THE SECURITY SECTOR IN THE STATE OF EMERGENCY:

TESTING DEMOCRACY

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# Table of Contents

From the World’s Funniest Virus to Wicked Adversary .......................................................... 3

State of Emergency vs. Emergency Situation .................................................................................. 3

Sidestepping the National Assembly ............................................................................................. 6

Deployment of the Serbian Armed Forces ...................................................................................... 7
  The State of Emergency Was Written for the Military and Not for Civilian Crisis Management ................................................................................................................................. 7
  Unplanned Interaction with Civilians ........................................................................................... 8
  Insufficient Protection of the Armed Forces Personnel .............................................................. 9

The Tasks and Conduct of the Police During the State of Emergency ......................................... 10
  Prohibition of Movement ............................................................................................................ 10
  Prohibition of Assembly ............................................................................................................ 11
  Mandatory Self-Isolation ........................................................................................................... 12

Threats and Pressure on Journalists and Activists ....................................................................... 14

The Invisible Presence of the Security Services? ........................................................................ 15

Actors Who Informed the Public About Security During the State of Emergency .............. 16

Recommendations ......................................................................................................................... 17
The state of emergency declared in Serbia to prevent the spread of the COVID-19 infection was in force from 15 March to 6 May. The crisis caused by this epidemic was a serious challenge not only for the country’s healthcare system but for all of its institutions, its economy and its population. The manner in which those in positions of executive power chose to manage the crisis, especially the decision to declare the state of emergency rather than an emergency situation, and the measures completely restricting people’s movement (at all times for those over 65 and during certain time periods for all citizens), was the cause of much controversy and proved to be a test of the state of democracy and the rule of law in Serbia. The context in which the state of emergency unfolded seemed bleak: as the state of emergency was lifted Freedom House published its regular Nations in Transit report, according to which Serbia is, for the first time since 2003, no longer a democracy.

While the state of emergency was in force, security sector institutions, principally the police and the armed forces, were engaged on a number of tasks. The aim of this article is to present, in a systematic manner, how the police and armed forces were deployed and to analyse their actions during the state of emergency, in order to identify legal ambiguities, omissions and potential abuses of power.

From the World’s Funniest Virus to Wicked Adversary

The road from completely denying the problem of the COVID-19 pandemic to talking about the new coronavirus, which causes this disease, as the country’s greatest enemy was exceptionally short. In late February (26th) the first confirmed case of the COVID-19 infectious disease was officially recorded in the Western Balkans, in North Macedonia, at a time when Italy was already facing a serious crisis. In spite of this, the danger of the virus was still being relativized for some time in Serbia. It was even referred to as the funniest virus in human history. Parliamentary elections1 were called in early March, which resulted in huge crowds gathering to collect signatures in support of the ruling Serbian Progressive Party.

On 6 March, only two days after the parliamentary elections were announced, the first case of a person infected by the coronavirus was officially registered in the northern Serbian town of Subotica. Serbia soon found itself at “war against an invisible and wicked adversary”, as the country’s president described COVID-19. Ultimately, Serbia introduced the strictest measures, even when compared with the rest of the world. During the period from 6 March to 20 April, Serbia closed border crossings, closed schools, banned gatherings, suspended public transport, restricted and completely forbade people’s movement at night and during weekends. In so doing, Serbia joined the group of countries with the strictest measures against the coronavirus anywhere in the world.2

State of Emergency vs. Emergency Situation

The first port of call for Serbian decision-makers facing an impending epidemic is the Law on the Protection of Population from Infectious Diseases. In accordance with the procedure set out in this law, on 10 March the government initially declared COVID-19 to be an infectious disease and the Health Minister declared an epidemic on 19 March. This all only occurred, however, four days after the declaration of the state of emergency and one day after the Minister of Interior introduced measures restricting people’s movement (a 24-hour curfew for those over the age of 65 and a curfew from 8pm to 5am for all other citizens). The logic behind this sequence of decisions – which first see the introduction of drastic measures and only then define the problem – is not immediately clear.

When the state of emergency was declared on 15 March, Serbia had 48 confirmed cases of infection. Prior to this, the government had at its disposal a number of measures set out in the aforementioned law3 that

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3 Articles 52 and 53.
do not require the declaration of the state of emergency – a ban on gatherings in public places, restriction of people’s movement in the area affected by the emergency situation (emphasis added), quarantine measures, bans on travel or the sale of certain types of goods or products. The Constitution of Serbia also allows the restriction of the freedom of assembly and entrepreneurship even under “normal circumstances”, if necessary for the protection of public health and proportional to this purpose.⁴

An epidemic of a contagious disease is considered a natural disaster that is usually countered using the national security subsystem prescribed by the Law on Disaster Risk Reduction and Emergency Management⁵. If such a phenomenon endangers the lives and health of a large number of people and therefore requires a more resolute response from the authorities than usual, on the recommendation of the National Emergency Management Headquarters (henceforth, HQ), the government can declare an emergency situation for the whole Serbia.⁶

That a state of emergency is an unusual response to an epidemic is also indicated by the fact that, except for a few articles of the Constitution, it is only regulated by the Law on Defence.⁷ This is why it was the defence minister who had to submit an assessment of the threat the epidemic poses to the population, which must be at the level of a threat to the survival of the state or its citizens in order to justify the declaration of a state of emergency. In an emergency situation the armed forces can step in to provide support to civilian institutions only at the request of the civilian HQ, whereas in the state of emergency their role is more prominent.⁸ State of emergency makes it possible to introduce restrictive measures, including derogations from a number of human and minority rights but only to the necessary degree and without discrimination. The Serbian authorities chose the harder (and more repressive) route and introduced it the easy (more exceptional) way – by bypassing the National Assembly. Additionally, the text of the declaration of the state of emergency contains no mention of why it was introduced, nor how long it would last. The constitution states that it can last no longer than 90 days and that this can be extended for a further 90 days if the reasons for its introduction are still in existence.⁹

