LESSONS WE CAN LEARN ABOUT HUMAN RIGHTS AFTER THE COVID-19 VIRUS PANDEMIC IN THE REPUBLIC OF SERBIA

ABSTRACT: The spread and danger of the Covid-19 virus in 2020 demonstrated how unprepared states were for such threats. Each state took measures it believed to be adequate at the time to protect its population. In the Republic of Serbia, numerous measures were implemented after a state of emergency was declared in March, to prevent the spread of the virus. Many of these measures led to derogations of various human rights. However, even in extreme situations like a state of emergency, derogating human rights should meet the requirements of necessity, and proportionality. This paper examines the state of certain human rights, namely the right to information and freedom of peaceful assembly during the state of emergency in the Republic of Serbia. The analysis aims to determine whether there was a derogation of these rights or rather their gross violation. In this way, the paper seeks to provide specific lessons about human rights that every citizen can draw after the Covid-19 virus pandemic in the Republic of Serbia.

Keywords: Covid-19, Republic of Serbia, right to information, freedom of movement, freedom of peaceful assembly.
1. Introduction

At the end of 2019, a new virus called Covid-19 emerged in China. By the beginning of the following year, this issue became a global concern, and the first infected individuals were registered in most countries. The rapid spread of the virus and fear of the unknown posed a challenge for many nations. Each of them attempted to devise the most adequate response in the given situation. In the Republic of Serbia, the first infected people were registered in early March 2020, leading to the declaration of a state of emergency in the country on March 15. The introduction of the state of emergency as a measure against the spread of the Covid-19 virus resulted in the derogation and violation of numerous rights of citizens, guaranteed both by the constitutional and legal framework existing in the Republic of Serbia, and certain international legal instruments. Although the state can limit the enjoyment of certain rights in specific situations regulated in accordance with the constitutional and legal framework, it is essential for such limitations to be in line with the principles of legality, necessity, and proportionality. In many aspects of this “new” situation, the actions of authorities in Serbia contributed to strengthening the existing distrust among citizens, culminating on July 7, 2020. The July protests and police brutality are just some of the challenges that further distance Serbia from the model of democracy. The state of emergency resulted in a strengthening of the executive branch of power and numerous cases of human rights violations. Freedom of movement, freedom of expression, freedom of association, freedom of participation in social and political life, as well as many other freedoms and rights of citizens, were jeopardized during the state of emergency. Although the events in the Republic of Serbia may currently seem like a distant memory, it is necessary to draw lessons from the time of the Covid-19 virus pandemic to ensure that every citizen, in any new and unknown situation, is aware of the existence of circumstances in which their human rights are endangered or violated. This paper analyzes the right to information, as well as the freedom of peaceful assembly, as the rights of citizens that were endangered during the state of emergency in the Republic of Serbia. In each section, the existing normative framework in Serbia will primarily be presented, as well as certain international instruments guaranteeing these rights. Then, the practice of state authorities, which endangered citizens’ rights and in numerous cases led to their violation, will be addressed.
2. Right to information

Under the freedom of expression and opinion, the right to information is also implied. This right is guaranteed by Article 51 of the Constitution of the Republic of Serbia, which states: “Everyone has the right to be informed truthfully, completely, and in a timely manner about matters of public importance, and the media are duty-bound to respect this right. Everyone has the right of access to data kept by state bodies and organizations exercising public authority, in accordance with the law” (Constitution of the Republic of Serbia, 2006). Freedom of expression is also guaranteed by the European Convention on Human Rights and Fundamental Freedoms, as well as the International Covenant on Civil and Political Rights. Both the Constitution of the Republic of Serbia and these international documents allow for the possibility of limiting freedom of expression in certain cases, meaning that freedom of expression does not have the status of an absolute right that cannot be denied to an individual in any situation. According to the Constitution: “Freedom of expression may be limited by law if it is necessary to protect the rights and reputation of others, to preserve the authority and impartiality of the courts, and to protect public health, morality, democratic society, and the national security of the Republic of Serbia” (Constitution of the Republic of Serbia, 2006). The state’s obligation to protect its citizens from an epidemic and to restrict certain rights for this purpose is not a problem; however, it needs to be examined whether these limitations are legal, necessary, and proportionate (Belgrade Center for Human Rights, 2021, p. 132).

