg-stanja.pdf.

152 CRTA, "2020 Election: Campaign before the Campaign, Full Report," available at: <https://crt.rs/wp-content/uploads/2020/03/Elections-2020-Campaign-before-the-Campaign-Full-report.pdf>.

153 *Beta*, "IJAS: Election Campaign in Media Continues under Illegal REM Rulebook," 15 May 2020, available in Serbian at: <https://beta.rs/su-pro-media/supromedia-srpski/127225-nuns-predizborna-kampanja-u-medijima-nastavlja-se-po-nezakonitom-pravilniku-rem-a>.

154 *N1*, "Serbian media watchdog says opposition got more airtime than authorities," 25 May 2020, available in Serbian at: <http://rs.n1info.com/English/NEWS/a603113/Serbian-media-watchdog-says-opposition-got-more-air-time-than-authorities.html>.

155 CRTA, "REM Election Monitoring 2020 Biased and Opaque," available at: <https://crt.rs/en/rem-election-monitoring-2020-biased-and-opaque/>.

156 *N1*, "Gavrilović on "one and non-existent" in the media, Zekić on paramilitary REMs," 2 June 2020, available in Serbian at: <http://rs.n1info.com/Izbori-2020/a606015/Gavrilovic-o-jednom-i-nepostojecima-u-medijima-Zekic-o-paravojnim-REM-ovima.html>.

practices followed by election observer missions.¹⁵⁷ BIRODI in particular referred to lack of the analysis of the tonality (positive, negative and neutral) of the coverage; the fact that REM did not distinguish between the political stakeholders' roles – whether they were the subjects or objects of the reports; that REM did not monitor all stations broadcasting election programmes; and that the criteria under which it selected the ones to monitor remained unclear; it further noted that REM had added up the seconds of airtime, regardless of whether the reports were broadcast on stations with nationwide coverage, public service broadcasters, cable or radio stations.¹⁵⁸

Although public officials' abuse of their offices for party campaigning was commonplace in Serbia and more effective in news than in election campaign shows,¹⁵⁹ REM monitored only the election campaign blocks, not the stations' entire programmes. It registered the contestants only in their capacity of representatives of election tickets, disregarding their appearances in newscasts. Under the Anti-Corruption Agency Act, only the President may engage in such campaigning. Nevertheless, "measuring the President's media coverage is justifiable from the phenomenological point of view, because his dominantly positive presence in that office influences the forming of voters' opinions".¹⁶⁰ Although the President did not run for any of the seats in these elections and did not head his party's election ticket, he dominated in most SNS election spots.¹⁶¹

The Slavko Ćuruvija Foundation filed a complaint with REM against *TV Kopernikus*, which broadcast a show hosted by SNS MP Vladimir Đukanović. REM ordered the station to suspend the show until the end of the election campaign. Under Article 9 of the Rulebook on the Protection of Human Rights in the Field of Media Service Provision,¹⁶² officials may not appear in newscasts and current affairs shows either as hosts, announcers or reporters. REM discontinued the procedure against *TV Kopernikus* in June, after the station admitted its mistake. The show was taken off the air for good in the meantime.¹⁶³ REM in June initiated a review of *TV Šabac*,

157 *Beta*, "BIRODI: REM's Election Monitoring of Media Not in Line with International Standards," 25 May 2020, available at: <https://betabriefing.com/news/politics/10943-birodi-rems-election-monitoring-of-media-not-in-line-with-international-standards>.

158 More is available on BIRODI's website: <https://www.birodi.rs/category/saopstenja/>.

159 *Ibid.*

160 *Danas*, "BIRODI: REM's Methodology is Faulty," 26 May 2020, available in Serbian at: <https://www.danas.rs/drustvo/birodi-metodologija-rem-a-nije-dobra/>.

161 Most complaints filed with REM concerned TV reports giving advantage to public officials running in the elections, especially at the local level. REM's decisions on the complaints were not publicly available at the end of the reporting period. More in CRTA, "2020 Election: Campaign before the Campaign, Full Report," available at: <https://crt.rs/wp-content/uploads/2020/03/Elections-2020-Campaign-before-the-Campaign-Full-report.pdf>.

162 *Sl. glasnik RS*, 55/15.

163 Cenzolovka, "Procedure against *TV Kopernikus* over SNS Official Đukanović's Show Discontinued," 11 June 2020, available in Serbian at: <https://www.cenzolovka.rs/etika/obustavljen-postupak-protiv-kopernikusa-zbog-emisije-funkcionera-sns-a-djukanovica/>.

for violating the Electronic Media Act; this station broadcast the spots of the Russian Party in late February and early March, before the elections were called.¹⁶⁴

1.2.3. Prohibited Election Spots

The SNS in late May ran its election spot showing the party leader, Aleksandar Vučić, talking to a six-year-old girl. The spot met with harsh public criticism. Political actors and organisations and associations focusing on child rights required of REM to prohibit its airing “because it fulfilled nearly all the criteria laid down in the Code on Protection of Children from Political Abuse. The Code explicitly prohibits the participation of children in election activities because children do not have the right to vote and should not be abused to influence the voters’ orientation.”¹⁶⁵ REM ordered electronic media to stop airing the spot, because it was in contravention of the Rule-book on the Protection of Minors in the Field of Media Service Provision.¹⁶⁶ REM’s decision, however, applies only to the media within its remit, and not the Internet.¹⁶⁷

Two election spots of the “Aleksandar Vučić – For Our Children” ticket featured workers of public companies and institutions wearing their uniforms and promoting SNS. REM recused itself from ruling on the request to ban the spots, although the Anti-Corruption Agency found a violation of the law.¹⁶⁸

REM called on broadcasters to stop airing another spot “Not voting is the only way not to vote for Vučić,” because it was in contravention of the Advertising Act.¹⁶⁹ The spot promoting the boycott of the elections did not clearly designate who was behind it.

1.2.4. Social Media Campaigning

CRTA in 2020 monitored the campaigning of political parties and their representatives also on the following social media: Facebook, Twitter and Instagram. It monitored and analysed over 300 official profiles and around 7,500 posts in the 4–16 March and 12–24 May periods. Opposition parties and individuals were much more active on the social networks, which may be interpreted as their attempt to make up

164 *Radio 021*, “REM Initiates Procedure against TV Šabac,” 12 June 2020, available in Serbian at: <https://www.021.rs/story/Izbori-2020/245792/REM-pokrenuo-postupak-protiv-TV-Sabac.html>.

165 *Danas*, “Organisations: SNS Spot is New Form of Child Abuse,” 30 May 2020, available in Serbian at: <https://www.danas.rs/drustvo/organizacije-spot-sns-novi-vid-zloupotrebe-dece/>.

166 *Danas*, “REM Prohibits SNS Spot Featuring a Child,” 1 June 2020, available in Serbian at: <https://www.danas.rs/politika/izbori-2020/insajder-zabranjen-spot-sns-a-u-kojem-se-pojavljuje-dete/>.

167 *Radio Free Europe*, “How was Vučić’s sport banned? On children and political campaigns,” 2 June 2020, available in Serbian at: <https://www.slobodnaevropa.org/a/kako-je-zabranjen-vucic-ev-spot/30649013.html>.

168 CRTA, “Elections 2020: Long-Term Observation Report for the May 25th – June 14th Period,” available at: <https://crt.rs/wp-content/uploads/2020/06/Elections-2020-Long-term-observation-report-for-the-period-May-25th-June-14th.pdf>.

169 *Nedeljnik*, “REM Prohibits Spot Calling for Boycott of Elections because It Mentions Vučić,” 12 June 2020, available in Serbian at: <https://www.nedeljnik.rs/rem-zabranio-spot-koji-poziva-na-bojkot-izbora-zbog-pominjanja-vucica-diskriminacija-licnosti/>.

for lack of other space to communicate with the voters. The number of posts of opposition parties and figures heavily outnumbered those posted on social networks by the ruling parties and their officials (72% v. 28% in March and 78% v. 22% in May).¹⁷⁰

In March 2020, Twitter removed over 8,500 accounts that sent over 43 million tweets promoting SNS and its leader Aleksandar Vučić and attacking their political opponents. Daniel Bush of Stanford University described the contours of this operation and the tactics the ruling party used to achieve its aims.¹⁷¹

2. Unofficial Campaigning during the State of Emergency

On 16 March 2020, the Republican Election Commission (REC) adopted a Ruling Suspending All Parliamentary Election Activities¹⁷² pursuant to Article 5 of the Decree on State of Emergency Measures,¹⁷³ ordering the discontinuation of all election activities at all three levels: national, provincial and local. Paragraph 3 of the Ruling specified that the new election activity deadlines would be set after the end of the state of emergency.

After the COVID-19 epidemic was declared and the state of emergency introduced, all parties were forced to cancel their rallies; the anti-Government protests held every Saturday were called off as well. Representatives and sympathisers of both the ruling and the opposition parties violated the prohibition of movement in plain sight on several occasions. The public officials' activities and presence in the media, especially the activities and statements of the topmost officials – the Serbian President and Prime Minister – regarding epidemic-related questions left the impression that the campaign had actually never been suspended.

At the very onset of the state of emergency, Government representatives participated together with medical experts in news conference on the epidemic. Subsequently the Crisis Headquarters members held their press conferences every day at 3 pm and the Government representatives addressed the nation in the evenings.

170 CRTA, "Elections 2020: Long-Term Observation Report for the May 25th – June 14th Period," available at: <https://cрта.rs/wp-content/uploads/2020/06/Elections-2020-Long-term-observation-report-for-the-period-May-25th-June-14th.pdf>.

171 Daniel Bush, "Fighting Like a Lion for Serbia": An Analysis of Government-Linked Influence Operations in Serbia, Stanford Internet Observatory, April 2020, available at: https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/serbia_march_twitter.pdf.

172 DPA, "Serbia delays elections because of coronavirus outbreak," 16 March 2020, available at: <https://www.dpa-international.com/topic/serbia-delays-elections-coronavirus-outbreak-urn%3Anewsm-l%3Adpa.com%3A20090101%3A200316-99-354365>. The REC Ruling is available in Serbian at: <https://www.rik.parlament.gov.rs/vest/sr/2615/republicka-izborna-komisija-donela-resenje-o-prekidu-svih-izbornih-radnji-u-sprovodjenju-izbora-za-narodne-poslanike-.php>.

173 *Sl. glasnik RS*, 31/20, 36/20, 38/20, 39/20, 43/20, 47/20 and 49/20.

The SNS election ticket was headed by the Serbian President, who was not running for any seats. Both before and especially after the state of emergency was proclaimed, he frequently appeared on TV stations with nationwide coverage in his capacity of President, but the public interpreted his appearances as election campaigning. For instance, he held a news conference in the Belgrade Arena after touring the packing of aid packages to be distributed to Belgrade pensioners; the impression of campaigning could not be shaken off, as there was clearly no rational reason why the head of state should oversee the city authorities' activities. The Serbian President frequently publicly spoke about a number of issues not within his remit; the one that drew the greatest attention was his announcement that all adult citizens of Serbia would be given €100 from the state budget, although the President has no powers to decide on distribution of money from the budget. With TV cameras in their wake, the President and Ministers went to various Serbian towns distributing medical equipment and ventilators to fight COVID-19.¹⁷⁴

Transparency Serbia said that the public officials' campaigns during the state of emergency were even more intensive and visible and that most regarded the fight against coronavirus and distribution of donations.¹⁷⁵ Representatives of opposition parties promoted the volunteering activities of their officials and sympathisers during the epidemic on social networks.

The Don't Let Belgrade D(r)own Initiative and Civic Front on 26 April called on citizens to come out to their windows and balconies and take part in a campaign under the slogan "Raise Your Voice Every Day: Noise against Dictatorship" every evening at 8:05 pm, by making noise to express their dissatisfaction with the degradation of the institutions and state capture by the SNS.¹⁷⁶ In response, SNS MP Vladimir Đukanović said he would play music on his balcony and make noise in support of the regime; footage of unidentified men climbing on tops of buildings across Serbia amidst the curfew, lighting torches and playing music, and voicing insults against opposition leader Dragan Đilas, soon appeared on social networks.¹⁷⁷

174 BIRN, "Serbian Mayor's Assistant Sacked for Criticising President," 7 April 2020, available at: <https://balkaninsight.com/2020/04/07/serbian-mayors-assistant-sacked-for-criticising-president/>. Vučić also handed out medical equipment in Niš and toured the construction of the highway at Čortanovci.

175 Transparency Serbia, "Monitoring of Public Officials' Activities during the Election Campaign (4–15 March) and during the "Suspended Election Campaign" (16 March – 10 May) – Initial Results," available in Serbian at: https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_prvi_rezultati_monitoringa_funkcionerske_kampanje_2020.pdf. In the 16 March – 10 May period, the greatest number of promotional activities was implemented by Defence Minister Aleksandar Vulin (52), Labour Minister Zoran Đorđević (28) and President Aleksandar Vučić (11). Among the local officials, the list was topped by Belgrade Deputy Mayor Goran Vesić (26), Zemun Mayor Dejan Matić (11), Šabac Mayor Nebojša Zelenović (10) and Novi Pazar Mayor Nihat Biševac (10).

176 US News/Reuters, "Serbs Bang Pots to Protest Government and Strict Coronavirus Measures," 29 April 2020, available at: <https://www.usnews.com/news/world/articles/2020-04-29/serbs-bang-pots-to-protest-government-and-strict-coronavirus-measures>.

177 BIRN, "Serbian police allow pro gov't protesters to breach curfew," 5 May 2020, available at: <https://balkaninsight.com/2020/05/05/serbian-police-allow-pro-govt-protesters-to-breach-curfew/>.

In response to citizens' complaints, the police came to the scene on several occasions and ID-ed the individuals on the roofs, who apparently had curfew passes.

The epidemic did not bring any changes to the outlets' editorial policies. Members of the ruling majority dominated the contents of programmes of television stations with national frequencies and occupied 91 percent of time dedicated to political entities in the extended prime-time. Of the nine percent of media time devoted to the opposition, five percent went to parties boycotting the elections, and four percent to those running in the elections. Reporting on the regime was mostly positive or neutral, on the opposition boycotting the elections mostly negative, while reports on the opposition that announced its participation in the elections were neutral.¹⁷⁸ Government representatives addressed the nation on nine special occasions, which were broadcast by all TV stations with nationwide coverage.¹⁷⁹

BIRODI's research showed that the opposition was altogether given 20 seconds and President Vučić 13,919 seconds of airtime in the 16–31 March period in the news on RTS, *TV Pink*, *TV Hepi* and *B92 TV*. Together with the airtime devoted to the Prime Minister, Ministers and representatives of the Vojvodina provincial government, the ruling parties featured around 20,000 seconds in these stations' newscasts.¹⁸⁰

When the state of emergency was lifted, the REC issued a Ruling on the Continuation of Parliamentary Election Activities.¹⁸¹ The elections were scheduled for 21 June 2020. Rallies were organised in front of the National Assembly despite the ban on assemblies. Representatives of the ruling coalition and some opposition parties clashed¹⁸² despite the police cordon between them. An SNS sympathiser slapped a woman protesting in the other camp.¹⁸³ Neither group complied with the protection measures, including the recommended physical distance; SNS organised buses to transport its supporters to the rally.

178 CRTA, "In the state of emergency, the regime is absolutely dominant on televisions with national coverage," 16 May 2020, available at: <https://crt.rs/en/in-the-state-of-emergency-the-regime-is-absolutely-dominant-on-televisions-with-national-coverage>.

179 *Ibid.* The Serbian President took part in seven and the Prime Minister in three of these special addresses.

180 *Direktno*, "Opposition Given 20 Seconds, Vučić 13,919 Seconds in News in One Fortnight!" 28 April 2020, available in Serbian at: <https://direktno.rs/vesti/drustvo-i-ekonomija/270410/u-15-dana-opoziciji-na-tv-20-sekundi-vucic-u-dnevnica-13919.html>.

181 The REC Ruling is available in Serbian at: <https://www.rik.parlament.gov.rs/tekst/1553/izbor-na-dokumenta.php>.

182 *BIRN*, "Serbian right-winger clashes with minister outside parliament," 8 May 2020, available at: <https://balkaninsight.com/2020/05/08/serbian-right-winger-clashes-with-minister-outside-parliament/>; *BIRN*, "Serbian MPs vow to continue rival hunger strikes," 11 May 2020, available at: <https://balkaninsight.com/2020/05/11/serbian-mps-vow-to-continue-rival-hunger-strikes/>; *N1*, "Incidents at the Parliament Door: *Dveri* Protest, Assaults on Ministers and MPs," 8 May 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a597243/Protest-Dveri-ispred-ulaza-u-Skupstinu.html>.

183 *Danas*, "Police and Gendarmes Fail to React to SNS Slap," 13 May 2020, available in Serbian at: <https://www.danas.rs/drustvo/policija-i-zandarmerija-nisu-reagovali-na-udarac-od-naprednjaka/>.

After the ban on assemblies was lifted, the assessments of the risks in the context of the election campaign were left to the political parties. Many public figures and experts criticised the total relaxation of the rigorous anti-epidemic measures. They also voiced concerns about the threats to health during the collection of signatures and rallies, as well as during voting in closed and often cramped polling stations. Wearing of protective gear was no longer obligatory, merely recommended.

3. Election Day – Campaigning for Turnout

Elections at all three levels were held on 21 June 2020. The REC published the final number of voters in Serbia in its Decision: as of 18 June 2020, the number of voters in Serbia stood at 6,583,665.¹⁸⁴ They were able to cast their ballots at 8,433 polling stations. Twenty-one tickets ran for the 250 seats in the Serbian parliament.¹⁸⁵ The name of SNS' ticket "Aleksandar Vučić – For Our Children" drew attention, inter alia, in the light of the Code on the Protection of Children from Political Abuse¹⁸⁶ adopted back in 1993. Under this Code, "political organisations shall not acquiesce to abuse of children and youths for political purposes even through media and reports supporting their policies and actions. They shall promote media legislation and self-regulation precluding the abuse of children for any purpose in their programs and activities."

With the exception of the Socialist Party of Serbia (SPS) – United Serbia coalition, the other contestants won little support. Albanian, Bosniak and Hungarian minority parties also fielded their candidates, as did the Russian Party.

The question of which turnout could be considered a good one dominated public discourse given that some opposition parties opted for boycotting the elections. The Alliance for Serbia, the Don't Let Belgrade D(r)own Initiative, the Movement of Free Citizens (PSG), Enough is Enough et al. decided against running in early 2020. PSG and the *Dveri* movement, however, decided to run after the state of emergency was lifted.¹⁸⁷ The Mayors of Šabac and Paraćin, Nebojša Zelenović and Saša Paunović, were advocating the third option – boycott of the parliamentary elections but not of the local elections; they argued that elections in these cities could be held in a democratic atmosphere and that they should not give them up to SNS without a fight.

184 Available in Serbian at: <https://www.rik.parlament.gov.rs/tekst/8230/broj-biraca.php>.

185 Available in Serbian at: <https://www.rik.parlament.gov.rs/tekst/1937/izborne-liste.php>.

186 Prvoslav S. Plavšić, *Children and the Media: Rulebook against Abuse of Children for Media Purposes, Code on Protection of Children from Political Abuse*, Friends of Children of Serbia, 2019, p. 66, available in Serbian at: <http://zadecu.org/wp-content/uploads/2019/09/Deca-i-mediji.pdf>.

187 Blic, "Pavle Grbović, Member of PSG Presidency: Young People Should Decide What Kind of a Country They Want to Live in," 10 May 2020, available in Serbian at: <https://www.blic.rs/vesti/politika/pavle-grbovic-clan-predsednistva-psg-mladi-treba-da-odluce-u-kakvoj-zemlji-zele-da-ykepjq3>.

On 5 July 2020, the REC published the final results of the elections¹⁸⁸ held on 21 June and of the repeat elections held on 1 July 2020.¹⁸⁹ CRTA and the Centre for Free Elections and Democracy (CeSID) decided against monitoring the repeat elections because of the hike in coronavirus cases. According to the REC's data, 3,221,909 (or around 49%) of the voters went to the polls. With the exception of the minority parties, to which the 3% threshold does not apply, only the following parties won enough votes and seats in the parliament: SNS (60.65%-188 seats), SPS-United Serbia coalition (10.38% – 32 seats) and Aleksandar Šapić's Victory for Serbia (3.83%-11 seats). The following minority parties won seats in the National Assembly: Alliance of Vojvodina Hungarians (2.23%-9 seats), Straight Ahead (1% – 4 seats), the Albanian Democratic Alternative – United Valley (0.82%-3 seats) and the Party of Democratic Action of Sandžak (0.77% – 3 seats). The 49% turnout, estimated by CRTA on election night and ultimately confirmed by REC, was much lower than at the 2016 parliamentary elections, when 56.7% of the voters cast their ballots.¹⁹⁰

CRTA assessed that the turnout was increased by between four and five percent through undue pressures, incidents and irregularities, which occurred at between 8 and 10 percent of the polling stations. The number of irregularities at these elections doubled compared with those registered during the 2016 and 2017 elections.¹⁹¹ A number of irregularities registered during election-day at polling stations and in front of them, upped the turnout; they included the so-called Bulgarian train¹⁹² in Zrenjanin and Požarevac, prompting CRTA to file criminal complaints.¹⁹³ Secrecy of voting was violated and pressures were brought to bear both on the voters and on the election observers.

CRTA observers inside the polling stations, in front of the polls and at households of voters who registered to vote outside of polling stations identified the following breaches: breaches of secrecy of voting, registration of voters in parallel voter registers, pressures on voters, vote buying, letting people vote before identifying them first or using the UV lamp, as well as so-called carousel voting.¹⁹⁴ On election-day, many citizens were phoned by SNS activists, who asked them whether they

188 REC, Press release of 5 July 2020, available in Serbian at: <https://www.rik.parlament.gov.rs/vest/9434/saopstenje-za-javnost-.php>.

189 The repeat parliamentary elections were held at 234 polling stations. The REC Ruling of 26 June 2020 ordering them is available in Serbian at: <https://www.rik.parlament.gov.rs/tekst/9231/ponavljanje-glasanja-1-jula-2020-godine.php>.

190 CRTA, "Voter Turnout in Parliamentary Elections Lower Than in 2016," 21 June 2020, available at: <https://crt.rs/en/voter-turnout-in-parliamentary-elections-lower-than-in-2016/>.

191 *Ibid.*

192 See more: https://en.wikipedia.org/wiki/Bulgarian_train.

193 CRTA, "Nedeljkov and Pavlović: Minimal standards fulfilled, democracy endangered," 22 June 2020, available at: <https://crt.rs/en/minimal-standards-fulfilled-democracy-endangered>; *Danas*, "CeSID: Lots of Irregularities at Polls During the Last Two Hours," 21 June 2020, available in Serbian at: <https://www.danas.rs/politika/izbori-2020/cesid-u-poslednja-dva-sata-mnogo-nepravilnosti-na-birackim-mestima/>.

194 CRTA, "Nedeljkov and Pavlović: Minimal standards fulfilled, democracy endangered," 22 June 2020, available at: <https://crt.rs/en/minimal-standards-fulfilled-democracy-endangered>.

had voted and, if not, whether they would. The REC dismissed 108 complaints by citizens, 34 complaints filed by the CRTA observers and 85 complaints by the Movement for the Restauration of the Kingdom of Serbia.¹⁹⁵

Several cases of grave violations of the law and absurd situations drew public attention in the aftermath of the elections. Footage of an unidentified woman at polling station 49 in Ub standing behind the voting screen and showing voters, who had obviously come in a group, who to vote for, was posted on the social media. At one point, she even took the ballots after the voters circled the number they were told to, folded them and threw them into the ballot box. All this was happening in front of the election committee members, who ignored the scene, going about their usual duties of tracking down the names of the voters in the voters' registers before handing them the ballots. The footage prompted CRTA to file a criminal complaint against the unidentified woman for violating the confidentiality of voting and voting-related bribery.¹⁹⁶ The Association for the Protection of Constitutionality and Legality said that it had information that the voters were residents of a Roma settlement, who each received 1,000 RSD and a package of assistance. It called on the prosecutors to investigate these claims and gross violations of election rules seen on the footage.¹⁹⁷ Complaints were also filed because of the same handwriting on the minutes of various election committees in Niš and Požarevac.¹⁹⁸

Čajetina, Ražanj, Surdulica, Beočin, Topola and Svilajnac were the only municipalities in which the Serbian Progressive Party did not win the local elections.¹⁹⁹ In Belgrade, the SNS lost in the municipality of New Belgrade, to Aleksandar Šapić. The Šabac City Election Commission annulled the elections at all 100 polling stations due to irregularities.²⁰⁰ The Šabac Mayor said that his movement had filed

195 NI, "REC Rejects All Complaints about Serbia's Elections," 24 June 2020, available at: <http://rs.n1info.com/English/NEWS/a613250/RIK-rejects-all-complaints-about-Serbia-s-elections-ENEMO-Race-imperilled.html>.

