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Legal Aspects of the Restriction of Human Rights and Freedoms During the COVID-19 Crisis

Dženeta Omerdić *

In addition to the health and security challenges they have been facing, the onset of COVID-19 has forced countries to guarantee/ensure a *normally* functioning society in the new (*extraordinary*) circumstances, while protecting the basic principles of democracy and rule of law. However, insufficiently prepared, countries tried to mitigate the consequences for their citizens, and end the “war against the invisible enemy” with minimal losses. As a result, they have used a variety of normative and institutional instruments that imply restrictions on fundamental rights and freedoms.

The restrictions on human rights and fundamental freedoms during the COVID-19 crisis were *de facto* requested by the World Health Organization. The WHO called for “urgent, aggressive actions” from national governments, while striving to achieve a balance “between the protection of health, minimizing of economic and social disorders, and human rights protection.” The call clearly shows that states were expected to take an active approach – through preventive operational measures – which often implies a restriction of some rights in order to protect other rights and freedoms. The very implementation of the so-called *positive obligations of states*¹ has brought up an extremely important question: “*When and under what conditions is it allowed to derogate or restrict human rights and freedoms?*”

DEROGATION OF HUMAN RIGHTS AND FREEDOMS: THE CONVENTION

There is no doubt that the coronavirus pandemic has brought numerous challenges, and states have often reacted with a formal and/or tactical derogation of certain rights laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention).

Article 15 of the Convention says that “In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures *derogating* from its obligations under the Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.” Thus, provided they fulfil legislative requirements, states are allowed to derogate from provisions in the Convention, and thus interfere with certain human rights and freedoms.

This Article clearly lays down four conditions that must be fulfilled in order to derogate from provisions in the Convention. These are:

- existence of war or other public emergency;
- threat to the life of the nation;
- measures taken only to an extent that is strictly required by the exigencies of the situation, and
- existence of consistency with its other obligations under international law.

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The European Court of Human Rights (hereinafter: the Court) has left establish the establishment of a public emergency (i.e. war) to the discretion of that nation. Believing countries to be better informed of their national circumstances, the European Court of Human Rights (hereinafter: the Court) has left the establishment of a public emergency threatening the life of the nation (i.e. war) to the discretion of that nation. However, when *developing* the discretionary right of the state, the Court expressed an important position in the case of *Aksoy v. Turkey*. In that case, the Court decided that states do not have an unlimited discretionary right in establishing the existence of a threat. The Court determined that states would have to be assessed to determine whether they had exceeded their scope of action, and that the discretionary assessment of the state should be supplemented by European supervision. It was emphasized that the implementation of European supervision reflected the Court's obligation to evaluate the nature of the restricted right in each individual case, as well as the circumstances that resulted in a derogation, and the duration of the emergency situation.

The second provision in Article 15 of the Convention states that measures derogating rights may be taken only to the extent strictly *required* by the exigencies of the situation. In theory and practice, there is no uniform or single definition of a strictly required derogation measure, and as such the Court analyses the facts and evaluates the situation at hand for every case. In one example, the Court looked at a an individual's arrest without a proper decision by judicial authorities and determined that though drastic, it did not exceed the limit that is strictly *required* by the exigencies of the emergency situation. In another case, the Court concluded that a 14-day detention exceeded the extent that was strictly *required* by the exigencies of the situation.

If a state decides to derogate from the obligations of the Convention, or to apply Article 15, in addition to the aforementioned requirements the state must also inform the Secretary General of the Council of Europe about the derogation measures, reasons for taking those measures, and the time period during which the specific Convention rights will be derogated².

In addition to the explicit derogation, states are allowed to *intervene in* specific Convention rights without referring to Article 15. Although all people have the following rights: "Right to respect for private and family life, home and correspondence", "Freedom of thought, conscience and religion"; "Freedom of expression", and "Freedom of assembly and association", the Convention still foresees certain *allowed* interventions by the state. However, for certain state actions to be considered an allowed interference, they must be based on the law, have a legitimate aim, be necessary in a democratic society, and pass the so-called proportionality test.

Actions taken by national authorities will be deemed an allowed interference with certain rights if they are based on the law (where the word "law" covers not only statute but also unwritten law)³. Furthermore, an intervention with certain rights will be allowed if it protects a specific and legitimate aim which is of a general nature, and poses a restriction on the enjoyment of individual rights and freedoms⁴. However, if the interference by national authorities is not evaluated as necessary in a democratic society, it will not be allowed. The proportionality test, conducted in order to establish the *necessity in a democratic society*, evaluates if it was "justified to introduce such restriction of freedom or rights considering the standards applied in a democratic society." For example, when the Court decides on the necessity in a democratic society, it expresses its view of the interests⁵ of the individual who is complaining about the violation of rights, and of society as a whole.

RESTRICTIONS ON THE RIGHTS AND FREEDOMS OF CITIZENS AT THE TIME OF THE PANDEMIC: THE CASE OF BOSNIA AND HERZEGOVINA

The coronavirus pandemic did not bypass Bosnia and Herzegovina. In view of the recommendations of the World Health Organization, and the practices of other regional countries, national authorities launched regulatory activities as soon as the first Covid-19 patient appeared in Bosnia and Herzegovina, in order to prevent the spread.

Since there is no single regulatory solution which would apply identical measures on the whole territory of Bosnia and Herzegovina, each Entity responded to the COVID situation separately, in

accordance with existing constitutional provisions. The Constitution of Bosnia and Herzegovina does not include a provision for a state of emergency, and neither does the Constitution of the Federation of BiH. The Constitution of the Republika Srpska, however, does.