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⁵ Article 1, Article 2, Paragraph 1, Items 2 and 7.
⁶ According to official claims, the HQ met on 13 February to examine possible responses to the epidemic. The HQ is chaired by the Minister of Interior.
It is possible to speculate on the threefold reasons for opting for a state of emergency over an emergency situation. First, the constitution allows for the right to vote to be restricted during a state of emergency. This opportunity was taken and the parliamentary, provincial and local elections, originally scheduled for 26 April, were postponed. As early as 16 March all pre-election activities were suspended and, once the state of emergency was lifted, 21 June was set as the new date for the elections. Second, the emergency management system in Serbia actually does not function well. Finally, it is possible that the authorities deemed it more effective to introduce highly restrictive measures and to intimidate the population into being disciplined because so much time had already been lost while the contagion was being relativized.

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**Table 1: Emergency Situation vs. State of Emergency**

<table>
<thead>
<tr>
<th><strong>Legal Framework</strong></th>
<th><strong>Emergency Situation</strong></th>
<th><strong>State of Emergency</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Law on Disaster Risk Reduction and Emergency Management</td>
<td>Constitution, Law on Defence</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Degree of Threat</strong></th>
<th><strong>Emergency Situation</strong></th>
<th><strong>State of Emergency</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The regular activities of the authorities and services are insufficient and the situation calls for a more resolute response</td>
<td>The survival of the state or its citizens are threatened by a public danger</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Declared by</strong></th>
<th><strong>Emergency Situation</strong></th>
<th><strong>State of Emergency</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Government (for the entire territory of Serbia)</td>
<td>The National Assembly and, in exceptional circumstances, the Prime Minister and the President of the Republic and the Speaker of the National Assembly jointly</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Proposed by</strong></th>
<th><strong>Emergency Situation</strong></th>
<th><strong>State of Emergency</strong></th>
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</thead>
<tbody>
<tr>
<td>The National Emergency Management Headquarters</td>
<td>The President of the Republic and the Government jointly</td>
<td></td>
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<thead>
<tr>
<th><strong>Consequences for Human and Minority Rights</strong></th>
<th><strong>Emergency Situation</strong></th>
<th><strong>State of Emergency</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Necessary and proportionate limitations of certain rights and freedoms are permitted</td>
<td>Necessary and proportionate derogations of rights that are not absolute</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Dominant Security Sector Actor</strong></th>
<th><strong>Emergency Situation</strong></th>
<th><strong>State of Emergency</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Interior</td>
<td>Ministry of Defence</td>
<td></td>
</tr>
</tbody>
</table>

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10. Absolute rights are guaranteed by the following articles of the Constitution: 23, 24, 25, 26, 28, 32, 34, 37, 38, 43, 45, 47, 49, 62, 63, 64, and 78.

Sidestepping the National Assembly

The state of emergency was declared in Serbia without a vote in the National Assembly. The Constitution of the Republic of Serbia states that the main role in the declaration and lifting of a state of emergency is to be played by the National Assembly, except in those circumstances in which it is impossible for MPs to convene. In such cases the state of emergency can be declared jointly by President of the Republic, the Prime Minister and the Speaker of the National Assembly but must be confirmed by parliament as soon as it is possible for it to meet. Given the fact that a state of emergency permits the derogation of human and minority rights, a decision by the National Assembly, as the body representing all of the country’s citizens, is very important in cases such as this.

Nevertheless, the decision to declare the state of emergency was made by the President of the Republic, the Prime Minister and the Speaker of the National Assembly. To justify the exclusion of the National Assembly from the declaration, the ruling party’s officials cited the Government’s (then in force) ordinance forbidding gatherings of 50 or more people in enclosed spaces.

Bypassing the National Assembly is problematic for a number of reasons. Namely, a legally unacceptable interpretation occurred, in which an act by the executive branch was binding for the legislative body. Also, it was not clearly stated why members of the Assembly were unable to meet and the constitutional provisions do not clearly specify when a state of emergency can be declared without the National Assembly. The practices of other countries that were also affected by the pandemic indicate that it is possible to organise the work of parliament in various ways whilst still adhering to the prescribed measures. Many countries have organised online sessions, reduced the quorum required to hold sessions and provided protective measures.

Moreover, in Serbia the National Assembly began meeting, with appropriate measures in place, before the state of emergency was lifted, which poses the question why this was not possible earlier? The National Assembly convened 44 days after the declaration of a state of emergency and retroactively passed all of the decisions made to date. At one parliamentary session the National Assembly not only passed the declaration of the state of emergency but also 44 regulations by the government, which were put in front of the MPs as one document, making it impossible to take into consideration each regulation as a separate act.

One week after that, the National Assembly voted on lifting the state of emergency at the proposal of the government, co-signed by the president and presented to the MPs by the prime minister. During her presentation, the prime minister mentioned the declaration of the state of emergency and justified the failure to hold parliamentary debate with the argument about responsible behaviour during an epidemic. What is more, she pointed out that the ruling coalition “has a clear majority in this parliament”, so convening a session at the time would have unnecessarily endangered parliamentarians and the Assembly’s administrative staff. Quite apart from the fact that this shows there was no intention to organise a parliamentary debate, this statement is very worrying given that it degrades the role of the Assembly to rubber stamping the decisions of the executive and treats deputies exclusively as representatives of political parties, rather than all of the citizens of Serbia.