196 NI, "CRTA Files Criminal Complaint over Voting "Assistance" in Ub," 26 June 2020, available in Serbian at: <http://rs.n1info.com/Izbori-2020/a613631/CRTA-podnela-krivicnu-prijavu-zbog-zajednickog-glasanja-u-Ubu.html>.

197 NI, "APCL: People on Footage Voted for 1,000 Dinars and a Package," 25 June 2020, available in Serbian at: <http://rs.n1info.com/Izbori-2020/a613538/UZUZ-Ljudi-sa-snimka-glasali-zahiljadu-dinara-i-paket.html>.

198 *Južne vesti*, "Criminal Report Filed with Niš Prosecutors over Same Handwriting on Election Committees' Minutes," 2 July 2020; *Danas*, "Administrative Court to Establish Final Results in Požarevac," 7 July 2020, available in Serbian at: <https://www.juznevesti.com/Politika/Krivicna-prijava-DJB-u-Nisu-zbog-zapisnika-sa-istim-rukopisom-iz-GIK-a-kazu-da-nema-nepravilnosti.sr.html> and <https://www.danas.rs/politika/konacne-rezultate-izbora-u-pozarevcu-utvrdice-upravni-sud/>.

199 NI, "Local Elections: Municipalities in Which SNS Did Not Win," 22 June 2020, available in Serbian at: <http://rs.n1info.com/Izbori-2020/a612544/Lokalni-izbori-Opstine-u-kojima-nije-pobedio-SNS.html>.

200 NI, "Zelenović on Elections: SNS Entitled to Complain, We Have to Hold on to Šabac," 25 June 2020, available in Serbian at: <http://rs.n1info.com/Izbori-2020/a613384/Zelenovic-o-izborima-SNS-ima-pravo-zalbe-moramo-da-sacuvamo-Sabac.html>.

27 criminal complaints against the chairs of the 26 election committees, all of them members of the SNS, because voters had cast their ballots outside the polling stations, and 42 complaints over irregularities at polling stations, including voting by people who did not show their IDs to the election committees, keeping of parallel voters' registers, group voting, et al.²⁰¹ The SNS City Committee appealed the decision with the Novi Sad Administrative Court, which upheld the appeal partially and ruled that elections be repeated at 27 polling stations.²⁰² However, as the hike in the number of COVID cases in Šabac led to the introduction of an emergency situation, the City Election Commission decided that the repeat elections would be held seven days after the emergency situation was lifted.²⁰³ SNS won the majority also in Paraćin, where the repeat elections were to be held at three polling stations. The repeat elections were not held by the time this report was completed.

Questions were again raised of the now established practice of holding elections at various levels on the same day given that senior state officials, who have no powers at the local level, usually head the tickets and wage the campaigns. Simultaneous local and parliamentary elections benefit large and/or ruling parties, since they allow them to pool their campaigning resources and airtime, as opposed to their local adversaries. Rather than focusing on the local parties' programmes addressing specific local community issues and interests, the voters are confused by campaigns waged by senior state officials discussing national policy issues.

The turnout was lower in Belgrade than in the rest of Serbia – it stood at around 38%.²⁰⁴

Just one day after the elections, the media turned their attention back to the COVID-19 epidemic and claims that it has again acquired critical proportions. The number of COVID-19 cases suddenly rose but public events, such as soccer games, concerts, et al, were not cancelled. The following questions arise in the light of the explosion of the epidemic in late June, although the ruling party was repeatedly declaring "victory" over it from 6 May, when it decided to lift the state of emergency, to election-day and abolished most of the measures: Where conditions for holding elections fulfilled? How much did voting in cramped polling stations contribute to the surge of the virus? Were citizens intentionally deceived about the actual threats to their health at the time?

201 *Ibid.*

202 N1, "Court Partly Upholds SNS Complaint, Repeat Elections at 27 Stations in Šabac," 29 June 2020, available in Serbian at: <http://rs.n1info.com/Izbori-2020/a614588/Sud-delimicno-usvojio-zalbu-SNS-izbori-u-Sapcu-ponavljaju-se-na-27-mesta.html>.

203 N1, "Partial Repetition of Elections in Šabac after Emergency Situation," 11 July 2020, available in Serbian at: <http://rs.n1info.com/Izbori-2020/a618740/Delimicno-ponavljanje-izbora-u-Sapcu.html>.

204 REC, Parliamentary Election Results by Municipalities, available in Serbian at: <https://www.rik.parlament.gov.rs/tekst/9386/ukupni-rezultati-izbora-za-narodne-poslanike-narodne-skupstine-2020-godine.php>.

VI. LIBERTY AND SECURITY

1. Prohibition of Torture and Right to Liberty and Security

No changes were made to Serbian laws on the state's obligations regarding the prohibition of torture and inhuman or degrading treatment or punishment (ill-treatment) in the first half of 2020.

The Serbian Protector of Citizens completed three reviews of cases of torture and ill-treatment by public officials in the first six months of the year, identifying deficiencies in the work of the relevant authorities.

The first case, which the Protector of Citizens reported on in February 2020, concerned the ill-treatment of a man by several police officers in Smederevo. They pinned him to the ground, hitting him on the head and bashing his head against the asphalt, and then kept his head pinned to the ground with their feet. The Protector of Citizens found that their superior had failed to perform a diligent review of their use of force.²⁰⁵

The second case, which the Protector of Citizens also reported on in February 2020, concerned allegations of a detained individual, who claimed that the police had abused him during his arrest in mid-December 2019 (he sustained a skull fracture and a concussion after the police reportedly hit him on the nape of the neck with the butt of their gun). The Protector of Citizens had difficulties reviewing the case because the Prokuplje District Prison doctor had failed to describe the complainant's injuries in detail or photograph them, to precisely write down his account of how he had sustained them, or give his opinion on whether his injuries could have been inflicted by the physical force he complained of. The Protector of Citizens' review revealed that the District Prison Warden and the prison medical staff were unaware of their duties under the Istanbul Protocol, despite the numerous recommendations the Protector issued on the subject in the recent past.²⁰⁶

205 Protector of Citizens, "Smederevo Police Violated Complainant's Right to Inviolability of Physical and Mental Integrity," 11 February 2020, available in Serbian at: www.ombudsman.rs/index.php/2012-02-07-14-03-33/6494-n-c-lni-p-lici-s-upr-v-u-s-d-r-vu-d-u-vrdi-disciplins-u-dg-vrn-s-p-lici-s-ih-sluzb-ni-i-su-n-p-sr-dn-p-s-up-li-pr-pri-uzi-cu.

206 Protector of Citizens, "Prokuplje District Prison Violated Right to Prohibition of Torture," 26 February 2020, available in Serbian at: www.ombudsman.rs/index.php/2012-02-07-14-03-33/6521-z-u-pr-uplju-p-vr-di-pr-v-n-z-sh-i-u-d-zl-s-vlj-nj-r-ni-d-ljn-pis-ns-v-n-p-vr-d-pri-uzi-c-i-ni-un-nj-g-v-n-v-d-n-cinu-n-s-n-p-vr-d.

The third case, which also drew a lot of public attention, concerned the ill-treatment of unaccompanied migrant children by the Bogovađa Asylum Centre guards in mid-May 2020. In BCHR's view, some of the Ombudsman's findings and recommendations in this case are problematic. First of all, in his enactment on the completion of the review, the Protector of Citizens did not recognise the guards – workers of the private security company contracted to safeguard the Centre – as individuals acting in official (public) capacity in the meaning of Article 1 of the Convention against Torture;²⁰⁷ consequently he did not qualify the ill-treatment as an act attributable to the state, i.e. the administrative authority subject to his review or recommend that all the implicated guards be suspended from their jobs in the Asylum Centre (a requirement applicable to all public officials under the case law of the European Court of Human Rights and the European Committee for the Prevention of Torture, CPT). He therefore recommended “preclusion of direct contacts” between them and the abused children pending the completion of the procedure. Furthermore, rather than performing a comprehensive review of the legality and regularity of work of the Bogovađa Asylum Centre, the Inter-Municipal Social Work Centre covering the Ljig, Lajkovac and Mionica municipalities, and the Ministry of Internal Affairs, MIA), the Protector of Citizens recommended that such a review be implemented by in-house supervisory mechanisms – which brings into question the purpose of his independent oversight. Finally, there was no justification for the Ombudsman's failure to recommend to the administrative authorities to urgently take measures to address the excessive number of unaccompanied migrant children under the care of just one temporary guardian since he himself said in his enactment that one Inter-Municipal Social Work Centre case officer was acting as a temporary guardian of around 333 unaccompanied migrant children. Nor did the Protector of Citizens recommend any measures with regards to the fact that the Bogovađa Asylum Centre guards were “allowed to carry plastic truncheons,” which they “occasionally use to punish disobedient migrants.”²⁰⁸

On 26 June, International Day in Support of Victims of Torture, the Protector of Citizens issued a press release saying that “there is no systemic torture in Serbia and that there is a tendency of improvement of the protection of the rights of persons deprived of liberty and prevention of torture and other forms of ill-treatment.”²⁰⁹

207 In its General Comment No. 2 on the implementation of article 2 of the Convention against Torture by State parties, the Committee against Torture held that States bore international responsibility for the acts and omissions of their officials *and others, including agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law* (italics ours). See: CAT/C/GC/2, §§ 15 and 17.

208 Protector of Citizens, “Protector of Citizens Requires of MIA to Establish All the Circumstances of the Physical Abuse of Migrant Children,” 26 June 2020, available in Serbian at: www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6662-nisu-pr-duz-dg-v-r-uc-r-p-v-d-fizic-g-zl-s-vlj-nj-l-l-nih-igr-n-b-z-pr-nj-u-c-n-ru-z-zil-u-b-g-v-du.

209 Protector of Citizens, “Press Release on 26 June, International Day in Support of Victims of Torture,” 25 June 2020, available in Serbian at: www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6664-26-3.

In BCHR's view, police ill-treatment is still widespread in Serbia, the status of victims of torture and other forms of ill-treatment is still extremely inauspicious, and the victims are "tripped up" at all levels, especially in court. There is still no audio or video surveillance of police interrogations, which are conducted in the offices of police inspectors, while most criminal complaints alleging torture and ill-treatment by public officials are dismissed. Public officials found guilty of torture or ill-treatment do not lose their jobs and are usually handed down mild penalties (usually suspended sentences). The BCHR, however, noted that several positive steps have been made in the past few years: the Serbian Bar Chamber opened a call centre for the appointment of *ex officio* counsel; the Legal Aid Act, which recognises victims of torture and ill-treatment as beneficiaries entitled to free legal aid regardless of their financial standing, was adopted; and, the MIA Commission for the Implementation of Torture Prevention Standards by the Police was established.²¹⁰

The BCHR marked the International Day in Support of Victims of Torture by publishing the testimony of Roki Đorđević from Kula, who was subject to grave ill-treatment by the local police officers in January 2020 in an attempt to extort a confession from him.²¹¹

1.1. State of Emergency – Derogations from the Right to Liberty and Security

Some of the measures imposed during the state of emergency derogated from the right to liberty and security (milder ones derogated only from the freedom of movement), while some eroded safeguards against torture.

Soon after the proclamation of the state of emergency, the MIA issued an Order Restricting and Prohibiting Movement of Individuals in the Territory of the Republic of Serbia.²¹² The Order prohibited persons over 65 (over 70 in smaller settlements) from leaving their homes, except in the early morning hours once a week, when they were allowed to go and buy their groceries. The Order also prohibited everyone else from leaving their homes during various parts of the day (in the afternoons, evenings and early mornings). This Order was unconstitutional from the very start because, under the Serbian Constitution, the MIA is not entitled to impose measures derogating from human rights and freedoms during the state of emergency, and the Government is not entitled to vest it with the authority to impose them.

In early April 2020, the Serbian Government revoked the Order, but included its provisions in the Decree on State of Emergency Measures.²¹³ Although the for-

210 BCHR, "Victims of Torture "Tripped up" at all Levels," 26 June 2020, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/victims-of-torture-in-serbia-tripped-up-at-all-levels-26-june-2020/>.

211 The testimony is available at: www.youtube.com/watch?v=3RF5-ajWjjQ.

212 *Sl. glasnik RS*, 34/20, 39/20, 40/20, 46/20 and 50/20.

213 *Sl. glasnik RS*, 31/20, 36/20, 38/20, 39/20, 43/20, 47/20, 49/20, 53/20, 56/20, 57/20, 58/20 and 60/20.

mal deficiency related to the unconstitutionality of the measure was thus eliminated, the degree in which the right to liberty and security of person and freedom of movement were restricted stayed the same. The limitations were extensively criticised as disproportionate vis-à-vis the elderly, who were deprived of the possibility to leave their homes 24/7, except once a week for three hours, for over a month.²¹⁴ They were finally allowed to leave their homes for short periods of time in the evenings in late April. Only specific categories of workers (doctors, police and army officers, et al) were allowed free movement during the curfew, while others had to apply for passes with the MIA.²¹⁵

Asylum seekers and migrants, who had found themselves in Serbia during the state of emergency, were under 24-hour lockdown in the Asylum and Reception Centres. The deprivation of liberty of this group of people was ordered by the Government Decision on the Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum and Reception Centres in the Republic of Serbia,²¹⁶ adopted in accordance with Article 6 of the Act on the Protection of the Population from Communicable Diseases. In early April 2020, this decision was revoked, but the identical restriction of the right to liberty and security of asylum seekers and migrants was included in the amended Decree on State of Emergency Measures.²¹⁷ The authorities planned on keeping asylum seekers and migrants locked up in the Asylum and Reception Centres after the state of emergency was lifted as well. The Health Ministry on 6 May 2020 issued the Order Restricting Movement on Roads Leading to Asylum and Reception Centre Facilities and Grounds,²¹⁸ but revoked it eight days later²¹⁹ after several CSOs initiated a review of its constitutionality with the Constitutional Court.²²⁰

During the state of emergency, a large number of people reported that they had been arrested and detained for violating the self-isolation measure they had not been properly notified of. They claimed that the flyers on COVID-19 protection measures they received when they entered the country did not specify that they should remain in their homes or that leaving their homes for a specific period of time was punishable by law. The people given flyers rather than rulings on self-

214 The Constitutional Court of Serbia did not take a view on this issue. The Constitutional Court of Bosnia and Herzegovina found the prohibition of movement unconstitutional (its decision is available in BCS at: www.ustavnisud.ba/dokumenti/_bs/AP-1217-20-1234093.pdf).

215 The criteria against which the curfew passes were issued were not laid down. The issuance of such passes was compromised at the end of the state of emergency after serious suspicions arose that the MIA had issued them to the ruling party's activists, who lit torches and fireworks on tops of residential buildings in Serbian cities.

216 *Sl. glasnik RS*, 32/20.

217 *Sl. glasnik RS*, 53/20, 56/20, 57/20, 58/20 and 60/20.

218 *Sl. glasnik RS*, 66/20.

219 *Sl. glasnik RS*, 74/20.

220 The BCHR initiative is available in Serbian at: www.bgcentar.org.rs/inicijativa-ustavnom-sudu-za-ocenu-ustavnosti-i-zakonitosti-naredbe-o-ogranicenju-kretanja-na-prilazima-otvorenim-prostoru-i-objektima-prihvatnih-centara-za-migrante-i-centara-za-azil/.

-isolation were arrested if they were found outside their homes and held in detention for several weeks on suspicion that they had violated the Criminal Code provision incriminating non-compliance with health regulations during an epidemic.²²¹ The Justice Ministry recommended that all public prosecutors request pre-trial detention of everyone who committed a crime prosecuted *ex officio* by violating the self-isolation measure.²²²

At the recommendation of the Justice Ministry and, subsequently, under the Government Decree on the Participation of Defendants in the Main Hearings in Criminal Proceedings during the State of Emergency proclaimed on 15 March 2020,²²³ courts were allowed to arrange the presence of defendants at main hearings via Skype, a move experts sharply criticised as impinging on the right to a fair trial. The BCHR alerted that such trials undermined safeguards against torture. Namely, there was a risk that defendants abused by the police might be discouraged from reporting the abuse to the judge during the Skype trials because they were physically under the control of their abusers or their co-workers/superiors.²²⁴

The police overstepped their powers and physically abused people who violated the lockdown measures (slapped, punched, kicked them, etc.) on a number of occasions during the state of emergency. The BCHR filed four criminal complaints against police officers for torture and ill-treatment of people who had violated the curfew under Article 137(3) of the Criminal Code since the state of emergency was introduced on 15 March 2020 (three incidents occurred in Belgrade and one in Leskovac). It submitted all the video footage of police brutality posted on social networks together with the criminal complaints to the public prosecution services and the MIA Internal Control Sector.²²⁵ Police ill-treated asylum seekers in Serbia as well during the state of emergency; the BCHR filed a criminal report with the Belgrade First Basic Public Prosecution Service and a complaint with the Protector of Citizens against members of an unidentified police unit (apparently a Gendarmerie unit), who abused several asylum seekers in the Krnjača Asylum Centre in early April 2020.²²⁶

221 Such a fate befell musician Jovana Popović from Kikinda and basketball player Nikola Todorović from Leskovac. Jovana Popović's account is available in Serbian at: rs.n1info.com/Vesti/a592544/Jovana-Popovic-Iz-jednog-zatvora-sam-usla-u-drugi-i-dalje-cekam-odgovor-suda.html.

222 *Danas*, "Prosecutors under the Obligation to Request Pre-Trial Detention for Violation of Self-Isolation," 21 March 2020, available in Serbian at: www.danas.rs/drustvo/tuzilastvo-obavezno-da-trazi-pritvor-za-kršenje-samoizolacije/.

223 *Sl. glasnik RS*, 49/20.

224 BCHR, "Skype Trials Erode Safeguards against Torture and Ill-Treatment," 8 April 2020, available at: www.bgcentar.org.rs/skype-sudenja-umanjuju-garancije-za-zastitu-od-zlostavljanja/.

225 The Belgrade First Basic Public Prosecution Service and the Leskovac Basic Public Prosecution Service did not respond by the end of the reporting period to BCHR's requests for access to information of public importance concerning the steps they took in response to the criminal complaints it filed.

226 The Protector of Citizens did not complete the review of the complaint by the end of the reporting period.

1.2. Activities of the National Preventive Mechanism (NPM)

In January and February 2020, the NPM published several reports on its April, June and August 2019 visits to establishments in which people deprived of liberty were held. The NPM's practice of drafting reports on visits with three- and five-month delays and publishing them with six- and nine-month delays continued. In June 2020, the NPM published several reports on its September and October 2019 visits to the Vranje police and District Prison and the Prokuplje District Prison; these reports were prepared in February 2020. The NPM failed to publish its 2019 annual report by end of June 2020.

According to information published on the website of the Protector of Citizens, the NPM commendably recently paid a larger number of visits to establishments where people deprived of liberty were held, specifically police stations and administrations. The continuous drop in the number of its visits to institutions, especially police stations, until 2018²²⁷ was noted and criticised both by local CSOs and the European Commission.²²⁸ Furthermore, none of the visits to the police stations reported on in the first six months of 2020 were pre-notified.

However, the NPM's oversight of police treatment of persons deprived of liberty still cannot be qualified as fully satisfactory. Although it has been recommending that police interrogations be held in designated premises under audio and video surveillance and that the police equipment and items seized by the police not be kept in such premises,²²⁹ the NPM appears to have been neglecting several other important aspects of its oversight of the police.

The NPM reports published in the first half of 2020 lead to the conclusion that this body does not peruse registers of complaints by citizens when it visits the police stations, which is extremely important for preventing and identifying cases indicating ill-treatment. There have been quite a few cases of complaints of police abuse that were either never forwarded or were forwarded with a delay to the relevant prosecutors or the MIA Internal Control Sector.²³⁰

Second, the NPM has failed to perform proper oversight of deportations of aliens. Although the Protector of Citizens specified in his recent thorough reports on oversight of deportations²³¹ that the NPM teams monitored the putting of the

227 YUCOM, "5 Years: Analysis of the Work of the Protector of Citizens of the Republic 2015–2019," pp. 93–104, available at: <http://en.yucom.org.rs/wp-content/uploads/2020/01/Analiza-rada-Ombudsmana-2015–2019-ENG.pdf>.

228 European Commission, *Serbia 2019 Report*, pp. 23–24, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>.

229 The NPM has been reiterating these recommendations in all its reports on visits to police establishments over the previous year.

230 The BCHR ascertained this in several cases during its monitoring visit to the Belgrade City Police Administration in February 2020.

231 See the following NPM reports, available in Serbian at: www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz-vlj-nin-u-r-in, www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz-vlj-nin-u-r-in, www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz-vlj-nin-u-r-in, www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz-vlj-nin-u-r-in, www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz-vlj-nin-u-r-in, www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz-vlj-nin-u-r-in, www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz-vlj-nin-u-r-in, 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www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz-vlj-nin-u-r-in, www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz-vlj-nin-u-r-in, www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz-vlj-nin-u-r-in, www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz-vlj-nin-u-r-in, [www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz](http://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6465-np-n-dzir-prinudn-ud-lj-nj-drz-vlj-nin-u-r-in)

aliens in the official vehicles, checked the quality of their accommodation and interviewed them, the reports gave no indication of whether the NPM also examined whether the relevant authorities had performed detailed assessments of risks of ill-treatment of the aliens upon their forced removal from the Republic of Serbia (under the *non-refoulement* principle), an issue repeatedly alerted to by international monitoring mechanisms.²³²

The gravest problem regarding the NPM's activities in the past six months was identified in the case of an individual who claimed that he was ill-treated by the police after they deprived him of liberty. The NPM's report on its *ad hoc* visit to the Stari Grad Police Station on 13 June 2019 (which was published in February 2020)²³³ said that the man it interviewed claimed that he had been physically abused (kicked and punched) by the police the previous day, on 12 June 2019, including in the police station hallway in front of a number of witnesses.²³⁴ The NPM said it sought access to the footage of the hall cameras, but that the police said they could not rewind it. The NPM "subsequently" requested access to the footage from the MIA, which replied that all footage was deleted after 20 days due to lack of space on the hard disc. The only conclusion that can be drawn from the report is that the NPM had not acted promptly on the complaint since it had required of the MIA to provide it with access to the footage two and a half weeks after its visit, by which time it was already deleted. The NPM also made no mention in its report that it had alerted the relevant prosecution service of the case immediately after its visit.²³⁵

During the COVID-19 state of emergency, the NPM "maintained written communication with the relevant authorities and visited several establishments holding people deprived of liberty."²³⁶ In its Thematic report on the application of CPT principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, the NPM said that, during

ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6528-np-u-prihv-ilish-u-z-s-r-nc-u-p-dins-s-li and [www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6539-n-dz-r-n-d-prinudni-ud-lj-nj-s-r-n-c](https://ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6539-n-dz-r-n-d-prinudni-ud-lj-nj-s-r-n-c).

232 See, e.g. the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Serbia in November 2017, A/HRC/40/59/Add.1, §§ 49–51, available at: <https://undocs.org/A/HRC/40/59/Add.1>.

233 The NPM Report No. 412–33/19, Ref. No. 27826, is available in Serbian at: [www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6513-p-s-uplj-n-p-svi-pr-p-ru-np-iz-izv-sh-p-s-i-ps-s-ri-gr-d](https://ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6513-p-s-uplj-n-p-svi-pr-p-ru-np-iz-izv-sh-p-s-i-ps-s-ri-gr-d).

234 *Ibid*, pp. 8–9.