The state of emergency in the Republic of Serbia was declared on March 15, 2020. However, it should be noted that “the state of emergency was declared before the epidemic was declared an epidemic of major epidemiological significance and without the participation of the National Assembly as the body competent to declare a state of emergency” (Dimitrijević & Panić, 2022, p. 6). After the introduction of the state of emergency on March 15, Serbia began to create a narrative that it was at war with the virus (Hercigonja & Pejić Nikić, 2021, p. 4). This presentation of the situation by the authorities contributed to strengthening the existing fear among citizens. The creation of this “war” atmosphere eventually proved to be fertile ground for the violation of numerous human rights in Serbia during the pandemic (Hercigonja & Pejić Nikić, 2021, p. 4). In response to the spread of the virus, numerous new measures were implemented, including the establishment of the Crisis Staff, border closures, restrictions on freedom of movement and assembly, the imposition of curfews, and more. Daily information was provided by
the Crisis Staff, a body formed during the pandemic, whose exact scope of
authority was not clearly defined. Moreover, the members of this body, whose
composition was also questioned, often had conflicting statements about the
current measures, further confusing citizens. At one point, there was an attempt
to centralize public information about the pandemic as the government issued
a decree banning the publication of information from any source other than
the official one represented by the Crisis Staff and its members (Government
of the Republic of Serbia Conclusion, 2020).

Data related to medical equipment and the number of respirators was
not known to the public (Belgrade Center for Human Rights, 2021, p. 137).
The number of sick and deceased from Covid-19 was often questioned, both
by citizens and numerous non-governmental organizations. After an article
published by the Balkan Investigative Reporting Network Serbia (BIRN),
which pointed out discrepancies in the data and alleged that authorities were
downplaying the number of Covid-19 deaths, dissatisfaction among citizens
increased even further (Belgrade Center for Human Rights, 2021, p. 135).
This information represented data of public importance to which every citizen
has the right. From the very beginning of the state of emergency, there were
suspicions of concealing information and presenting false numbers, which were
further fueled after the publication of the mentioned article. It is important to
note that the right to information is closely related to the issue of information
of public importance. In the normative framework of the Republic of Serbia,
information of public importance is defined as “information held by a public
authority, created in the work or in connection with the work of a public
authority, contained in a specific document, and which relates to everything
that the public has a legitimate interest to know” (Law on Free Access to
Information of Public Importance, 2004). The question of transparency in
the work of state authorities, although problematic in the Republic of Serbia,
was particularly criticized during the pandemic, especially concerning human
lives, which should not be treated as mere figures that can be manipulated
based on current interests.

3. Freedom of movement

Freedom of movement represents one of the fundamental rights of every
person. This right is guaranteed by the Constitution of the Republic of Serbia.
Article 39 of the Constitution states, “Everyone has the right to move freely
and choose their place of residence within the Republic of Serbia, to leave it,
and to return to it” (Constitution of the Republic of Serbia, 2006). According
to the following paragraph of the same article, “Freedom of movement and
residence and the right to leave the Republic of Serbia may be restricted by
the law if necessary for the conduct of criminal proceedings, the protection
of public order and peace, the prevention of the spread of infectious diseases,
or the defense of the Republic of Serbia.” In addition to the Constitution of
the Republic of Serbia, freedom of movement is also guaranteed by certain
international legal instruments, such as the International Covenant on Civil
and Political Rights and the European Convention on Human Rights. After
the introduction of the state of emergency in the Republic of Serbia, measures
were implemented to restrict the movement of the population to prevent the
spread of the Covid-19 virus. Citizens arriving from abroad during March
received brochures about Covid-19 upon entry into the country, but they were
not provided with detailed instructions regarding self-isolation, which led to
numerous arrests (Belgrade Center for Human Rights, 2020, p. 66). Among the
many measures adopted by the executive authorities, “one of the most drastic
and even humiliating measures that particularly affected Serbian citizens
over the age of 65 was the restriction that allowed them to shop for groceries
only once a week, between 4 and 7 in the morning, in stores that opened in
those early morning hours, although there was no logical explanation for this
measure, and it could not be justified by health reasons” (Belgrade Center for
Human Rights, 2020, p. 81).