National authorities of began their “fight against the invisible enemy” by prescribing additional requirements for the entry of foreign nationals to Bosnia and Herzegovina. Pursuant to this decision, which was adopted by the Council of Ministers of BiH in order to suppress and prevent the spread of communicable diseases, foreign nationals were banned entry to BiH if they were travelling from certain areas with an intense coronavirus problem. In response to the threat of an epidemic, and to mitigate the risk of an outbreak, the Federation of BiH proclaimed a state of natural disaster on 16 March 2020. On the same day, the Government of the BiH Entity Republika Srpska proclaimed a state of emergency on its own territory. One day later, the Council of Ministers of BiH proclaimed a *State of natural or other disaster* on the territory of Bosnia and Herzegovina, pursuant to the Framework Law on the Protection and Rescue of People and Property from Natural and Other Disasters in Bosnia and Herzegovina.

With respect to the constitutional division of competencies between the state level and the Entities, government authorities have the right and obligation to define a framework for the exercise of guaranteed rights. Using the legislative framework, the highest legislative authority in Bosnia and Herzegovina – the Parliamentary Assembly of BiH - sets general principles and standards, and the lower government levels decide on the method of implementation of legislative provisions. In other words, the state-level authority adopts laws that are legally binding, regardless of the “Framework”, and the authorities in charge of practical implementations (and further elaboration) are in charge of “subject-matter and territory”. In that regard, pursuant to Article IV 4.a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina adopted the Framework Law on the Protection and Rescue of People and Property from Natural and Other Disasters in Bosnia and Herzegovina. This law lays down the following: the implementation of international obligations and cooperation in

the provision of protection and rescue, and civilian protection; the competency of institutions and bodies of BiH as regards the protection and rescue of people and property from natural and other disasters in BiH; *coordination of the institutions and bodies of Bosnia and Herzegovina, Entity-level civilian protection offices, and the civilian protection authority of the Brčko District*, etc. In addition, provisions of this Law define a disaster as an infectious disease epidemic (among other things), obliging competent state-level and Entity and Brčko District authorities to cooperate.

Unlike some European countries, Bosnia and Herzegovina did not refer to Article 15 of the Convention, nor did it initiate formal derogation of obligations from the Convention. Instead, the authorities of Bosnia and Herzegovina chose another option: interference with certain Convention rights and freedoms. However, for the nth time, *(in)action* by competent government authorities resulted in the violation of rights and freedoms guaranteed by the Convention. This time, the Constitutional Court of BiH (AP-1217/20) established that the Convention rights had been violated in the Federation of BiH during the pandemic, due to interference with the right to freedom of movement. This poses a very logical question: *what did they do wrong?*

Pursuant to Article 2 of Protocol 4, “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” Everyone shall be free to leave any country, including his own. However, the right to freedom of movement is not absolute. Restrictions may be imposed if they are in accordance with the law and are necessary in a democratic society⁶. As well, restrictions may be introduced “in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, the protection of health or morals, or for the protection of the rights and freedoms of others.” On the other hand, the right to freedom of movement may be subject to certain restrictions “imposed in accordance with law and justified by the public interest in a democratic society.” The Constitution of BiH (Article II/3) further decrees that “all persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in

paragraph 2 above”, including the right to freedom of movement and residence.

The quoted provisions must be taken into consideration when imposing restrictions on human rights and freedoms during the COVID-19 crisis. However, competent authorities have substantially departed from these provisions. Although the chronology of developments is fairly well-known, here is a short summary:

Upon the proclamation of the state of natural disaster in the Federation of BiH, the FBiH staff/civilian protection staff was to control all activities related to the coordination and management of protection and rescue of people in affected areas, in accordance with the FBiH’s plan and existing legislation. Referring to the FBiH Government, and to the provisions of the Law on the Protection and Rescue of People and Property from Natural and Other Disasters, the FBiH civilian protection staff issued an order ***prohibiting movement*** of persons under the age of 18 and above the age of 65 from 20 to 31 March 2020. Seven days later, the FBiH civilian protection staff issued another order ***restricting the*** movement of aforementioned persons ***until further notice, without any explanation***. The FBiH civilian protection staff later amended its previous orders and allowed movement of persons above the age of 65 between 8am -12pm in order to collect their pensions from 6 to 10 April 2020. The same order allowed persons under the age of 18 to “move in a vehicle.” This amendment did not include any explanation either. Two weeks later, the FBiH civilian protection staff instructed that the previously issued orders would apply until 30 April 2020. Seeing as the movement restrictions for persons under the age of 18 and above the age of 65, introduced on 20 March 2020, were brought before the Constitutional Court of BiH (AP-1217/20)⁷, the FBiH civilian protection staff issued another order explaining the legal solutions in details, as well as the legal grounds and reasons for the issuance of this act. The order on 24 April 2020 prohibited the movement of persons above the age of 65, at all times other than Monday, Wednesday, and Friday from 9 a.m. to 1 p.m. It likewise prohibited the movement of persons under the age of 18 with the exception of Tuesday, Thursday, and Saturday from 2 p.m. to 8 p.m. Unlike previous orders, due to the

Constitutional Court of BiH, this order provided categories within those age groups that were exempt from the prohibitions due to the nature of their job or for special health requirements. Under the obligation of constant review, the imposed restrictions were applied only until 30 April 2020.

NOW LET US GO BACK TO THE PREVIOUSLY ASKED QUESTION: WHAT DID THEY DO WRONG?

Naturally one must begin with the failure to consider provisions of international and national law. When they interfered with a specific right, cumulative requirements that should have been met beforehand were neglected. More specifically, there is a provision in the BiH constitution that acknowledges the overarching priority of the Convention over other laws, and that all national authorities are obligated to consider the Convention when adopting/applying legislation; as such, ***proportionality*** between the imposed measures and the purpose thereof was evidently missing during the interference with the right to freedom of movement in the Federation of BiH, which in this case was found by the Constitutional Court of BiH. The Constitutional Court of BiH found that the restriction of human rights was introduced in accordance with the law, and that a legitimate aim existed. However, the Constitutional Court stressed that, from a constitutional and Convention point of view, the fulfilment of these two requirements is not sufficient to legally allow the interference with the Convention. The Convention requires a cumulative fulfilment of the requirements and there is a proportionality between imposed measures and aims lacking. In other words, there was no ***balance*** between individual rights and general interest during the COVID-19 which was the object of protection in the Federation of BiH.