235 Interestingly, the NPM report issued after it received the MIA's reply starts out by declaring that "all NPM recommendations have been acted on," although the MIA's reply, which is also published on the website, indicates that it is yet to undertake or complete many of the activities (e.g. designate separate interrogation premises under audio and video surveillance, organise seminars for police officers, etc.)

236 Protector of Citizens, NPM Thematic report: Application of CPT principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, May 2020, p. 3, available at: <https://www.ombudsman.rs/attachments/article/6627/Report.pdf>.

the state of emergency, it visited the Belgrade District Prison (on 23 March), the Belgrade and Padinska Skela penitentiaries and the MIA Aliens Shelter (on 24 April), and the Sremska Mitrovica penitentiary (on 30 April). All these visits were pre-notified and the NPM conducted unsupervised interviews with randomly selected persons deprived of liberty during them.²³⁷ The NPM was apparently satisfied with the work of these establishments during the state of emergency, given that it issued them only one recommendation, to put in place conditions enabling all persons deprived of liberty to maintain contacts with their families and other people by phone or alternative means of communication, including communication over the Internet by using available programs for the transmission of images and sound, to a greater extent than in ordinary circumstances.²³⁸ The thoroughness of these visits remains questionable for two reasons: the NPM team visited three establishments on the same day and its team did not include any medical professionals, although the report dealt with the protection of the persons deprived of liberty from COVID-19.

The Protector of Citizens noted in his Special Report on the activities of his office during the state of emergency that measures for protecting the health of persons deprived of liberty and the staff were complied with, that they were regularly supplied with protective gear and that enhanced medical supervision measures were applied with respect to individuals at particular risk of infection.²³⁹ The Report further states that the Penal Sanctions Enforcement Administration (PSEA) has undertaken all the requisite steps to organise the work of the staff, ensure the safe operations of all establishments and implement the measures to protect the staff and persons deprived of liberty from contracting coronavirus. Some of the inmates, however, were infected with COVID-19. The situation was particularly grave in the penitentiary in Požarevac, where as many as 84 persons deprived of liberty had coronavirus in early May, as confirmed by the PSEA.²⁴⁰ No information was publicly available about any NPM oversight activities in the Požarevac penitentiary during the state of emergency.

The NPM visited two Reception Centres run by the Commissariat for Refugees and Migration (CRM) during the state of emergency as well: the Reception Centre in Obrenovac (in late April)²⁴¹ and the Reception Centre in Adaševci (in ear-

237 *Ibid*, p. 4.

238 *Ibid*, pp. 9–10.

239 The Special Report is available at: <https://www.ombudsman.org.rs/attachments/article/192/Report%20on%20Protector%20of%20Citizens'%20activities%20during%20COVID-19%20pandemic.pdf>.

240 *N1*, “84 Convicts in Zabela Infected with Coronavirus,” 4 May 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a596021/Korona-u-Zabeli.html>.

241 NPM press release on the visit to the Obrenovac Reception Centre of 28 April 2020, available in Serbian at: www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6586-np-u-prihv-n-c-n-ru-z-igr-n-u-br-n-vcu.

ly May 2020).²⁴² The NPM did not publish its reports on these two visits by the end of the reporting period, but the Protector of Citizens said in his Special Report on the activities of his office during the state of emergency that they were overcrowded and that the accommodation conditions were unsatisfactory.²⁴³

It remains unclear why the NPM failed to visit any police stations in Serbia during the state of emergency, especially in light of the footage of police brutality (especially in Belgrade) posted on social media. The NPM team did not visit any psychiatric or residential institutions during the state of emergency either.

Cooperation between the Protector of Citizens and civic associations in the performance of NPM duties underwent specific changes in the reporting period. The Lawyers' Committee for Human Rights (YUCOM) is the only NGO of the three the Protector of Citizens cooperated with in 2019 that were selected to partake in the work of the NPM in 2020. The Protector of Citizens ceased cooperation with the Mental Disability Rights Initiative-Serbia (MDRI-S) and the International Aid Network (IAN), its 2019 partners. In addition to YUCOM, the Protector of Citizens selected the following CSOs to act as its NPM partners in 2020: the Helsinki Committee for Human Rights, the Valjevo Human Rights Committee, the Youth Integration Centre and A11-the Initiative for Economic and Social Rights.²⁴⁴ The BCHR broke off its cooperation with the NPM in mid-2019, dissatisfied with its activities, especially oversight of the police.²⁴⁵

2. Freedom of Peaceful Assembly

2.1. *Right to Freedom of Assembly – Events Held in 2020*

All of 2019 and the beginning of 2020 were marked by protests staged by the association “One out of Five Million” across Serbia. However, after 60 Saturday

242 NPM press release on the visit to the Adaševci Reception Centre of 5 May 2020, available in Serbian at: www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6592-np-u-v-nr-dn-p-s-i-prihv-n-c-n-ru-d-sh-vci.

243 The Special Report on the Activities of the Protector of Citizens during the State of Emergency, June 2020, p. 21, available at: <https://www.ombudsman.org.rs/attachments/article/192/Report%20on%20Protector%20of%20Citizens%20activities%20during%20COVID-19%20pandemic.pdf>.

244 Protector of Citizens, “Protector of Citizens Selects Associations to Cooperate in Performance of NPM Duties,” 19 June 2020, available in Serbian at: www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6660-z-sh-i-ni-gr-d-n-iz-br-udruz-nj-z-s-r-dnju-u-b-vlj-nju-p-sl-v-n-ci-n-ln-g-h-niz-z-pr-v-nci-u-r-ur.

245 BCHR, “NPM Observatory Report on Visit to Serbia’s NPM,” 30 July 2020, available in Serbian at: www.bgcentar.org.rs/saopstenje-povodom-izvestaja-npm-obs-o-radu-nacionalnog-mehanizma-za-prevenciju-torture-srbije/.

processions, the association said in late January 2020 that it would no longer organise the protests.²⁴⁶ Organisers of One out of Five Million protests in other Serbian cities: Novi Sad, Kruševac, Kragujevac, Čačak, Kikinda, and in Kosovo²⁴⁷ distanced themselves from the decision of the Belgrade chapter and local protests continued in several towns.²⁴⁸ The civic protests in Belgrade continued under the slogan “Boycott the 2020 Elections”.²⁴⁹

Protests similar to the numerous ones in support of the Serbian Orthodox Church (SOC) and against the adoption of the Montenegrin Act on Freedom of Religion in that country were held in several cities in Serbia. Red Star soccer fans set the Montenegrin flag on fire during their unnotified protest in front of the Montenegrin Embassy in Belgrade.²⁵⁰ Similar rallies staged by the Belgrade University Law School Student Club were held on a number of occasions in Belgrade.²⁵¹

An incident broke out at the beginning of the presentation of Vojislav Šešelj's book denying the Srebrenica genocide in the hall of the Belgrade Stari Grad municipality. Šešelj's bodyguards used force to throw out the activists of the Humanitarian Law Center (HLC) and the Youth Initiative for Human Rights (YIHR), who wanted to distribute HLC's report on crimes against Croats in Vojvodina to the audience. Šešelj's book was promoted in public institutions at least on two occasions, despite CSO remonstrations. Several CSOs required of the Ministry of Internal Affairs to prohibit the scheduled presentation in the New Belgrade municipality, pursuant to the Public Assembly Act provisions providing for restrictions of the freedom of assembly.²⁵² Indeed, the Public Assembly Act provides for restrictions, but the relevant authorities must construe these provisions very narrowly since the freedom of assembly is inevitably linked to the freedom of expression. Ideas promoted at rallies may be limited only under the relevant law on the freedom of expression.

246 N1, “One out of Five Million Giving up on Boycott and Organising Protests,” 29 January 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a564582/Udruzenje-1-od-5-miliona-odustaje-od-bojkota-i-od-organizacije-protesta.html>.

247 N1, “Local Organisers of One out of Five Million Protests Distance Themselves from Belgrade Chapter's Decision,” 29 January 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a564682/Lokalni-organizatori-protesta-1od-5-miliona-ogradjuju-se-od-odluke-Beograda.html>.

248 *Radio Free Europe*, “Protest in Kragujevac: “Regime in Panic over Announced Election Boycott,” 1 February 2020, available in Serbian at: <https://www.slobodnaevropa.org/a/30411914.html>.

249 *Danas*, “Belgrade: “Boycott the 2020 Elections” instead of One out of Five Million Protests,” 8 February 2020, available in Serbian at: <https://www.danas.rs/politika/nastavljeni-protesti-u-beogradu/>.

250 N1, “Red Star Fans Protest in front of Montenegrin Embassy,” 2 January 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a557507/Navijaci-Crvene-zvezde-protestovali-ispred-Ambasade-Crne-Gore.html>

251 N1, “Fresh Protest in Support of SOC in Montenegro Held in Belgrade,” 7 February 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a567494/Protest-u-Beogradu-zbog-crnogorskog-zakona-koji-je-sporan-SPC.html>.

252 YIHR, “The Ministry for Interior Affairs Must Ban Genocide-Denial in the New Belgrade Municipal Building,” 20 February 2020, available at: <https://www.yihr.rs/en/the-ministry-for-interior-affairs-must-ban-genocide-denial-in-the-new-belgrade-municipal-building/>.

On the other hand, public institutions have often been unexpectedly cancelling the scheduled events (to have been held in municipal, library or local community premises) “for technical reasons”, the latter being, as experience shows, a euphemism for political or party correctness. Denial of access to public spaces has become a tool for dealing with political opponents and precluding people from voicing opinions differing from those of the local majority; the impact of such actions is particularly pronounced in smaller communities.²⁵³

The following three topics also dominated the first two months of the year: anti-pollution protests, protests against the construction of small hydropower plants (SHPPs) and rallies in support of *TV N1*. Anti-pollution protests, staged by Don't Let Belgrade D(r)own and the Civic Front, were held in over 20 cities. Sumrakovac's residents protested against the construction of an SHPP near their village under the following slogans “We're not Relinquishing the Zlotska River” and “Rivers Give Life, Panels Give Electricity”.²⁵⁴ Rallies under the slogan “Let N1 be Seen” were organised in several Serbian cities in February. The first was held on one of the main squares in Belgrade in response to constant pressures on this media company and media blackout, as the organisers of the protest specified.²⁵⁵

Rightist groups organised “people's patrols” in late February and early March 2020, which accosted migrants and asylum seekers on the streets of Belgrade and staged rallies in several towns in Serbia. The participants in the anti-migrant protest in Subotica on 29 February 2020 carried banners “Migrants Go Home” and “We Don't Want Migrants”.²⁵⁶ A procession was organised in Belgrade on 1 March; its participants chanted “We Don't Want Migrants”, “Serbia to Serbs”, and “Kosovo is the Heart of Serbia” and carried banners such as “Terrorists not welcome”.²⁵⁷

A group of high-schoolers organised a protest in Leskovac on 2 March 2020 after fake news – that a pride parade would be held in this city – were posted on the social media; the protesters assaulted journalists covering the event and the police.²⁵⁸ The police allowed the event to proceed although the legal requirements for dispersing it or for issuing a warning to the protesters were fulfilled. The high-schoolers

253 Two book promotions were cancelled in February 2020, one written by playwright Siniša Kovačević in Indija and the other by rock critic Peca Popović in Vršac, both of whom are well-known for their opposition to the regime.

254 *N1*, “Protest against SHPP in Sumrakovac Village: Investor is not Welcome,” 11 January 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a559681/Protest-protiv-MHE-u-selu-Sumrakovac-Investitor-nije-dobrodosao.html>.

255 See: <https://twitter.com/GradjanskiO/status/1222480078359224326?s=20>.

256 *Subotica.com*, “Protest against Migrants Held,” 29 February 2020, available in Serbian at: <https://www.subotica.com/vesti/odrzan-protest-protiv-migranata-id37346.html>.

257 *Radio Free Europe*, “Protest against Migrants in Belgrade,” 8 March 2020, available in Serbian at: <https://www.slobodnaevropa.org/a/30476286.html>.

258 *Južne vesti*, “Police and Journalists Assaulted in Leskovac during Protest against Untrue Announcement of Pride Parade,” 2 March 2020, available in Serbian at: <https://www.juznevesti.com/Hronika/Napad-na-policiju-i-novinara-u-Leskovcu-na-protestu-posle-lazne-najave-o-paradi-ponosa.sr.html>.

were chanting “F...ots won’t walk here” and “Kill f...ots”, thus inciting hate, intolerance and violation of the rights of others; they also assaulted journalists covering the event and the police (both of which constitute grounds for restricting the freedom of assembly under Article 8 of the Public Assembly Act). The police brought the young man suspected of assaulting a journalist before the competent prosecution service.²⁵⁹ The Leskovac police confirmed to *Južne vesti* that they had not been notified of the event in advance. It remains to be seen whether the state authorities will remain consistent in their prosecution of organisers of rallies not notified to the police.

2.2. Freedom of Peaceful Assembly during the Coronavirus Epidemic

2.2.1. Legal Framework

Many countries across the world introduced temporary measures to prevent the spread of coronavirus, including measures prohibiting or restricting the freedom of assembly. The first coronavirus cases were diagnosed in Serbia in early March 2020. Although the freedom of assembly is enshrined in both the European Convention on Human Rights (Article 11) and the International Covenant on Civil and Political Rights (Article 21), both these international instruments allow the restriction of this freedom under specific conditions; all restrictions must be *prescribed by law* and *necessary in a democratic society* and pursue specific legitimate aims enumerated by the ECHR and the ICCPR. Protection of (public) health would be the legitimate aim in the context of the coronavirus pandemic. In order to keep the possibility of abuse of the freedom of assembly to a minimum, the restrictions must fulfil another criterion – that of *proportionality*: the degree and intensity of the restrictions must be necessary to achieve the protection of public health.

Article 54 of the Serbian Constitution lays down that restrictions of the freedom of assembly must be prescribed by law and necessary to protect public health, morals, the rights of others or the security of the Republic of Serbia. Freedom of assembly is governed in greater detail by the Public Assembly Act.²⁶⁰ Article 52 of the Act on the Protection of the Population from Communicable Diseases²⁶¹ allows the Health Minister to prohibit assemblies in public places at the proposal of the national Expert Commission for the Protection of the Population from Communicable Diseases and the Serbian Public Health Institute “Dr Milan Jovanović Batut”.

Representatives of opposition groups were the first to call for a ban on public assemblies “in order to protect the population”.²⁶² Serbian President Aleksandar

259 N1, “Assailant on Reporters in Leskovac Arrested,” 2 March 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a574306/Uhapsen-napadac-na-novinare-u-Leskovcu.html>.

260 *Sl. glasnik RS*, 6/16.

261 *Sl. glasnik RS*, 15/16 and 68/20–4.

262 N1, “Alliance for Serbia: Ban Public Assemblies and Temporarily Shut down Schools because of Virus,” 11 March 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a576862/SzS-Zabrani-ti-javna-okupljanja-i-privremeno-zatvoriti-skole-zbog-virusa.html>.

Vučić initially opposed the idea, but subsequently cancelled all SNS election rallies due to the epidemic until 1 April.²⁶³ Following a meeting of the state leadership on 11 March 2020, indoor public events attended by over 100 people were prohibited in the entire country under the Health Minister's Order Prohibiting Assemblies in Indoor Public Spaces in the Republic of Serbia (hereinafter: Order).²⁶⁴

2.2.2. Right to Freedom of Assembly during the State of Emergency

The Health Minister amended the above Order²⁶⁵ and prohibited public assemblies of over 50 people in the entire country when the state of emergency was proclaimed and before the Decree on State of Emergency Measures²⁶⁶ (hereinafter: Decree), adopted by the Government and co-signed by the Serbian President, entered into force.

Article 4 of the Decree prohibited “the calling and holding of rallies and all other outdoor assemblies” and all indoor assemblies “with the exception of those of special interest to the work and functioning of the state authorities and services”, which had to be approved by the Minister of Internal Affairs.²⁶⁷

Freedom of assembly in indoor spaces should also have been governed by the Decree, as an enactment of superior legal force than the Order, as of 16 March 2020, when the Decree entered into force. That, however, was not the case in practice. The Decree prohibited all indoor assemblies, except those approved by the Minister of Internal Affairs, while the Order of 15 March allowed indoor gatherings of up to 50 people. These provisions of the Order remained in force until 21 March, when the Health Minister amended it,²⁶⁸ reducing the number of people allowed to rally in indoor public places to five. Paragraph 2(1) of the Order elaborated the possibility of state authorities organising indoor assemblies to ensure the unobstructed work of state authorities, limiting their number to 50 (the Decree did not restrict the number of people who were allowed to rally in such cases). Article 4(2) of the Decree laid down that assemblies of special interest to the work and functioning of the state authorities and services had to be approved by the Minister of Internal Affairs, not the Minister of Health.

The Health Minister's orders did not lay down penalties for violations of the orders; nor did they specify which authorities were charged with monitoring compliance with their provisions. However, under the Act on the Protection of the Population

263 *Blic*, “Vučić Cancels all SNS Election Rallies till 1 April,” 11 March 2020, available in Serbian at: <https://www.blic.rs/vesti/politika/vucic-otkazao-sve-predizborne-skupove-sns-do-1-aprila/sb5k9m4>. See also, *Telegraf*, “All SNS Election Events Cancelled till 1 April due to Coronavirus,” 11 March 2020, available in Serbian at: <https://www.telegraf.rs/vesti/politika/3164079-otkazani-svi-predizborni-skupovi-srpske-napredne-stranke-do-1-aprila-zbog-korona-virusa>.

264 *Sl. glasnik RS*, 25/20.

265 *Sl. glasnik RS*, 30/20.

266 *Sl. glasnik RS*, 31/20–3.

267 *Sl. glasnik RS*, 31/20–3.

268 *Sl. glasnik RS*, 39/20.

from Contagious Diseases and the Public Assembly Act, compliance with orders is to be monitored by the Ministry of Health and the Ministry of Internal Affairs.

Assemblies were not absolutely prohibited during the state of emergency because Article 4(3) of the Decree entitled the Government to adopt decisions on exceptions to the ban on indoor and outdoor assemblies. Therefore, the Health Ministers' orders banning assemblies but allowing indoor assemblies were not in compliance with the Decree, an enactment of superior legal force, because the Government is the one entitled under the Decree to provide for exceptions from the general ban on assemblies. The authorities obviously did not make sure that the regulations were in conformity with each other.

2.2.3. Right to Freedom of Assembly after the State of Emergency

The regulations on freedom of assembly that were in force during the state of emergency ceased to be effective when the state of emergency was lifted on 6 May 2020. The Health Minister's Order Prohibiting Indoor and Outdoor Assemblies in the Republic of Serbia,²⁶⁹ limiting assemblies to 50 people provided they complied with protective measures (wore face masks and maintained a two-metre physical distance), entered into force on 7 May. The Order was amended on 21 May, allowing a maximum of 100 people to rally provided they complied with these protective measures.²⁷⁰

The national COVID-19 Crisis Headquarters said on 27 May that public assemblies of up to 1,000 people would be allowed as of 1 June 2020.²⁷¹ Two days later, on 29 May, the Health Minister amended the Order Prohibiting Indoor and Outdoor Assemblies in the Republic of Serbia²⁷²; the number of people allowed to rally indoors still stood at 100, while the number of those allowed to rally outdoors was increased to 1,000. The Order also provided for exceptions to the restrictions – sports events, provided the spectators maintained a distance of one metre. Wearing face masks at outdoor assemblies was no longer mandatory.

After the Crisis Headquarters decided to lift the restriction on the number of people who could attend outdoor assemblies,²⁷³ the Health Minister adopted the Order Prohibiting Assemblies in Public Places in the Republic of Serbia²⁷⁴ that entered into force on 10 June. This Order lifted the restriction on the number of peo-

269 *Sl. glasnik RS*, 66/20–17.

270 *Sl. glasnik RS*, 76/20–17.

271 *NI*, "Rallies of Maximum 1,000 People in Serbia as of 1 June, Antibody Tests Cost 1,200 Dinars," 27 May 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a603858/Od-1.-juna-u-Srbiji-skupovi-s-najvise-1.000-ljudi-test-na-antitela-1.200-dinara.html>.

272 *Sl. glasnik RS*, 78/20–71.

273 *RTS*, "Outdoor Assembly Restrictions Lifted, Home Isolation for Asymptomatic Corona Patients," 5 June 2020, available in Serbian at: <https://www.rts.rs/page/stories/sr/Коронавирус/story/3134/koronavirus-u-srbiji/3976983/krizni-stab-mere-odluke-okupljanja.html>.

274 *Sl. glasnik RS*, 83/20.

ple attending outdoor assemblies provided they maintained a minimum one-metre physical distance from each other. The number of people who could attend indoor assemblies was increased to 500 people.

A number of public assemblies were held after the state of emergency was lifted in May and June. Sports events and political rallies accounted for most of them.

The largest assembly since the outbreak of the coronavirus epidemic was held on 11 May 2020. Supporters of the Serbian Progressive Party and the *Dveri* Movement rallied in front of the parliament, each camp to extend support to their MPs on a hunger strike. The two groups were separated by a human shield formed by the Gendarmerie. The Serbian President said that he had received the “data on the number of people from the police and the Security Intelligence Agency – 5,790 supporters of mostly the Serbian Progressive Party and 64 or 65 followers of the *Dveri* Movement”.²⁷⁵ It became clear that the implementation of the Order in practice was a matter of political decision. The following large rally in front of the parliament was staged in support of *Dveri*’s MPs, on 17 May 2020.²⁷⁶

Some fifty people, mostly members of the rightist movement Leviathan, rallied on 13 May in front of the Obrenovac Reception Centre for migrants, chanting their xenophobic and anti-migrant views.²⁷⁷ The police did not exercise their powers under Article 8 of the Public Assembly Act allowing them to disperse the protesters, whose strong anti-migrant rhetoric based on ethnic affiliation or origin was unequivocally aimed at “provoking or inciting racial, ethnic, religious or other inequalities, hate or intolerance”.

The “eternal derby” between Belgrade’s two leading soccer clubs, Red Star and Partizan, was played on 10 June 2020. The number of spectators was officially estimated at 15,803.²⁷⁸ Interestingly, no-one apparently contemplated the idea of having the teams play the match in an empty stadium, like in all other European countries. The event provoked innumerable comments both in Serbia and abroad, since the players were inadequately protected and there was no possibility of the fans maintaining a physical distance.²⁷⁹

275 N1, “Vučić Quotes Approximate Number of SNS and Opposition Followers, What do Recordings Show,” 17 May 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a600510/Odakle-potreba-za-prebrojavanjem-gradjana-u-glavu-i-koliko-su-ti-podaci-tacni.html>.

276 *Insajder*, “Rally Held in Support of *Dveri* MPs on Hunger Strike: We’ll be coming until we hand our demands to RTS,” 17 May 2020, available in Serbian at: <https://insajder.net/sr/sajt/vazno/18466/>.

277 *Insajder*, “Rightists Rally in Front of Migrant Centre in Obrenovac,” 13 May 2020, available in Serbian at: <https://insajder.net/sr/sajt/vazno/18406/Skup-desnicara-ispred-migrantskog-centra-u-Obrenovcu.htm>.

278 *AFP*, “Belgrade Derby Played in Front of 16,000 Fans,” 11 June 2020, available at: <https://www.newsbreak.com/news/0PJ911Mv/belgrade-derby-played-in-front-of-16000-fans>.

279 *Eurosport*, “Serbia lets 25,000 attend derby as coronavirus lockdown eases,” 11 June 2020, available at: https://www.eurosport.com/football/serbia-lets-25000-attend-soccer-derby-as-coronavirus-lockdown-eases_sto7772193/story.shtml.