During the state of emergency in the Republic of Serbia, the practice
was to introduce a “multi-day complete ban on the movement of the entire
population, i.e., the so-called ‘lock-down’” (Bataljević, 2021, p. 70). Additionally, arrests, judicial proceedings, and fines were not uncommon
for citizens who violated the curfew during the state of emergency. Due to
the rapid issuance of new measures, people often weren’t sure which ones
were currently in effect, resulting in numerous fines. Citizens were obligated
to follow daily press conferences of state officials; otherwise, they wouldn’t
be informed about the current movement restrictions. During the curfew, the
movement ban did not apply to “1) healthcare workers with valid licenses,
2) members of the Ministry of Interior, Ministry of Defense, Serbian Armed
Forces, and security services, as well as 3) individuals with movement permits
issued by the Ministry of Interior” (Committee of Lawyers for Human Rights,
2020, p. 20). However, due to unclear instructions regarding the issuance of
movement permits, the procedures and processes were extremely confusing
for citizens. The situation in which different information came from different
sources regarding the curfew and the permit issuance needed to be regulated
in a way “that enables each individual to know what is prohibited and what
is not. If a citizen can exercise a certain right, then that should only be possible if there is a prescribed procedure” (Milić, 2020, p. 756). Estimates suggest that by the end of the state of emergency, there were nearly eight thousand violations committed by citizens during the curfew (Dorđević, 2020). During the state of emergency, the selective application of measures was noticeable, as evidenced by the fact that torches were lit on the rooftops of buildings in certain cities during the curfew in response to expressions of dissatisfaction by critical-minded citizens. The Belgrade Center for Human Rights, analyzing the measures introduced by European countries regarding movement restrictions, concluded “that the measures restricting and banning the movement of Serbian citizens are certainly among the most drastic in Europe” (Belgrade Center for Human Rights, 2020, p. 82).

4. Freedom of peaceful assembly

Freedom of peaceful assembly is one of the essential rights that allow people to participate in the social and political life of their community, and as such, it has a certain political dimension (Dimitrijević, Popović, Papić & Petrović, 2007, p. 249). This freedom is guaranteed by the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the Constitution of the Republic of Serbia. Article 54 of the Constitution guarantees citizens the freedom of peaceful assembly, and it distinguishes between indoor gatherings that do not require approval and notification and outdoor gatherings that must be reported to the state authority in accordance with the law. The same article states that the freedom of assembly may only be restricted by law if necessary to protect public health, morals, the rights of others, and the security of the Republic of Serbia (Constitution of the Republic of Serbia, 2006). Further regulation in this area is left to the Law on Public Assembly, which was adopted in 2016. A significant drawback of this mentioned law is the lack of the requirement of proportionality in its provisions, which is a legal standard prescribed by the European Convention (Belgrade Center for Human Rights, 2021, p. 142).

During the state of emergency, the freedom of assembly was gradually restricted. This restriction evidently did not apply to state representatives who were present during the distribution of respirators in certain major cities in Serbia. This serves as another proof that the implementation of measures introduced to curb the spread of the Covid-19 virus was selective. The declaration of the state of emergency itself, which bypassed the National Assembly of the Republic of Serbia, was carried out differently because the
authorities claimed that the parliament could not convene due to restrictions on the freedom of assembly. All measures aimed at preventing the spread of the virus ceased to be in effect on May 6, 2020, when the decision to lift the state of emergency was made. At that time, there were frequent statements in the media about having defeated the virus (Hercigonja & Pejić Nikić, 2021, p. 8). The decision to lift the state of emergency was based on the declining number of cases and deaths from the virus at the end of April. It can be concluded that politics “was the main driving force (especially after the end of the state of emergency) that directed institutions and decision-makers in the process of managing the pandemic, while expertise (from the field of epidemiology and medicine in general) was sidelined” (Hercigonja & Prebić, 2023, p. 4). When making decisions to lift all measures, attention should be paid to concerns about the truthfulness of the data presented to the public and citizens since the beginning of the state of emergency. By May 7, citizens’ lives returned to normal overnight, and it seemed as if the Covid-19 pandemic never existed. Already at the beginning of June, a football match between Red Star and Partizan was held with a large number of people in attendance. While drastic measures were taken at the beginning of the state of emergency to prevent the spread of Covid-19, with the lifting of the state of emergency, it seemed as if those measures were a distant past.

After the parliamentary, provincial, and local elections were held, and the election victory was celebrated, it was announced that stricter measures and a new curfew would be introduced. This decision contributed to massive dissatisfaction among citizens, who expressed their disagreement by taking to the streets of Belgrade and other major cities in Serbia. Although the protests began peacefully, with citizens sitting on the streets, the situation soon took a different turn. A certain group of demonstrators threw rocks, to which the police responded with brutal force and a large amount of tear gas due to delayed and poor judgment (Đorđević, 2020a).