WHAT SHOULD COVID 19 TEACH US?

The Federation of BiH ended the state of natural disaster on 31 May 2020, and it seemed that things were slowly going back to “normal”. However, the epidemiological situation started deteriorating again, and two separate cantons reported an epidemic. Considering the increased number of new cases, we are likely looking at new measures, and it would be beneficial for this incoming period to have learned important lessons from the last.

The experience thus far with COVID 19 should have taught us that a strong state with an organized and efficiently structured government is crucial to the creation, exercise, and protection of human rights and fundamental freedoms. Without a prompt and efficient reaction from the state, not a single subject will be protected. It should also have taught us that an efficient government apparatus cannot be created on its own, it takes a lot of work. An efficient government apparatus primarily requires an accountable legislative branch, which can respond to crisis situations in a timely manner.

Another lesson we should have learned is that it is extremely important during a crisis to know *who* makes the decisions and *what* is being decided. It is important to precisely define measures that need to be taken in order to protect the interests of the general public. These measures should not be uncertain, and they must not be imposed for an indefinite time period. In fact it should be the opposite; measures interfering with the Convention's rights and freedoms should be subject to constant review, and must be proportional to the pursued aims.

The COVID 19 crisis thus far should have taught us that legal certainty and the rule of law are the key principles that lead to the stability of society. Therefore, the rule of law should be respected in emergency circumstances as well. Namely, existing legal provisions, legal principles, and democratic standards should guide the regulation of social relations. Any deviation from these principles results in inestimable consequences for the community and the whole country.

Finally, a lesson that we should learn from COVID 19 is that a loss of confidence in the state and the government can pose the biggest threat to the country and society as a whole. If this were to happen, there is no regulation or legal mechanism that will make derogation and/or interference with human rights acceptable or allowed. ■

ENDNOTES

- 1 From a legal perspective, the main obligation of a state is to refrain from actions that would result in the violation of human rights and fundamental freedoms. It is the so-called negative obligation of the state, which does not require any action. However, the negative obligation of the state has proved to be insufficient in the protection of human rights and fundamental freedoms. As a result, the so-called positive obligation of the state was developed through the European Court of Human Rights.
- 2 Although it provides the possibility of derogation elsewhere, Article 15(2) of the Convention prohibits derogation from the following Articles: 2 (right to life), 3 (prohibition of torture), 4 (prohibition of slavery and forced labour), and 7 (No punishment without law).
- 3 The Court provided a broader meaning of the word "law" in the case of the *Sunday Times v. The United Kingdom*, when it concluded that "the word 'law' in the expression 'prescribed by law' covers not only statute but also unwritten law. The Court further concludes that a norm cannot be regarded as a 'law' unless it is accessible to the citizen: he must be able to foresee the consequences which a given action may entail, as prescribed by the specific provision. See Judgement of the European Court of Human Rights, *Sunday Times v. The United Kingdom* of 26.4.1979, appl. 6538/74, a. 49, available at: [https://hudoc.echr.coe.int/rus/{%22itemid%22:\[%22001-57584%22\]}](https://hudoc.echr.coe.int/rus/{%22itemid%22:[%22001-57584%22]}), visited on 10.5.2020
- 4 A legitimate aim can be defined through public security, protection of the rights and freedoms of others, protection of health and morale, etc. See. Articles 8, 9, 10 and 11 of the Convention
- 5 The Court expressed its position on The Fair Balance Test in the case of *Rees v. The United Kingdom*. See. Judgement of the European Court of Human Rights, *Rees v. The United Kingdom* of 17.10.1986, appl. 9532/81, t. 37, available at: [https://hudoc.echr.coe.int/fre/{%22itemid%22:\[%22001-57564%22\]}](https://hudoc.echr.coe.int/fre/{%22itemid%22:[%22001-57564%22]}), visited on: 10.5.2020
A good example of the proportionality test is provided in: J. Gerards, *General Principles of the European Convention on Human Rights*, Cambridge 2019, p. 112 and onward.
- 6 Necessities to a democratic society is one of the most subjective elements that the Court should consider. W. A. Schabas, *The European Convention on Human Rights: A Commentary*, Oxford 2015, p. 1064.
- 7 In addition to the imposed restrictions that were brought before the Constitutional Court of BiH, the FBiH civilian protection staff also issued an order prohibiting the movement of citizens on the Federation of BiH from 6 p.m. to 5 a.m. The order did not include a provision informing citizens about the curfew duration. Eight days after this order, FBiH staff issued another one, changing the curfew hours to 8 p.m. - 6 a.m. The order of 17 April prohibited the movement of FBiH citizens until 30 April 2020, but the imposed measure was cancelled seven days later.

How did Serbia Unite Chomsky, Mironov and Fukuyama? Engaging with the New Despotism

Gazela Pudar Draško * / Vedran Džihic **

It is difficult to imagine what could unite Jürgen Habermas, Francis Fukuyama, Judith Butler, Noam Chomsky, Martha Nussbaum, Michael Walzer, Yuval Noah Harari and Vladimir Mironov.¹ However, the renowned Institute for Philosophy and Social Theory in Belgrade (IFDT), founded to settle dissident intellectuals expelled from the university for their involvement in the Yugoslav 1968 protests, managed to do so. An international appeal has reached us in the past few days which has revealed once more the ongoing clandestine attack on freedom of thought and academic autonomy in Serbia.