During the coronavirus epidemic, trend of the parliament’s reduced role in overseeing the security sector was confirmed. The declaration of the state of emergency without a vote in the National Assembly exposed the facade role of parliament, which has been doing nothing more than formally confirming the decisions of the executive branch for some time. Parliament was suspended until late April when it continued its work unhindered and approved all of the previously made decisions. This means that all of the measures introduced during the state of emergency, including restrictions on people’s movement and assembly and other restrictive measures, as well as the deployment of the armed forces, proceeded without parliamentary oversight.

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Deployment of the Serbian Armed Forces

The Serbian Armed Forces (SAF) were deployed immediately following the declaration of the state of emergency and, from the scope and variety of tasks they performed, were the busiest of the militaries in the region. Members of the armed forces assisted the police in maintaining public order and in securing border crossings. Military medical institutions were tasked with caring for those suffering from COVID-19. The military set up field hospitals and quarantines for Serbian citizens returning to the country from abroad after the state of emergency was declared, while the nuclear chemical and biological warfare unit disinfected public spaces and buildings.

There were several reasons for this large-scale deployment of the military. The presence of armed forces personnel in public spaces has a symbolic function — on the one hand, it sends a message to citizens that everything is under control and, on the other, that something serious is going on. At the same time, just as with the 2014 floods, it is clear that the civilian authorities do not have sufficient capacities to respond to a crisis without support from the military. Even so, such a significant role of the Ministry of Defence and the SAF was, in this case, the result of the manner in which government officials chose to manage this crisis — that is, the fact that they elected to declare a state of emergency rather than an emergency situation.

The State of Emergency Was Written for the Military and Not for Civilian Crisis Management

The institute of state of emergency was developed primarily in order to respond to conventional security threats, threats of a military nature. This is evident from the fact that the declaration of and conduct in a state of emergency is regulated in detail by the Law on Defence. Under this law, the very proposal to declare a state of emergency is submitted to the National Assembly jointly by the President and the Government, on the basis of a threat assessment made by the Minister of Defence. In this case too, Defence Minister Aleksandar Vulin submitted a threat assessment to the executive branch on the day before the state of emergency was declared. Interestingly, while the Ministry of Defence’s official announcement states that the Minister submitted his threat assessment to the president and “commander in chief”, it makes no mention of it also being submitted to the Government. It is also unclear how actively representatives of the Military Health Department were engaged in producing a threat assessment that deals with a pandemic and whether in so doing they were in contact with the already formed COVID-19 crisis response team.

Furthermore, the Law on Defence stipulates that, once a state of emergency has been declared, the military acts in accordance with its own deployment and action plan, as well as with the decisions of the President of the Republic. In contrast, in the event of an emergency situation, the military deploys at the request of the National Emergency Management Headquarters, which grants civilian institutions a greater role and enables better coordination between civilian structures and the military in response to natural disasters. Since the President of the Republic is not a member of the Government, it is unclear what formal channels the Government — or ministries such as the Ministry of Health or the Ministry of Interior — can rely upon during a state of emergency to communicate instructions to the Ministry of Defence and the SAF, when the armed forces are legally obliged to act in accordance with its own internal plans and the orders of the president.

In practice, indications from the Ministry of Defence point to the fact that the SAF acted in coordination with the ad hoc headquarters for suppressing COVID-19. For example, the headquarters issued

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13 Law on Defence, Article 88.
14 Law on Defence, Article 92.
15 Law on Disaster Risk Reduction and Emergency Management, Article 26
recommendations on where field hospitals were needed. As the president participated in the work of this headquarters, he could channel his decisions to the military, which nonetheless continues to leave an impression of improvised coordination. Poor coordination between civilian and military structures was also apparent at the operational level. For example, a body for coordination of civilian and military health resources was not set up and instead, according to the Serbian Military Union, this took place via the president and the minister of defence.

An additional problem regarding the deployment of the Serbian Armed Forces is that this was done in an exceptionally non-transparent manner. No presidential decision on the deployment of the armed forces was published in either the Official Gazette of the Republic of Serbia, nor in the Official Military Gazette. Further confusion was caused by announcements issued by the Ministry of Defence, which suggest that the armed forces were deployed on the basis of the minister’s decisions and the orders of the Chief of the General Staff after the state of emergency was declared. This begs the conclusion that the ministry and the armed forces decided for themselves which tasks to undertake. None of these decisions or orders has been published to date. In a state of war, this would make sense as a measure to prevent information on military activities falling into enemy hands, but in this case the “enemy” cannot read. This lack of transparency reduces the possibility of democratic control, even post festum review, and holding the decision-makers accountable in case of omissions.

Finally, the problem with using the state of emergency is that once it is lifted there is no longer a legal basis for the deployment of the armed forces, even though the epidemic is still ongoing.