Police officers did not distinguish between violent groups and individuals who wanted to express their disagreement peacefully, considering everyone on the streets as potentially dangerous, which led to an escalation of violence (Đorđević, 2020b, pp. 6-7). Images and videos of police brutality spread on social media, causing an increase in the feeling of insecurity among citizens who might have joined the protests in a peaceful manner to express their disagreement with the newly announced measures. In this way, their right to peaceful assembly was hindered, despite being guaranteed by the Constitution and important international instruments.
The police officers who used excessive force, deviating from their powers granted by the law and acting inhumanely, have not been sanctioned. It is concerning that the Internal Control Department reacted only in one case when a police officer used force against a child with developmental disabilities (Published in Danas, 2020). This contributes to the perception that institutions using force do not have to be held accountable for their actions. Additionally, such actions by police officers are not in line with the Law on Police, which was adopted in 2016 and emphasizes the principle of proportionality in the use of force. Article 105 of the Law, in addition to defining means of coercion, also defines when a police officer can use them. According to this article, means of coercion are used only if the task cannot be accomplished in any other way, and they must be used with restraint and proportionate to the danger, while the officer is obligated to preserve human life and cause as little harm as possible (Law on Police, 2016). Furthermore, by employing excessive force, the police officer directly endangers the life and psychological and physical integrity of the person toward whom the force is used, and these values are protected by the Constitution of the Republic of Serbia (Nikač & Leštanin, 2017, p. 197).

Thanks to the media, during the protests, people became aware of the extent of police brutality. The use of physical force against individuals peacefully sitting on a bench in Pionirski Park, kicking people who were already lying on the ground and unable to resist, and the inadequate use of force by police officers were certainly not in line with the existing normative framework in the country or international standards. The institutions responsible for police oversight clearly did not have an adequate reaction to the behavior of officers during the protests and the individuals who acted in an inhumane manner were not sanctioned. On the other hand, numerous civil society organizations reacted sharply and directed criticism and demands not only to state institutions but also to certain actors outside the country to respond to police brutality and the excessive use of force.

4. Conclusion

During 2020, many countries faced serious challenges posed by a previously unknown virus to the world. In that unforeseen and new situation, each country tried to devise an adequate response, calling for solidarity and patience among its population. In the Republic of Serbia, during the state of emergency, there was a narrative that the state declared war on an invisible enemy. For that reason, drastic measures were taken that did not meet the conditions of the proportionality test, which is important when it comes
to derogating human rights. The state of emergency in Serbia contributed to strengthening the executive branch, which does not pay much attention to human rights. The right of citizens to be informed, guaranteed by the Constitution of the Republic of Serbia itself, was not respected. In the situation of a state of emergency and the danger of the virus threatening the entire population, citizens were left with conflicting information, living in constant fear. The result of this was a state in which citizens did not know which measures were in force, leading to numerous arrests and fines. The number of sick and deceased from Covid-19 was a matter of public interest. Doubts about the reported data throughout the state of emergency led to the strengthening of the existing distrust of citizens toward institutions in the country. The lifting of the state of emergency and the holding of elections in 2020, followed by the announcement of new measures and a curfew, were one of the main motives that brought citizens to the streets in July 2020. These “July” protests will be remembered for the amount of police brutality. The disproportionate use of force by the police, as well as equating all participants in the protests as potentially dangerous, led to a serious violation of the freedom of peaceful assembly. The lack of sanctions against police officers by the appropriate institutions in the country resulted in an atmosphere in which citizens do not feel safe to express their disagreement with the current policies in the country. Even before 2020, the Republic of Serbia was far from being classified as a democratic country, but the behavior of the authorities during the state of emergency certainly further distanced the country from the model of democracy and the rule of law. According to a public opinion survey conducted by the Belgrade Centre for Security Policy in late 2020, “one-third of Serbian citizens believe that the pandemic has affected the quality of democracy in Serbia, and of that number, 29.3% believe that there has been an erosion of democracy, 28.9% believe that decisions by competent institutions have threatened democracy, while 24.1% believe that all power is in the hands of one person” (Belgrade Centre for Security Policy, 2020, p. 7). Although 2020 now seems distant, every citizen should draw certain lessons from the time of the state of emergency in the Republic of Serbia regarding the state of their human rights during the Covid-19 pandemic.
LEKCIJE O LJUDSKIM PRAVIMA KOJE MOŽEMO NAUČITI NAKON PANDEMIJE VIRUSA COVID-19 U REPUBLICI SRBIJI


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