3. Freedom of Association

In late 2019, 14 CSOs filed a complaint against the Belgrade Bar Association with the International Bar Association (IBA) because of its discrimination of CSOs with regard to extension of legal aid. The Belgrade Bar Association published IBA's reply in late January 2020, in which this association expressed its concern because of the restrictions faced by lawyers cooperating with non-profit organisations, alerting it could imply a setback on the functioning of the legal profession and undermine access to justice of vulnerable groups.²⁸⁰

The Journalists' Association of Serbia (JAS) said that most members of local commissions selecting media projects to be awarded co-funding in 2020 were appointed on the proposal of the Association of Electronic Media ComNet and the Professional Press Association of Serbia (PROUNS).²⁸¹ These associations are also well-known for issuing press releases condemning media "attacks" on the Serbian President and the now infamous "incitement to murder" on weekly NiN's front page. Such conspicuous side-lining of the two largest press associations in Serbia (JAS and the Independent Journalists' Association of Serbia, IJAS) testifies to the rigged and non-transparent allocation of state and local co-funding for media content of public interest, a tendency since the adoption of the new media laws in 2014.²⁸²

3.1. Freedom of Association during the State of Emergency – Narrower Scope for CSO Engagement

After the state of emergency was introduced, the Government Office for Co-operation with Civil Society discontinued the allocation of grants from the Serbian budget to organisations granted EU funding under a 2019 call for proposals. The NGO Civic Initiatives warned that although there may be legal grounds for such a decision, "the question remains whether such a decision is legitimate at the moment because it threatens the financial sustainability of organizations as well as the people whose existence is based on the revenues from these sources."²⁸³ It goes without saying that the unobstructed functioning of CSOs extending legal aid, advice and

280 IBA's reply is available at: <https://akb.org.rs/wp-content/uploads/2020/01/International-Bar-Association.pdf>.

281 Danas, "JAS: 'Representatives of Press Associations Defending Vučić Account for Most Members of the Committees,'" 11 March 2020, available in Serbian at: <https://www.danas.rs/drustvo/uns-predstavnici-novinarskih-udruzenja-koja-brane-vucica-najzastupljeniji-u-konkursnim-komisijama/>.

282 More in Chapter IV.

283 Civic Initiatives, *Three Freedoms under the Magnifying Glass* 16–26 March 2020, 30 March 2020, available at: <https://www.gradjanske.org/wp-content/uploads/2020/03/Three-freedoms-under-the-magnifying-glass-16-25-March-.pdf>.

support to citizens is crucial given the restrictions of and derogations from human and minority rights enshrined in the Constitution during the state of emergency.

In its capacity of resource centre for many NGOs, Civic Initiatives and its partners opened the issue of passes that would allow CSOs extending assistance to vulnerable categories of the population to move freely and visit their beneficiaries in the field during the state of emergency lockdown. The state had provided for the issuance of such passes only to businesses. The relevant authorities did not react to the plan that was developed and presented to the Office for Cooperation with Civil Society.²⁸⁴ The authorities continued ignoring NGOs not only as partners, but also as actors that could help during the pandemic. They dismissed the requests for passes filed by A11²⁸⁵ and the Institute for European Affairs²⁸⁶. These two examples corroborate the fact that CSOs were largely precluded from implementing their activities during the epidemic and the state of emergency, which ultimately resulted in their inability to assist the most vulnerable categories of the population.

Qualifications of CSOs as enemies of the state and foreign mercenaries did not cease during the state of emergency. Portal *Vidovdan* branded Open Society Foundations and the Belgrade Open School as foreign enemies and anti-state institutions that infiltrated the Theology School to “strike a serious blow to the Church.”²⁸⁷ The COVID-19 Serbia Facebook profile published messages attacking and discrediting activists, human rights defenders and reporters. The page, which attracted a lot of attention in Serbia during the pandemic, had sponsored posts against critics of the regime. It, inter alia, posted messages against TV *NI*, the Don’t Let Belgrade D(r) own initiative, reporter Ana Lalić, news agency *Beta* Editor Dragan Janjić et al.

One of the most striking examples of the risks decisions adopted during the state of emergency bore occurred in Bor. The City Emergency Headquarters on 6 April adopted 11 orders including, inter alia, measures derogating from human and minority rights, although such measures may not be imposed by city HQs either under the Constitution or domestic law. One of its impugned orders obligated “civic associations to place all their human resources at the disposal” of the City HQ to help distribute aid to the elderly; this obligation was qualified as a step towards introducing “forced labour”, which is prohibited by the Constitution.²⁸⁸ The City HQ withdrew the order the following day, claiming a “technical error”

284 Information obtained in an interview with Civic Initiatives.

285 Information obtained in an interview with A11 – Initiative for Economic and Social Rights.

286 Institute for European Affairs post on Twitter: https://twitter.com/iea_rs/status/1256152730869149696?s=21.

287 *Vidovdan*, “Moles Betray SOC! Soros at Theological College, Bishops Stunned,” 4 April 2020, available in Serbian at: <https://vidovdan.org/info/krtice-izdale-spc-soros-na-bogoslovskom-fakultetu-vladike-zatecene/>.

288 BCHR, “Bor Emergency Headquarters Unconstitutionally and Illegally Restricting Human Rights,” 8 April 2020, available in Serbian at: <http://www.bgcentar.org.rs/gradski-stab-za-van-redne-situacije-u-boru-protivustavno-i-protivzakonito-ogranicava-ljudska-prava/>.

had occurred and that the provision was to have been formulated as a recommendation from the very start.²⁸⁹

4. Freedom of Movement

4.1. *Unconstitutional Restrictions of the Freedom of Movement*

Freedom of movement was the most restricted right during the state of emergency. Immediately after the state of emergency was proclaimed, the Government adopted the Decree on State of Emergency Measures.²⁹⁰ Under the Decree, with the consent of the Health Ministry, the Ministry of Internal Affairs was entitled to temporarily restrict or prohibit the movement of people in public spaces; order individuals or groups of people with suspected or confirmed COVID-19 infections to stay at home and report to the relevant health institutions (Article 2); order the closure of all access to outdoor spaces or facilities and preclude people from leaving such spaces or facilities without special passes; and, order specific individuals or groups to remain in specific areas or facilities – migrant reception centres, et al.

Pursuant to Article 2 of the Decree, the Minister of Internal Affairs on 18 March 2020 issued the Order Restricting and Prohibiting Movement of Individuals in the Territory of the Republic of Serbia,²⁹¹ with the consent of the Ministry of Health and with a view to suppressing and preventing the spread of COVID-19 and protecting the population from this disease. The Order prohibited persons over 65 in settlements with a population exceeding 5,000 and persons over 70 in settlements with a population under 5,000 from movement in public areas, i.e. outside their homes, residential premises and facilities in residential buildings and outside their households (yards) from 5 pm to 5 am, except on Sundays, when they were allowed to go outside from 3 am to 8 am (paragraph 1). The Order also prohibited everyone else from leaving their homes, residential premises and facilities in residential buildings and their households (yards) from 5 pm to 5 am on workdays, from 3 pm to 3 am on Saturdays and from 3 pm to 5 am on Sundays (paragraph 2). Movement in all parks and public areas designated for sports and recreation was prohibited as of 8 pm on 21 March 2020 (paragraph 2a).

Furthermore, one of the most drastic and, indeed, humiliating measures that hit hard people over 65 was the one allowing them to leave their homes and shop

289 Bor 030, "Emergency Headquarters Withdraws ORDER and Issues RECOMMENDATION to Bor Associations," 9 April 2020, available in Serbian at: <https://www.bor030.net/stab-za-van-redne-situacije-povukao-naredbu-i-izdao-preporuku-borskim-udruzenjima>.

290 *Sl. glasnik RS*, 31/20–3, 36/20–3, 38/20–3, 39/20–3, 43/20–3, 47/20–3, 49/20–3, 53/20–3, 56/20–3, 57/20–11, 58/20–3 and 60/20–5.

291 *Sl. glasnik RS*, 34/20.

for their groceries only between 4 and 7 am once a week. There was no logical explanation or justification for this measure, which, as the authorities explained, was introduced to protect the health of this category of the population.

The Serbian Government's authority to lay down measures derogating from human and minority rights in the event the National Assembly cannot convene may not be delegated to a ministry under any governmental or presidential enactment. The Interior Ministry's Order was not valid grounds for derogating from human and minority rights enshrined in the Constitution, especially since some of the restrictions of the freedom of movement prescribed by the Order amounted to deprivation of liberty under international human rights standards (notably, the 24-hour curfew imposed on people over 65 or 70). The BCHR thus filed an initiative with the Constitutional Court on 31 March, requesting a review of the constitutionality of Articles 2 and 3 of the Decree and the Order.²⁹² The initiative was still pending before the Constitutional Court at the time this report was finalised.

4.2. Disproportionate Restriction of the Freedom of Movement?

Article 202(1) of the Serbian Constitution provides for derogation from specific human rights during a state of emergency only to the extent deemed necessary. A similar provision can be found in Article 4 of the International Covenant on Civil and Political Rights, under which States Parties may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation in time of public emergency which threatens the life of the nation. The Human Rights Committee specified in its General Comment No. 29 on Article 4 of the ICCPR, *inter alia*, that any measures derogating from obligations assumed by ratification of this international treaty had to be limited to the extent strictly required by the exigencies of the situation and proportionate.

Although the Order ceased to be effective on 9 April 2020, the stringent measures restricting the freedom of movement remained in place pursuant to the Decree on State of Emergency Measures.

BCHR's analysis of the lockdown measures in European countries shows that the restrictions of the freedom of movement of Serbia's citizens imposed by the Serbian authorities to prevent the spread of COVID-19 were amongst the most drastic in Europe. For instance, only 18% of the European countries introduced a curfew. The elderly were hit the hardest by the lockdown measures. The round-the-clock curfew of people over 65 (lifted only for four hours in the early morning once a week) remained in place for 34 days. Only 15% of the European countries had introduced measures additionally restricting the movement of the elderly.

292 More at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/category/news-from-the-center/page/2/>.

Frequent changes in the scope and periods of the restrictions and bans on freedom of movement and the illogicality of the order in which the measures were introduced and lifted created confusion among the people, who often had problems conforming their conduct and actions to the valid measures, as numerous cases of citizens penalised for violating the lockdown testify. The question remains whether such stringent measures restricting and prohibiting the freedom of movement were necessary to achieve the goal – halt the transmission of COVID-19, i.e. whether the same result could have been achieved by measures interfering less in the citizens' rights, as well as whether the state had acted in violation of the Constitution and international law in this case.

VII. INDEPENDENT INSTITUTIONS

1. Protector of Citizens

The Chapter 23 Action Plan envisages the strengthening of the mandate and guarantees of independence of the Protector of Citizens, as well as the amendment of the Protector of Citizens Act. These amendments, to have been adopted by the fourth quarter of 2016, were still pending in late June 2020.²⁹³

Serbian Protector of Citizens Zoran Pašalić submitted his Regular Annual Report for 2019 to the National Assembly on 15 March 2020.²⁹⁴ According to the Report, no headway has yet been made in the area of freedom of speech; the position and status of journalists and media workers is compromised not only by their poor material status, but also by pressures, offensive and degrading treatment, direct threats and physical assaults. Hate speech, sensationalism, discriminatory views and offensive reporting, especially about women, notably those holding public office, and the LGBT population, still exist in the public arena. The Protector of Citizens recommended that particular attention be devoted to responsible reporting, especially about domestic and intimate partner violence.

According to data on the Protector of Citizens website, this institution filed two initiatives for amending laws, by-laws and general enactments in the first five months of the year, pursuant to the Protector of Citizens Act.²⁹⁵ In January 2020, the Protector of Citizens recommended to the Ministry of Finance to delete the requirement that customers returning goods or claiming refunds provide their personal identification numbers prescribed by Article 8(1 and 2) of the Ministry Rulebook on registration of transactions through issuance of fiscal receipts, elimination of errors in registering transactions through fiscal cash registers and keeping of daily report books.²⁹⁶

293 More in the *2017 Report*, III.4.4.1. and the *2019 Report*, III.4.4.2.

294 Protector of Citizens, 2019 Annual Report, available at: <https://www.ombudsman.org.rs/attachments/article/186/Regular%20Annual%20Report%20of%20the%20Protector%20of%20Citizens%20for%202019%20pdf.pdf>.

295 Article 18(2), Protector of Citizens Act.

296 More on the Protector of Citizens initiative and the Finance Ministry's reply is available in Serbian at: <https://www.ombudsman.rs/index.php/zakonske-i-druge-inicijative/6438-prili-r-l-ci-ili-vr-d-b-r-d-upc-n-z-z-h-v-i-bg>.

1.1. Review of the Legality and Regularity of the Operations of Administrative Authorities

The Protector of Citizens on 13 January launched a review of the operations of the Environmental Protection Ministry²⁹⁷ and the next day of six²⁹⁸ local self-governments²⁹⁹ because the Ministry and other relevant state authorities failed to implement any of the specific measures he recommended 2018 and 2019 to address the air pollution in a large number of cities and municipalities. The Protector of Citizens wrote a letter to the local self-governments requesting information about the causes of pollution and the measures they took to address it, et al, but it remained unclear whether they responded to his request.

That same month, the Protector of Citizens initiated a review of the legality and regularity of work of the Ministry of Labour, Employment and Veteran and Social Issues, after learning that the company Kosmos Ltd.³⁰⁰, which employs mostly persons with disabilities, had not been paying salaries to its workers since November 2018. The Ministry twice transferred funds to the company to subsidise the wages of workers with disabilities. No information on whether the Ministry replied to the Protector of Citizens and clarified the circumstances was available at the end of the reporting period.³⁰¹

The Protector of Citizens launched on his own motion a review of the legality and regularity of the operations of the Republican Health Insurance Fund (RHIF) in the case of a patient³⁰² of the Intensive Care Ward of the Vojvodina Child and Youth Health Care Institute in Novi Sad.³⁰³ A week later, on 24 January 2020, the relevant RHIF Commission held a session at which it approved the adequate treatment for the girl.³⁰⁴

297 Protector of Citizens press release of 13 January 2020, available at: <https://www.ombudsman.org.rs/index.php?limitstart=40>.

298 The cities of Belgrade, Pančevo, Niš, Kragujevac, Užice and the Kosjerić Municipality.

299 Protector of Citizens press release of 14 January 2020, available in Serbian at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6440-z-sh-i-ni-gr-d-n-p-r-nu-p-s-up-n-r-l-r-d-zb-g-pr-rn-z-g-d-n-s-i-v-zduh-u-sh-s-l-lnih-s-upr-v>.

300 The Protector of Citizens specified that Kosmos was a company for the employment and professional rehabilitation of persons with disabilities and that 27 of its 39 employees were persons with disabilities.

301 Protector of Citizens press release of 22 January 2020, available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=170:the-protector-of-citizens-launched-the-procedure-over-a-potential-violation-of-rights-of-persons-with-disabilities-employed-in-kosmos-company&catid=43:control-procedures&Itemid=3.

302 The girl suffering from the gravest form of spinal muscular atrophy had not been provided with the adequate therapy to halt the spreading of the disease.

303 The girl has been in the Intensive Care Ward since April 2019. The medication Spinraza has been available in Serbia since July 2018 and was taken by 28 patients at the time; the expenses of the treatment are covered by state health insurance. See the Protector of Citizens press release, available in Serbian at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6448-rfz-d-dg-v-ri-z-sh-s-c-s-d-br-nj-pri-n-l-p-ci-n-i-s-sh-i-bli-s>.

304 See the Protector of Citizens press release of 7 February 2020, available in Serbian at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6483-rfz-b-zb-di-l-c-nj-d-v-cic-n-d-lju-d-n-p-sh-z-sh-i-ni-gr-d-n-p-r-nu-p-s-up-n-r-l>.

1.2. Activities of the Protector of Citizens during the State of Emergency

The role of the Protector of Citizens was extremely important during the state of emergency, when a number of human rights were restricted or derogated from, since this institution is charged with reacting to human rights violations and alerting to deficiencies in law or practice jeopardising or unjustifiably limiting human rights. Immediately after the proclamation of the state of emergency, the Protector of Citizens issued a press release stating that he and his “mobile team” were monitoring the respect for human rights on a daily basis. He specified that the mobile team, comprising representatives of the Emergency Response Department, the Sector for the Rights of Persons Deprived of Liberty and the National Preventive Mechanism (NPM), was monitoring the human rights situation in the field intensively and round the clock.³⁰⁵

The Protector of Citizens said that the number of complaints filed with his office during the state of emergency was ten times higher than usual.³⁰⁶ The Protector of Citizens in June 2020 published a Special Report on the activities of his office during the state of emergency.³⁰⁷

The Special Report states, among other things, that the higher number of complaints during the state of emergency testified to public trust in the Protector of Citizens³⁰⁸ and that the office’s work during this period involved preventive and advisory activities, mediation between the complainants and administrative authorities, filing of initiatives to amend the regulations with the relevant authorities, field checks and reviews of complaints. The Report specified that field checks were performed to verify the conditions people were living in, especially vulnerable groups including children, persons with disabilities, the Roma, migrants and persons deprived of liberty.

The Protector of Citizens failed to apply the powers he has under the Protector of Citizens Act to initiate the review of the constitutionality of laws, other regulations and general enactments with the Constitutional Court, and to propose laws within his remit and initiate amendments of laws, other regulations and general enactments with the Government and the National Assembly if he is of the opinion

305 Protector of Citizens press release of 18 March 2020, available at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=187:the-field-team-of-the-protector-of-citizens-works-intensively-roundtheclock-amid-the-state-of-emergency&catid=15:information&Itemid=18<https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6544-r-n-s-ip-z-sh-i-ni-gr-d-n-u-usl-vi-v-nr-dn-g-s-nj-r-di-p-c-n-i-c-l-dn-vn>.

306 RTS, “Number of Complaints to Protector of Citizens Ten Times Higher during State of Emergency,” 6 May 2020, available in Serbian at: <https://www.rts.rs/page/stories/sr/%D0%9A%D0%BE%D1%80%D0%BE%D0%BD%D0%B0%D0%B2%D0%B8%D1%80%D1%83%D1%81/story/3134/koronavirus-u-srbiji/3944681/zastitnik-gradjana-zoran-pasalic.html>.

307 The Special Report is available at: <https://www.ombudsman.org.rs/attachments/article/192/Report%20on%20Protector%20of%20Citizens'%20activities%20during%20COVID-19%20pandemic.pdf>.

308 According to the Special Report, 3,637 people called up the Protector of Citizens and 1,029 wrote to him asking for help.

that their deficiencies have resulted in human rights violations.³⁰⁹ The Protector of Citizens did not exercise these powers with respect to the numerous state of emergency measures derogating from constitutionally guaranteed human rights and freedoms (freedom of movement, right to liberty and security, right to a fair trial, rights of the accused, etc.)

Actually, the Protector of Citizens had no objections to the Government Decree on the Participation of Defendants in the Main Hearings in Criminal Proceedings during the State of Emergency proclaimed on 15 March 2020³¹⁰ providing for so-called Skype trials, as opposed to a number of experts who contested the constitutionality of the Decree.³¹¹ He issued an opinion to the Ministry of Justice that it should also take measures to facilitate alternative means and modes of communication (via Skype) between the defendants and their counsel in a separate room³¹² which would have only further undermined the status of the defendants.

The Special Report states that the Protector of Citizens initiated the amendment of the regulations to allow the movement of children with autism and their parents during the curfew. The Protector of Citizens issued a press release on 7 April stating that he had already raised this issue with the Prime Minister.³¹³ However, although the Government lockdown decrees were amended, children with autism and their parents were not allowed to leave their homes during the curfew until 14 April,³¹⁴ one month after the state of emergency was proclaimed, although associations of parents and associations protecting the rights of persons with disabilities warned back in late March of the grave effects such measures had on children with autism due to the changes in their daily habits and needs.³¹⁵

The Protector of Citizens launched other initiatives with delay as well. For instance, it took the Protector of Citizens almost a month and half from the day the state of emergency was proclaimed to file an initiative with Prime Minister Ana Brnabić³¹⁶ to amend the Decree on State of Emergency Measures to exempt victims of

309 Articles 18 and 19, Protector of Citizens Act.

310 *Sl. glasnik RS*, 49/20.

311 Among many authorities, see the opinion of former Constitutional Court judge Dr Goran Ilić, available in Serbian at: <https://www.cepris.org/licni-stavovi/ilic-virus-neznanja-nikad-ne-spava/>.

312 See more at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=193:the-protector-of-citizens-issued-an-opinion-to-the-ministry-of-justice&catid=49:activities&Itemid=16.

313 See more at: https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=196:protector-of-citizens-press-release&catid=49&Itemid=16.

314 B92, "Vučić: Children with Autism Can Go Outside Whenever They Want," 14 April 2020, available in Serbian at: https://www.b92.net/info/vesti/index.php?yyyy=2020&mm=04&dd=14&nav_category=12&nav_id=1675306.

315 N1, "Plea to Protect People with Autism during State of Emergency," 30 March 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a583815/Molba-za-zastitu-osoba-sa-autizmom-za-vreme-vanrednog-stanja.html>.

316 Protector of Citizens press release of 30 April 2020, available in Serbian at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6588-z-sh-i-ni-gr-d-n-upu-i-inici-ivu-pr-ds-dnici-vl-d-r-publi-srbi>.

violence from the prohibition of movement measures.³¹⁷ The Protector of Citizens explained that domestic and intimate partner violence was on the rise during the state of emergency and that victims of such violence had to be exempted from the lockdown measures to allow them to leave their homes and protect themselves from their abusers without fearing that they would be penalised for violating the curfew.

1.3. Reviews Performed during the State of Emergency

The Protector of Citizens alerted to several cases of human rights violations during the state of emergency.³¹⁸ On 14 April 2020, he initiated a review of the legality and regularity of work of the Niš Gerontology Centre and the Ministry of Labour, Employment and Veteran and Social Issues³¹⁹ after news broke that 140 residents of the Centre and four of its staff had contracted the coronavirus. The Protector of Citizens required of the Gerontology Centre to forward it all the documents on the circumstances of the case as soon as possible and of the Ministry to perform direct oversight of the Gerontology Centre, ascertain the facts and circumstances and order adequate measures to eliminate any deficiencies.³²⁰ The Niš Police Administration issued a press release³²¹ the previous day, on 13 April, stating that, in cooperation with the Security Intelligence Agency and the city High Public Prosecution Service, the police had arrested the authorised person of the Gerontology Centre because of his failure to take the requisite protective measures to prevent the spread of coronavirus.

The Protector of Citizens, however, remained mum on several cases where the public expected of him to react, e.g. the arrest of Kikinda musician Jovana Popović³²² and Leskovac basketball player Nikola Todorović³²³, who had spent 20 or

317 The Protector of Citizens' view is mostly based on the press release of the UN Special Rapporteur on violence against women of 27 March 2020, emphasising that restrictive measures adopted worldwide to fight COVID-19 intensified the risk of domestic violence, especially where the freedom of movement was restricted.

318 According to data on the website of the Protector of Citizens, his office initiated reviews of the Pančev Social Work Centre because of the rape of a 17-year-old girl, and the Sremska Mitrovica Social Work Centre because of the abuse of a child in a foster family. The office also initiated the review of the Labour Inspectorate of the Ministry of Labour, Employment and Veteran and Social Issues over the death of a construction worker in Zrenjanin. See more at: <https://www.ombudsman.org.rs/index.php?limitstart=12>

319 See more at: <https://www.ombudsman.org.rs/index.php?limitstart=12>.

320 *Radio Free Europe*, "Ombudsman Launches Review of Ministry and Gerontological Centre in Niš," 14 April 2020, available in Serbian at: <https://www.slobodnaevropa.org/a/30553168.html>.

321 Niš Police Administration press release of 13 April 2020, available in Serbian at: <https://bit.ly/2AeLGzo>.

322 *Danas*, "Jovana Popović, Writer of the Song 'Scum', Released," 13 April 2020, available in Serbian at: <https://www.danas.rs/drustvo/umetnica-iz-kikinde-jovana-popovic-pustena-na-slobodu/>.

323 Jovana Popović, known for her anti-regime songs, spent 21 days in detention on remand in the Požarevac penitentiary Zabela, because she violated the self-isolation measure; she was not officially ordered to self-isolate on her return to Serbia. Popović was released but criminal proceed-

so days in pre-trial detention³²⁴ allegedly because they had knowingly violated the self-isolation measures. The lack of reaction on the part of the Protector of Citizens gave rise to the impression that he selectively responded to the extremely frequent violations of human rights during the state of emergency.