Unplanned Interaction with Civilians

During the state of emergency, Serbian Armed Forces personnel, particularly those serving in the Military Police and Special Brigade, were tasked with assisting the police in maintaining internal security and public order. These tasks included guarding airports, coach stations, hospitals, care homes, quarantines for those entering the country and refugee centres. These guard duties boiled down to controlling the flow of people, which in itself does not guarantee that the spread of the virus will be prevented. Involving the military in internal security during a pandemic was a controversial issue throughout Europe. Apart from Serbia, of the other countries in the region (including all of the countries of the former Yugoslavia), only North Macedonia and Albania used their militaries for this purpose, while the Slovenian parliament rejected the president’s proposal for the military to support the police in securing the country’s southern borders.

While military police officers are, by law, permitted to exercise authority over civilians, members of other units are trained for completely different tasks that are not at all police-like in nature. Recent research conducted by BCSP found that members of the Serbian Armed Forces have not been receiving regular training for what is known as their third mission – i.e. supporting the civilian authorities in emergency response. It has been stressed on several occasions that the military was faced with completely new tasks. In that sense, working with civilians was a serious challenge. This is most evident from the military’s assignment to guard refugee centres.

During the state of emergency, the VS was tasked with guarding refugee reception centres and camps, housing some nine thousand migrants who are placed on round the clock quarantine by the government – de facto interning them – even though not a single case of COVID-19 was confirmed among them for the duration of the state of emergency. On several occasions media reports emerged of incidents at these refugee centres and, on two occasions, SAF personnel reacted by firing warning shots into the air.

16 This refers to: Odluka o privremenom ograničavanju kretanja tražilaca azila i iregularnih migranata smeštenih u centrima za azil i prihvatnim centrima u Republici Srbiji (Decision to Temporarily Restrict the Movement of Asylum Seekers and Irregular Migrants Residing in Asylum andRefugee Centres in the Republic of Serbia), Official Gazette of the Republic of Serbia, 32/2020 od 16.03.2020.
The first occurrence of this was in early April in Knjača, when a group of refugees allegedly first fought among themselves then attacked security guards and SAF personnel. The second occurrence was when SAF personnel fired warning shots during an incident at a refugee centre in Adaševci. The minister confirmed that warning shots were fired in both incidents. What exactly took place in both cases remains unclear as media and ministerial reports differ somewhat. For example, from the minister’s statement it can be concluded that armed forces personnel in Adaševci fired warning shots to prevent a group of refugees fleeing the camp, while media reports suggest that shots were fired when one refugee tried to leave.

From both incidents it is clear that armed forces personnel faced challenges that went beyond their training, insofar as the civilians they were dealing with probably did not speak Serbian, came from different cultures and may suffer from psychological difficulties caused by the circumstances in which they find themselves. Defence minister, Aleksandar Vulin, suggested that armed forces personnel acted in accordance with the Rules of Service and standard operating procedures for guard duties. Neither of these documents are available to the public but it is unlikely that situations such as these could have been foreseen at the time they were written. The proportionality of the use of firearms certainly calls for further investigation, since it is not clear how much the departure of several people from a refugee centre would endanger public safety.

It does not currently seem, however, that any investigations will be conducted, especially since the minister has already announced that the armed forces personnel who fired warning shots will receive rewards. On the other hand, even if an investigation was to be conducted, the public should not expect to be informed of its results. This is because a 2016 ministerial decision determined that all reports on when and how the military police used force are automatically classified and this decision would likely be applied for reports on the use of force against civilians by personnel from other units during a state of emergency.

Insufficient Protection of the Armed Forces Personnel

Serbian Armed Forces personnel were engaged in tasks that resulted in them having relatively frequent contact with infected patients. In late March the Military Union of Serbia warned that stocks of personal protective equipment were insufficient, as well as that armed forces personnel with COVID-19 symptoms were required to first report to their unit for a health assessment (unnecessarily increasing the risk of spreading the infection). A short time later it was announced that 60 members of the First Brigade, who had worked on setting up camps for Serbian citizens returning from abroad, were confirmed to be infected.

Unlike the Ministry of Interior, the Ministry of Defence has not published data on the exact number of confirmed cases among its employees. Only once the state of emergency was lifted did the minister of defence announce that three members of the armed forces had died and that, at that time, 52 were confirmed cases, while another 167 were “in isolation”. According to all available information, the quantities of personal protective equipment were significantly improved in April but the Military Union of Serbia pointed to other problems – such as that in some units parents of children aged under 12 and those with chronic conditions were not given leave to stay home.

During the state of emergency, the Ministry of Defence stressed that regular activities in the defence system are, on the orders of the president, to continue uninterrupted. The only exception being schooling, since distance learning has been organised for most pupils and cadets – except for those training to become pilots or aviation technicians. On the other hand, the 98th Air Brigade continued its training of combat operations in various conditions on its recently acquired Mi-35 helicopters, in spite of reports that some members of this unit had tested positive for coronavirus. Part of the training took place at the Pasuljanske livade training ground. The Sloga union of Ministry of Defence and Serbian Armed Forces employees has pressed criminal charges against the commander of this training centre for failing to take the appropriate measures to protect the health of those serving in his unit. According to a statement issued by this union, at least ten soldiers deployed to Pasuljanske livade had become infected with the COVID-19 virus.

17 This was notable in both cases, when a member of a far-right group broke into an Obrenovac refugee centre with his car, to which the soldiers present were slow to react and visibly confused.
The Ministry of Defence has always **claimed that protective measures designed to prevent the spread of the virus are in place** throughout the defence system and that supplies of personal protective equipment are sufficient. On the other hand, about the defence system do not support this claim – at least not for the first week of the state of emergency. For example, one **news item** about the oath-taking ceremony for reserve officer candidates dated 20 March is accompanied by a photo in which none of those present are wearing a facemask.

