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THE COVID-19 PANDEMIC AND HUMAN RIGHTS

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The COVID-19 Pandemic and Human Rights

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EDITOR'S NOTE

By Tanja Porčnik*

Any pandemic is not only a threat to the health and safety of the people but may also lead to other significant threats to them.

In times of great national uncertainty, the government is called upon to act, and the present pandemic is no exception. In responding to the COVID-19 pandemic exigencies, governments around the world have taken vast and unparalleled decisions to contain the spread of the Covid-19 virus and protect lives. Indisputably, many of those measures have directly or indirectly curtailed our human rights and freedoms.

Crucially, in such times, policymakers are not only expected to impose and enforce proportionate legal measures to address the pandemic, but also should maintain or even strengthen an institutional environment with secure rights and freedoms that will enable the country to better cope with the crisis and recover from it more quickly afterward.

In this context, the most important question is, have human rights shaped responses to an unprecedented and global crisis, or have they been mandated at their expense? Also, have coronavirus emergency measures perhaps been abused for attacks on human rights?

It is with great pleasure that I present Issue 6 of *The Visio Journal* that features four papers exploring the answers to these and other related questions. In the first one, Dr. Vlad I. Roșca analyzes how the COVID-19 crisis exposed Third Country Nationals (TCNs) in Romania to yet another risk of vulnerability to the dangers of social exclusion. Many of TCNs working in Romania are from South Asia and most of them are low-skilled workers employed in the primary or secondary sectors of the economy. Poor standards of living, , inadequate public policies, and delayed political decision-making in Romania have done little else than to deprive TCN workers of some basic human rights, while also increasing their vulnerability and exposing their host communities to even higher health risks. This article investigates if and how the human rights of South Asian TCNs in Romania were respected in the wake of the COVID-19 pandemic of 2020, and what effects there were on their quality of life and standard of living.

Next, Dr. Spyridon Vlachopoulos explores the danger of the gradual consolidation of a *constitutional mithridatism*. With mithridatism being the practice of protecting oneself against a poison by gradually self-administering non-lethal amounts, the author defines *constitutional mithridatism* as the danger of tolerating any restrictions on our rights, even after the end of extraordinary circumstances. Because even after their end, there is a risk that these restrictions on individual rights and freedoms will continue or intensify. How do

we defend our values, rule of law and democracy, while we aim to tackle the coronavirus pandemic?

Third, Aldina Jahić, Merisa Hasić, and Admir Čavalić study a broad spectrum of human rights and freedoms restrictions in Bosnia and Herzegovina, while considering two significant characteristics of the country. First, Bosnia and Herzegovina is a decentralized country, which means that COVID-19 measures are partially adopted by different governments of the same country. Second, the Constitutional Court of Bosnia and Herzegovina, which is not only independent but also protective of liberal values like the human rights, has issued a series of decisions where the government's measures to address the COVID-19 pandemic have been declared unconstitutional. These and other cases of human rights infringements are analysed in their paper.

Fourth, Igor Šlosar highlights that COVID-19 lockdowns and other restrictions on movement and association led to people spending more time at home than earlier. Only as the pandemic extended from initial few weeks and months, second-hand consequences of restrictions became noticeable. One of those is the rise in domestic violence. Often, the victims of such violence are women. Since the pandemic struck, Croatia has experienced a surge in cases of domestic violence and an increased influx of victims seeking shelter. The network of safe houses, shelters, and call centers taking in these cases was already underfunded before the COVID-19 pandemic, and the increase in cases will only exacerbate the issues already present. The Croatian government has promised funds to increase the capacities of the system, but that has yet to come to fruition. However, the author argues that no single act of government will be enough. To prevent a collapse of the support system in Croatia, which is flawed, underfunded, and slow at almost every level, change must be systemic and with wide support from the public.

Finally, I would like to recognize the generous contribution of the Friedrich Naumann Foundation for Freedom for supporting the journal that is before you.

* Tanja Porčnik is President of Visio institut and editor of *The Visio Journal*.

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The Rights and Challenges of South Asian Migrants in Romania during the COVID-19 Pandemic

By Vlad I. ROȘCA*

Since the 2015 refugee crisis onwards, the yearly quota of working permits for Third Country Nationals (TCNs) offered by the Romanian Government has gradually increased, reaching 25,000 in 2020. An important category of TCNs working in Romania are people from South Asia, mainly Indian, Bangladeshi, Sinhalese or Nepali migrants. Most of them are low-skilled workers employed in the primary or secondary sectors of the economy. Apart from the socio-cultural barriers towards integration that these migrants face, the year 2020 exposed them to yet another risk of vulnerability to the dangers of social exclusion: the COVID-19 crisis. In August and October 2020, several pest holes of COVID-19 infections have been reported in South Asian migrant communities in Romania. Poor standards of living, inadequate public policies and delayed political decision-making have done little else than to deprive TCN workers of some basic human rights, while also increasing their vulnerability and exposing their host communities to even higher health risks. This article uses a mixed method of digital ethnography and community research to investigate if and how the human rights of South Asian TCNs in Romania were respected in the wake of the COVID-19 pandemic of 2020, and what effects there were on their quality of life and standard of living. The research will focus on how public policies and measures have been employed to address the COVID-19 crisis that emerged within South Asian migrant communities in Romania and on how the rights of migrants have been respected during the deployment of such measures.

Key words: international migration, quality of life, refugees, asylum seekers, pandemic.

Introduction: South-Asian Migrants in Romania

With a maritime border with Turkey at the Black Sea and a terrestrial border with the Western Balkans, Romania has played a significant role in international immigration, especially since the refugee crisis of 2015. The Eastern European country has a rich history of outbound migration (see Vilcu, 2014) dating back to the early 1990s, when, after the

fall of Nicolae Ceaușescu's Communist Regime, many Romanians sought a new life in France, Germany, England or the United States. The image of the Romanian migrant, however, started to be shaped after the country's admission to the European Union on January 1, 2007, which meant greater work opportunities for the native population (Nicolae, 2011; Șerban, 2015). Italy and Spain became emblematic destinations for Romanian labor migrants (Șerban and Voicu, 2010), and allegedly four million Romanians currently live outside the country's borders, accentuating the braindrain phenomenon (Boncea, 2014). This demographic imbalance led to a labor market deficit, leaving many low-paid jobs and positions unoccupied. Consequently, a labor immigration trend also started to emerge during the 2010s in Romania. In 2020, more than 6000 asylum requirements were filed in Romania, not to mention the labor immigrants from third countries (Costea, 2021). Traditional migrant flows to Romania mainly originated from neighboring countries such as the Republic of Moldova or the Ukraine, or from Turkey (Popescu and Toth, 2011). However, many of the Moldovan, Ukrainian or Turkish migrants came to Romania not for employment, but for studies, for setting up businesses, or as an intermediary step towards further Western migration (Omer and Cupcea, 2017). In this context, more and more employment opportunities emerged for South-Asian migrants.