The Don't Let Belgrade D(r)own initiative criticised the Protector of Citizens,³²⁵ accusing him of “synchronised action and promotion of the governments’ moves instead of performing his role of independent watchdog and corrective factor of the administration’s work” and advising him to devote himself to human rights protection. The Protector of Citizens told the media that the “public is misinformed” because falsehoods about the work of his office had been published and that the Protector of Citizens intensified his efforts during the state of emergency, as many as ten times compared with the previous period.”³²⁶

On 16 April 2020, the Protector of Citizens initiated a review of the legality and regularity of the operations of the Ministry of Internal Affairs (MIA) on his own initiative³²⁷ after video footage of a police officer slapping a man in custody in the back seat of the police car was published. The Protector of Citizens did not complete the procedure by the end of June 2020.

Footage of people lighting torches and powerful fireworks on rooftops of residential buildings in Belgrade and other cities in the evenings, amidst the curfew, was aired by the traditional and social media in late April. The latter quoted the citizens, who called the police to report violations of the curfew and the Public Law and Order Act,³²⁸ as saying that the police told them that they were not competent for these misdemeanours and to report them to the local communal police instead. Others said that the police had come to the scene, but had not taken any action after establishing that the citizens lighting torches and activating fireworks had the curfew passes issued by the MIA during the state of emergency.

These incidents prompted a group of CSOs, including the BCHR,³²⁹ to file an initiative with the Protector of Citizens to immediately launch a review of the

ings against her were pending at the end of the reporting period. Basketball player Nikola Todorović went through a similar ordeal for the same reason; he spent 22 days in pre-trial detention.

324 *Direktno*, “Basketball Player in Prison even on Easter because His Complaint Has not been Reviewed,” 17 April 2020, available in Serbian at: <https://direktno.rs/vesti/hronika/268124/kosarkas-i-za-uskrs-u-zatvoru-jer-nije-razmatran-prigovor.html>.

325 Don't Let Belgrade D(r)own press release of 16 April 2020, available in Serbian at: <https://nedavimobeograd.rs/zastitnik-gradana-da-stiti-prava-gradana-a-ne-postupke-neodgovorne-vlasti/>.

326 *Novi magazin*, “Protector of Citizens Responds to Untrue Allegations of the Don't Let Belgrade D(r)own Initiative,” 16 March 2020, available in Serbian at: <http://www.novimagazin.rs/vesti/odgovor-zastitnika-gradjana-na-neistinite-tvrdnje-inicijative-ne-davimo-beograd>.

327 “Protector of Citizens Initiates Review of Legality and Regularity of MIA’s Work,” 16 April 2020, available in Serbian at: <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6573-z-sh-i-ni-gr-d-n-p-r-nu-p-s-up-n-r-l-z-ni-s-i-i-pr-viln-s-i-r-d-up>.

328 Misdemeanour offence under Article 17 of the Public Law and Order Act.

329 BCHR’s press release of 4 May 2020 on the initiative it and other organisations filed with the Protector of Citizens is available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/initia->

legality and regularity of the MIA's operations and ascertain the truth. The Protector of Citizens told *Insajder*³³⁰ that he had launched the review on 30 April, when the media reported the incidents, even before he received the NGOs' initiative. He required all audio recordings of conversations with citizens who had reported the offences, and police reports on actions taken in response to them. The MIA sent a letter to the Protector of Citizens on 14 May 2020, in which it said that the police had acted on all the reports, consulted with the relevant prosecution services and filed reports in cases where they found elements of punishable acts. The MIA also said that it had filed misdemeanour motions against 129 individuals for violating the curfew and misdemeanour motions against 251 individuals for violating the Public Law and Order Act in the 27 April – 4 May 2020 period. The Protector of Citizens was dissatisfied with the reply and sought additional information from the MIA on the same day, 14 May, requiring of it again to forward him all audio recordings of conversations with citizens who had reported the offences, police reports on actions taken in response to them, and copies of the submitted misdemeanour motions.³³¹

In view of the experience the prior Protector of Citizens had with the MIA in the Savamala demolition case³³², it appears highly unlikely that the Ombudsman will be able to detect any irregularities in the MIA's work merely by exchanging letters with it. He may wish to consider exercising his authority to perform direct oversight of its operations.

The South Korean factory Jura in Leskovac, whose workers protested in April because of the inadequate working conditions, became a new coronavirus hotbed in May.³³³ The Associated Trade Unions of Serbia *Sloga* said that the managers' non-compliance with the health professionals' recommendations had led to an increase of workers infected with coronavirus in Jura's facilities, as well as in the other plants, turning the city into a COVID-19 hotbed.³³⁴ The Protector of Citizens on 14 May 2020 launched a review of the legality and regularity of operations of the Labour Inspectorate of the Ministry of Labour, Employment and Veteran and Social Issues when media reports alerted him to the case and non-compliance with the health protection measures.³³⁵

tive-filed-with-the-protector-of-citizens-to-review-the-legality-and-regularity-of-mia-operations-during-curfew/.

330 *Insajder*, "Protector of Citizens Launches Review of MIA over Torches," 6 May 2020, available in Serbian at: <https://insajder.net/sr/sajt/vazno/18288/>.

331 Information obtained in reply to BCHR's request for access to information of public importance.

332 More on the Savamala case in the 2017 Report, III.4.2.

333 *Danas*, "Number of Infected Jura Workers in Leskovac on the Rise," 17 May 2020, available in Serbian at: <https://www.danas.rs/drustvo/povecava-se-broj-zarazenih-radnika-jure-u-leskovcu/>.

334 *Danas*, "Sloga: Jura and Authorities Responsible for Infection Hike in Leskovac," 18 May 2020, available in Serbian at: <https://www.danas.rs/drustvo/sloga-jura-i-vlast-odgovorni-za-povecanje-zaraze-u-leskovcu/>.

335 Protector of Citizens, "Rapid Response Department Initiates Review of Labour Inspectorate's Operations," 14 May 2020, available in Serbian at: <https://www.ombudsman.rs/index.php/2011->

The Deputy Protector of Citizens charged with the rights of the child and gender equality launched a review of the operations of the Electronic Media Regulator (REM) on her own motion, on suspicion that the Serbian Progressive Party election spot violated the rights of the child. The REM prohibited the spot in the meantime, which the public perceived as the government's ploy to publicly portray the regulator's work as "independent".³³⁶

The Protector of Citizens and representatives of media associations and press trade unions³³⁷ in May 2020 signed an Agreement on the Establishment of a Platform registering all cases of threats to the safety of and pressures against journalists and other media professionals. The Protector of Citizens said that this was one of the crucial developments in the work of this institution, especially given the media's role in it, because as many as 90% of the reviews the Protector has launched on his own initiative have been prompted by information he learned from the media.³³⁸

Representatives of the two leading press associations, JAS and IJAS, welcomed the establishment of the Platform because it rallied all the relevant associations in one place and called on journalists to report all violations of their labour related rights.³³⁹ The Ombudsman's particular interest in this topic, since he was the one that launched the idea to establish the Platform back in the summer of 2019, is, however, at odds with his inadequate response to the prosecutor's decision to keep reporter Ana Lalić in custody for 48 hours for publishing articles on the poor working conditions in the Vojvodina Clinical Centre during the coronavirus pandemic.³⁴⁰ Although Zoran Pašalić told TV *Nova S* that he had primarily been interested in how the police treated Ana Lalić and that he advocated respect for the journalists' rights, he failed to clearly condemn her arrest. Even more concerning is the fact that he failed to react to the Government's Conclusion on Provision of Information of 28

12-25-10-17-15/2011-12-26-10-05-05/6601-d-lj-nj-z-hi-n-p-s-up-nj-p-r-nul-p-s-up-n-r-l-r-d-insp-r-z-r-d.

336 NI, "Protector of Citizens Launches Review of REM's Operations over SNS Spot," 1 June 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a605443/Zastitnik-gradjana-pokrenuo-postupak-kontrole-rada-REM-a-zbog-spota-SNS.html>.

337 The Agreement was signed with the Journalists' Association of Serbia, the Independent Journalists' Association of Serbia, the Independent Journalists' Association of Vojvodina, the Association of Independent Electronic Media, the Media Association, the Online Media Association, the Business Association "Local Press," the Trade Union of Journalists of Serbia (SINOS), the *Nezavisnost* (Independence) branch trade union for culture, art and media, and the Autonomous Trade Union of Employees in Graphics, Publishing, News and Film Industry of Serbia.

338 Protector of Citizens, "Agreement signed on establishing a platform for recording cases of security threats and pressure on journalists and other media actors," 22 May 2020, available at: <https://www.ombudsman.org.rs/>.

339 NI, "Agreement on Platform Registering Pressures against Journalists Signed," 22 May 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a602291/Potpisan-Sporazum-o-uspostavljanju-Platforme-za-evidenciju-pritisaka-na-novinare.html>.

340 NI, "Nova Reporter Ordered into 48-Hour Custody," 2 April 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a584626/Novinarki-Nova.rs-odredjeno-zadrzavanje-do-48-sati.html>.

March 2020, which practically introduced censorship and a monopoly on information during the state of emergency.³⁴¹

2. Commissioner for the Protection of Equality

The Office of the Commissioner for the Protection of Equality (Equality Commissioner) celebrated its 10th anniversary on 27 May 2020. Equality Commissioner Brankica Janković's five-year term in office expired the same day. At the event, the Commissioner said that the institution had done a lot but that much remained to be done because "there can be no real equality as long as prejudice and customs are stronger than the law."³⁴²

Under Article 28 of the Anti-Discrimination Act, each parliamentary caucus is entitled to nominate a candidate for the office of Commissioner; the candidates have to be approved by the majority of votes of the parliamentary Committee on Constitutional Issues.³⁴³ The National Assembly must elect the new Equality Commissioner within three months from the day of expiry of the term in office of the outgoing Commissioner. Since none of the caucuses fielded any candidates before the parliamentary elections on 21 June 2020, the new MPs will elect the Commissioner once the National Assembly is constituted. This is not the first time the legislature has demonstrated such an attitude towards independent institutions. The new Commissioner for Information of Public Importance and Personal Data Protection Milan Marinović was elected on 26 July 2019, although the term in office of his predecessor, Rodoljub Šabić, expired on 22 December 2018.³⁴⁴

The consequences of the legislature's failure to elect the new Equality Commissioner on time are extremely – citizens will be deprived of protection from discrimination for months, as some examples already illustrate. Many organisations that have complained of discrimination have been informed that their complaints would be reviewed once the new Equality Commissioner was elected. This led a group of over 50 NGOs to appeal to all the relevant actors to make sure that the new parliament urgently elected the new Equality Commissioner. They said that the current situation additionally victimised all those who have been discriminated against and increased risks of their further or repeated discrimination. They also raised the

341 Government Conclusion of 28 March 2020, *Sl. glasnik RS*, 48/20.

342 NI, "Equality Commissioner Celebrates 10th Anniversary," 27 May 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a603938/Obelezeno-deset-godina-institucije-Poverenika-za-zastitu-ravnopravnosti.html>.

343 *Danas*, "No-one Nominated for the Office of Equality Commissioner Yet," 18 May 2020, available in Serbian at: <https://www.danas.rs/drustvo/jos-nema-kandidata-za-poverenika-za-zastitu-ravnopravnosti/>

344 More in the 2019 Report, p. 247, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Human-Rights-in-Serbia-2019.pdf>.

question of how the Equality Commissioner would take procedural actions in ongoing anti-discrimination court cases, warning that the situation further undermined the security of legal protection from discrimination.³⁴⁵

2.1. Equality Commissioner's Activities in 2020

True to form, the Equality Commissioner promptly submitted her 2019 Annual Report to the National Assembly.³⁴⁶ The National Assembly did not review the report by the end of the reporting period first due to the state of emergency, which lasted almost two months, and subsequently due to the parliamentary elections on 21 June 2020.

The Equality Commissioner said in her 2019 Report that she had issued a total of 29 recommendations for suppressing discrimination and improving equality in the reporting period. As in the past, most of the complaints concerned discrimination on grounds of disability, gender and health. The Report stated that the Equality Commissioner received equal numbers of complaints of discrimination on grounds of age and membership of political, unionist and other organisations and fewer complaints of discrimination on grounds of marital and family status, ethnicity, financial standing and sexual discrimination, as well as a small number of complaints of discrimination on other grounds. Labour and employment-related discrimination again ranked supreme – one-third of the complaints alleged discrimination in this field. Next came discrimination in procedures before public authorities, in education, social protection, et al.

The general impression is that headway is visible, but that society still faces numerous challenges with respect to equality and protection from discrimination, as corroborated by the large numbers of complaints in the same areas and alleging discrimination against the same categories of the population over the past few years.

The Equality Commissioner in January 2020 published a Special Report on Discrimination in Labour and Employment³⁴⁷ and results of her research “Discrimination in the Labour Market”.³⁴⁸ She said that a third of all complaints during the ten-year existence of the Office regarded discrimination in recruitment and that she

345 The NGOs' press release of 16 June 2020 is available in Serbian at: https://www.femplatz.org/library/2020-06-16_Zastita_od_diskriminacije_na_pauzi.pdf.

346 The abridged version of the Equality Commissioner's 2019 Report is available at: <http://ravnopravnost.gov.rs/wp-content/uploads/2020/05/Skraceni-redovni-godisnji-izvestaj-2019-engl.pdf>.

347 Available in Serbian at: <http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2020/01/P%00%9ES%00%95B%00%90N-IZV%00%95S%00%A2%00%90%00%88-PZZR-%00%9E-DISKRI%00%9CIN%00%90CI%00%88I-U-%00%9EBL%00%90S%00%A2I-R%00%90D%00%90-I-Z%00%90P%00%9ESLj%00%90V%00%90N%D1%98%00%90-1.pdf>.

348 Available in Serbian at: <http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2020/01/diskriminacija-na-trzistu-rada-FINAL.pdf>.

did not expect major improvements in 2020. She expressed particular concern about the employment of Roma, who are a relatively young population.³⁴⁹ The research showed that as many as 31% of the job-seekers were unaware that an institution for protection against discrimination existed and that more needed to be done to raise awareness of the prohibition of discrimination, to enforce the law and ensure comprehensive protection of the job-seekers' fundamental rights.³⁵⁰

The Equality Commissioner in February 2020 issued a Recommendation³⁵¹ to all cities and municipalities to ensure greater involvement of women and youths in political and public decision-making at the local level. Namely, the Act on the Election of Assembly Deputies³⁵² lays down that women are to hold offices at all levels of government and administration in Serbia, which is not the case in practice. The Equality Commissioner said that she believed that the implementation of her Recommendation in election year would encourage the involvement of more women and youths at all decision-making levels, which would result in their political empowerment and engagement in policy making. The results of a survey³⁵³ conducted by her Office show that only 12 women were mayors at the time, that only 14% of the city and municipal assemblies were headed by women and that only 7.1% of the local communities (sub-divisions of municipalities) were headed by women. Youth involvement in local governments was similar: young people (i.e. adults under 30 under Serbian law) accounted for only 1.8% of the city and municipal mayors, only 5% of the city or municipal councillors, while none of the city or municipal assemblies were chaired by youths.³⁵⁴

349 The Equality Commissioner's survey within the "Inclusion of Roma and Other Marginalised Groups" project showed that 92% of the employers, 86% of the job-seekers and 84% of the workers confirmed that there was discrimination in the labour market.

350 N1, "Equality Commissioner: Citizens Complaining the Most about Labour-Related Discrimination," 16 January 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a561080/Poverenica-Gradjani-se-najvise-zale-na-diskriminaciju-u-oblasti-rada.html>.

351 Equality Commissioner, "Recommendation to Local Self-Governments on Achieving Equality of Women and Youths," 21 February 2020, available in Serbian at: <http://ravnopravnost.gov.rs/%d0%bf%d1%80%d0%b5%d0%bf%d0%be%d1%80%d1%83%d0%ba%d0%b0-%d0%b-c%d0%b5%d1%80%d0%b0-%d0%b7%d0%b0-%d0%be%d1%81%d1%82%d0%b2%d0%b0%d1%80%d0%b8%d0%b2%d0%b0%d1%9a%d0%b5-%d1%80%d0%b0%d0%b2%d0%b-d%d0%be%d0%bf-3/>.

352 *Sl. glasnik RS*, 35/00, 57/03 – CC decision, 72/03 – other law, 75/03 – correction of other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – CC decision, 36/11, 104/09 – other law and 12/20.

353 Equality Commissioner, "Gender Equality in Local Self-Government Units," Belgrade, 2017, available at: <http://ravnopravnost.gov.rs/en/gender-equality-in-local-self-government-units-current-situation-in-terms-of-implementing-recommendations-containing-measures-issued-to-local-self-government-units-with-the-aim-of-achieving-gender-equ/>.

354 *Danas*, "Janković: Fewer than 20% of Senior Public Offices Held by Women," 10 February 2020, available in Serbian at: <https://www.danas.rs/politika/jankovic-manje-od-20-odsto-zena-na-rukovodnim-funkcijama-u-odnosu-na-muskarce/>.

The Equality Commissioner's Recommendation to the national Social Protection Institute also concerned cities and municipalities, specifically the provision of personal escort services to children with disabilities. The Equality Commissioner issued the Recommendation because she had received a large number of complaints that individual local self-governments did not provide such services.³⁵⁵

The Equality Commissioner qualified as discriminatory a statement by Health Minister Zlatibor Lončar that he was "conducting a policy to ensure that there are no Montenegrins in his portfolio" and that Montenegrins "who don't speak Serbian" held a number of senior offices in Serbia.³⁵⁶ She said that his views were in contravention of the Constitution and the principles of equality and that such statements harmed the state's reputation and might cause anxiety among the population, especially when voiced by senior public officials who are under the duty to promote tolerance, understanding and equality. Minister Lončar responded,³⁵⁷ underlining that he was "sorry if anyone felt offended or discriminated against," because everyone knew that he did not "hate or, God forbid, discriminate against anyone". He added that "we live in times when any statement is at risk of manipulation, of being spun and ripped out of context".³⁵⁸

The Equality Commissioner also issued a warning³⁵⁹ in response to the front pages of the newspapers *Srpski telegraf* and *Informer*, and an article that appeared on the *alo.rs* portal, which published the statements by Ninoslav Jovanović, the kidnapper of a twelve-year-old girl, and the details of his abduction and abuse of his victim. The Equality Commissioner warned that the details of this heinous crime were not information of public interest but abuse of media space and violation of the Press Code of Conduct.³⁶⁰

355 The Equality Commissioner's Recommendation of 21 February 2020 is available in Serbian at: <http://ravnopravnost.gov.rs/%d0%bf%d1%80%d0%b5%d0%bf%d0%be%d1%80%d1%83%d0%ba%d0%b0-%d0%bc%d0%b5%d1%80%d0%b0-%d0%b7%d0%b0-%d0%be%d1%81%d1%82%d0%b2%d0%b0%d1%80%d0%b8%d0%b2%d0%b0%d1%9a%d0%b5-%d1%80%d0%b0%d0%b2%d0%bd%d0%be%d0%bf-2/>.

356 N1, "Lončar: Montenegrins who don't speak Serbian holding numerous senior offices," 6 February 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a567200/Loncar-Na-mnogo-vo-decih-mesta-imamo-Crnogorce-koji-nisu-srpski-naucili.html>.

357 RTS, "Lončar Responds to Criticisms of His Statement about Montenegrins," 7 February 2020, available in Serbian at: <https://www.rts.rs/page/stories/sr/story/125/drustvo/3843873/loncar-se-oglasio-posle-kritika-na-racun-njegove-izjave-o-crnogorcima.html>.

358 *Insajder*, "Equality Commissioner: Minister Lončar's statement about Montenegrins is offensive and discriminatory," 7 February 2020, available in Serbian at: <https://insajder.net/sr/sajt/vazno/16863/>.

359 Equality Commissioner, "Warning Due to Inappropriate Media Reporting," 9 January 2020, available at: <http://ravnopravnost.gov.rs/en/warning-due-to-inappropriate-media-reporting/>.

360 *Cenzolovka*, "I Hope No-One Wants a Serbia in Which Violations of Child Rights are Commonplace," 14 January 2020, available in Serbian at: <https://www.cenzolovka.rs/etika/niko-nad-am-se-ne-zeli-srbiju-u-kojoj-ce-krsenje-prava-deteta-postati-normalno/>.

2.2. Equality Commissioner's Activities during the State of Emergency

The Equality Commissioner issued six recommendations during the state of emergency introduced in Serbia to halt the spread of SARS-CoV-2. All of them aimed at improving the status of individual categories of the population, whose status deteriorated during the state of emergency and who were at greater risk of discrimination. Some of the recommendations concerned measures in support of victims of domestic violence,³⁶¹ measures regarding supplying of electricity to the elderly and social vulnerable categories of the population,³⁶² and measures to improve the situation of Roma in informal settlements.³⁶³ Furthermore, the Equality Commissioner analysed news and other TV shows on the state of emergency and found that people with hearing impairments were unable to follow some newscasts broadcast by Radio Television of Vojvodina (RTV), wherefore she recommended to this station to ensure that they were subtitled and/or interpreted into sign language.³⁶⁴ The Equality Commissioner issued the same recommendation to the national service broadcaster RTS.³⁶⁵

In May 2020, the Equality Commissioner issued a Recommendation³⁶⁶ to the Government regarding its Economic Measures Programme³⁶⁷ to help address the effects of the epidemic on businesses. The Programme envisaged four sets of measures to maintain employment during the state of emergency and help companies pursue their operations. The Commissioner had received a number of complaints

361 Equality Commissioner, "Recommendation No. 560–2020 of Measures Regarding Curfew Passes, Work of Hotlines, Domestic Violence," 15 April 2020. Available at: <http://ravnopravnost.gov.rs/preporuka-mera-u-vezi-dozvola-za-kretanje-rada-linija-cir/>.

362 Equality Commissioner, "Recommendation No. 340–2020 of Measures Regarding Supplying the Elderly and Social Vulnerable Categories with Electricity," 9 April 2020, available in Serbian at: <http://ravnopravnost.gov.rs/preporuka-mera-za-snabdevanje-el-energijom-cir/>.

363 The Standing Conference of Roma Associations – Roma League wrote a letter to the Equality Commissioner, alerting her to the grave problems Roma were facing since the declaration of the coronavirus pandemic. The Equality Commissioner's Recommendation No. 596–2020 of 21 April 2020 is available in Serbian at: <http://ravnopravnost.gov.rs/polozaj-roma-u-romskim-nas-cir/>.

364 Equality Commissioner, "Recommendation No. 340–2020 of Measures to Achieve Equality by RTV Vojvodina," 27 March 2020, available in Serbian at: <http://ravnopravnost.gov.rs/340-2020-preporuka-mera-za-ostvarivanje-ravnopravnosti-rt-vo-cir/>.

365 Equality Commissioner, "Recommendation 339–2020 of Measures to Achieve Equality by RTS," 27 March 2020, available in Serbian at: <http://ravnopravnost.gov.rs/339-2020-preporuka-mera-za-ostvarivanje-ravnopravnosti-rts-cir/>.

366 Equality Commissioner, "Recommendation of Measures to the Government Regarding the Programme of Economic Measures," 7 May 2020, available in Serbian at: <http://ravnopravnost.gov.rs/rs/preporuka-mera-vladi-povodom-programa-ekonomskih-mera/>.

367 KPMG, Overview of the Programme of Economic Measures, 2 April 2020, available at: <https://home.kpmg/rs/en/home/insights/2020/04/economic-measures-announced-by-serbian-government-due-to-covid-19-crisis.html>.

On 25 April 2020, the Equality Commissioner issued a warning in response to the sexist comments *Informer* editor Dragan Vučićević made about *N1* reporter Žaklina Tatalović on Twitter. The Equality Commissioner invited her to file a complaint against discrimination after the opposition Party of Freedom and Justice called on her to put an end to such actions by the *Informer* editor.³⁷²

3. Commissioner for Information of Public Importance and Personal Data Protection

The Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: Commissioner) submitted his 2019 Report to the National Assembly in March 2020.³⁷³ The 2019 Report was the 15th annual report on the implementation of the Free Access to Information of Public Importance Act (FAIPIA) and the 11th annual report on the implementation of the Personal Data Protection Act (PDPA).³⁷⁴ The 2019 Report covers the first year of the seven-year term in office of Milan Marinović, who was elected Commissioner in July 2019, without a debate about his candidacy or a thorough review of all the nominated candidates.³⁷⁵

The Commissioner noted in his 2019 Report that the National Assembly in 2019 abandoned its years-long practice of not reviewing the Commissioner's reports at plenary sessions – only three of the prior fourteen annual reports (the 2010, 2012 and 2013 Reports) had been reviewed at plenary sessions. The National Assembly failed to review the annual reports of other independent institutions in plenum for years as well, an obligation it has under the law.