The Tasks and Conduct of the Police During the State of Emergency

During the state of emergency, the police were supposed to ensure that the measures restricting or prohibiting free movement and assembly, medical supervision and quarantine were being respected. Also, the police were tasked with ensuring that permissions to move freely during the hours of curfew were granted to those who really needed it. The legal acts on which these measures were founded changed several times during the state of emergency, which indirectly indicates the absence of a plan for tackling the epidemic.

| The regulation on measures during the state of emergency was amended 12 times |
| The ordinance restricting and prohibiting people’s movement was amended 5 times |
| The ordinance prohibiting assembly in public spaces was amended 3 times |

Prohibition of Movement

The minister of interior regulated the restriction and prohibition of movement via an ordinance, **which is not in accordance with the Constitution**. The Constitution stipulates that the Government is obliged to regulate derogations from human rights during a state of emergency by a regulation\(^\text{18}\) co-signed by the President of the Republic. In this case, however, the government left it to the Ministry of Interior to restrict or completely ban the movement of people in public spaces.\(^\text{19}\)

The first of five ordinances issued by the minister of interior to restrict or prohibit people’s movement was issued on 18 March\(^\text{20}\), three days after the declaration of the state of emergency, at a time when there were **89 confirmed cases in Serbia**. The ordinance completely prohibits the movement of those aged 65 and over in public spaces and from 8pm to 5am for all other citizens. The prohibition of movement did not apply to healthcare workers with a valid licence to practice, members of the Ministry of Interior, the Ministry of Defence, the Serbian Armed Forces and the security services, as well as those to whom the Ministry of Interior had issued a permit to violate the curfew.

\(^\text{19}\) Uredba o merama za vreme vanrednog stanja (Regulation on Measures During the State of Emergency), Official Gazette of the Republic of Serbia, 31/2020.
\(^\text{20}\) Naredba o ograničenju i zabrani kretanja lica na teritoriji Republike Srbije (Ordinance on Restriction and Prohibition of People’s Movement in the Republic of Serbia), Official Gazette of the Republic of Serbia 34/2020.
The criteria according to which the Ministry of Interior issued movement permits were never clearly defined. Even though the Ministry of Economy mediated the issuance of permits for enterprises, the Ministry of Interior had the final say. The lack of criteria for issuing a permit will turn out to be one of the main failings enabling persons with permits to organise the lighting of torches on the rooftops of residential buildings in Belgrade, Niš and Novi Sad during the curfew and, in so doing, endanger the safety of others.

The minister of interior’s ordinance on restricting and prohibiting people’s movement was amended another four times by 9 April, when it was finally merged with the Regulation on Measures During the State of Emergency. During this time, the curfew was expanded to last from 5pm to 5am, while asylum seekers and migrants in Serbia were completely prohibited from moving in order to “prevent the uncontrolled movement of persons who could be carriers of the virus”, unless they are visiting a doctor with a permit issued by the Commissariat for Refugees and Migration. During the state of emergency, the police caught 6,800 people violating the curfew and 1,063 people over the age of 65 violating their prohibition of movement – i.e. 7,800 people in total. However, police officers did not always conduct themselves professionally. During the first night the curfew was introduced (18 March), two police officers in central Belgrade used disproportionate force to overcome a dog walker out during the curfew.

A similar incident occurred in Leskovac on 23 March. At least one of the three police officers who participated in this incident used disproportionate force against a person who, as can be seen in the video, put up no resistance. What is more, the victim of this excessive use of force was allegedly later asked to sign a false statement on injuries to their eardrum being the result of a fall. A third incident of police brutality occurred in Belgrade when a police officer struck and slapped a person who had already been detained and was sitting in a police car. The Sector for Internal Control of the Ministry of Interior, which examines the legality of police officers’ conduct, issued a statement only regarding the third incident, stating that an investigation will be launched.

Prohibition of Assembly

On 12 March an ordinance by the health minister prohibited public gatherings of more than 100 people in enclosed spaces. By 21 March the maximum number of people permitted to gather in these conditions was reduced to five. However, in the final amendment of the ordinance the health minister introduced an exception that allowed up to 50 people to gather if the assembly was organised by a government institution with the purpose of “taking measures aimed at preventing the spread of the contagion”, in which case the venue must first be disinfected. In so doing, the health minister enabled the organisation of a number of gatherings that were attended by the President of the Republic and which were more reminiscent of political campaign events than medical support. For example, more than 30 people participated in a visit to Niš on 10 April, including reporters and photojournalists. On that occasion medical protection and ventilators were delivered to the south of Serbia.

Promises that there would be no gatherings of the faithful during Orthodox Easter were not everywhere kept. A significant number of people attended a service at the Church of St Mark in Belgrade during the curfew and around 70 believers held communion in the Cathedral Church in Požarevac. The whole gathering was reported to the police, who reported that they found around 20 people in the church and determined that they were maintaining social distancing, even though the prohibition of assembly was then in force.

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21 Ministarstvo privrede, Instrukcija privrednim subjektima u vezi sa postupkom za izdavanje dozvole za kretanje u vremenu od 20 do 5 časova (Instruction to enterprises on the procedure for issuing a permit to travel between 8pm and 5am), no. 023-00188/2020-09, 19. 3. 2020
The gatherings that caused the most public outcry and which embroiled the police in a political struggle between the government and opposition groups were organised from 29 April. Supporters of the Serbian Progressive Party (SNS) responded to the noisy protests of some elements of Serbian society who were dissatisfied with the measures in place in the fight against the epidemic by lighting flares and chanting slogans on the rooftops of buildings in Belgrade, Niš and Novi Sad during the curfew. These activities threatened the safety of the residents of those buildings from whose rooftops flares and other pyrotechnical devices were set off. A fire was almost started at one such incident in Niš.