Unfortunately, Serbia is not alone in democratic backsliding, neither in Southeast Europe or Europe more generally, nor at the global level. Democracy has been openly challenged in several EU states, while the most recent developments in the USA have revealed the depth of internal fractures in American liberal democracy. Thus, it is not surprising that the Southeast European region (SEE) - a post-conflict, semi-peripheral area in Europe - faces growing illiberalism and varying types of competitive authoritarianism and new despotism.

A role model of illiberalism and authoritarianism for SEE leaders resides just across the border. One thing cannot be denied about Victor Orban – he

has shown remarkable consistency in his illiberal remodelling of Hungary, creating a system that John Keane describes in his newest book as ‘new despotism’. Debates about the expulsion of the Central European University from Budapest had hardly subsided and Orban was already busy planning his next move: introducing de facto censorship into state-owned media. Aleksandar Vučić, his Serbian colleague, nurtures friendly relations with Orban, and has learned many of his tricks. During the Coronavirus crisis, Vučić has demonstrated on a daily basis that he has mastered the entire authoritarian, or despotic, playbook. Vučić controls the government and state and acts according to his own will. His political opponents and the opposition are defamed by the loyal media. It is therefore not surprising that Freedom House recently demoted Serbia from the status of ‘democracy’ to ‘hybrid regime’.

It is not only during the pandemic that democracy has been steadily weakened in SEE. the ruling parties have for much longer been hijacking independent institutions and the judiciary which are the primary venues for democratic procedures and the rule of law, making them virtually sequestered and inaccessible to citizens. It is a similar situation with security forces such as the police, who are turning a blind eye to obvious violations of the law. This recently became clear during two similarly destructive acts: the 2016 demolition of Hercegovačka street in Belgrade, and of the National Theatre in Tirana in May 2020, both of which occurred overnight. The

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masked men who destroyed private buildings in Hercegovacka, took phones away from bystanders, even tying some of them up. The police ignoring calls for help is probably the best example of the politics of phantom democracies: the rule of law is turned into the rule by law; legal provisions taken under political pressure by dominant political structures are turned against critical voices, while violence is masked as the justified intervention by the regime for the sake of the alleged progress. The growing pressure on institutions, citizens, and movements critical of the new despotism is usually accompanied by overwhelming government control of the media, preserving only a few islands of critical journalism that can withstand the grip of the ubiquitous rulers. Such developments explain why Hungary, Serbia, and Turkey are often mentioned in the same breath, and labeled well-camouflaged autocracies, or as new despotisms; “new type of pseudo-democratic government led by rulers skilled in the arts of manipulating and meddling with people’s lives, marshaling their support, and winning their conformity.” (John Keane)

In those “phantom democracies”, academic spaces have increasingly become ‘undesired space’ for the regime, filled with potential critics and critical non-conformity, which challenge the façade of “deception and seduction” created by strongmen and despotic leaders like Orban and Vučić, demasking the regime’s façade. The negative trend of growing threats to academic freedom and institutional autonomy for scientific work is visible not only in the European Union, Hungary in particular, but also in broader European spaces such as Turkey. It has motivated many institutions including the Council of Europe and European Parliament to underline the importance of academic freedom to democracy. It was also the European Parliament that called for the protection of academic freedoms and institutional autonomy to be included in the Copenhagen Criteria for the enlargement process of the Western Balkans.

Current developments in the academic sphere in Serbia, which is among those candidate countries that have advanced the furthest in accession negotiations, clearly show that academic freedom must not be separated from other freedoms, and that it should be included among the essential criteria

used to evaluate the success of the Europeanization process. As far as the current Serbian government is concerned, university autonomy has become an annoying constitutional appendage that must be removed. The calculation is simple: one should prevent any substantial criticism of the regime, and convey the image of Vučić as a stable, progressive, and future-oriented “world leader”.

In the past year, All European Academies (ALLEA), the European University Association (EUA), and Science Europe, have each reiterated that states have a duty to protect academic freedoms and the institutional autonomy of scientific work in three ways: (1) by providing a clear and coherent legal framework for scientific work, (2) by not interfering in the internal problems of individual research institutes, and (3) by maintaining an ongoing dialogue based on trust. It seems that though these three methods are being used in Serbia today, it is to limit the autonomy of academic institutions.

Although the Serbian constitution guarantees the autonomy of universities, faculties, and research institutes in equal fashion, the legal framework outlines that state representatives should make up 30% of the members of university and faculty governing bodies. However, the current structure of management boards in research institutes (4:3 ratio in favour of the government) violates the principle of academic autonomy and is arguably unconstitutional.² In recent months, orchestrated voting by government-appointed members resulted in directors being imposed onto institutions despite not having the support of the institutes’ scientific bodies, nor the top scientific and management records of all the candidates. Thus, the principle of excellence was betrayed. Some state representatives even went so far as to accuse the institutes of being “anarchists” when claiming the right to academic autonomy, revealing their aim to control the public institutes.

Another interesting point is that, in the scientific field, Serbia has been trying hard to project the image of a state that’s doing everything possible to keep its scientists from leaving the country, while simultaneously motivating the many scientists amongst the Serbian diaspora to return home. The European Commission has supported this with their newly introduced methodology for the accession process,

titled “EU credibility perspective for the Western Balkans” and stressed that this program will support the transformation of the Western Balkans in such a way as to, *inter alia*, promote the rule of law and curb the regional brain drain.

The Institute for Philosophy and Social Theory is one of the most successful in the SEE region as regards the circular migration of young researchers. More than a third of its researchers received their PhDs from renowned universities in Europe and America, which is extremely rare not only in Serbia, but in the entire SEE. The Institute has also been one of the most successful research institutes in Serbia since the fall of Milošević in 2000. It participates in international projects (Horizon 2020, Jean Monnet, Volkswagen Foundation) and cooperates with a wide range of international institutions and personalities.