Despite their growing numbers, the presence of Indian, Bangladeshi, Sinhalese or Nepali migrants in Romania is rather overlooked by public authorities, as well as largely neglected in the national scientific literature. Prior to 1989, during the communist regime, Asian and African migration to the Socialist Republic of Romania was rigorously contained and limited to some exchanges with fellow communist states (Gheorghiu and Netedu, 2015). Most migrants from former communist Asian states came to Romania for studies and returned home after graduation. During the 1990s and 2000s, Asian migrants came to Romania for trade businesses or to find work doing household chores. Large, impressive China Markets opened mainly at the outskirts of Bucharest and Constanța during the 1990s, while nowadays, nearly every middle to big city in Romania hosts one or more Chinese shops, where "Made in China" products ranging from toys to hats, notebooks or items of clothing are sold (Cioculescu, 2018: 338). For many other Asian migrants, Romania only represented a transit country on the road to Western Europe. Lately, though, Thai, Filipinos and Vietnamese people have found employment with wealthy new-rich families in search of babysitters or housekeepers (Ștefănuț, 2011), while more recently, a newer wave of South-Asian migrants emerged after the early 2010s, with Indian, Bangladeshi, Sinhalese or Nepali migrants finding employment in construction and hospitality (Oltean and Găvrus, 2018).

This research uses a macro perspective to look at the issues of challenges of South-Asian migrants, refugees and asylum seekers in Romania over the months that have gone by since the spread of the COVID-19 virus at a global level, in early 2020. The paper looks at social implications and communitarian issues among South-Asian TCNs since COVID-19

was declared a global pandemic by the World Health Organization. One of the main limitations of this research is that it has an exploratory goal, namely to clarify some aspects regarding the South-Asian migrant community in Romania during the COVID-19 crisis and to familiarize the researcher with a topic whose details will be developed in future studies (Stebbins, 2001). This paper therefore lacks rigorosity and thoroughness, being more a collection of ideas on the condition of South-Asian migrants in Romania during the COVID-19 epidemic.

The COVID-19 pandemic and migrants

Reports indicate that, in Northern European countries, migrants have a greater exposure to the COVID-19 virus in comparison to local residents (Drefahl et al., 2020, cited in Indseth et al., 2020). As pointed out by Jora (2020, 30), the COVID-19 pandemic is likely to deepen social inequalities in most aspects of life, from money to jobs, and education to healthcare. When such major crises impact humanity, socially vulnerable groups are exposed to greater burdens than regular populations. Migrants, refugees and asylum seekers are among the social categories that face high risk of having to deal with a diminished quality of life as a result of the pandemic (Cimpoeru et al., 2020; Schweitzer, 2015). The COVID-19 crisis can pose serious challenges to the social integration and human rights of these vulnerable individuals (Arroyo et al., 2021; Falkenhein et al., 2021). The already greatly restricted economic, educational, housing, medical and social integration options for migrants, refugees or asylum seekers now decrease even further.

South-Asian labor migrants, refugees or asylum seekers are among the most vulnerable social groups living in Romania. Most of them come to Romania to pursue employment opportunities. The vulnerability of these migrants starts in their native countries, where, in addition to the unequal access to decently paid jobs, people who decide to go abroad have to pay placement fees to recruitment agencies that find jobs for them in collaboration with partners overseas (Lindquist, Xiang and Yeoh, 2012; Kern and Müller-Böker, 2015; Shresta, 2018). Once in Romania, the position of South-Asians is not the most enviable. Since Romania is not a destination country for TCNs, but primarily a transit country towards Western Europe, the migration phenomenon and related public discourse are not as extensive in Romania as they are in Germany, France, the United Kingdom and Belgium (Băiașu, 2018; Düvell, 2012). Migration was not a priority for the Romanian government before the outbreak of the COVID-19 crisis, and it is even less now, when most public attention and resource allocation are directed towards combatting the epidemic. Migrants, refugees and asylums seekers from outside the European Union face the danger of marginalization at an even greater level than before COVID-19 (Alio et al., 2020). Their basic human rights, like the right to medical care, risk being pushed to the limit due to lack of public attention. If public discourse around TCNs was previously concentrated around attempts at socio-economic integration, a public health dimension now needs to be considered, because TCNs can be transporters of the virus. While bringing the virus from

the native country should not normally happen, since negative COVID-19-tests are now needed to travel abroad, migrants can become carriers of the virus within the host country due to several reasons.

With precarious living conditions, migrants and refugees live in socially and environmentally backward neighborhoods when compared to an average of the population. Such unfortunate locative aspects were among the causes that accelerated the spread of two infection outbreaks in the summer of 2020 in Bucharest in Romania. One of them concerned 34 Nepalese and Indian migrants working on a construction site (Digi24.ro, 2020) while the other involved 42 Nepalis working for a car dealership (NepalPlus, 2020). Overall, by mid-November 2020, more than 500 Nepalese workers in Romania had had the virus (Ibid.). The precarious housing conditions of many South-Asians in Romania (compared to the local population, see Anghe and Coşciug, 2018; Burean, 2018) can be considered a starting point for the increased vulnerability to the epidemic. Unable to pay rent alone, South-Asian migrants often choose to share living space. This leads to overcrowding, which makes it nearly impossible to respect physical distancing measures that might protect against infection. More than that, overcrowding can also lead to accelerated spreading of the disease (Singh et al., 2020). Other migrants – especially those in the construction sector – live in barracks at or near the work site (Popescu, 2007). This agglomeration in living spaces can be a cause for the communitarian spread of the virus. If labor migrants in general live in rented flats, the more vulnerable groups such as refugees or asylum seekers are left with the options of assistance from non-governmental organizations or residence in the refugee camps offered by the Romanian state. The living conditions in the latter are not necessarily ideal; habitation spaces are minimal and cleanliness leaves much to be desired (Deutsche Welle, 2017). TCNs are thus in additional psychological and social distress due to these precarious living conditions (Speltini and Passini, 2014). Having to deal with dirtiness during a global pandemic when so much emphasis is placed on public sanitation can be seen as negligence with regard to the basic human rights of refugees or asylum seekers. Efforts to improve cleanliness are minimal, as are actions towards an increase in the quality of life and the provision of basic human rights (Jack, Anantharaman and Browne, 2020). The public housing policy concerning migrants ought to be re-evaluated in the wake of the COVID-19 pandemic, since the usual overcrowding can lead to increased rates of infection (see more in Benfer et al., 2021). The situation is even more dramatic for refugees and asylum seekers that have entered Romania from Serbia and Hungary via the Western borders of the country in Timiș County during the COVID-19 crisis, as evidenced in a report of Radio Free Europe Romania (see Armanca, 2020): due to the lack of locations for placing them in the 14-day mandatory quarantine when entering the country from abroad, these vulnerable people have had to be kept in the custody of the local police. However, the police do not have enough facilities for all the refugees and asylum seekers, which again leads to overcrowding (up to four people in a room). Armanca's report also shows that these refugees and asylum seekers are entitled to only 16 Lei a day (app. 3 Euros and 20 cents, at the exchange

rate of March 15th, 2021), and only if they declare that they do not have any financial means. Food and other basic care products are offered by local NGOs. Those released from police custody eventually end up living in abandoned houses in Timisoara or in other adverse conditions (see Armanca, 2021).