People reported via social media that they had called the police, reporting violations of the curfew and the lighting of torches. In their responses the police claimed not to be responsible for these breaches and referred callers to the communal militia. In some cases, the police sent out patrols to the scene but took no action because they discovered that the organisers of the flare lighting counter-protest had permits to violate the curfew issued to them by the Ministry of Interior. In one case, it turned out that a police patrol had accidentally prevented the setting off of flares by its accidental presence at the scene.

The Ministry of Interior issued no statements about the torch lighting until news emerged that the police had arrested four opposition supporters who had violated the curfew to support an opposition figure. In the first week of May the director of the police tried to show that the police was acting politically neutrally by stating that 112 charges had been filed for misdemeanours, almost equally split between government and opposition supporters.

The President of the Republic and the leader of the ruling party stated that the flare lighting had not been organised by the SNS but instead by a youth association. Nevertheless, there are allegations to the contrary. A National Assembly deputy from the SNS confirmed he had used his TV show to urge people to light torches on rooftops but added that he was not one of the organisers. The president of the Palilula municipality in Niš was one of those who violated the curfew in order to set off torches from a rooftop.

Views expressed by the chairperson of the National Assembly Committee for Internal Affairs is of most concern. Instead of initiating an investigation into police conduct in order to determine whether there had been any illegality or irregularity, she told the National Assembly that the SNS had to respond and show that it will not remain silent. This did little to allay suspicions about SNS participation in the organisation of the pyrotechnical displays, instead it presented these incidents as a necessary response.

Mandatory Self-Isolation

One of the tasks of the police was to inform people arriving to Serbia from abroad about their obligation to self-isolate, initially for 14 days and subsequently for 28. The police later monitored the observance of this measure, particularly after the declaration of the state of emergency. In the event of violations of the measure, the police filed criminal charges with the prosecutor’s office. Police officers were empowered to order those confirmed of having been infected or those who were suspected of having coronavirus to remain at their residence or abode and to report to the relevant healthcare institution.

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25 Odluka o proglašenju bolesti COVID-19 izazvane virusom SARS-COV-2 zaraznom bolešću (Decision on Declaring the COVID-19 Contagion Caused by the SARS-COV-2 Virus), Official Gazette of the Republic of Serbia 23/2020, 24/2020, 27/2020 i 28/2020. At this point 14-day self-isolation was mandatory for arrivals from China, South Korea, Switzerland, Italy, Iran, Romania, Spain, Germany, France, Austria, Slovenia and Greece.

26 Odluka o proglašenju bolesti COVID-19 izazvane virusom SARS-COV-2 zaraznom bolešću (Decision on Declaring the COVID-19 Contagion Caused by the SARS-COV-2 Virus), Official Gazette of the Republic of Serbia 23/2020, 24/2020, 27/2020 i 28/2020. At this point 28-day self-isolation was mandatory for arrivals from China, South Korea, Switzerland, Italy, Iran, Romania, Spain, Germany, France, Austria, Slovenia and Greece. Self-isolation of 14 days was also mandatory for those entering Serbia from other countries.

27 Uredba o merama za vreme vanrednog stanja (Regulation on Measures During the State of Emergency), Official Gazette of the Republic of Serbia, 31/2020, Article 2.
The punishment of those who violated the measure of medical supervision and self-isolation functioned better than the system for informing people who arrived from abroad before the declaration of the state of emergency that they must stay at home. This was a consequence of the problem being relativized and of the slow decision-making process pertaining to preventing the spread of the contagion. The need to properly inform people was reduced in the meantime when all of Serbia’s border crossings were closed to incoming passengers on 19 March,\(^{28}\) which of course also reduced the number of people coming into the country.

Following the declaration of the state of emergency, a political decision resulted in the focus shifting to punishing those who violated obligatory self-isolation. The President of the Republic and the minister of interior in particular insisted on strict punishment of violators, while the media reported regularly on the number of people who had violated self-isolation and emphasised the high penalties for this.

Within two days of the introduction of the state of emergency, the Ministry of Justice quickly issued recommendations on the work of courts and public prosecutor’s offices in the new emergency circumstances. It recommended that prosecutors seek custody for violators of the medical supervision and self-isolation measures. Additionally, the Republic Public Prosecutors Office was recommended to initiate disciplinary proceedings against those prosecutors who do not seek custody in their cases. The Administration for the Enforcement of Penal Sanctions provided three special facilities where offenders were accommodated, which were staffed with prison guards and police officers. This systematic approach to making clear recommendations was notably absent when it came to ensuring that citizens were properly informed about their obligation to self-isolate. By 4 April, 139 persons had been incarcerated due to violations of self-isolation and medical supervision measures. Even so, not all violators were remanded in custody, which means prosecutors did not fully implement the Ministry of Justice’s recommendations.

Media reports point to a significant number of examples of citizens being poorly informed about their obligation to adhere to medical supervision and self-isolation measures. In some cases, the police informed recently arrived citizens about their obligation to self-isolate ten days after their entry into the country or failed to inform them at all, even when they arrived from countries considered to be contagion hotspots. The greatest confusion was caused amongst people who entered Serbia around 14 March, just before the state of emergency had been declared.