The data in the 2019 Annual Report shows that the challenges the Commissioner has been facing persisted, i.e. that the situation in the fields of personal data protection and access to information of public importance did not improve substantially and could not be qualified as satisfactory. Citizens still had great difficulties in exercising their right of access to information without the Commissioner's intervention and the state authorities often denied them access to information even after the Commissioner filed a complaint. The Report qualified such actions as "irresponsible and irrational" because the authorities' provision of access to information after they become aware of the complaints means that there was no real cause to deny access to it in the first place. The Commissioner said that access to information was denied

372 *N1*, "Equality Commissioner Condemns Vučićević's Tweets and Invites *N1* Reporter to File a Complaint," 25 April 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a592866/Povorenica-osudila-tvitove-Vucicevica-i-pozvala-novinarku-N1-da-podnese-pritužbu.html>.

373 The Commissioner's press release is available in Serbian at: <https://bit.ly/2Anu9oW>.

374 The Report is available at: <https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2019/ENIzvestaj2019.pdf>.

375 More on the election of the new Commissioner in the 2019 Report, III.4.2.1.

under the pretext that it was confidential or that giving access to the information would violate someone's privacy and that he was unable to actually verify whether the authorities did not have the requested information as they claimed.

Furthermore, the Commissioner asked the Government to provide information regarding the Belgrade Waterfront construction land planning costs,³⁷⁶ and how much money the Ministry of Economy had given and was planning to give Air Serbia from the budget. These questions remained unanswered. The state authorities ignored or refused to respond to questions on media funding and privatisation, and on hazards to and protection of human health and the environment which, as the Commissioner said, fell in the category of "privileged" information i.e. information in relation to which the public interest to know always exists and it cannot be proven to be otherwise. Some of Commissioner's requests concerned access to information on the Sava River embankment and the Kalemegdan gondola.

The Commissioner said in the Annual Report that the new PDPA, which entered into force in mid-2019, suffered from a number of deficiencies. He quoted in example the lack of provisions on video surveillance, an issue that has provoked a lot of public speculation. He also found abuse of personal data in a number of cases.³⁷⁷

3.1. Commissioner's Activities in the First Half of 2020

The statistical data published on the Commissioner's website show that a total of 4,095 cases were filed with his Office in the first six months of the year³⁷⁸ and that it closed 4,900 cases in the same period. Of the pending 3,247 cases, 2,933 concerned access to information, 275 personal data protection and 39 cooperation in both of these areas.³⁷⁹

The Commissioner again organised an event to mark Data Protection Day, on 28 January 2020. He emphasised that the new PDPA imposed new obligations on the state authorities and the Commissioner and that the nine-month period the state authorities were given to prepare for its implementation was too short. The Commissioner recalled that he had asked for the postponement of the application of this law because of the expected difficulties in practice, albeit to no avail.

The Commissioner reacted to public complaints of door to door campaigning before the state of emergency was introduced and the elections cancelled, with a

376 More in the *2019 Report*, III.4.2.2.

377 For example, the Commissioner launched a review of the work of the national Pension and Disability Insurance Fund in Novi Sad in 2019, because its staff disclosed the data of the insured beneficiaries to unauthorised individuals. He also launched a review of the work of the Vojvodina Clinical Centre due to the disclosure of a patient's personal data.

378 According to the data on the Commissioner's website, the Commissioner's Office received 1,508 cases in January, 1,018 in February, 80 in March, 258 cases in April, 500 cases in May and 731 cases in June. See more at: <https://www.poverenik.rs/sr-yu/o-nama/mesecni-statisticki-izvestaji.html>.

379 More on the Commissioner's website www.poverenik.rs.

view to alerting the political parties to their obligation to comply with the PDPA and that data on political opinions were a particular kind of personal data, the processing of which was restricted.³⁸⁰ He also appealed to citizens to file complaints with his Office if their rights were violated.

At the initiative of the SHARE Foundation³⁸¹, the Commissioner wrote to Google³⁸² to appoint its representative in the Republic of Serbia in writing pursuant to the PDPA³⁸³, which the company formally did on 21 May 2020.³⁸⁴ The Commissioner and everyone else may address to Google's representative in Serbia all issues related to processing, for the purposes of ensuring compliance with the PDPA. This is in accordance with the EU General Data Protection Regulation (GDPR) standards, on which the PDPA that entered into force in August 2019 is modelled.

In January 2020, the Commissioner filed a criminal report against an individual suspected of providing unauthorised persons access to the statement of Ninoslav Jovanović, suspected of kidnapping an underage girl, M.K. The Commissioner said that he had conducted a check in the Higher Public Prosecution Service in Niš and established that the suspected abductor had been questioned by the police and the prosecutors in the presence of his *ex officio* counsel.³⁸⁵

3.2. Commissioner's Activities during the State of Emergency

Before the state of emergency was officially proclaimed, the Commissioner received a large number of complaints about the "silence" of health and educational institutions to requests for access to information about how well they were equipped to fight the spread of the coronavirus. The Commissioner said that information regarding risks to or protection of public health and the environment were urgent in

380 *Radio 021*, "Commissioner: Citizens can sue parties in possession of their personal data," 1 March 2020, available in Serbian at: <https://www.021.rs/story/Izbori-2020/235598/Poverenik-Gradjani-mogu-da-tuze-stranke-koje-imaju-njihove-licne-podatke.html>.

381 SHARE Foundation "SHARE has brought Google to Serbia," 22 May 2020, available at: <https://www.sharefoundation.info/en/share-has-brought-google-to-serbia/>.

382 The Commissioner's press release of 22 May 2020 is available in Serbian at: <https://bit.ly/3fsLqMu>.

383 Under Article 44 of the PDPA, representatives of data controllers or processors not headquartered in the Republic of Serbia are under such an obligation except in cases provided by the PDPA. The representative shall be mandated by the controller or processor to be addressed in addition to or instead of the controller or the processor by, in particular, the Commissioner and data subjects, on all issues related to processing, for the purposes of ensuring compliance with the PDPA.

384 The BDK Law Office was engaged to represent Google in Serbia. More is available in Serbian at: <https://www.poverenik.rs/images/stories/dokumentacija-nova/razno/GoogleLLCletter-21052020.pdf>.

385 *N1*, "Commissioner Files Criminal Report over Leak of Ninoslav Jovanović's Statement," 20 January 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a562172/Poverenik-podneo-krivicnu-prijavu-zbog-objavljivanja-iskaza-Ninoslava-Jovanovica.html>.

character and that the public's interest to know it was justified.³⁸⁶ Only several days later, he warned the media not to publish the personal data of individuals infected with coronavirus, especially in the light of the sensationalist media reports on infected Serbian nationals violating their privacy and dignity.³⁸⁷

A number of people wrote to the Commissioner complaining of various issues within his remit after the state of emergency was proclaimed on 15 March 2020. The Commissioner recalled that the right of access to information was not suspended during the state of emergency, but that its realisation should be tailored to the circumstances. He clarified that the authorities were under the obligation to comply with the FAIPiA, emphasising that priority should be given to information on the health situation, health protection of the population and environmental protection, and other similar issues.³⁸⁸

The Commissioner was contacted during the state of emergency by a number of parents of children whose teachers required of them to submit information about their own health or the health of their families under the excuse that the Education Ministry and the regional school administrations were requesting it. The Commissioner wrote to the Ministry of Education, Science and Technological Development, and issued a press release appealing both to teachers and the public at large, especially the media and public authorities, to make sure that their activities did not violate the infected citizens' right to privacy.³⁸⁹

During the state of emergency, "assistance" was offered via social networks to a number of citizens under lockdown. They were asked to provide their personal data, such as their personal identification numbers, ID card numbers, bank account and credit card numbers, etc. This prompted the Commissioner to warn the public, especially the elderly, not to disclose their personal data to the people they did not know to avoid abuse. He instead advised them to directly contact the authorities or institutions specified in the "notices", the official telephone numbers of which were publicly available.³⁹⁰

The Commissioner said that the right to personal data protection was not among the rights restricted during the state of emergency. He said that data controllers and processors were under the obligation to implement their activities in accordance with the PDPA and other relevant regulations; that they had to ensure

386 Commissioner press release "Information about Coronavirus is Urgent in Character," 11 March 2020, available in Serbian at: <https://bit.ly/2zstGBj>.

387 Commissioner's press release "Commissioner Warns Media Not to Publish Personal Data of People Infected with Coronavirus," 9 March 2020, available in Serbian at: <https://bit.ly/2YYmB-Da>.

388 Commissioner's press release "Access to Information of Public Importance during the State of Emergency," 20 March 2020, available in Serbian at: <https://bit.ly/3cso1tx>.

389 Commissioner's press release "Commissioner's Appeal Re Protection of Data on Pupils' Health," 19 March 2020, available in Serbian at: <https://bit.ly/3crbPJN>.

390 Commissioner's press release "Commissioner Warns of Potential Scams on Social Media," 30 March 2020, available in Serbian at: <https://bit.ly/2WsxpyF>.

that there were legal grounds and a reason for processing all personal data; and, that personal data should be adequate, relevant and limited to what is necessary for the purposes for which they are processed. Furthermore, he noted that data subjects had to be aware of the processing and that personal data had to be processed in a manner that ensuring adequate security of the personal data, including protection against unauthorised or unlawful processing.³⁹¹

The Commissioner carried the press release of the International Conference of Information Commissioners (ICIC), which he is a member of, alerting to the importance of the exercise of the right of access to information of public importance during the coronavirus pandemic.³⁹² The Commissioner recalled that he had emphasised the importance of the right even before the state of emergency was proclaimed, especially of the right to access information on preventing the spread of the virus that the public has a justified interest to know.

On 28 March 2020, the Government adopted a Conclusion on the Provision of Information about COVID-19³⁹³ laying down that only the Prime Minister and the Crisis Headquarters or a person they designate may provide information about the virus and collect data on the infection. The Conclusion was harshly criticised by the public, especially journalists and CSOs. A group of NGOs issued a press release stating that information of relevance to the suppression of the infection had to be provided not only by the national authorities, but also by the provincial and local authorities (mayors, emergency headquarters, etc.), as well as by health institutions and professionals, because the lives and health of the population depended on the prompt response of the relevant institutions.³⁹⁴ Legal professionals and press associations also criticised the Conclusion, claiming that such centralisation of information amounted to censorship and gross violations of the constitutionally guaranteed right and freedoms, specifically the freedom of expression, the freedom of the media and the right to be informed.³⁹⁵ The Commissioner did not voice his view or in any way comment the impugned Conclusion or the attempted suspension of the public's right to be informed risking to jeopardise the lives and health of the people.

According to the information published by the Serbian Finance Ministry, all Serbian nationals over 18 were entitled to apply for one-off €100 aid (in RSD) to help cope with the effects of the coronavirus epidemic from 15 May to 5 June 2020.³⁹⁶

391 Article 5, PDPA.

392 The ICIC press release is available at: <https://www.informationcommissioners.org/covid-19>.

393 *Sl. glasnik RS*, 48/20.

394 BCHR, "The state institutions should fight against the coronavirus, not the freedom of media," 2 April 2020, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/the-state-institutions-should-fight-against-the-coronavirus-not-the-freedom-of-media/>.

395 *NI*, "Professionals Warn: Centralisation of Information is in Violation of the Constitution and the Law," 1 April 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a584488/Struka-upo-zorava-Centralizovanje-informisanja-je-krsenje-Ustava-i-zakona.html>.

396 Pensioners and welfare beneficiaries did not have to apply for the aid and the money was automatically paid to their accounts.

They could apply online, via the Treasury Administration, or via the call centre. The applicants had to provide their ID card and personal identification numbers, the names of their bank or of the bank in which they wanted the money to be deposited in their name, but they did not need to specify their first and last names. The issue of abuse of the required data arose since they can be used to ascertain the identity of Serbian nationals. Furthermore, it was not entirely clear who would be collecting the data and whether they were trained in handling personal data, what would subsequently happen to the data, whether there was room for errors, et al. The Commissioner said that there was scope for abuse and that it was unnecessary to require of the citizens to provide all the requested data. He said that the risk of abuse would be smaller if the authorities merely required of the applicants to specify their first and last names and perhaps their bank account numbers and that requiring more data would not be in accordance with the legal provision on the minimisation of data.³⁹⁷ The SHARE Foundation also said it was unclear why the applicants had to give their personal identification numbers as well and that ID card numbers were better identifiers since the numbers were totally random, while personal identification numbers contained other personal data as well.³⁹⁸

4. Anti-Corruption Agency

The European Commission said that corruption in Serbia remained a concern in its Non-paper on the state of play regarding chapters 23 and 24³⁹⁹ for Serbia of June 2020.⁴⁰⁰ It noted the delays in the adoption of amendments to the Act on the Financing of Political Activities and the FAIPIA and the adoption of the new Act on Origin of Property, the implementation of which “needs to be non-discriminatory and not susceptible to corruption”. The EC also noted that the situation in sectors particularly vulnerable to corruption remained largely unchanged.⁴⁰¹

The CoE Group of States against Corruption said in its 2019 report that Serbia had not implemented seven of GRECO’s 17 recommendations at all and had

397 *N1*, “Potential Abuse of Personal Data Lurks on the ‘Road to €100’”, 2 May 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a595309/Na-putu-do-100-evra-gradjane-vrebaju-moguće-zloupotrebe-licnih-podataka.html>.

398 *Radio 021*, “SHARE Foundation: ID Card Number Suffices for €100 Payment, Unclear why PIN Required,” 7 May 2020, available in Serbian at: <https://www.021.rs/story/Info/Srbija/242677/SHARE-Za-isplatu-100-evra-dovoljan-broj-licne-karte-nejasno-zbog-cega-se-trazi-i-JMBG.html>.

399 The European Commission’s Non-paper is available at: https://www.mei.gov.rs/upload/documents/eu_dokumenta/Non_paper_Ch_23_24_June_2020.pdf.

400 *N1*, “EC on Situation in Serbia: Threats and Violence against Journalists, Corruption Remain a Problem,” 15 June 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a610236/EK-o-stanju-u-Srbiji-Pretnje-i-nasilje-nad-novinarima-korupcija-ostaje-problem.html>.

401 Specifically, public procurement, infrastructure projects, healthcare, education, spatial planning and public companies.

partly implemented ten of them. The GRECO report assessed the measures Member States have undertaken to prevent the corruption of parliamentarians, judges, prosecutors, government officials and intelligence officers. Serbia, the Czech Republic and Bosnia and Herzegovina were the only three states that had not fully implemented any of the recommendations to prevent the corruption of parliamentarians, judges and prosecutors. Serbia was one of the eleven countries that had not implemented any recommendations to prevent the corruption of judges.⁴⁰² The Ministry of Justice responded by issuing a press release saying that GRECO had issued 13 not 17 recommendations to Serbia, as the media incorrectly stated, and that the number has not changed.⁴⁰³

The US State Department's 2019 Report on Human Rights Practices in Serbia⁴⁰⁴ said that corruption was prevalent and remained an issue of concern. It noted that Serbia had prosecuted a number of low profile corruption cases but was less successful in prosecuting high-profile corruption. It also said that there was a widespread public perception that the law was not being implemented consistently and systematically and that some high-level officials engaged in corrupt practices with impunity.

The Report further noted that police corruption and impunity remained problems, despite some progress on holding corrupt police officials accountable. The Report observed that while the legal framework for fighting corruption was broadly in place, anticorruption entities typically lacked adequate personnel and were not integrated with other judicial entities, which inhibited information and evidence sharing with the prosecution service. The authors of the Report also concluded that the revised anti-corruption law provided some improvements over the previous version, such as clarifying the Anti-Corruption Agency's competencies and broadening preventive measures.⁴⁰⁵

The Anti-Corruption Agency submitted its 2019 Report to the National Assembly on 31 March 2020.⁴⁰⁶ The Agency said that it had achieved better results in the reporting period and applied the preventive mechanisms more efficiently, which resulted, inter alia, in the strengthening of the public officials' personal integrity and of institutional integrity. The Agency, an independent authority that should play a

402 N1, "GRECO Report: Serbia Has Not Implemented 7 of 17 Recommendations at All and Has Fulfilled 10 Recommendations Partly," 3 June 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a606149/Izvestaj-GRECO-Srbija-nije-primenila-sedam-od-17-preporuka-10-delimicno.html>.

403 The MoJ's press release of 3 June 2020 is available in Serbian at: <https://www.drzavnauprava.gov.rs/sr/vest/30012/-13-preporuka-greko-a-za-srbiju.php>.

404 US State Department, 2019 Country Reports on Human Rights Practices: Serbia, available at: <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/serbia/>.

405 KRIK, "State Department on Serbia: Corruption in All Walks of Life Remains a Concern," 12 March 2020, available in Serbian at: <https://www.krik.rs/stejt-department-o-srbiji-zabrinjava-korupcija-u-svim-sferama-zivotat/>.

406 Anti-Corruption Agency, 2019 Annual Report, Belgrade, 2020, available in Serbian at: <http://www.acas.rs/wp-content/uploads/2020/03/ACASizvestaj2019WEB.pdf>.

preventive role in suppressing and fighting corruption, registered a number of violations of the Anti-Corruption Agency Act in 2019. It said that it had launched 866 proceedings and imposed 604 measures for violations of the Anti-Corruption Agency Act in cases under its sole authority⁴⁰⁷ in the reporting period and that the other proceedings were pending. The Agency also said that it had filed 182 misdemeanour motions and 38 criminal reports or reports with the relevant prosecution services against public officials, companies and responsible persons in companies in 2019.

4.1. Anti-Corruption Agency's Activities in the First Half of 2020

In February, the Agency recommended the dismissal of Vrnjačka Banja Mayor Boban Đurović, because of a conflict of interest he had failed to notify the Agency of. The Agency ascertained that on 18 November 2016, the Vrnjačka Banja Tourist Organisation, which was founded by the municipality, hired his wife as the Deputy Director for an indefinite period of time. The Mayor failed to notify the Agency of this conflict of interest in writing⁴⁰⁸ wherefore the Agency published its recommendation on his dismissal.⁴⁰⁹

The Agency also found a case of nepotism at the Belgrade University College of Veterinary Medicine. It ascertained that the Dean of the College, Vlado Teodorović, hired both of his daughters, maid of honour and brother in law, in violation of the Anti-Corruption Agency Act, and recommended his dismissal.⁴¹⁰

After *Insajder* reported that former Brus Mayor and now councillor in Municipal Assembly Milutin Jeličić Jutka failed to report his apartment in the heart of Belgrade, the Agency in February 2020 initiated an *ad hoc* check of the data in his asset declaration. It transpired in the meantime that Jeličić was registered in the cadastre as the owner of the real estate he bought back in 2011; this means that he concealed that information for nine years, which is a criminal offence.⁴¹¹ The revelation, however, did not speed up the review procedure which was pending over

407 Issues regarding officials' assets, conflicts of interest, financing of political activities, and other cases.

408 This was a case of conflict of interest, given that the wife of the Mayor of Vrnjačka Banja was hired by an organisation founded by this municipality. Public interest was thus subordinated to private interests and the mayor abused his public office to acquire benefit for an associated person, which is in contravention of Article 27 of the Anti-Corruption Agency Act.

409 *Nova ekonomija*, "Agency Recommends Dismissal of Vrnjačka Banja Mayor," 16 February 2020, available in Serbian at: <https://novaekonomija.rs/vesti-iz-zemlje/agencija-preporu%C4%8Dila-razre%C5%A1enje-predsednika-op%C5%A1tina-vrnja%C4%8Dka-banja>.

410 *Radio 021*, "Agency: Dismissal of Veterinary Medicine College Dean sought because he hired both daughters, maid of honour and brother in law," 24 January 2020, available in Serbian at: <https://www.021.rs/story/Info/Srbija/232857/Agencija-Dekan-Fakulteta-veterinarske-medicine-zaposlio-obe-cerke-kumu-i-suraka-trazi-se-smena.html>.

411 *Insajder*, "Milutin Jeličić Violates Suspended Sentence: Hid Ownership of Apartment in Heart of Belgrade for Nine Years," 9 June 2020, available in Serbian at: <https://insajder.net/sr/sajt/tema/18833/>.

four months, because, as the Agency explained, it had to collect all the required data before it completed the procedure.⁴¹²

4.2. Assessments of the Anti-Corruption Agency's Work

Transparency Serbia recalled that the Agency had failed to launch a procedure to ascertain whether Interior Minister Nebojša Stefanović was in a conflict of interest in regards to the Krušik scandal. Namely, media reports implicated the Minister's father, Branko Stefanović, i.e. the private company he was representing, in the sale of weapons manufactured in the Krušik plant in Valjevo; the company made profits at the detriment of the plant by selling the weapons at lower prices.⁴¹³ Notwithstanding all the evidence, the Agency merely issued a press release denying the existence of a conflict of interest, specifying that the Minister's father was not formally engaged by the company that sold the weapons.

Transparency Serbia also called on the Agency to respond to *BIRN*'s report that companies associated with Bojan Kisić, the brother of Dr. Darija Kisić Tepavčević, a member of the COVID-19 Crisis Headquarters, and the husband of Justice Minister Nela Kuburović, signed over 20 contracts worth €26.8 million with public companies and ministries. Transparency Serbia said that that it was highly unlikely that the Agency looked into the case, although all the claims should be in the interests of the institutions and not only the public. Namely, public officials are under the duty to declare their spouses' assets, but procurements and other deals with the state struck by the spouses' companies are not automatically checked. Such checks are performed only in the event the public officials own a substantial stake in these companies.⁴¹⁴ Doctor Kisić Tepavčević avoided *BIRN*'s questions about the public company tenders the company associated with her brother had participated in. The Justice Minister denied she was associated with the company her husband was working in and recalled that the Agency, as an independent body, was the "only one competent for deciding whether or not there is a conflict of interest."⁴¹⁵

An analysis conducted by the Centre for Investigative Reporting of Serbia (CINS)⁴¹⁶ showed that at least 87 candidates running for parliament had violated

412 *Insajder*, "Anti-Corruption Agency Initiates Check of Milutin Jeličić's Assets, No Results after Four Months," 15 June 2020, available in Serbian at: <https://insajder.net/sr/sajt/vazno/18924/Agencija-za-borbu-protiv-korupcije-pokrenula-postupak-kontrole-imovine-Milutina-Jeli%C4%8Di%C4%87a-nema-rezultata-ni-posle-%C4%8Detiri-meseca.htm>.

413 More on the Krušik case in the 2019 Report, III.4.3.2.

414 *NI*, "Nenadić: Anti-Corruption Agency should comment the Kisić case," 4 May 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a595775/Nenadic-Agencija-za-borbu-protiv-korupcije-da-se-oglasi-povodom-slucaja-Kisic.html>.

415 *BIRN*, "Serbian Company Linked to Minister's Husband Gets State Contracts," 1 May 2020, available at: <https://balkaninsight.com/2020/05/01/serbian-company-linked-to-ministers-husband-gets-state-contracts/>.

416 CINS, "Parties Nominated Them for Parliament although They Violated the Law," 29 May 2020, available in Serbian at: <https://www.cins.rs/krsili-zakon-a-stranke-ih-kandidovale-za-poslanike/>.

the Anti-Corruption Agency Act. Most of them were running on the SNS ticket and most of these officials were issued only warnings because of their conflicts of interest, management of private companies after they took office, and delays in submitting their asset declarations.

CINS also found that most officials managing Serbian public institutions in Kosovo, whose salaries were paid by Serbian tax-payers, had not declared their real estate, income or other valuables to the Anti-Corruption Agency, although they were obliged to under the law.⁴¹⁷ CINS' efforts to contact the public officials who had not declared their assets were unsuccessful.