Another aspect of their vulnerability lies in the fact that the majority of South-Asians in Romania are not employed in knowledge-based jobs that might be done remotely, but rather in restaurants, hotels, construction or daycare and family care, which all require physical presence (Țupulan and Safta, 2012). Yet another aspect to be considered is that many of the jobs in which South-Asians were employed, such as those in the hospitality sector, were shut down because of the pandemic. One of the popular sectors of activity for South-Asians in Romania is the daycare/family care industry, where many work as nannies or housekeepers. However, with families fearing the virus, many such agreements were cancelled. Migrants became unemployed in a country whose language they did not know, having to deal with this situation and with public authorities at the same time.

If, to a certain extent, labor migrants enjoy more stable conditions, since they are employed and receive a wage, the situation is more dramatic for refugees or asylum seekers who enter Romania without all the required documents, such as medical certifications or affiliations and school diplomas. The rights of undocumented migrants within the host country and their possibility to act are, thus, reduced. Immigrants are therefore exposed to the risk of not receiving proper medical care in the middle of a global pandemic. Even for labor migrants, a contractual relationship with an employer does not necessarily mean adequate protection from the coronavirus. Moreover, there is also a stigmatization risk, since these foreigners can be regarded as possible spreaders of the disease. On a global level, the danger of COVID-19-induced stigmatization is amplified by already existing xenophobic and racist attitudes against TCNs (Guadagno, 2020), although in Romania it could be said that anti-immigrant sentiment is on a rather minimal scale and mostly unmanifested in collective behavior.

Often being emotionally and sometimes even physically exploited by their employers, immigrants and refugees face the risk of social exclusion, since they have limited connections to public authorities that might help them (Mannila and Rueter, 2009). Due to the fact that many third country nationals (TCNs) barely understand the Romanian language, let alone speak it properly, the establishment of a connection with authorities becomes a challenge, while building trust is even more so. As if such barriers were not enough, according to a recent UNICEF report based on a survey conducted in 159 countries, the national response strategies to the COVID-19 pandemic and the related recovery plans have excluded migrants from key human rights (UNICEF, 2020). Access of migrants to essential services, including healthcare, has significantly declined compared to pre-pandemic times. The poor connection between immigrants and public authorities places respect for the human rights of TCNs in jeopardy.

Conclusions and Recommendations

Non-EU migrants, refugees and asylum seekers represent one of the most vulnerable social groups during the global COVID-19 pandemic. Gaining knowledge about their state during the pandemic is important, both from a scientific and from a practitioner's perspective. Gaining further insight into the position of TCNs with respect to the COVID-19 virus could lead to the development of knowledge that could be used to prevent the transmission of the virus. Several research approaches can be used in order to gain a better understanding of prevailing conditions. Using an individual approach, the cognitive and emotional processes of TCNs can be studied in order to understand how these people are affected by the crisis. What might be more interesting for future research, though, is a communitarian perspective, since migrants often live and work in groups, leading to shared decision-making and shared experiences that can hinder or accelerate the spread of the coronavirus, as was the case with the two outbreaks of infection in Romania in the summer of 2020. Functional, structural, or institutional perspectives can be used for studying the communitarian impact in order to develop an understanding that could subsequently be used in public planning and policies aimed at reducing the transmission of the coronavirus.

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Constitutional Mithridatism: Fundamental Rights in Times of a Pandemic

By Spyridon VLACHOPOULOS*

Measures to combat the coronavirus pandemic have limited a number of fundamental rights to an unprecedented extent. The rights of economic activity, movement, assembly and religious worship have been subjected to the most severe restrictions.

Here, however, lies the great danger of the gradual consolidation of a constitutional mithridatism, which will make us addicted to the idea of losing our fundamental rights for the sake of protecting superior legally protected rights. Mithridatism is the practice of protecting oneself against a poison by gradually self-administering non-lethal amounts. The word is derived from Mithridates VI, the King of Pontus, who so feared being poisoned that he regularly ingested small doses, aiming to develop immunity. Recently, however, the term has resurfaced in the context of the coronavirus pandemic and the adoption of emergency measures restricting fundamental rights. In this context, two points should be stressed: first, the recent measures are justified to protect the health of a large number of our fellow citizens, but they are an exceptional case that cannot be repeated in the face of any other 'enemy'. And, second, even in dealing with the coronavirus pandemic, the rule of law sets inviolable limits. It would be, for example, obviously unconstitutional in European liberal democracies to place cameras in public places and create a new Big Brother.

The issue is similar (without, of course, being the same) to that resulting from modern terrorism, especially after the attacks of 11 September 2001. At that time, there were many who were in favor of a super right to security and of the complete abolition of a series of individual rights, like the right not to be tortured, to human dignity, to communications confidentiality, and the right to a fair trial, in order to protect humanity from terrorism. But the European legal order resisted these attempts. The European Court of Human Rights (ECtHR) declared (Gäfgen v. Germany, 22978/05, 2010) that torture was not justified even for the disclosure of the most heinous crimes, while the German Federal Constitutional Court (1BvR 357/05, 2006) ruled as unconstitutional (contrary to human dignity) a provision of the German Aviation Security Act allowing the armed forces to shoot down aircraft intended for use in acts of

terrorism (this specific case involved an aircraft with crew and passengers that had been hijacked and flown to a residential area).

This paper intends to deal with the following questions: Can the suspension of fundamental rights in order to tackle the coronavirus pandemic threaten the health of democracy? Constitutional mithridatism refers to the danger of tolerating any restrictions on our rights, even after the end of extraordinary circumstances. Because even after their end, there is a risk that these restrictions on individual freedoms, such as our privacy, will continue or intensify with the use of new technological applications. How do we defend our legal culture?

Key words: mithridatism, pandemic, restrictions, human freedoms, fundamental rights, coronavirus.

I. What does Mithridates have to do with Modern Constitutional Law?

As was often the case with Kings, Mithridates VI (120-63 B.C.), the last King of Pontus in Hellenistic times, feared that his enemies would poison him. For this reason, he gradually administered to himself an increasing non-lethal dose of poison, aiming for his body to become addicted and slowly develop immunity against the poison. It is said that after his defeat by Pompey, when Mithridates wished to commit suicide with poison, he failed, because he had acquired full immunity (World History Encyclopedia, 2017). Thus, he begged a mercenary (in a different version of the story it is one of his servants) to kill him with a sword. In another version, he was unable to kill himself with poison, because he had used at least half of the poison he always had with him to kill his two daughters, with the further consequence that the rest was not sufficient for his suicide. The strategy Mithridates used not to be poisoned by enemies led him to not be able to choose the way he wished to die (Mayor, 2010; Tsatsakis et al., 2018).

The method of Mithridates went down in history and is known by the term 'mithridatism'. This term is used metaphorically to denote those cases when a person gradually becomes addicted to something negative, so that he accepts it and does not perceive its negative character. That is, in other words, the gradual habituation and acceptance of dangerous and negative situations and qualities. The term 'mithridatism' is used very often, with various reasons and in different relevance each time, not only in political vocabulary and in media articles, but also in legal theory. Most recently, in 2020, this term was revisited in the context of the COVID-19 pandemic and the adoption of emergency measures limiting fundamental rights. It was specifically written that there is "the great danger of the gradual consolidation of a 'constitutional mithridatism', which will make us addicted to the idea of losing our fundamental rights for the protection of superior legal goods ..." (Vlachopoulos, 2020a).