These poor practices changed after the declaration of the state of emergency, when informing on self-isolation became mandatory. Even so, this was not the end of the troubles for people who entered Serbia before 15 March, since there were occurrences of the police arresting people who were not aware that they had been subjected to mandatory self-isolation. At any event, the police carried out checks on whether people were self-isolating first by calling them at a landline and later by coming to their address.

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\(^{28}\) Odluka o zatvaranju svih graničnih prelaza za ulazak u Republiku Srbiju (Decision on Closing All Border Crossings into the Republic of Serbia), *Official Gazette of the Republic of Serbia* 37/2020.
Threats and Pressure on Journalists and Activists

Earlier BCSP research indicated that journalists and activists who are critical of the government are exposed to various threats and pressures even under "normal" circumstances. The pressure journalists and activists are exposed to range from physical attacks, death threats, endangering their economic security via potential loss of employment, smear campaigns in regime-friendly media, and all the way to the adoption of legislative approaches that obstruct activism.

During the state of emergency, these threats and pressures directed against independent journalists and activists continued apace and it is possible to claim that the state of emergency was used to stifle certain rights and freedoms, including freedom of the press. For example, on 28 March – under the pretext of preventing panic – the Government of Serbia adopted a conclusion on information that prohibited local authorities from providing information to the media regarding the COVID-19 pandemic. The Government’s emergency headquarters became the only institution authorised to pass information on to the public about the state of affairs, the measures that have been introduced and the impact of the pandemic.

In this atmosphere of centralised and limited information, Nova.rs journalist, Ana Lalić, was arrested on 1 April because she reported on the dreadful conditions at the Clinical Centre of Vojvodina – i.e. the lack of personal protective equipment for healthcare workers and non-compliance with protection protocols. Despite the fact that she had been reporting in a professional manner on issues of public importance, Lalić was taken into custody and charged with the criminal offence of causing panic. Her arrest caused outrage and drew condemnations, both from the Serbian public and from international organisations and institutions. The very next day, 2 April, the Prime Minister of Serbia announced the withdrawal of the government’s decision on information centralisation and released Ana Lalić.

The arrest of this journalist was paradigmatic for a number of reasons. First, even though Lalić was quickly released, her arrest is a form of intimidation as it sends a message to other journalists to take care what they report on if they want to avoid being arrested. Intimidation can result in self-censorship and the ultimate result is a threat to the freedom of information that is in the public interest. Secondly, the government’s controversial decision indicated the Serbian authorities’ tendency to adapt the normative to the de facto state of affairs – the decision was in fact intended to enshrine in law the already existing practice of stifling press freedoms. Thirdly, the government’s decision was withdrawn due to, as the prime minister stressed, an explicit request from the President of the Republic. Thus, the President of Serbia is once again presented as someone who cares about the rights of the people and steps in to solve problems, whilst the fact that these problems arose from the regime that he controls is conveniently ignored.

Although the arrest of Ana Lalić was the most visible of the attacks on journalists, the Regional Platform for Advocating Media Freedom and Journalists’ Safety, SafeJournalists.net, recorded 56 incidents of threats and attacks against journalists across the region in the first four months of 2020 – more than half of these were in Serbia.

The arrest of an activist, Jovana Popović, has also received significant public attention. Popović is a final-year student at the Music Academy in Novi Sad and is known to the general public as the author of the song “Bagra”, in which she criticises the current government. She performed the song in early February at an opposition rally calling for a boycott of the forthcoming elections. The activist spent three weeks in prison in Zabela for allegedly violating mandatory self-isolation measures. Popović returned to Serbia from Montenegro on 14 March, one day before the state of emergency was declared, and claims she was not served with a decision on mandatory self-isolation at the border. She was arrested ten days after she returned to Serbia and was released from custody on 13 April, pending the setting of a trial date.

The arrest and detention of Jovana Popović was a problematic case, above all because of legal provisions that cannot be applied retroactively but also because pre-trial detention is usually applied when there is a flight risk, a danger of recidivism or the possibility that evidence will be tampered with – none of which conditions apply to this case. Proceedings against Popović are ongoing but, given the circumstances, it is reasonable to assume that the harsh detention also served the function of intimidating and castigating critics of the government.

Another arrest that can be assumed to be intended to silence critics is that of Slaviša Pajović, a worker at a plant operated by South Korean’s Jura automotive parts manufacturer. Pajović became the leader of a group of workers who protested unsafe working conditions at the plant, claiming that the factory’s management had broken a previously made agreement on a slowdown due to the pandemic. Dissatisfied workers gathered in front of the factory gates on 9 April and Pajović was detained while he waited to give a statement on working conditions at Jura to an N1 news crew. He was interviewed by the police and granted bail, pending charges for causing panic and disorderly conduct. In this case it was particularly telling that Pajović was prevented, at least initially, from speaking to the press.

The reason given for the arrests of both Ana Lalić and Slaviša Pajović was the alleged causing of panic, which is a criminal offence under Article 434 of the Criminal Code.30 The pandemic opened the door for abuses of this provision, a fact that is borne out by cases in which the highlighting of improper or unsafe working conditions – at the Clinical Centre of Vojvodina and the Jura plant in Rača – by the accused was characterised as causing panic. In other words, the pandemic served as a convenient opportunity to sanction critics and stifle freedom of speech.

The Invisible Presence of the Security Services?