Paradoxically, this institute is the favourite target of coordinated attacks by representatives of the Ministry of Science, as well as scientists who are closely linked to the government and whose roots go back to the Milošević era. In March 2019, the Government of Serbia appointed its new representatives for a four-year term in the Institute of Social Theory and Philosophy’s Management Board, with a six months delay. These representatives included persons whose academic track record, reputation, and values go directly against those cherished and promoted by the Institute since its establishment. Academic excellence, a strong international profile, and close cooperation with civil society are all core attributes of the Institute. They are not, however, shared by the Government’s appointed representatives, given that some of them are known for their xenophobic statements and have repeatedly warned against the detrimental nature of civil society and international cooperation. Furthermore, some of them also are known to have strong formal ties with the Serbian intelligence service, which recently characterized civil society as subversive and destructive.

History seems to be repeating itself, at least in the case of the IFDT. Freedom of thought and freedom of scientific work is once more being defended through the solidarity of European colleagues and intellectuals, just as in 1980, when Jürgen Habermas, Iring Fetscher, Oskar Negt and

Albrecht Wellmer successfully rallied support for the founders of the Institute by addressing the then Yugoslav and Serbian authorities directly, thus aiding in the founding of the Institute. The Institute was established by the state but not in the spirit of a democratic state; A democratic state is a political community of sovereign citizens, not a regime or an administration. Academic autonomy exists precisely to safeguard the development and flourishing of science from the abuse of executive political power, and this safeguarding is in the interest of the state, *i.e.* the political community of sovereign citizens, not in interest of the regime. Yet this is the exact intention of current Serbian right-wing intellectual circles who are closely intertwined with political elites – that there should be state science produced in state institutes.

It is once again time for the international public to defend independent thought and research in Serbia, since it’s not only the academic institutions that are at risk – the government is also targeting public intellectuals who are pointing out society’s problems. A tried and true method is used to do so: if someone criticizes the government from a professional standpoint, they are immediately labeled political opposition. The tabloid media controlled by the regime then embark upon a public campaign to discredit them. Alternatively, they [the media] simply ignore all efforts to point out society’s problems just as they ignore the appeal by the greatest scholars of today to preserve the autonomy of the Institute. This not only discourages critical thought, it also destroys the central principles of freedom in society as a whole. With its ongoing illiberalization and Orban-like methods, it will certainly not be possible to position Serbia as a credible partner for European integration. The spiral of democratic decline continues, yet democratic engagements against the new despotism of Vučić and his almighty ruling party will continue and intensify. New despotisms are vulnerable, always hunted by the resistance and “possible surprise disruptions, digital mutinies, and media storms” (John Keane). The appeals by international intellectuals to protect academic freedoms and the autonomy of the IFDT suggest an unexpected disruption for the Serbian regime that was, in the end, successful in its efforts³. It also its more widely into the societal struggles of engaged civil society

organizations, free media, and engaged citizens in Serbia, the wider region, Hungary, Poland, and wherever else freedom is under attack.

“Strength is born of association”, once said Beaumont, teaching us what citizens can do to defend themselves against folly and hubris. In a similar vein follows John Keane who wrote, “The defense of civil society institutions and citizen efforts to build new democratic ways of living and handling power remain of basic importance in the rejection of despotism, at home and abroad”. This must become a new common goal for progressive and emancipatory movements and individuals, both in the region as well as in the wider European context. We need to create and fight for a new social contract based on Rousseau’s idea of fighting new modern despots such as Vučić, Orban, or Erdoğan, and their vision of ruling the masses in the name of the people. The ultimate task is to win back the hearts of the people in SEE and help them feel empowered enough to take control of their future by engaging in politics not just every four years for somewhat regime-dominated elections, but more permanently and in all possible spheres of public and social life. ■

ENDNOTES

- 1 To non-Russian audiences, he is a member of the Russian Academy of Sciences and Arts, and Dean of the Department of Philosophy at Lomonosov Moscow State University
- 2 An Initiative for the assessment of the constitutionality of this Article in the Law on Science is to be submitted to the Constitutional Court of Serbia.
- 3 On June 4th, Government appointed Ivan Vejvoda, permanent fellow at the Institute for Human Sciences in Vienna as the President of the Managing Board of the Institute, bringing the 15-month crisis in the Institute close to the end. It remains to be seen if the autonomy is preserved, after the process of selecting director.

Economic Consequences of Covid-19 for Bosnia and Herzegovina

Admir Čavalić *

It becomes more certain every day that the economic victims of the Covid-19 pandemic will outnumber those who will die of the virus itself. Billions of people around the globe will be indirectly affected by consequences of the global recession; more specifically, around 130 million will be pushed to the “edge of hunger”, according to the UN World Food Programme. Being a small, open, and regionally and globally integrated economy, Bosnia and Herzegovina (BiH) will not be spared. In this short essay, I will try to explain the influence of the pandemic on the national economy, and the challenges it will face this year and in the few years to come.

HOW IS BIH FACING THE CRISIS?

Regardless of the current pandemic, earlier trends indicate that 2020 has not been a very promising year in the context of BiH's economic growth. The pandemic-caused recession has thus arrived at a very unfortunate time. In the last quarter of 2019, BiH's GDP growth was only 1.6%, which is the lowest growth rate in the last five years. The economic downturn is a result of an unfortunate series of external events – the industrial production drop in Germany, recession in Italy and Turkey, Kosovo's trade barriers, and other important global developments (the trade war between the USA and China, Brexit, etc.).