II. The Modern Dimension: 'mithridatism' and the measures to tackle the COVID-19 pandemic.

A. Health Protection as the Foundation of Restrictive Measures.

The Greek Constitution enshrines the right to health and to life in more than one of its provisions. Article 5, Paragraph 2 states emphatically that those residing on Greek territory enjoy the absolute protection of their lives. Furthermore, and in relation to the right to health, Article 21, Paragraph 3 provides that the "state cares for the health of citizens", while Article 5, Paragraph 5 states that everyone "has the right to health protection". Therefore, the adoption of positive measures on the part of the state to protect the health of citizens is an explicit constitutional imperative. By invoking the abovementioned constitutional provisions, it is justified in principle to temporarily restrict certain individual rights in the interest of curbing the spread of acute contagious diseases (Vlachopoulos, 2020b; Kontiadis, 2020, Papatolias, 2020). Thus, in order to address the COVID-19 pandemic, the economic freedom (Article 5, Paragraph 1), the freedom of movement (Article 5, Paragraphs 3 and 4), the right to privacy (Article 9A), the right to assembly (Article 11) and the freedom of the religious worship (Article 13, Paragraph 2) were, in principle, restricted permissively, as is the absolutely held view in theory (Doudonis, 2020; Karavokiris, 2020). Let us not forget that the existence of life is a prerequisite for the exercise of all human rights and furthermore that the state "is entitled to claim from all citizens the fulfillment of the debt of social and national solidarity" (Article 25, Paragraph 4). The temporary restriction of some fundamental freedoms is a preeminent manifestation of social and national solidarity in order to deal with a pandemic and save the lives of our fellow human beings.

B. Limitations of Restrictions. Human Dignity, Equality Before the Law, Proportionality and the Core of Human Rights.

However, the above does not mean in any way that the invocation of coronavirus justifies the adoption of any restrictive measures. In fact, there is the danger of gradual consolidation of a constitutional mithridatism which will make us addicted to the idea of losing our fundamental rights for the protection of superior legal goods. Three points should therefore be highlighted. First, the recent measures may be an exceptional case of a temporary nature. And here is what has been stated on a more general level: "[T]oxic treatments are necessary in some cases, but they should not go on for long as if it were a dogma" (Council of Europe, 2020). Second, no other legal good and no other danger, either political or economic or of any other character, can justify such measures. And, third, even in dealing with the coronavirus pandemic, the rule of law, as it is signified by the principles of human dignity, equality before the law, proportionality, and the obligation to respect human rights, sets inviolable limits. It would be, for instance, unconstitutional in Greece to place cameras in public places and create a new "Big Brother" with an intent to ensure that those who violate the quarantine are caught and punished. It would be

similarly unconstitutional to allow mass surveillance of telephone and electronic communications of citizens. It is one thing to prosecute and punish those who violate the restrictive measures to curb the spread of COVID-19 by revoking the confidentiality of communications in individual cases with judicial approval (as defined in the provisions of Article 19 of the Greek Constitution and the criminal law in Greece), but it is a completely different issue to revoke the confidentiality of communication for the whole society or for some groups of citizens.

In Germany, Lepsius (2020) argues it would be unconstitutional to make exercise of individual freedom of movement conditional on the prior permission of the administration. Oliver Lepsius also questions the logic of closing bookstores and flower shops, and strongly objects to the ban introduced in Bavaria, a federal state of Germany, on the use of public benches. To him, these measures are not only an "insult to reason" (Ger. "Beleidigung des Verstandes") but also a "loss of legal logic" (Ger. "hat den juristischen Verstand verloren").

A joint statement on the principles of the rule of law in times of COVID-19 from 2 April 2020 by sixteen member states of the European Union (Belgium, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Spain, and Sweden) argues for the legality of the extraordinary measures to protect their citizens and overcome the crisis. However, they also express concern about violations of the principles of rule of law, democracy and fundamental rights that may result from these emergency measures. As stressed, urgent measures should be limited to what is strictly necessary, they should be proportionate, temporary in nature, be regularly reviewed, not restrict freedom of expression, and respect obligations under international law.

It is unquestionable at this point that the effort to tackle the coronavirus pandemic will feed the constitutional dialogue on human rights for a long time. The issues that may arise are many and of different natures. For example, is compulsory medical examination or compulsory vaccination consistent with national Constitutions worldwide, e.g., in Greece, USA and Brazil (Mariner, Annas and Parmet, 2009; Papaspyrou, 2019; Pierik, 2018; Chemerinsky and Goodwin, 2016; Holland, 2012; Bustamante, Meyer and Tirado, 2020)? Is an employer legally allowed to require the employee to have medical exams or to produce a certificate showing that she is not a carrier of the coronavirus? Can an employer disclose medical information about his employee (e.g., that she is/was infected with COVID-19 or that there is such an incident in her family) to other employees or clients of the company? Is it legally allowed to ask anyone entering a country for a medical certificate, even if it is for travel within the European Union? This study does not aim to answer all these questions and many similar ones that will arise in the future. Instead, its main focus is the starting point from which we can begin addressing them. Will it be decided in the name of the protection of public health that any restriction of individual rights

and freedoms is permitted or, on the contrary, will it be accepted that the legal order sets inviolable limits, as they arise mainly from human dignity, equality before the law, proportionality of measures, and respect for human rights? The answer to this dilemma will determine the resilience of fundamental rights and the rule of law in emergency situations. As the Council of Europe (2020) points out: "The virus is destroying many lives and much else of what is very dear to us. We should not let it destroy our core values and free societies".

C. Constitutional Case Law on Pandemic Issues. From the Bubonic Plague of 1900 to the COVID-19 of 2020.

The constitutionality of the measures taken to combat pandemics has preoccupied jurisprudence since the first year of the twentieth century. More specifically, in 1900 when bubonic plague occurred in San Francisco, U.S. public health authorities ordered citizens of Asian descent to be vaccinated with an experimental vaccine that caused severe side effects. As this was ruled unconstitutional by a U.S. federal court in *Wong Wai v. Williamson* (103 F. 384, 1900), San Francisco health authorities quarantined the city's Chinese quarter. However, this measure was also ruled unconstitutional by a U.S. federal court in *Jew Ho v. Williamson* (103 F. 10, 1900). In particular, it was declared that this order was in breach of the principle of equality, since it limited quarantine only to the Chinese. The language used by this court was particularly unforgiving, ruling that the quarantine order had been the result of "an evil eye and an unequal hand" (Mariner, Annas and Parmet, 2009). However, five years later, in 1905, a related case was assessed by the U.S. Supreme Court. The court in *Jacobson v. Massachusetts* (197 U.S. 11), ruled that the law providing for the mandatory vaccination of the population to treat smallpox and imposing a fine of \$5 (about \$149 in 2021 standards) for violations was constitutional. In particular, the Court justified the constitutionality of the restrictions on individual liberty on the grounds that they were reasonable and necessary for the protection of public health. In the same ruling, the Supreme Court recognizes that it would be constitutional to quarantine an American citizen arriving in a U.S. port by ship with cases of yellow fever or Asiatic cholera. This citizen could be constitutionally held in quarantine on board such vessel, or in a quarantine station, until the risk of the disease spreading among the community disappeared.