The Anti-Corruption Agency in late May initiated procedures against six Kosovo officials, including the Kosovska Mitrovica Mayor, who, as the Agency reported, failed to report the two offices he held and his assets and property.⁴¹⁸

CINS also revealed that senior Socialist Party of Serbia (SPS) official and MP Milutin Mrkonjić never declared that he became the owner of a Podgorica company *Habit invest* for free in 2002. Notwithstanding the official documentation attesting to his ownership and managerial rights, Mrkonjić denied that he owned the company⁴¹⁹, while the Agency said that it would examine whether the requirements to initiate a procedure against him were fulfilled.⁴²⁰

4.3. Anti-Corruption Agency's Activities during the Election Campaign

The Anti-Corruption Agency in February selected 120 observers (33 city and municipal coordinators and 87 field observers) of the 2020 election campaign.⁴²¹ The observers collected the data the Agency uses for its comparative analysis of the reports of election campaign expenses political entities must submit within 30 days from the day the final election results are proclaimed.⁴²²

417 CINS, "Serbian Officials in Kosovo Not Declaring Assets under Serbian Law," 27 May 2020, available in Serbian at: <https://www.cins.rs/srpski-funkcioneri-na-kosovu-ne-prijavljaju-imovinu-i-prihode-po-srpskom-zakonu/>.

418 CINS, "Agency Initiating Procedure against Six Public Officials Employed in Kosovo," 28 May 2020, available in Serbian at: <https://www.cins.rs/agencija-pokrece-postupak-protiv-sest-funkcionera-zaposlenih-na-kosovu/>.

419 CINS, "Mrkonjić Denies Ownership of Montenegrin Company, Data Refute Him," 12 March 2020, available in Serbian at: <https://www.cins.rs/mrkonjic-negira-vlasnistvo-nad-crnogorskom-firmom-podaci-ga-demantuju/>.

420 CINS, "IN SUM: Milutin Mrkonjić Should Have Declared Montenegrin Company," 18 March 2020, available in Serbian at: <https://www.cins.rs/ukratko-milutin-mrkonjic-morao-da-prijava-crnogorsku-firmu/>.

421 *Radio 021*, "Anti-Corruption Agency Selects Election Campaign Observers," 24 February 2020, available in Serbian at: <https://www.021.rs/story/Izbori-2020/235187/Agencija-za-borbu-protiv-korupcije-izabrala-posmatrace-izborne-kampanje.html>.

422 *Politika*, "120 Anti-Corruption Agency Observers Monitoring Election Campaign," 4 June 2020, available in Serbian at: <http://www.politika.rs/sr/clanak/455418/Izbornu-kampanju-prati-120-posmatraca-Agencije-za-borbu-protiv-korupcije>.

CRTA's observer mission launched its long-term monitoring of the election campaign in accordance with international standards on independent civic election monitoring. CRTA said that it filed nine reports in the 14 October 2019 – 3 March 2020 period⁴²³ with the Anti-Corruption Agency; seven concerned abuse of public resources, two concerned public officials' abuse of office for party campaigning, while three alleged violations of the Act on the Financing of Political Activities.⁴²⁴

On 27 December 2019, CRTA filed a report with the Anti-Corruption Agency against Serbian Prime Minister Ana Brnabić alleging she had abused her office for party campaigning.⁴²⁵ CRTA claimed that she had violated Article 29 of the Anti-Corruption Agency Act⁴²⁶ because she said in a morning show on *TV Pink* the previous day that the Government's results were good and that she would give her trust to the Serbian Progressive Party at the parliamentary elections. The Anti-Corruption Agency initiated the procedure. In her comment of the report against her, Brnabić told the media she had been reported not because she called on the people to vote for a particular party, but because she said she "expected of the citizens to recognise the results".⁴²⁷ The Agency issued a ruling on 18 May 2020 discontinuing the procedure against Brnabić, finding that she had not breached Article 29. In its letter notifying CRTA of its decision, the Agency said that all the statements Brnabić made during the TV show, including the impugned statement, were made in her capacity of Prime Minister.⁴²⁸

The Agency went on to say that Brnabić's expression of her expectations that the citizens would give their trust to a specific party, which she mentioned only once, because of the achieved results, could not be considered a violation of Article 29. The Agency decision is disputable for two reasons. First of all, it took the Agency five months to render it; the election campaign was ongoing at the time, wherefore the question arises whether the consequences of the impugned statements could have been eliminated had the Agency found the Prime Minister in violation of the

423 The Agency in May said that CRTA's reports of abuse of public resources and offices by several public officials did not have the status of reports of abuses during election campaigns because they had been filed before the elections were called. The Agency said that it was reviewing CRTA's nine reports against public officials at various levels and would promptly notify it of the outcome. More in *Danas*, "CRTA's Reports Filed before Elections Were Called," 13 May 2020, available in Serbian at: <https://www.danas.rs/politika/izbori-2020/acas-prijave-organizacije-crta-stigle-pre-raspisivanja-izbora/>.

424 *NI*, "CRTA Files Nine Reports re Campaign with Anti-Corruption Agenc," 10 March 2020, available in Serbian at: <http://rs.n1info.com/Izbiri-2020/a576542/Crta-podnela-devet-prijava-Agenciji-za-borbu-protiv-korupcije-zbog-kampanje.html>.

425 CRTA's report is available in Serbian at: <https://crta.rs/wp-content/uploads/2020/06/27.12.2019.-ACAS-Ana-Brnabi%C4%87-prijava-.pdf>.

426 *Sl. glasnik RS*, 97/08.

427 *Insajder*, "Prime Minister Receives Anti-Corruption Agency's Report re Abuse of Office for Party Campaigning," 9 March 2020, available in Serbian at: <https://insajder.net/sr/sajt/vazno/17179/>.

428 The Anti-Corruption Agency's reply to CRTA is available in Serbian at: <https://crta.rs/wp-content/uploads/2020/06/Odgovo-na-prijavu-Ana-Brnabi%C4%87.pdf>.

law. Furthermore, the Agency's decision renders meaningless Article 29, prohibiting public officials from abusing their office to promote their parties and their election programmes and inviting citizens to vote for them at official events.

Transparency Serbia in May published the Agency's replies to its prior initiatives, in which it concluded that SNS and SPS had not abused public resources in their election spots and announcements⁴²⁹ because the footage in the election spots had "already been broadcast" i.e. that pick-ups were at issue. Transparency Serbia disagreed, stating that the legal ambiguities and misinterpretations of the law led to an imprecise definition of abuse of public office for party campaigning. In its view, public officials' activities are used to increase their parties' visibility in news programmes and are presented as politically neutral news, but the footage and news of state officials' activities are subsequently used to openly promote the parties – within election spots and announcements on the parties' social media profiles and under their campaign logos.⁴³⁰

429 Specifically, the Agency does not consider that public resources are used in the following cases: use of footage of public officials' visits to health institutions in party promotional spots; use of footage of public health institutions and state-owned companies in party promotional spots; announcements of activities of ministers and other public officials on the parties' Facebook profiles under campaign logos.

430 Transparency Serbia, "Agency Allowing Dual Exploitation of Public Officials' Campaigning," 23 May 2020, available in Serbian at: <https://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/11441-agencija-odabrava-dvostruku-eksploataciju-funkcionerske-kampanje>.

VIII. INDIVIDUAL RIGHTS

1. Right to Privacy

No substantial changes were made in the legal framework governing rights falling in the category of those protecting private life in the reporting period. Serbia signed the Council of Europe Protocol amending the Convention for the protection of individuals with regard to the processing of personal data (Convention 108+) in November 2019 and ratified it on 26 May 2020.⁴³¹ The Protocol aims to reinforce international cooperation and the role and independence of authorities charged with personal data protection.⁴³²

The issue of confidentiality of correspondence drew a lot of attention when Defence Minister Aleksandar Vulin in February commented an op-ed written by his predecessor Dragan Šutanovac that was never published in the weekly *Nedeljnik*.⁴³³ Šutanovac had e-mailed the text to *Nedeljnik* Chief Editor Veljko Lalić, but the editors decided against running it. The question arose how Vulin found out about the content of the article and whether the constitutional right to confidentiality of correspondence had been violated in this case.

The Ministry of Defence (MoD) issued a press release the same day, explaining that the MoD PR department had made a grave mistake, because Vulin's comment regarded Šutanovac's interview to the daily *Kurir*, not a text in *Nedeljnik*.⁴³⁴ This explanation is unacceptable because the interview Šutanovac gave to *Kurir* dealt with altogether different issues than the op-ed that was to have appeared in *Nedeljnik* and Vulin's initial reaction evidently concerned Šutanovac's allegations in the latter. At its session on 21 February 2020, the parliamentary Security Services Oversight Committee unanimously upheld the MoD General In-

431 *Sl. glasnik RS*, 4/20.

432 The main novelties in Convention 108+ include stronger requirements regarding the principles of proportionality and lawfulness and transparency of processing; extension of the types of sensitive data, which will now include genetic and biometric data, et al; the obligation to declare data breaches; and, new rights for the persons in an algorithmic decision making context, which are particularly relevant in connection with the development of artificial intelligence.

433 *Kurir*, "MINISTER VULIN: Šutanovac has to attack Serbia every time I meet Minister Shoygu," 16 February 2020, available in Serbian at: <https://www.kurir.rs/vesti/politika/3412501/vulin-sutanovac-napada-srbiju-kad-god-dolazi-ruski-ministar-odbrane-sergej-sojgu>

434 MoD, "Apology to *Kurir* and *Nedeljnik*," 16 February 2020, available at: <http://www.mod.gov.rs/eng/15053/izvinjenje-kuriru-i-nedeljniku-15053>.

spector's Report on the *ad hoc* check of the Military Security Agency, which stated that the Agency had not implemented any particular procedures or measures with respect to former Defence Minister Dragan Šutanovac or *Nedeljnik* Chief Editor Veljko Lalić that would have enabled collection of information from their mutual communication.⁴³⁵ Đorđe Komlenski, a lawyer and MP of Vulin's Socialists' Movement, filed a criminal report against his party leader.⁴³⁶ Special Cyber Crime Prosecutor Branko Stamenković said that his office had undertaken steps to verify the allegations in the report that Vulin had illegally accessed the e-mail communication between *Nedeljnik* Chief Editor Lalić and former Defence Minister Šutanovac and would publish the results of their investigation. *Nedeljnik* called for the establishment of an independent commission to investigate whether journalists in Serbia were followed and bugged.⁴³⁷ The state of emergency was proclaimed soon afterwards and no new information about this case was made public by the end of the reporting period.

1.1. Violations of the Right to Privacy during the State of Emergency

The state of emergency brought numerous challenges to the human rights of citizens. As opposed to people in other European countries, Serbia's public did not devote much attention to the right to privacy during the pandemic. This is probably why the following statement Serbian President Aleksandar Vučić made on 19 March practically went unnoticed. Vučić said that "the state is monitoring telephone numbers, primarily Italian ones" in order to keep track of the movement of people who had come from Italy and added "don't think you'll fool us by leaving your phone somewhere, because we've found another way to monitor who is violating the rules prescribed by the state and how."⁴³⁸ The state imposed mandatory self-isolation on everyone who had come to Serbia from other countries and the police called them up every day to check whether they complied with the measure (and visited them on occasion). Vučić said that these steps were being taken to protect the health of the population.

435 The report on the Security Services Oversight Committee session is available in Serbian at: http://www.parlament.gov.rs/36_%D1%81%D0%B5%D0%B4%D0%BD%D0%B8%D1%86%D0%B0_%D0%9E%D0%B4%D0%B1%D0%BE%D1%80%D0%B0_%D0%B7%D0%B0_%D0%BA%D0%BE%D0%BD%D1%82%D1%80%D0%BE%D0%BB%D1%83.38745.43.html.

436 *Espresso.rs*, "DELIBERATE: Socialists' Movement Filed Criminal Report against Vulin, Forwards Copy to NEDELJNIK!" 27 February 2020, available in Serbian at: <https://www.espresso.rs/vesti/politika/517521/smisljeno-pokret-socijalista-podneo-krivicnu-prijavu-protiv-vulina-pa-uputio-kopiju-nedeljniku>.

437 *Nedeljnik*, "Nedeljnik Requesting Independent Commission on Bugging of Reporters," 27 February 2020, available in Serbian at: <https://www.nedeljnik.rs/nedeljnik-trazi-nezavisnu-komisiyu-za-prisluskivanje-novinara/>.

438 *Mondo*, "Vučić: Don't leave your phones, you won't fool us! WE KNOW you're moving about," <https://mondo.rs/Info/Drustvo/a1298105/Aleksandar-Vucic-policija-telefonski-brojevi-policijski-sat-upozorenje-krecu-se.html>.

Several days earlier, Vučić blamed the appearance of the virus in the country on the hundreds of thousands of Serbian nationals who had returned from other countries, especially Italy, which had the most COVID-19 cases at the time.⁴³⁹

Although Vučić said that the state was not intercepting telephone conversations, but just monitoring the telephone numbers, especially Italian ones, to prevent people from moving and to protect human health, he did not specify which law such measures were based on. Perusal of the legal framework on interception and monitoring of communication and movement of citizens indicates that there is a great likelihood that these measures were illegal.

Namely, Article 41(2) of the Constitution provides for derogations from the right to confidentiality of letters and other means of communication only for a specified period of time and based on a court decision if necessary to conduct criminal proceedings or protect the safety of the Republic of Serbia, in a manner stipulated by the law. Furthermore, the Criminal Procedure Code (CPC) lays down that special evidentiary actions, including covert interception of communication and secret surveillance and audio and video recording, may be ordered against persons reasonably suspected of committing any of the crimes enumerated in Article 162 of the CPC. Given that non-compliance with health regulations during epidemics (Article 248 of the Criminal Code) and transmission of communicable diseases (Article 249 of the Criminal Code) are not listed in Article 162 of the CPC, it remains unclear which legal grounds the state had relied on when it monitored the locations of the cell phone signals.

1.2. Personal Data Protection

Both experts and the Commissioner for Information of Public Importance and Personal Data Protection have for years been warning that personal data protection remained at an extremely low level despite the new Personal Data Protection Act (PDPA),⁴⁴⁰ which entered into force in August 2019, and its predecessor, the 2008 Personal Data Protection Act,⁴⁴¹ which had been amended several times. The right to personal data protection has been violated many times and the state authorities have frequently violated the citizens' right to privacy by publishing their private data.

The authorities continued installing so-called smart video surveillance cameras in Belgrade in early 2020.⁴⁴² The BCHR alerted to the potential risks to the right to privacy and the state's unacceptable policy on this issue in its 2019 Report.⁴⁴³

439 More in Chapter VIII.2.

440 *Sl. glasnik RS*, 87/18.

441 *Sl. glasnik RS*, 97/08, 104/09 – other law, 68/12 – CC decision and 107/12.

442 *Novosti*, “Cameras Capturing Arrogant Drivers: Video Surveillance in Belgrade EVERY STEP OF THE WAY, Misdemeanours Recorded, Fines Sent to Home Addresses (PHOTO)”, 5 February 2020, available in Serbian at: <https://www.novosti.rs/vesti/beograd.74.html:845621-Kamere-love-bahate-vozace-Video-nadzor-u-Beogradu-na-SVAKOM-KORAKU-preksaji-se-snimaju-a-kazne-stizu-na-kucnu-adresu-FOTO>.

443 BCHR, *2019 Report*, II.5.5.2, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Human-Rights-in-Serbia-2019.pdf>.

Not unexpectedly, political parties, especially those in power, amply resorted to abuse of the population's personal data in the run-up to the 2020 elections. Representatives of the Commissioner's Office said that many citizens complained to it that they were harassed by political parties after the state of emergency was lifted and the election campaigns resumed and that the activists were in possession of their private data.⁴⁴⁴ The Commissioner's Office said that the reports it had received before the introduction of the state of emergency mostly concerned door to door campaigning, while the ones it received after it concerned phone calls by party activists. The Commissioner issued a press release appealing to political parties to comply with the Personal Data Protection Act, especially its provisions on the legal and transparent processing of personal data.⁴⁴⁵

In late May, pensioners received letters from President Vučić thanking them for the sacrifice they had made during the pandemic and reminding them that they had each received 4,000 RSD and €100 during the state of emergency thanks to the state's diligence. The letter raised the same question as the thank-you letter the President sent all pensioners in 2018 – how his Serbian Progressive Party (SNS) got hold of the pensioners' personal data.

The 2018 letter prompted the Commissioner to file a criminal complaint against unidentified officials of the Pension and Disability Insurance Fund reasonably suspected of leaking the pensioners' personal data to the SNS. The First Basic Public Prosecution Service has not notified the Commissioner of the status of the 2018 report to this day. The Commissioner's Office said that the data processing that occurred in May 2020 was identical to the one in 2018 and that it would notify the prosecutors thereof.⁴⁴⁶

1.2.1. State of Emergency and Personal Data Protection

The pandemic brought numerous challenges to personal data protection. The Commissioner warned state authorities,⁴⁴⁷ the media⁴⁴⁸ and the public at large⁴⁴⁹ that both data controllers and processors were under the duty to act in accordance with the PDPA in emergencies as well.

444 NI, "Interview with Zlatko Petrović of the Commissioner's Office: Increasingly frequent abuse of personal data," 4 June 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a606445/Petrovic-Veoma-ucestala-zloupotreba-podataka-o-licnosti-u-poslednje-vreme.html>.

445 Commissioner, Press Release of 28 February 2020, available in Serbian at: <https://bit.ly/3fM-7r9E>.

446 *Insajder*, "Commissioner: We will inform the prosecutors that the SNS President sent a new letter to the pensioners, we don't have any information on what happened with the prior report," 25 May 2020, available in Serbian at: <https://insajder.net/sr/sajt/vazno/18586/Poverenik-Obavesti%C4%87emo-tu%C5%BEila%C5%A1tvo-da-je-predsednik-SNS-poslao-novo-pismo-penzionerima-nemamo-informacije-%C5%A1ta-je-s-prethodnim-postupkom.htm>.

447 Commissioner, Press Release of 19 March 2020, available in Serbian at: <http://skr.rs/A5J>.

448 Commissioner, Press Release of 9 March 2020, available in Serbian at: <http://skr.rs/A5B>.

449 Commissioner, Press Release of 1 April 2020, available in Serbian at: <https://bit.ly/2WAKLA2>.

The greatest threat to the personal data on health was definitely the deficiency of the COVID-19 information system, centralised software for collecting, analysing and storing data of all individuals monitored to control and suppress the pandemic in Serbia. This programme stores the data of all individuals who have been tested, treated, placed into isolation or died of coronavirus, including of individuals who may have contracted the disease because they were in contact with COVID-19 patients.

During its search of key words on Google, the SHARE Foundation accidentally came upon the username and password to access the COVID-19 Information System, which were accessible through a simple search. Anyone was able access the data on the population's health in the 9–17 April period. The SHARE Foundation immediately alerted the Commissioner, the National ICT Cyber Security Centre and the Ministry of Trade, Tourism and Telecommunications and the deficiency was soon eliminated. No information on whether an inquiry into who was liable for the lapse was conducted was publicly available by the end of the reporting period.

2. Rights of Serbian Nationals – (Un)Obstructed Return to Their Country

Article 38(2) of the Constitution prohibits the expulsion of Serbian nationals while Article 39, on the freedom of movement, guarantees everyone the right to leave and return to Serbia. A large number of Serbian nationals were abroad when the COVID-19 pandemic was declared and numerous states closed their borders. Some of them were temporarily or habitually residing and working or studying abroad. Serbian tourists were also prevented from returning to Serbia as flights were cancelled and airports were shut down. Since Serbia is under the duty to protect the rights and interests of its nationals abroad and extend them diplomatic and consular protection, it was under the obligation to do its utmost to help all its nationals who wanted to return to Serbia after the state of emergency was proclaimed.⁴⁵⁰

Several days after the state of emergency was introduced, on 19 March 2020, the Ministry of Construction, Transportation and Infrastructure said that Belgrade Airport Nikola Tesla was closed to international commercial flights⁴⁵¹ and that all passengers, who had arrived in the past few days, had to comply with the self-

450 Article 13(1) of the Constitution. The fundamental provisions of the Constitution define the state's active relationship with its nationals habitually or temporarily residing in other states. More in: Marijana Pajvančić, *Comments on the Constitution of the Republic of Serbia*, Konrad Adenauer Foundation, Belgrade, 2009, p. 23.

451 *Danas*, "Airport Nikola Tesla Cancels All Commercial International Flights, 19 March 2020, available in Serbian at: <https://www.danas.rs/ekonomija/aerodrom-nikola-tesla-obustavlja-sve-komercijalne-medjunarodne-letove/>.

-isolation measures. The authorities said that the violation of these measures would be strictly controlled and penalised in accordance with the law. The Serbian Government adopted the Decision on the Closure of All National Border Crossings.⁴⁵²

As flights were cancelled and borders closed across the world, Serbian nationals stranded in foreign countries and at foreign airports for days sought help from the state via the media and social networks. The Ministry of Foreign Affairs began organising the return of Serbian nationals from various destinations only on 23 March 2020.⁴⁵³ This action, although belated, nevertheless facilitated the return of many Serbian nationals after days of uncertainty.

Statements by some state officials met with public condemnation. At a press conference in Belgrade on 18 March 2020, the Serbian President and Prime Minister sharply criticised Serbian tourists who had left the country and publicly called on Serbian nationals abroad not to return.

The public was also scandalised by Serbian officials' accusations against accusing Serbian nationals returning from other countries of bringing the virus to Serbia and that those, who had tested positive, were lowering their temperature to leave the countries they had been living in. At a news conference on 18 March, Prime Minister Ana Brnabić said that Serbian nationals returning from other countries despite the Serbian authorities' appeals posed the greatest security challenge and that over 65,000 nationals had returned to Serbia from 14 to 18 March.⁴⁵⁴

Serbian President Aleksandar Vučić's words, uttered during his press conference on 25 March broadcast by all media, topped them all. He said that "the state has made only one mistake in the fight against the coronavirus – it let our nationals abroad back into the Serbia," adding that this was unavoidable because of the Constitution. "We wouldn't have even a quarter of the problem now if we had not made that mistake," he said.⁴⁵⁵

Statements made during the state of emergency are disputable for a number of reasons. Namely, Serbian nationals are entitled to return to Serbia regardless of the situation in the country and their right to return should not be obstructed. Furthermore, blaming Serbian nationals for the appearance and spread of the virus in Serbia amounts to a gross violation of equality and to discrimination.

452 *Sl. glasnik RS* 25/20, 27/20, 35/20 and 47/20, and *Sl. glasnik RS*, 37/20.

453 Ministry of Foreign Affairs press release, "Minister Dačić: We have secured return of close to 4000 of our nationals to the Republic of Serbia," 31 March 2020, available at: <http://mfa.gov.rs/en/press-service/statements/19201-minister-dacic-we-have-secured-return-of-close-to-4000-our-nationals-to-the-republic-of-serbia>.

454 *Radio 021*, "Brnabić: Prison for all returnees to Serbia who don't comply with imposed measures and infect citizens or cause death," 18 March 2020, available in Serbian at: <https://www.021.rs/story/Info/Srbija/237034/Brnabic-Zatvor-za-povratnike-u-Srbiju-ako-nepridrzavanjem-nalozenih-mera-zaraze-gradjane-ili-izazovu-smrt.html>.

455 *24 online.info*, "Vučić: We made just one mistake, we allowed our nationals to return from abroad," 25 March 2020, available in Serbian at: <https://www.24online.info/vucic-napravili-smo-samo-jednu-gresku-dozvolili-smo-nasim-drzavljanima-da-se-vrate-iz-inostranstva/>.

The Decision declaring COVID-19 caused by the SARS-CoV-2 virus a communicable disease,⁴⁵⁶ which was amended several times, initially allowed the competent authorities to temporarily prohibit or restrict persons coming from virus-affected countries entry into and movement in Serbia; this provision was subsequently amended and such people were ordered into 14- and 28-day self-isolation and placed under surveillance. The Decision was amended on 18 March, when 14-day self-isolation was introduced; quarantine was introduced subsequently. Under the amendments adopted on 28 March, persons infected with COVID-19 were referred to designated facilities and the self-isolation measure was extended by another 14 days. The next amendment, adopted just several days later, replaced the quarantine measure by self-isolation. Compliance with the measures was monitored by the Ministry of Internal Affairs.