Domestically, there are several structural problems in the background. One example is the increase in pension and disability insurance premiums. Done in

the Republika Srpska (RS) four years ago, and in the federation of Bosnia and Herzegovina (FBiH) at the beginning of 2020, this was a precondition for the transfer of this system to treasury operations. This transfer was an attempt by the Entities to protect pension and disability insurance from bankruptcy. This problem is highlighted by the fact that BiH is about to hit 700,000 pensioners, despite there only being around 830,000 employed persons. Simultaneously, the ‘brain drain’ is intensifying (around 60,000 people emigrated in 2019, according to data from the Union for Sustainable Return). This means that it will not be long before the ratio of pensioners to employed persons becomes 1:1, which is fiscally unsustainable.

Other problems include the poor financial operation of public enterprises, and a debt of almost 8 billion BAM, according to an IMF survey. The wage gap between the public sector and the real sector has distorted the labour market, by attracting top quality workers to the public sector. This is one of the reasons why global reports show a low productivity rate and economic competitiveness in Bosnia and Herzegovina.

In addition, some of the main obstacles to more significant economic growth include an evident lack of economic freedoms, an inadequate fiscal system, and the current laws governing business operations. With these factors in mind, it is very difficult to do business in BiH, as confirmed by a “Doing Business” report by the World Bank wherein BiH dropped to #90 on the global level (together with El Salvador and Botswana).

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The non-implementation of crucial reforms (compulsory social contributions, taxes, parafiscal levies, labour market, business registration and operations, etc.) that had originally been planned by the Reform Agenda, and then in the Joint Socio-Economic Reforms 2019-2022 document is cause for particular concern. Interestingly, this document (JSER) defines the improvement of the healthcare system as a primary reform objective. Some of the recorded healthcare problems that have become particularly relevant during the Covid-19 pandemic include poor financial management, an exodus of health workers, and a dysfunctional insurance system.

COURSE OF EVENTS

According to Nassim Nicholas Taleb, a scholar and a former risk analyst, the expectation of a viral pandemic – as Bill Gates had spoken publicly about five years ago – makes Covid-19 a “white swan”. Alternatively, the genuine “black swan” is related to the reaction of countries around the world.¹ It can cause economic problems and a global recession, which could be sensed in BiH. The idea that Bosnian companies faced business difficulties only in mid-March is delusional. As early as late January and early February hundreds of domestic companies, including a significant number of exporters, faced difficulties in their operations due to partly blocked supply chains caused by the Chinese lockdown. Additional problems were caused by the health disaster in Italy, who together with China, account for around 20% of BiH’s imports. It is only the genuine economic crisis that began in March when decisions by crisis staff and crisis management institutions (in)directly blocked over 80% of the domestic economy. The real crisis and series of economic consequences began at that moment.

CONSEQUENCES FOR THE ECONOMY

The business blockade automatically shut down hundreds of companies. On average, a company can function 2-3 months without cash before losing their cash flow potential. Even if additional cash is pumped in through support measures, there is no guarantee that the company will survive. In the short run, it can exist only as a “zombie company.”² With the full or partial suspension of economic activities,

preconditions were created for the greatest mass layoffs since the establishment of the state of Bosnia and Herzegovina. In the Federation of Bosnia and Herzegovina alone, almost 27,000 people lost their jobs. In the Republika Srpska, the number is around 7,000. Of the total labour force in BiH, 64% works in the Federation of BiH, and only 33% in the RS but that does not explain the large difference in layoff percentages. Representatives of employers believe that it is related to the fast adoption and communication of the national “corona law” in the RS, which means that the RS had a much better approach.

Some preliminary projections indicate that 30,000 to 100,000 people in the whole country will be unemployed by the end of the year, depending on how optimistic the macroeconomic scenarios are – the World Bank foresees a decrease of 3.2%, whereas the IMF, Standard & Poor’s, and the Vienna Institute project 5%. The most pessimistic scenario is presented in the FNF foundation’s report which envisages a decrease by 9.5%. When analysing unemployment rates and estimating future labour market trends, several phenomena should be considered:

- A significant number of domestic companies artificially retained all employees, anticipating the government’s support package. This means that, although they had critical issues with their operations, they did not lay off their employees because representatives of the Entity and cantonal governments communicated that companies who fire workers will not be entitled to the “corona law” benefits. It is possible that they will begin planned layoffs after the package has been distributed (in the midst of the Covid-19 pandemic the previously mentioned “zombie companies” are specific to Europe, and therefore don’t exist in the USA, which is why they have dozens of millions of layoffs there).
- Some companies came to an understanding with their employees, firing them for a fixed, targeted period of e.g. three months, which is the minimum period needed for unemployed persons to be able to qualify for support from the employment bureau. In this way, employers transferred part of the crisis burden to the government.
- It is possible that for each new unemployed

person in BiH, there will be an additional one forced back from their work abroad due to the global recession, or who unable to take seasonal work in neighbouring countries (due to the tourism collapse in Croatia, Slovenia, and Montenegro). As these are mostly young, seasonally employed men, there is a concern that it will create a critical mass for social unrest similar to that which we witnessed back in 2014.

The unemployment support incurs additional costs for the employment bureau amounting to 8 million BAM per month just in the FBiH. This has become another consequence of the crisis, related to budget pressures and instability. Costs of unemployment insurance, health and protection needs, and expectations to support businesses through the “corona laws” are rising. The government has committed to the regular payment of pensions and other social benefits. Yet, public revenues have decreased by 20-35%, depending on the government level. The direct collection of taxes dropped (companies were blocked) as early as March, and indirect tax collection started recording a downward trend in April (98 million BAM less based on VAT). This results from the drastic decrease of public consumption, which accounts for the largest share of the GDP in BiH, and served as the basis for the aforementioned macroeconomic projections.