Serbia’s security services were not directly involved in the country’s response to the pandemic or in implementing measures undertaken during the state of emergency. According to information provided by the Ministry of Labour, Employment, Veterans and Social Affairs, the exception to this was the Security Information Agency (BIA) participating in monitoring whether measures designed to prevent the spread of COVID-19 were being implemented by social security institutions. Nevertheless, a statement by the president, Aleksandar Vučić, gave rise to suspicions that the services (or the police) were acting outside the law in order to prevent the spread of the virus.

Not long after the declaration of the state of emergency, Vučić stated that the relevant services were monitoring the movement of Serbian citizens who had arrived from countries that were recognised as hotbeds of the pandemic, particularly Italy – via their phones. The location of users’ mobile telephones falls under the category of stored data31 that government bodies (the police or the security services) can access only if certain conditions are met, including judicial approval by a relevant court. Access to stored data represents an infringement of the constitutional right to confidentiality of letters and other means of communication. Even though this is a right that can be restricted during a state of emergency, the government made no provisions for this eventuality, which means the confidentiality of communications must remain as inviolable as it is under normal circumstances. Some members of the Security Services Control Committee pronounced that they will re-examine what is behind Vučić’s statement but at the time of writing (12 May 2020) this committee has yet to meet.

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Actors Who Informed the Public About Security During the State of Emergency

Throughout most of the state of emergency, the public was informed about developments in the fight against the pandemic and the numbers of confirmed cases and deceased by medical specialists at the COVID-19 crisis response team. The introduction of new measures was usually announced by the president himself, at press conferences that were broadcast live by all of the major television channels. These press conferences were not attended by the ministers of interior or defence, even though most of the measures introduced during the state of emergency fell within their purview or were, what more, approved by them.

The minister of interior did not make many appearances during the state of emergency, although it was him who issued the ordinance on restriction and prohibition of people’s movement, which was amended several times. Instead, the President of the Republic and medical specialists from the crisis response team informed the public about the curfew and explained why measures were being introduced and the details of their implementation. It was the minister who tried to initiate an additional window of freedom of movement for dog owners during the complete lockdown and spoke briefly when there were abuses of permits during the “balcony war”, as well as the mass violation of the curfew. He has, on several occasions, used Twitter as a means to communicate with the public – for example, in response to an incident of police brutality or to call for compliance with the curfew. Similarly, the director of the police, Vladimir Rebić, has only been in the public eye on a handful of occasions, disseminating information on the number of people who violated the curfew.

The minister of defence was significantly more active and visible during the state of emergency, even though he did not attend official press conferences. Most often he addressed the public while visiting members of the armed forces undertaking various tasks during the state of emergency (at border crossings, airports, field hospitals, etc), during guest appearances on TV programmes or through announcements on the Ministry of Defence website. The Chief of the General Staff wrote an open letter to VS personnel at the beginning of the state of emergency, stressing the decisive role the armed forces would play in the suppressing the virus. In addition to this, in March the Ministry of Defence initiated a public procurement procedure to purchase the service of measuring public opinion about the minister. Even though the Ministry clarified that this is a service that is renewed annually, it remains unclear why the minister’s rating should be measured during a state of emergency using public money.

A public opinion survey conducted in May 2019 by the BCSP shows that most Serbian citizens think information about security sector institutions should be provided to the public by the relevant minister (34%), by the directors of the security services and the police (14%) and professionals in these institutions (14%). In spite of this, one in three people recognise that information on security matters most often comes from the President of the Republic. In the interest of greater transparency and increasing public trust in institutions, security sector professionals and line ministers should play a greater role in disseminating information to the public about their work and about other security issues.
Recommendations

- The Constitutional Court of the Republic of Serbia should review the constitutionality and legality of the executive decisions in managing the crisis caused by the COVID-19 pandemic.
- The National Assembly, the Ombudsman and internal control departments in security sector institutions should review the legality of their conduct during the state of emergency.
- The National Assembly Defence and Internal Affairs Committee should request extraordinary reports from the Ministry of Interior and the Ministry of Defence on the conduct of the police and the deployment of the military during the state of emergency. At the same time, it should also request information on measures undertaken to protect members of the police and the armed forces from contagion in the course of performing their regular and irregular duties.
- The Security Services Control Committee and Defence and Internal Affairs Committee should review whether the security services or the police accessed stored data (including mobile telephone location data) and, if they did, whether this was done in accordance with the Constitution and the law.
- The Prosecution and the Ombudsman should review the arrests of journalists and activists in accordance with their competences.
- The European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), which is due to visit Serbia this year, should investigate cases in which police officers used excessive force during the state of emergency.
- Also, the Council of Europe should pay special attention to the treatment of migrants in Serbia during the COVID-19 pandemic, particularly given the government’s decision to completely abolish their freedom of movement.
- In compiling its next progress report, the European Union should take the work of the National Assembly and the Ombudsman into account, as well as the conduct of the police and the deployment of the armed forces to protect public security during the state of emergency.

In the long term, in order to effectively respond to a variety of security threats:

- It will be necessary to regulate the state of emergency with specific legislation, which should be their obligation according to the Constitution.
- It will be necessary to reform the current emergency management system to ensure it becomes realistic and functional and to consistently invest in its development under normal circumstances.
- It will be necessary to develop the concept of total defence in such a way that it complements civil structures during natural disasters and to enable the building of effective coordination and interoperability between civilian and military structures at all levels.
- The Action Plan for Implementing the National Security Strategy can be an excellent opportunity to operationalise policies for the prevention of and response to infectious diseases – a threat that is already recognised by the Strategy as potentially becoming, “more pronounced in future.”

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