From the beginning of the 20th century in the United States, let us move to Europe in 2020. The restrictive measures in response to the COVID-19 pandemic have already begun to become the subject of judicial review, particularly at the level of temporary judicial protection. The Greek Council of State (The Supreme Administrative Court in Greece) in its 49/2020, 60/2020 and 2/2021 decisions rejected application of temporary judicial protection concerning restrictions on religious ceremonies in churches and other places of religious worship. These applications were rejected on the grounds that there were overriding reasons of public interest, which consisted of safeguarding human health (Androutopoulos, 2021). Also, the 263/2020 decision of the Council of State rejected a re-

quest for temporary judicial protection, which was directed against the prohibition of gatherings of more than four persons on the anniversary of the student uprising against the military dictatorship in Greece (17 November 1973). However, those decisions concern remedies for temporary judicial protection and do not constitute the final judgment of the Court on the legality of the measures taken.

In Germany, also in early April 2020, the Federal Constitutional Court (1 BvR 755/20, 2020) rejected an application for temporary judicial protection directed against Bavarian regulatory acts to protect the public from COVID-19. Instead, the Court accepted that the measures taken did indeed drastically interfere with the applicant's individual freedoms, such as his ability to build relationships and to demonstrate or create music with others. Generally speaking, the disputed provisions in Bavaria significantly limited direct physical contact among people. Facilities where citizens gathered were closed and people were prohibited from leaving their residence without a valid reason. The Court weighed the opposing interests and accepted that the applicant's interests were important, but not to such an extent as to outweigh the constitutional obligation of the state to protect human life and health. Finally, the Court took into account that the restrictive measures are of temporary effect and provide for numerous exceptions in their application, and that the imposition of penalties for infringement, which is within the discretion of the administration, takes account of any significant individual interests.

In related decisions, the German Federal Constitutional Court (1 BvQ 28/20, 2020) was asked to decide on a request for temporary judicial protection against the ban on a mass during Easter. The Court accepted the applicant's contentions that church attendance is a fundamental element of the Catholic faith which cannot be replenished in other alternative ways, such as by individual prayer or by broadcasting the mass on the internet. However, the Court accepted that in the context of weighing the opposing interests, the state obligation to protect human life prevails. Most importantly, the concluding remark by the Court is that, due to the intense intervention in the religious worship of believers, strict application of the principle of proportionality is required. This means that the ban on religious gatherings should be continuously reviewed based on new data pertaining to both the spread of the virus and the capacity of the health system in order to determine whether the ban could be replaced by less burdensome measures.

In another decision, the same Court (1 BvR 828/20, 2020) in considering the prohibition of gatherings in the German federal state of Hesse held that the refusal of the Hessian authorities to allow a gathering on the grounds that the relevant legislation prohibited all gatherings without exception was unlawful. As the German Federal Constitutional Court ruled, the legislation of Hesse did not establish an absolute ban but gave the competent bodies –in view of the constitutional protection of the assemblies under Article 8 of the German Constitution – discretion, which was not used in the case in question.

In fact, a little later the same Court (1 BvQ 44/20, 2020) ruled in relation to a decree of the German federal state of Lower Saxony which strictly prohibited gatherings in churches, mosques, synagogues, and other places of religious worship that exceptions should be allowed in individual cases, by request and subject to compliance with the necessary sanitary measures.

In France, the French Council of State on 18 May 2020 adopted a series of decisions (no. 440366, 440380, 440410, 440531, 440550, 440562, 440563, 440590) concerning a total ban on religious ceremonies in relation to the COVID-19 pandemic. The Court, having stressed the need to balance the individual right of religious freedom with the protection of public health, ordered the relevant decree to be amended and the absolute prohibition to be replaced by less stringent measures, taking into account in particular that the same decree in other cases permitted gatherings of less than ten persons.

Finally, in the United States, the Supreme Court in *The Roman Catholic Diocese of Brooklyn, New York, Applicant v. Andrew M. Cuomo, Governor of New York* (20-3590) in proceedings for temporary judicial protection on 25 November 2020, held that restricting the right of believers to assemble in religious ceremonies to a maximum occupancy of either 10 or 25 persons without any further distinctions were not justified.

III. "Mithridatism" and Constitutional Dilemmas.

A. Can the Protection of Human Life justify any Restriction?

It is customary to say that there is no hierarchy among fundamental rights (as well as more generally between constitutional provisions), with further consequence, in the event of their conflict, an attempt to *harmonize* them. But the coronavirus pandemic and the unprecedented restrictions imposed to deal with its spread have raised the question: Is this the case or not? Does human life ultimately constitute a fundamental right which outweighs all the rest?

There is no doubt that human life is the basis of all other fundamental rights of individuals, in the sense that if there is no human being, there is not even a question of exercising the other rights. Moreover, human life is permanently lost, while most other fundamental rights can only be limited temporarily, that is, for a period of time, after which their beneficiary can continue to exercise them. In this sense, when the state's obligation to protect human life collides with its obligation to protect and not restrict other fundamental rights (such as those of economic freedom, freedom of movement, freedom of assembly, and religious freedom), human life does indeed enter with an increased weight into the balancing process. This is even more true in cases of rapidly transmitted diseases that have been classified as a pandemic. In addition, such cases put national health system to the test by requiring a large number of beds in intensive care units.

However, the superiority of human life in the above cases does not mean that in its name any restriction of fundamental rights is justified and that Greek legal order prohibits any type of violation of the right to human life by the state. First, while the Greek Constitution protects human life emphatically (Article 5, Paragraph 2) it also, on the other hand, legalizes the death penalty for felonies committed during war (Article 7, Paragraph 3). Second, although a section of legal theory and jurisprudence accepts that human life begins with the fertilization of the egg or with the implantation of the fertilized egg in the uterus, nevertheless, at the same time it holds that it is not unconstitutional to allow a woman to have an abortion in the first weeks of pregnancy. This position has also been adopted by courts in other countries, such as the German Federal Constitutional Court since the 1990s.

Furthermore, the protection of human life has not been invoked in order to reign in technological developments, even though the most prevalent innovations, such as cars, pose risks to human life. According to the case law of national courts and supranational courts, if there is one constitutional principle that absolutely prevails over all others, it is not human life, but human dignity. For instance, the case law of the ECtHR illustrates that torture by police or other bodies is prohibited, even if it is aimed at revealing the place of detention of a kidnapped child whose life is in danger. As the European Court in Strasbourg noted, the ban on torture and inhumane treatment defined in Article 3 of the European Convention on Human Rights (ECHR) is an absolute value that should not be weighed against any other legal good, even if that good is human life. Human dignity does not allow exceptions, not even in the most difficult and marginal situations, like the fight against terrorism and organized crime, or an emergency that threatens the existence of a nation. As the ECtHR stated in *Gäfgen v. Germany* (22978/05, 2010), "The Court has confirmed that even in the most difficult circumstances, such as the fight against terrorism and organized crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned," and arguing that, "The philosophical basis underpinning the absolute nature of the right under Article 3 does not allow for any exceptions or justifying factors or balancing of interests, irrespective of the conduct of the person concerned and the nature of the offence at issue".