FUTURE PROJECTIONS

Additional debts are a necessity for BiH to maintain normal economic and social relations i.e. fulfill all previously assumed budget obligations (a relatively cumbersome public sector). Depending on needs and capacities, every government level will incur larger or lesser additional debts this or next year. It is estimated that the recovery will require around 2 billion BAM. BiH does not have the conventional monetary policy instruments, instead it has a currency board institution. The Central Bank of BiH operates under this arrangement with the following characteristics: full coverage of monetary liabilities with foreign exchange reserves, it has to use reserve requirement as a monetary policy instrument, it is banned from extending loans and operations in the open market, and the national currency exchange rate is pegged to the euro as its “anchor currency”. The currency board must not be jeopardized,

especially now, during the crisis, because monetary stability is the basis for the functioning of the remainder of the system, and as such, it is priceless. However, this leads to the country’s dependence on international debts. It is for this reason that the preservation of the existing monetary system has been the implied, and only, condition for the current 330 million euro debt to the IMF through the *rapid financing instrument*.

Domestic debt will also grow, and intense efforts have already been made to address it. In mid-April, the RS issued bonds with only 48.04% success, which is an indicator of negative market perceptions of this Entity’s creditworthiness. A few days earlier, another small issue was successfully organised, but only because it was “saved” by neighbouring Serbia through the Komercijalna banka a.d. Beograd. It is interesting since Serbia itself also has problems, and its debt-to-GDP ratio is already at approximately 52.4%. For this and other economic restrictions, Serbia’s future support to the RS can only be symbolic.

It is certain that with the relative debt-to-GDP ratio of 48.89% (compared to 27.52% in FBiH) the RS will have significant problems with obtaining the required capital. The global and national recession will strip BiH of 3-5 years of economic life before the country can regain its previous average annual growth values of 2-3%. According to available reports, the biggest risks are related to long-term unemployment, stagnation or drop of real wages, decrease of remittances and the diaspora’s participation in the economy (around 10% of the GDP), and the chronic illiquidity of the public and private sectors. This decreases the economic growth potential which are determined by the level of success in the repayment of currently indispensable debts. This poses a risk for an additional fiscal burden on taxpayers (maybe a differential VAT rate of 21%), and poorer healthcare, education, and other public services.

Nevertheless, due to its specific constitutional setup, BiH will not face the “Greek scenario.” Namely, the complexity of political decision making implies a difficult borrowing process, which proved to be the case in the most recent example of obtaining, and the effective use of, the IMF loan. Fiscal

decentralization – the Entities, cantons – decreases credit potential and increases the likelihood of bankruptcy; not of the government (like Greece), but of individual administrative units in Bosnia and Herzegovina (the Entity, cantons, the District, cities/municipalities). The need for borrowing is not created on the state level, but on lower government levels that are fiscally more conservative by nature, which means that there is no agreement about the determination of needs for a loan. With this in mind, BiH is a moderately indebted country.

CONCLUSION

BiH is not doing “the worst” in the region as far as the economic collapse caused by the Covid-19 pandemic. Like its territory, BiH’s economy is somewhere between Croatia (-11%) and Serbia (-4%). Unlike Croatia which is overly exposed to tourism, and Serbia which focuses on the domestic demand, as an industrial country BiH suffers the most damage from stoppages in global supply chains and industrial contracts in the region, the EU, and the world. This is why the stabilization of the national economy implies two strategic objectives – maximum economic preservation during the crisis (compensations due to lockdown measures, budget stability etc.), and the uninterrupted functionality of the BiH economy (opening up, liberalization of measures) as well as movement of goods/people across the borders. This means intensifying the Euro-Atlantic integration process, strengthening the CEFTA, and even somewhat more radical ideas such as the “small Schengen”, or the particularly relevant Western Balkans “travel bubble” during the pandemic. ■

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ENDNOTES

- 1 **A black swan** is a highly improbable event with three principal characteristics: it is unpredictable; it carries a massive impact; and we concoct an explanation after the fact that makes it appear less random, and more predictable, than it actually had been. **A white swan** is a highly certain event with three principal characteristics: it is certain; it carries an impact that can easily be estimated; and, after the fact, we concoct an explanation that recognizes the certainty of occurrence, but again, shifts the focus to errors in judgment or some other human form of causation. These concepts were developed by Nassim Nicholas Taleb and are widely accepted in economics. They are especially relevant in times of great (low probability) crises like Covid-19.
- 2 In a political economy, a zombie company is one that needs bailouts in order to operate.

European Solidarity in the Time of Pandemic

Adi Ćerimagić¹

On Sunday, 15 March 2020, citizens of six Western Balkans countries woke up feeling fearful and uneasy. By that morning, 137 persons in the region had tested positive to the new coronavirus, and one person died in Albania. Governments throughout the region were beginning to introduce rigorous social distancing measures. Kindergartens, schools, and universities were closed down, sporting and cultural events were cancelled, and some countries went so far as to introduce a curfew prohibiting all activities outside the home for persons under the age of 18 and above 65. Warning signs and reports had been coming in for weeks from countries where the virus had practically stopped all activities and completely turned life around.

That evening, the Government of the Republic of Serbia decided to proclaim a state of emergency. In his 25-minute address to the public, the Serbian President Aleksandar Vučić announced that “As of today, Serbia is at war with an invisible, dangerous, and vicious enemy that our country must beat.”¹ In the fifteenth minute of his speech, he explained that on the international level, Serbia was hoping to receive support from the National Republic of China, because they “realized that there is no European solidarity. It is a fairy tale on paper.” Earlier that day, Vučić explained that the EU had decided that “we cannot import goods from the EU. Ursula von der Leyen said that we can no longer import medical supplies from the European Union.” He added that this decision made him “jump out of his skin.”²

In the days that followed, the regional media wrote about the “scandalous decision from Brussels” to ban imports of “medications and ventilators.”³ They wondered if “the EU abandoned the Western Balkans”.⁴ In an interview for the German DW, BiH Presidency member, Milorad Dodik said that he was “disappointed with the EU’s treatment of the whole region, not only BiH, in the context of the pandemic.”⁵ In his letter to the Chinese President Xi Jinping, Dodik noted that we were “abandoned by Europe, relying on you and hoping for China’s assistance.”⁶

They tried to create a regional, national, and international public impression that the EU abandoned the Western Balkans countries during the biggest global health crisis in the last 100 years.