Frequent amendments of the decrees and orders adopted by the state authorities caused a lot of confusion among Serbia's nationals, especially those who were affected by them because they had returned from other countries. Human rights NGOs issued press releases warning of violations of specific constitutionally guaranteed human rights, the divergent practices of the authorities implementing or monitoring the measures, the harsh penalties handed down in specific cases, violations of rights that may not be derogated from even during a state of emergency, discrimination against specific categories of the population, especially the elderly, the employed or the poor.⁴⁵⁷

Serbian nationals, who had returned from other countries, faced a number of other problems as well. First, as soon as they crossed the border, they were accommodated in designated facilities where they had to wait for days to be tested. Once tested, they had to wait days for the results; their freedom of movement was restricted during this period.⁴⁵⁸ Second, not everyone returning to the country was notified that they had to self-isolate for a specific period of time; some returnees who were unaware of the obligation left their homes and were deprived of their liberty; some spent days in pre-trial detention or were sentenced to extremely harsh prison sentences.

The Government decisions ordered the accommodation of Serbian nationals without registered residence in Serbia and those qualified as health risks by the doctors at the borders in a special tent camp in the village of Morović near Šid, a town close to the border with Croatia. The camp was established under a Government

456 *Sl. glasnik RS*, 23/20, 24/20, 27/20, 28/20, 30/20, 32/20, 35/20, 37/20, 38/20, 39/20, 43/20, 45/20, 48/20, 49/20, 59/20, 60/20, 66/20, 67/20, 72/20, 73/20, 75/20, 76/20 and 84/20.

457 *Danas*, "State of Emergency Analysis: Citizens Unaware of Their Rights and Obligations," 26 April 2020, available in Serbian at: <https://www.danas.rs/drustvo/analiza-vanrednog-stanja-gradjani-ne-znaju-koja-su-njihova-prava-i-obaveze/>.

458 *Danas*, "Serbian Nationals Were Accommodated in Inhuman Conditions in Camp at Subotica," 24 March 2020, available in Serbian at: <https://www.danas.rs/drustvo/drzavljeni-srbije-bili-smesteni-u-nehumanim-uslovima-u-kampu-kod-subotice/>.

Conclusion of 17 March 2020.⁴⁵⁹ Decisions on who could enter the camp were taken by the Ministry of Defence, together with the Ministry of Internal Affairs and the relevant sanitary services.⁴⁶⁰

2.1. Status of Serbian Nationals – Dual Citizenship and Ethnic Affiliation

2.1.1. Issuance of Passports to Nationals of Bosnia and Herzegovina

The countries in the region amended their legislation on citizenship years ago to enable nationals of the neighbouring countries to acquire their citizenship (e.g. Hungary and Bulgaria, and, as of 2019, Croatia).

News broke in the first half of the year that the Ministry of Internal Affairs was issuing Serbian passports to nationals of Bosnia and Herzegovina. The comments that appeared in the media linked the trend to the right to vote, since foreign nationals granted Serbian citizenship may run in elections and vote.

The activity would have probably gone unnoticed had parliamentary, provincial and local elections not been first scheduled for April (and then rescheduled for 21 June). Suspicions arose that this was the real reason why the authorities were rapidly issuing passports to BiH citizens because a number of opposition parties called on the citizens to boycott the elections and the ruling party wanted to drum up a turnout similar to the ones during the prior parliamentary elections.⁴⁶¹ The Ministry of Internal Affairs refused to answer daily *Danas*' question whether reports on massive issuance of passports and granting of Serbian citizenship were true.⁴⁶²

2.1.2. Serbian Nationals of Montenegrin Origin

The Serbian Citizenship Act lays down that Montenegrin nationals registered as habitual residents of Serbia on 3 June 2006 shall be deemed nationals of the Republic of Serbia in the meaning of this law. They were to apply for registration in the Register of Serbian Nationals and submit a written statement that they considered themselves nationals of the Republic of Serbia⁴⁶³ within five years from the day the Citizenship Act entered into force.⁴⁶⁴ Back in 2006, when the State Union of Serbia and Montenegro ceased to exist, the Serbian Government adopted the Declaration

459 RS Government Conclusion 05 No. 53–2551/2020 of 17 March 2020. *Sl. glasnik RS*, 33/20.

460 Ministry of Defence press release “Minister Vulin: Camp in Morović is Set up,” 19 March 2020, available at: <http://www.mod.gov.rs/eng/15774/ministar-vulin-otvoren-kamp-u-morovicu-15774>.

461 See Chapter V.

462 *Danas*, “No Reply from MIA to *Danas* Question on Veselinović's Claims,” 10 March 2020, available in Serbian at: <https://www.danas.rs/politika/izbori-2020/mup-bez-odgovora-danasu-o-tvrdenjama-veselinovica/>.

463 Article 52(2), Citizenship Act.

464 Article 52(5), Citizenship Act. The Citizenship Act was published in *Sl. glasnik RS*, 135/04 and it entered into force eight days later, as prescribed in Article 56 of the Citizenship Act.

on the Granting of the Citizenship of the Republic of Serbia to Montenegrin Nationals with Habitual Residence in the Republic of Serbia.⁴⁶⁵ The Declaration confirmed that the Republic of Serbia, as the legal successor of the State Union of Serbia and Montenegro, allowed all Montenegrin nationals habitually residing in Serbia to acquire Serbian citizenship in accordance with the Citizenship Act.

However, political relations between Serbia and Montenegro grew tense at the beginning of the year after Montenegro adopted a new Act on the Freedom of Religion⁴⁶⁶ and the crisis brought on by the disputes between the Montenegrin authorities and Montenegrin nationals, believers of the Serbian Orthodox Church (SOC).⁴⁶⁷ Serbian Foreign Minister Ivica Dačić in January 2020 warned Serbian nationals of Montenegrin origin that their Serbian citizenship might be brought into question.

Minister Dačić's statement is a threat and infringes on the Serbian nationals' right to citizenship since there are no legal grounds for depriving them of their citizenship. Such statements can only be qualified as political pressure and intimidation of one's own nationals. Namely, Serbian law does not provide for the possibility of stripping any Serbian nationals of their nationality, especially if they would thus become stateless.

3. Rights of Persons with Disabilities during the State of Emergency

The difficulties of people with physical, sensory, intellectual and psychosocial disabilities were compounded during the state of emergency. Their representatives were not involved in planning either the anti-epidemic measures or a crisis exit strategy. The non-participation of persons with disabilities at the national and local levels resulted in the adoption of measures that did not take into account the specific circumstances and needs of persons with disabilities. Due to the relevant authorities' disregard of the situation of persons with disabilities and their fulfilment of their basic needs, associations of persons with disabilities and organisations championing their human rights intensively worked on identifying all the problems and communicating the requests and proposals to the relevant authorities, notably the COVID-19 Crisis Headquarters, the Ministry of Labour, Employment and Veteran and Social Issues, the Ministry of Internal Affairs and the Ministry of Health.

Some of the CSOs' requests were fulfilled with major delays. They, notably, included the appeal to allow the freedom of movement of children and adults with disabilities and of their personal assistants during the curfew.⁴⁶⁸ Unfortunately, the

465 *Sl. glasnik RS*, 56/06.

466 *Sl. list CG*, 74/19.

467 See Chapter VI.2.

468 The relaxation of measures did not apply to people living in residential institutions.

situation of institutionalised persons with disabilities remained unchanged both during and after the state of emergency, although the decision makers and the public had been alerted to their problems. They were kept under full lockdown longer than the rest of the population.

The residential institutions complied with the instructions and orders of the ministry charged with social issues and the Serbian Government decrees, based on the health recommendations.⁴⁶⁹ Visits to the residents of these institutions were prohibited from the very start. However, this isolation, although apparently reasonable to prevent the virus from entering the institutions, was not mitigated, for example by increasing the use of accessible forms of electronic communication, such as video calls, as recommended by international bodies. Maintaining and even intensifying family contacts during lockdown is one of the main mechanisms for alleviating the emotional problems caused by the isolation, uncertainty and apprehension most people grapple with. Apart from psychosocial support, contacts with the outside world are important for the residents of the homes because their visitors can identify potential abuses of their rights.

On the other hand, some of the rights of the institutions' residents were denied and restricted to a greater extent than those of the population not living in closed settings. They were prohibited from strolling the grounds and catching some fresh air. Particularly problematic was the measure interfering in the right to assisted community living. Some institutions, such as the Dr Nikola Šumenović Home for Children and People with Disabilities in Stamnica, moved the beneficiaries back to the institution, thus substantially increasing the risk of infection. This measure was not only unwarranted from the medical perspective, but also in contravention of recommendations of international human rights organisations.⁴⁷⁰

3.1. Monitoring of Residential Institutions

Absence of independent monitoring of residential institutions and psychiatric hospitals gave rise to concerns. The National Preventive Mechanism, a body operating within the office of the Protector of Citizens, did not exercise its powers to visit

469 The Ministry of Labour, Employment and Veteran and Social Issues COVID-19 enactments are available in Serbian at: https://www.minrzs.gov.rs/sites/default/files/2020-06/Pregled%20akata%20minrzs%20o%20delovanju%20V9.pdf?fbclid=IwAR1k8_xdkYkQUe_vI_K4tIPY_TzN-V1nB-nCvOcaYpNohJrfN94GUm7iTe04.

470 UNSDG, "Policy Brief: A disability Inclusive response to COVID-19," May 2020, available at: <https://unsdg.un.org/sites/default/files/2020-05/Policy-Brief-A-Disability-Inclusive-Response-to-COVID-19.pdf>; OHCHR, "COVID-19 and the Rights of Persons with Disabilities: Guidance," 29 April 2020, available at: https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf; Council of Europe, "Persons with disabilities must not be left behind in the response to the COVID-19 pandemic," 2 April 2020, available at: https://www.coe.int/en/web/commissioner/thematic-work/covid-19/-/asset_publisher/5cdZW0AJBMLI/content/persons-with-disabilities-must-not-be-left-behind-in-the-response-to-the-covid-19-pandemic.

establishments holding persons deprived of liberty *de facto* and *de jure*, including residential institutions. Consequently, there was no external or independent monitoring of the situation in the homes during the state of emergency. The restrictive measures and lack of staff might have resulted in additional interferences in the fundamental rights of the residents and resort to practices such as forced medication and forced restraint.

The UN and CoE recommendations dealt precisely with the need for intensive activities of independent monitoring bodies to prevent and identify torture, inhuman and degrading treatment and other forms of ill-treatment. The ministry charged with social issues reported that it had intensified inspectorial oversight of the residential institutions during the epidemic and initiated criminal proceedings against five service providers.⁴⁷¹

3.2. Prohibition of Movement and Community-Based Care

The measures imposed during the state of emergency to protect public health lacked flexibility; nor were they reasonably tailored to various categories of the population. The lockdowns from 5 pm until 5 am on workdays and during the weekends increased the feelings of distress and anxiety among a number of children and adults with intellectual difficulties/mental disabilities and consequently led to undesirable behaviours; some of them suffered intense mental anguish because their everyday routines were disrupted.⁴⁷² The authorities responded to the appeals by a number of organisations, associations of parents and independent bodies, albeit with a huge delay, and at long last allowed these people the freedom of movement during curfew as well.⁴⁷³ However, persons with disabilities living with their parents over 65 were denied the freedom of movement throughout the state of emergency, due to the 24/7 lockdown of people over 65.

The lockdown exacerbated the work of personal assistants as soon as it was introduced, because they were unable to access their clients at all times. To recall, this service is one of the pillars of independent living. However, only persons who have legal capacity and are employed or actively engaged in the work of associations of persons with disabilities or political parties are entitled to personal assistants. This requirement has precluded most people with intellectual and psychosocial disabilities from availing themselves of this service and has consequently impinged on their integration in society and independent living.

471 Ministry of Labour, Employment and Veteran and Social Issues, "COVID-19 Pandemic Work Results," available in Serbian at: <https://www.minrzs.gov.rs/sites/default/files/2020-05/Brosura%20Finalna%20verzija.pdf>.

472 BBC in Serbian, "Coronavirus and Autism: 'How do I explain to my child he can't go out?'" 2 April 2020, available in Serbian at: <https://www.bbc.com/serbian/lat/srbija-52114192>.

473 N1, "Vučić: Children with Autism Can Go outside Whenever They Want," 14 April 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a589041/Roditelji-sa-decom-sa-zastojem-u-razvoju-moci-ce-u-setnju-od-18-do-20h.html>.

Thanks to associations of persons with disabilities, the authorities agreed to issue curfew passes to personal assistants. In response to the interventions by associations of persons with disabilities and independent human rights bodies, such passes were also issued to informal caregivers of persons with disabilities, who do not extend their services within the social protection system. Needless to say, persons with disabilities in need of auxiliary care and assistance were in dire straits until their assistants and caregivers were granted curfew passes.

3.3. Inadequate Provision of Information on the Situation and Rights of Persons with Disabilities

Reports on the situation in the residential facilities and the number of infected residents and staff lacked transparency during the state of emergency as well. Although the Ministry of Labour, Employment and Veteran and Social Issues published on its website the institutions in which the beneficiaries and staff contracted COVID-19, it did not provide any information about how many people were infected in each institution, where and how these people were treated, or how many residents succumbed to the virus. Data from other countries indicated extremely high death tolls in closed settings, where the virus has been spreading like wildfire.

The number of residents of homes who died of coronavirus was not published by the end of the reporting period. The ministry charged with social issues said that the data would be published subsequently.⁴⁷⁴ Many private old-age homes were understaffed during the epidemic, with media publishing claims that only one caregiver was looking after dozens of residents in some of them.⁴⁷⁵ Such treatment may have easily led to violations of the prohibition of inhuman or degrading treatment, due to lack of care, especially among residents unable to fulfil their basic physiological needs or move without someone's help. Anyone responsible for such treatment can be prosecuted for abandonment of helpless persons incriminated in Article 126 of the Criminal Code.

At least 140 residents of the Niš Gerontology Centre contracted COVID-19. The Centre's Director was arrested on suspicion of violating Article 249 of the Criminal Code (facilitating the transmission of a communicable disease by failing to act in accordance with protective measures). According to the data the Niš Higher Public Prosecution Service forwarded to *Insajder*, 50 of the Centre's residents died of the virus. The investigation against the former Director was ongoing for over three

474 MDRI-S, "Ministry's Reply to MDRI-S' Letters: Data on Death Tolls in Homes Do Not Exist Yet," 19 May 2020, available in Serbian at: <https://www.mdri-s.org/vesti/odgovor-ministarstva-za-socialna-pitanja-dopise-mdri-s-podaci-o-broju-umrlih-korisnika-u-domovima-jos-uvek-ne-postoje/>.

475 *Blic*, "Only One Volunteer Looking after 19 Residents of Private Old-People's Home in Zemun; Ministry Lacks Information, Doesn't Dare Send an Inspector 'Lest It Endangers Anyone's Health,'" 31 March 2020, available in Serbian at: <https://www.blic.rs/vesti/drustvo/o-19-korisnika-privatnog-doma-za-stare-u-zemunu-brine-samo-jedan-volonter/1rgkhyv>.

months.⁴⁷⁶ The Director of the Old-People's Home *Radost* (Happiness) in Negotin was arrested on suspicion of the same crime. Media reported that 59 residents of the home were infected and that six of them died before her arrest.⁴⁷⁷ The owner of the home was under investigation on suspicion of inciting the Director not to report the coronavirus outbreak in this institution.⁴⁷⁸

The official report⁴⁷⁹ of the Ministry of Employment, Labour and Veteran and Social Issues demonstrates that the state has not undertaken all the requisite measures to protect the people living in the residential institutions, who fall among the most vulnerable categories of the population. The Ministry reported coronavirus cases in as many as 27 institutions in mid-July 2020 and specified that 642 residents and 235 staff had recovered from it; the Ministry did not say how many people had died of the virus.

Provision of information during the state of emergency was for the most part not tailored to the needs of persons with sensory and intellectual disabilities. The Crisis Headquarters press conferences were interpreted into sign language. The relevant institutions did not issue publications or information in simple language persons with intellectual disabilities could comprehend, but a user-friendly brochure with basic information about COVID-19 was issued by the Media Disability Rights Initiative – Serbia (MDRI-S).⁴⁸⁰

4. Rights of the Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) Population

4.1. Discrimination and Hate Speech

Serbian Minister without Portfolio charged with innovation and technical development and leader of the Serbian People's Party Nenad Popović again publicly

476 *Insajder*, "Prosecution Service: 50 Residents of Niš Gerontology Centre Died: Ombudsman: Criminal Proceedings against Director Precluding Check," 14 July 2020, available in Serbian at: <https://insajder.net/sr/sajt/tema/19555/Tu%C5%BEila%C5%A1tvo-U-ni%C5%A1kom-Gerontolo%C5%A1kom-centru-preminulo-50-%C5%A1ti%C4%87enika;Ombudsman-Kontrolu-spre%C4%8Dava-krivi%C4%8Dni-postupak-protiv-direktora.htm>.

477 *N1*, "Director of Old-People's Home in Negotin Arrested," 19 May 2020, available in Serbian at: <http://rs.n1info.com/Vesti/a601156/Uhapsena-direktorka-doma-za-stare-u-Negotinu.html>.

478 *Blic*, "LOST LIVES: Owner of Old-People's Home *Radost* in Negotin Exercises Right to Silence, Facing up to 12 Years' Imprisonment," 4 June 2020, available in Serbian at: <https://www.blic.rs/vesti/hronika/izgubljeni-zivoti-a-odbrana-cutanjem-vlasnici-doma-za-stare-radost-u-negotinu-preti/1etm7nb>.

479 The report is available in Serbian at: <https://www.minrzs.gov.rs/sr/aktuelnosti/vesti/u-ustanova-ma-socijalne-zastite-za-smestaj-korisnika-i-domovima-za-smestaj-odraslih-i-starih-zarazeno-15-korisnika-i-34-zaposlena>.

480 MDRI-S' Brochure "Information about COVID-19" is available in Serbian at: <https://www.mdri-s.org/wp-content/uploads/2020/05/Brošura-COVID-19.pdf?fbclid=IwAR-0SQu9joQ-g3pUooRSSq71dHd9X9J5BhbnWJluMmibZilxZtGe3kBCXBb4>.

voiced his homophobic views, criticising the possibility of legally allowing homosexual couples to adopt children.⁴⁸¹ This was not the first time Popović publicly voiced his homophobic views and violated the Anti-Discrimination Act.⁴⁸²

Media continued publishing negative comments about actor Goran Jevtić in 2020,⁴⁸³ especially after the Sombor Higher Court decided that he should serve his sentence at home, but without electronic monitoring.⁴⁸⁴

Actor Miloš Timotijević was the target of attacks and hate speech on social networks for playing a character who kissed another man in the local series *South Wind*. The premiere of the 13th episode containing that scene was shown on RTS on 29 March, but a pirated copy of it appeared on the Internet already on 23 March. Numerous offensive comments against the actor were posted on the social networks and he received a large number of threatening messages.⁴⁸⁵ The Equality Commissioner condemned the attacks on Miloš Timotijević.⁴⁸⁶

4.2. Violence and Hate Crimes against the LGBTI Population

The 11th attack on the Pride Info Centre in the heart of Belgrade since it opened⁴⁸⁷ occurred on 29 February 2020. A group of masked young men kicked the door and window of the Centre, damaging the lock and the window.⁴⁸⁸ The attack was condemned by the Protector of Citizens⁴⁸⁹ and the Equality Commissioner.⁴⁹⁰ No-one was prosecuted for or found guilty of this attack either.

481 *Danas*, “Nenad Popović tells *Danas*: We’re not renouncing our policy,” 1 February 2020, available in Serbian at: <https://www.danas.rs/politika/nenad-popovic-za-danas-ne-odricemo-se-svoje-politike/>.

482 More in the 2018 Report, IV.2.2.2.

483 More about Goran Jevtić’s case in the 2019 Report, IV.2.2.2.

484 *Blic*, “Goran Jevtić Not Going to Prison. Will Serve 10-Month Prison Sentence for Illicit Sex with a Minor at Home,” 4 March 2020, available in Serbian at: <https://www.blic.rs/vesti/hronika/goran-jevtic-ne-ide-u-zatvor-kaznu-od-10-meseci-zbog-nedozvoljenih-polnih-radnji-nad/ldfnrgs>.

485 *Danas*, “Love is the Only Bright Point of That Character and That’s Exactly What Bothers the People,” 2 April 2020, available in Serbian at: <https://www.danas.rs/kultura/jedina-svetla-tacka-u-tom-liku-je-ljubav-a-ljudima-upravo-to-smeta/>.

486 *Nova S*, “Kids Lynch Serbian Actor on Networks because of Gay Scene,” 1 April 2020, available in Serbian at: <https://nova.rs/drustvo/srpskog-glumca-klinci-lincovali-na-mrezama-zbog-gej-scena/>.

487 Pride Info Centre opened in the heart of Belgrade, close to the main state institutions in August 2018.

488 *RTS*, “Attack on Pride Info Centre, Pašalić Reacts,” *RTS*, 1 March 2020, available in Serbian at: <https://www.rts.rs/page/stories/sr/story/125/drustvo/3871581/prajd-info-centar-lgbt-napad-pasalic.html>.

489 The press release of the Protector of Citizens of 1 March 2020 is available in Serbian at: <https://www.danas.rs/drustvo/pasalic-seksualna-orijentacija-je-licna-stvar-pojedince-ali-se-zastita-prava-na-razlicitost-tice-svih-nas/>.

490 Equality Commissioner, “Warning on Incidents at High-School Students’ Rally in Leskovac,” 2 March 2020, available at: <http://ravnopravnost.gov.rs/en/warning-on-incidents-at-high-school-students-rally-in-leskovac/>.

A group of high-schoolers staged a protest in Leskovac in early March after fake news – that a pride parade would be held in Leskovac – was published on Facebook the previous day. The high-schoolers spontaneously organised the rally via social media. They chanted homophobic slogans. Reporters of the *Beta* news agency and *Jug Media* covering the protest were assaulted and the police hauled in two perpetrators.⁴⁹¹ Member of the Leskovac *Dveri* Movement Slavoljub Milenković justified the violence that broke out during the protest and hurled insults at the assaulted *Jug Media* reporter.⁴⁹²

The Smederevo Basic Court in February 2020 delivered a judgment⁴⁹³ finding D.M. guilty of violent conduct (under Article 344(2) of the Criminal Code). In 2015, D.M. assaulted his victim because of their presumed sexual orientation; both the victim and the individual they were with sustained light physical injuries. The perpetrator also threatened to kill the victim. He assaulted the victim in a public place in the heart of Smederevo, in front of a large number of people. The Court sentenced him to six-month home imprisonment with electronic monitoring. In its decision on the penalty, the Court took into account Article 54a of the Criminal Code, under which courts shall consider as an aggravating circumstance the commission of a crime out of hate of another on grounds of his race, religion, national or ethnic affiliation, sexual orientation or gender identity.

The Court commendably recognised that a hate crime was at issue and relied on Article 54a of the Criminal Code. Two questions, however, arise in this case. The first regards the efficiency of the authorities prosecuting crimes with elements of hate: the judgment was delivered after more than four years had passed since the commission of the crime (which involved the infliction of physical injuries, death threats, assault on more than one person, commission of the offence in a public area in front of a large number of people, et al). Furthermore, the Court's decision to impose such a short and lenient sentence is also questionable: first of all, the offence incriminated in Article 344(2) of the Criminal Code warrants a prison sentence ranging from six months to five years, and, second, the Court itself relied on Article 54a but apparently did not consider the fact that the crime had elements of hate as an aggravating circumstance warranting a harsher penalty, at the very least the one prescribed by the Criminal Code.

491 *Danas*, “Leskovac High-Schoolers’ Protest against Pride Parade, Journalist Arrested,” 2 March 2020, available in Serbian at: <https://www.danas.rs/drustvo/protest-srednjoskolaca-u-leskovcu-protiv-parade-ponosa-napadnuti-novinari/>.

492 *Danas*, “*Dveri* Member Justifies High-Schoolers’ Violence in Leskovac,” 2 March 2020, available in Serbian at: <https://www.danas.rs/drustvo/clan-dveri-opravdao-nasilje-srednjoskolaca-u-leskovcu/>.

493 Smederevo Basic Court, Main Hearing Records, Case 4 K No. 81/17, 4 February 2020.