What is the conclusion from all of the above? While the protection of human life is given increased weight in contrast with other conflicting legal goods and justifies limitations on fundamental rights that may not be justified in any other way, it nonetheless does not automatically justify any and all restrictive measures. State power, when taking steps to protect human life, must move within a framework that is bound by the rule of law and, in particular, by the principles of proportionality, equality before the law, and human values. It must also respect fundamental rights, even those that have to be temporarily restricted. And that is because the Constitution does not protect human life simply as biological existence, disconnected from any other features. It protects it as an aspect of human

dignity, as signified by the other fundamental rights and constitutional principles.

B. Social Rights as a Necessary Complement to Individual Freedoms.

Social rights, like right of residence, right to health and right to social security, were enshrined in constitutional frameworks at a later time than the classical fundamental rights. They begin to appear with the Weimar Constitution of 1919. In Greece, the first social rights were enshrined in the Constitution of 1927. The current Greek Constitution of 1975 provides legal recognition and protection for many important social rights. Despite this, the normative value and necessity of the constitutional guarantee of social rights was strongly contested during the economic crisis in Greece after 2010. Is it by inclusion of social rights in the Constitution that we create a better state, or do we simply cover a less pleasant social reality with them? Furthermore, is it by *constitutionalizing* social rights that we *make it a court's obligation* to distribute the available resources, which is primarily a political rather than an economic choice?

It seems, however, that with the coronavirus pandemic and the restrictive measures taken to deal with it, social rights (in the broad sense of the welfare state) are *taking their revenge*. First, the fight against the pandemic is centered on the public health system, which is a fulfillment of the constitutional requirement for the protection of human life and health (Article 5, Paragraphs 2 and 5, and Article 21, Paragraph 3 of the Greek Constitution). Moreover, in all European countries, the issue of short-term and long-term support, including benefits, has been raised for the professions most affected by the restrictive measures, which have been forced to suspend their activities either by law or due to lack of customers. These findings are immediately visible. But what is less visible, and perhaps even more important, is that both the spread of the virus and the measures to tackle the pandemic have highlighted and, to a large extent, exacerbated existing social inequalities. It was pointed out that some social groups are more vulnerable than others in relation to the threat of communicable diseases. As Mariner, Annas and Parmet (2009) state, "The second lesson is that coercive measures invite abuse and exacerbate social divisions. Measures like quarantine, surveillance, and behavior control have historically been targeted at people who are already disadvantaged, those on the margins of society, especially immigrants, the poor, and people of color". And these variations are not just about age. Of course, the most vulnerable groups are those who have been deprived of their freedom (prisoners, psychiatric inpatients, immigrants held in detention centers, etc.) (Council of Europe, 2020). Vulnerability also has to do with the integration and living conditions of social groups, as the case of the Roma demonstrates. It even has to do with someone's financial situation, the profession they practice, and whether they use public or private transport. It is stated that in Barcelona, residents of the lowest-income neighborhoods are seven times more likely to be infected than those in wealthy neighborhoods (Efimerida ton Syntakton, 2020). Further, the cessation of the same professional activity affects a wealthy individual with savings very differently than another individual with low income and no savings. Self-isolation is also experienced differently by a person who

lives in a suburban detached house with a courtyard than by someone who lives in an apartment complex in the city center, possibly without a nearby park that would allow her to exercise. Remote teaching by telecommunication was certainly one of the most positive strategies for dealing with the pandemic. But it requires a computer for every child in a family.

Of course, constitutional provisions are not the most effective means of mitigating social inequalities. Yet, when the state power enacts exceptionally restrictive measures that mostly affect certain groups within the larger population, it must provide benefits and generally take steps to support these groups. After all, this is the notion of true equality in rights. The need for state and social rights "return".

4. Instead of an Epilogue: the End of Mithridates.

When Mithridates decided to ingest gradually increasing amounts of poison, he did it for a legitimate purpose: to gain immunity and protect himself from any enemies who might try to poison him. He gained nothing, however, since at the end of his life he was in danger, not from conspiracies and poisons, but from his enemies' weapons. What is still striking though, is that this tactic backfired: he wanted to poison himself to death so as not to fall into the hands of his opponents, but his intentionally cultivated immunity stood in the way, and he had to ask to be killed with a sword. It seems that *mithridatism* avenged Mithridates in the most tragic manner possible. Can we take similar lessons from *constitutional mithridatism*?

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Human Rights during the COVID-19 Pandemic in Bosnia and Herzegovina

By Aldina JAHIĆ*, Merisa HASIĆ** and Admir ČAVALIĆ***

During the COVID-19 pandemic, Bosnia and Herzegovina, like many countries in the world, introduced a series of rigid measures to combat the crisis. These measures often violated the fundamental human rights and freedoms of the citizens. Measures at certain times and in certain places included a curfew, mandatory mask wearing in public, restricting the freedom of movement of young and old, mandatory quarantine after international travel, public disclosure of personal information about those who travelled, lock-in of certain cantons (regions), and the like. The paper analyses a broad spectrum of human rights and freedoms violations in Bosnia and Herzegovina, while taking into account two significant characteristics of the country. First, Bosnia and Herzegovina is an extremely decentralized country, which means that COVID-19 measures are partially adopted by different governments. In practice, this means that half of the country has a curfew imposed and a half does not. Second, the Constitutional Court of Bosnia and Herzegovina is not only independent but also protective of liberal values like the human rights. The main reason for this is that in addition to domestic judges, it is made up of foreign judges. Consequently, the Court has issued a series of judgments where the government's actions have been declared unconstitutional. These and other cases of human rights violations will be analysed in this paper.

Key words: Bosnia and Herzegovina, COVID-19, human rights, Constitutional Court, federalism.

Introduction

In March 2020, the World Health Organization (WHO) declared a pandemic caused by the COVID-19 virus. In the same month, Bosnia and Herzegovina began implementing restrictive measures aimed at protecting the local population from the new virus. As in many other countries of the world, these measures were on the verge of not respecting human rights and caused numerous controversies. The Constitutional Court of Bosnia and Herzegovina was called upon to adjudicate several of them.

What is specific to Bosnia and Herzegovina is that it is an extremely decentralized country, with a state system defined by the 1995 Dayton Peace Agreement (DPA). Its state system was primarily intended as a guarantee of peace after the Yugoslav wars of the 1990s. Nevertheless, certain legal provisions have been incorporated in the DPA that guarantee legal recognition and protection of human rights in the long run, such as Annex 6 entitled “Agreement on Human Rights”. It secures to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, as detailed in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and various international agreements listed in an appendix. Thirteen rights are set out in Article 1 of Annex 6 (and again in Article II (3) of the Constitution) and are to be enjoyed without discrimination (Sloan, 1996). However, in practice, there are numerous examples of violations of these rights.