The book *Win Bigly: Persuasion in a World Where Facts Don't Matter* by Scott Adams, tries to make sense of Donald Trump’s ability to persuade the public toward falsehoods. Adams wrote that masters of persuasion are like hypnotists, saying; “Hypnosis is a powerful tool, when it is working in the same direction as people’s existing urges.”⁷

That same week [of 15 March], Aleksandar Vučić tried to use the European Commission’s decision to deepen the already existing impression that the European Union does not care about the Western Balkans. Without a detailed public opinion survey from before and after the initial pandemic wave, it is hard to determine whether President Vučić managed to deepen this belief in Serbia and the region,

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but it is easy to check what the EU has done for the region up to and since that point.

Let's start with allegation that the European Commission's decision of 15 March prevented "the import of medical equipment from the European Union."⁸ The European Commission's decision was motivated by a desire to stop the distortion of the EU market, which began when some member states, Germany and Switzerland, announced restrictions on the export of protective medical equipment, thereby threatening to undermine the basic principles of the free and single market. The Commission's decision was not related to the export of medical equipment, but to five products that are used as personal protective equipment (PPE): protective glasses and visors, protective face masks, mouth and nose protection equipment, protective clothes and gloves.⁹ With the fulfilment of certain conditions and approval by governments of member states, exports of these goods could continue, and contrary to public belief, the decision did not apply to ventilators, medications or other medical equipment.¹⁰

As early as March, the European Commission allocated 38 million EUR to support the medicinal response to the pandemic. With this money, six regional EU delegations financed the purchase of protective medical equipment (on the non-EU market), ventilators, tests and equipment required for the new coronavirus tests, as well as flights to deliver the equipment from China or India. In late March, the European Standardization Organization - in agreement with the European Commission - enabled free access to European standards for medical equipment to all manufacturers of medical equipment in the Western Balkans. In this way, they opened the path for manufacturers to start producing medical equipment in accordance with EU standards, without initial costs.

In the beginning of April, all Western Balkan countries were invited (and accepted) to participate with the EU governments in a joint purchase of medical equipment on the global market. The Government of the United Kingdom rejected this initiative, but faced criticism by the public and by experts. If necessary, the Western Balkan countries also have access to medical equipment reserves that

have been provided by the European Commission to EU Member States needing outside assistance.

The European Commission's support did not stop with the health risk posed by the pandemic. By the end of April, over 100 citizens of the Western Balkans were able to return home thanks to the European Commission's initiative. The EU offered a financial package of EUR 3.3 billion to the region¹¹ including macro-economic support to the Western Balkans countries in the amount of EUR 750 million, of which 250 million EUR were sent to BiH. The European Investment Bank also promised support in the amount of 1.7 billion EUR. Additionally, four Western Balkans countries (Montenegro, Serbia, Northern Macedonia and Albania) will have access to the EU Solidarity Fund, if they fulfil certain conditions. Individually, governments of Member States announced plans for the increase of bilateral financial support to the Western Balkan countries.

Perhaps the most important non-health contribution by the European Commission to the Western Balkans is related to the region's inclusion in the "green roads" initiative which enabled, to the benefit of both sides, the free flow of goods within the region and with the EU. This initiative played a large role in minimizing the decrease in the exchange of goods and market supply.

When the Serbian President, Aleksandar Vučić announced that "European solidarity does not exist" and that it was "a fairy tale on paper", Europe really needed solidarity, not with the Western Balkans countries, but with those countries and regions that were in the epicentre of the European and global pandemic of the new coronavirus. Namely, by 15 March, there were no recorded deaths caused by the coronavirus, and the country had a total of 48 persons who tested positive. The situation was similar in the rest of the region. On the other hand, that same day, four European countries - Italy, Spain, France and Germany - reported around 7,000 new cases and 506 deaths in only 24 hours. Healthcare systems in Spain and some regions in Italy were facing collapse.

Here, some politicians in the Western Balkans missed their chance to demonstrate that European solidarity is a two-way process. One exception was

the Albanian government who, at the end of March, sent a team of medical workers to Italy to support the pandemic response efforts.

Foreign ministers from the Western Balkans constitute another exception. In a joint letter to the European Commission, they requested that Western Balkan countries be exempted from the [15 March] decision, and that the Western Balkans countries and the EU offer a joint response to the pandemic. The European Commission accepted their initiative and exempted the Western Balkans from its decision on 15 March. Additionally, they provided fairly extensive and diverse support in equipment and funds.

It is yet unknown what kind of support has been provided by China, Russia or other non-EU Member States. According to politician statements, it seems that the majority of goods that have arrived from non-EU Member States were purchased at often higher prices and of lower quality than those from EU Members states, and that they received disproportionately higher levels of public attention. This is supported by the declaration from the Zagreb summit, which brought together leaders from the EU and the Western Balkans. The declaration reads that the “support of and cooperation (with EU) [during the pandemic] has exceeded everything that was provided by other partners to the region, and it deserves to be publicly acknowledged.”¹² However, there are still many people in the Western Balkans who believe that the EU abandoned them. Reasons behind this claim can be found in the Scott Adams’s book and his theory about the success of political hypnotists. The EU is not able to fight *the hypnotists* alone; it needs politicians, observers and citizens in the region who see the region’s interest more broadly, who look farther and clearer instead of focusing on one single point, which is mostly misinterpreted. ■

ENDNOTES

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