The specific state system implies that in different parts of the country and by different levels of government during the COVID-19 pandemic, vastly different measures were adopted that significantly affected the lives of citizens and their human rights and freedoms. Accordingly, depending on the place of residence, the citizens of Bosnia and Herzegovina have been subjected to various repressive measures by the state. This unequal treatment of the citizens was problematized by non-governmental organizations (e.g., BIRN's reaction to Bosnia and Herzegovina's Coronavirus Curbs on Children and Older People), state institutions (e.g., The Ministry of Security of Bosnia and Herzegovina when Canton 10 tried to close itself), and by the Constitutional Court of Bosnia and Herzegovina as the highest court in the country.

Human rights crisis

The COVID-19 pandemic has caused general uncertainty, both in the world and in Bosnia and Herzegovina. Like any other crisis, this one has several social consequences (Čavalić, 2015; Knowles et al., 1999), including those initially short-term, but possibly long-term outcomes which relate to respect for human rights and freedoms. At the height of the pandemic, countries across the world took certain measures that had a greater or lesser impact on the human rights of citizens, especially marginalized groups (Human Rights Watch, 2021). According to the United Nations (UN) (2021) report, the COVID-19 pandemic has had a negative impact on all sectors of society, highlighting existing inequalities and undermining the enjoyment of human rights. The pandemic is testing the limits of human rights, as noted by Spadaro (2020).

The basic question is how to establish the right balance between respect for human rights on the one hand and public health policy on the other. For that purpose, we will examine both the constitutional framework in Bosnia and Herzegovina and international law. First, the rights of every individual in Bosnia and Herzegovina are regulated by the Constitution of Bosnia and Herzegovina, international treaties or conventions signed by Bosnia and

Herzegovina, and the law itself. Chapter II of the Constitution is dedicated to the protection of human rights through the Commission on Human Rights, which consists of the Office of the Ombudsman and the Human Rights Council. The Commission for Human Rights operates at the Constitutional Court of Bosnia and Herzegovina. The Joint Commission for Human Rights of Bosnia and Herzegovina considers issues related to the exercise of human rights and fundamental freedoms guaranteed by the Constitution and legislation: citizenship; emigration, immigration, refugees and asylum; implementation of Annexes 6 and 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina; movement and stay of foreigners; realization and protection of human rights and freedoms and measures for their more effective protection; personal data protection and cooperation with the Agency for Personal Data Protection in Bosnia and Herzegovina; the rights of national minorities; petitions regarding violations of human rights and fundamental freedoms; cooperation with the Commission for Human Rights and the Commission for Displaced Persons and Refugees, as well as the commissions for human rights in the Parliament of the FB&H and the National Assembly of the RS.

Second, in international law The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1985) require that any measure taken to protect the population, which restricts individual rights and freedoms, in order to comply with human rights standards restrictions should, at a minimum, be:

- provided for and carried out in accordance with the law;
- directed toward a legitimate objective of general interest;
- strictly necessary in a democratic society to achieve the objective;
- the least intrusive and restrictive available to reach the objective;
- based on scientific evidence and neither arbitrary nor discriminatory in application; and
- of limited duration, respectful of human dignity, and subject to review.

In line with the presented principles, the state must take into account the legal basis of the measure, its necessity, and its scientific basis. Measures must be transparent and open to review, especially by the media and the professional public. It is especially important that the measures be limited in time, i.e., proportional to the goal to be achieved. This limits the so-called naive intervention, about which Nassim Nicholas Taleb wrote extensively (2012).

These B&H constitutional and ECHR principles will be used as a benchmark in the paper to determine whether violations of human rights and freedoms of the citizens of Bosnia and Herzegovina occurred during the COVID-19 pandemic.

The course of the crisis

A state of natural or other disaster was declared at the highest state level of Bosnia and

Herzegovina on March 17, 2020 (Official Gazette of B&H, 2020). In the meantime, Republika Srpska (RS) declared a state of emergency on March 16 and a general emergency on March 28, 2020 (Official Gazette of RS, 2020) and the Federation of Bosnia and Herzegovina (FB&H) and the Brčko District of the federation declared a state of emergency on March 16, 2020. Bosnia and Herzegovina has since adopted several measures that are not in line with the principles of the ECHR. Some of the measures were adopted at the beginning of the pandemic, in March 2020, and were lifted very quickly. Others have been declared unconstitutional by the Constitutional Court of Bosnia and Herzegovina, which will be the subject of the other chapters of this paper. A significant number of the COVID-19 measures enacted in Bosnia and Herzegovina, such as the curfew, are still in place, despite not meeting the time limit requirement or being based on solid scientific evidence.

Numerous reports have identified a number of human rights violations, including the *Policy Brief: The Western Balkans in Times of the Global Pandemic* report, which states that the primary focus of the state in Bosnia and Herzegovina has been enforcing physical distancing through restrictive measures and repression, including steep penalties, instead of education and communication (Bieber et al., 2020). Muratagić (2020) states that in its violations of the rights to freedom of movement, freedom of expression and freedom of assembly, the executive power in Bosnia and Herzegovina left citizens in a state of legal uncertainty.

Examples of human rights violations

The Banjaluka Center for Human Rights (2020), the Organization for Security and Cooperation in Europe (OSCE) Mission to B&H, published a report *Ljudska prava u periodu COVID-19. Utvrđeni propusti u ostvarivanju ljudskih prava u Bosni i Hercegovini* (Eng. Human Rights in times of COVID-19. Identified omissions in the realization of human rights in Bosnia and Herzegovina) identifies the endangerment of the following rights: the right to provide and receive information, the right to privacy, stigmatization, hate speech and discrimination, freedom of movement, freedom of expression, freedom of assembly, freedom of religion, treatment of prisoners, increased vulnerability (migrants and refugees, persons with disabilities, Roma population and users of social protection services), labor rights, access to health care and general abuse. This report concludes that the measures implemented to contain the spread of the coronavirus were quite restrictive and proved to be to some extent effective. However, the restrictions imposed were clearly not based on scientific data, nor were less restrictive measures considered, and often the restrictions were not limited in time, resulting in human rights violations. The measures that followed did not incorporate the principle of proportionality. The subsequent easing of the measures, in fact, followed the same mode of action of the restrictions and as a result, the distrust of the general population towards the authorities increased. According to the report, this can in turn lead to citizens not respecting future measures.

Examples of human rights violations in Bosnia and Herzegovina during the COVID-19 pandemic will be discussed next. The citizens of Bosnia and Herzegovina did not receive **timely and credible information** from the state or cantonal authorities as to whether there were enough coronavirus tests and respirators in the country, that too few people were tested and that the tests, among other things, were done selectively, as highlighted by the Human Rights Ombudsman of Bosnia and Herzegovina Jasminka Džumhur on March 22, 2020 (Interview.ba). Information was often inconsistent (MediaCentar, 2020), especially in the FB&H, which has 10 cantons and where the ungrateful task of coordination was placed on the Federal Civil Protection Administration (Korajlić, Smailbegović, 2020). Further, according to the OSCE report (2020, page 40-41), problems in communicating measures were particularly evident among the most vulnerable in society, who were less likely to receive information about government measures directly and were largely dependent on the media or other citizens. These practices highlighted another phenomenon - journalistic scepticism towards the information provided by the government (MediaCentar, 2020). All these developments led to misinformation, general confusion, a growing number of pandemic conspiracy theorists and even fake news (Interview.ba).

Freedom of expression is one of the most important freedoms that ensure the functioning of a democratic society. Although as such there may be abuse in terms of spreading misinformation, restricting it would mean violating all other rights and freedoms, as well as individual dignity, which has been shown in the context of the coronavirus pandemic. Restrictions on freedom of movement also indirectly affected the media, making it more difficult for them to investigate and gather information, and the measures introduced to combat misinformation directly restricted the freedom of expression of both the media and the public, the right to provide and receive information. Ironically, these measures were introduced to prevent inducing panic. However, they ended up having a counter-effect by deepening panic, exacerbating citizens' distrust of the authorities, the emergence of further conspiracy theories, and the polarization of society. One of the few cases where this was called into question was when the Prijedor Police Department filed a misdemeanour charge against Maja Stojić Dragojevič, a cardiologist and member of the presidency of the opposition Serbian Democratic Party, for violating the March 19, 2020 decision made by the Government of the RS to penalise false news and the spreading of panic. The report was filed in response to her statements that there were not enough ventilators, beds, or intensive care services in Republika Srpska (RS), and for claims that RS was unprepared for the coming crisis. She was accused of spreading false news and was ordered to pay a fine in the amount of 500 euros (Balkan Insight, 2020; Zurnal.info, 2020). In addition, immediately after RS declared a state of emergency, President Željka Cvijanović issued a decree prohibiting the media and the public from spreading fake news that might incite panic and providing significant fines for those who do so (Official Gazette of RS 2020). The key question that should be asked in the context of this case is who decides what is fake news and what is true, especially if we are talking about a virus that is in itself unexplored and unknown?

Authorities in B&H decided to try to prevent the spread of the COVID-19 virus among the population by prohibiting gatherings in open and private areas, and to that end, the authorities have made decisions on bans and cancellations of gatherings, and absolute bans on gatherings (Anadolu Agency, 2020; Slobodna Evropa, 2020). With the absolute limitation on the **right of assembly**, the problem of disproportion arises again. To wit: the bans on gatherings followed as one of the first measures in the fight against the virus, without taking into account certain milder measures, such as prescribing that social gatherings must be held in public, that masks must be worn, and that there should be as little physical contact with others as possible. The absolute ban on assembly should be the last choice of the authorities, for example, in cases where more lenient measures would not successfully combat COVID-19. The B&H authorities did not even try to reduce the spread of the virus with less restrictive measures, but immediately decided to limit one of the basic rights of citizens. The ban on gatherings stifled the possibility of expressing a collective opinion, which is a precondition for a democratic society, and which, in combination with other bans, paralyzed the citizens of B&H to take action against the general violation of their freedoms, rights and dignity.

When it comes to the **right to privacy**, this right has been violated in B&H several times via the publication of personal data such as the names, surnames, year of birth, city of residence, date of isolation, and telephone numbers of persons required by the state to self-isolate. Shortly after the start of this practice, the Agency for Personal Data Protection of B&H (the Agency) on 24.03.2020. issued a decision stating that the disclosure of data to the public regarding persons who were positive for coronavirus and those who were in (self-)isolation but did not violate the said measures, was not in the public interest. For example, it is possible that people who had been potentially infected with the virus would not report this, thus achieving the opposite effect than was planned. As part of the decision, the Agency ordered the removal of such lists (Agency for Personal Data Protection of B&H, 2020). Violation of the right to privacy and disclosure of personal data has caused a large number of cases to occur that can be characterized as stigmatization, discrimination, and hate speech. People who tested positive due to the failure of the responsible authorities were exposed to 'witch hunts' in the form of threats, evictions, and public lynching (Sokol, 2020). One of the first victims of the above was Sandra Šahat, who, after publication of her positive test result, was subjected to threats by her fellow citizens as well as threats of eviction from the apartment she had rented in order to isolate herself (Oslobođenje, 2020).

One of the first coronavirus containment measures in B&H was the restriction of **freedom of movement**. On March 22, 2020, Canton 10 (the largest of the cantons of the FB&H) issued an order banning citizens from the rest of the country to enter the canton. The order was sharply criticized as unconstitutional and created fierce political disagreement (N1, 2020; Oslobođenje, 2020). It was withdrawn within a few hours of being introduced (Herceg-Bosna County Government, 2020). Regarding freedom of movement, it is also neces-

sary to draw attention to the state's position vis-a-vis foreign nationals. The Ministry of Foreign Affairs discouraged the country's diplomatic corps from sending citizens to their home country (Danas.rs, 2020), which is contrary to Article 12 of the International Covenant on Civil and Political Rights (1966), which states that "[n]o one shall be arbitrarily deprived of the right to enter his own country". In March and April 2020, various authorities in B&H issued orders prohibiting gatherings of people in both open and closed areas. To that end, the authorities have banned and cancelled gatherings, and imposed absolute bans on gatherings.[1] Instead of these arbitrary measures, it would be better to require everyone to apply evidence-based strategies, including social distancing, hand washing, and isolation of those who become ill or have been exposed to the virus. Such measures, which can be monitored and reviewed during a pandemic, would help protect the right to health and prevent disease transmission without discrimination (Balkan Insight, 2020).

Measures in Light of the B&H Constitution and International Law

The complete ban on freedom of movement was challenged before the Constitutional Court of B&H. Two state entities, FB&H on March 20 and RS on March 21, 2020, introduced more restrictive measures regarding movement for certain age groups. With these orders, persons over the age of 65, and in the FB&H also persons under the age of 18, have been required to remain under house arrest, which completely limits their freedom of movement.

In the RS, the mandate for people over the age of 65 to stay at home was eased on March 30, 2020, while in the FB&H it remained in force until April 24, when it was modified in light of the Constitutional Court decision (AP1217/20 of March 22, 2020). On April 22, more than a month after the imposition of the ban, the Constitutional Court of Bosnia and Herzegovina ruled that the FB&H was in violation of human rights. The court determined the violation was of the right to freedom of movement under Article II / 3.m of the Constitution of Bosnia and Herzegovina and Article II of Protocol 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court found that no proportionality had been established between the prescribed measure and the legitimate aim of protecting the health of citizens. Movement bans did not include any exceptions, nor consider the specific (health) needs of those in the affected categories. The court found that the complete ban on freedom of movement, among other things, neglected the issue of employment of persons over 65, and that possible alternatives were not considered. The court ordered the government to amend the measures within five days, and the latter responded with the Federal Civil Protection Staff order (12-40-6-148-143/20 of April 24, 2020), which allowed the movement of persons under 18 and over 65 on special days, according to the instructions of the Constitutional Court.

Restrictions on freedom of movement for these two categories of persons are also contradict the basic principles of the Convention for the Protection of Human Rights and Funda-

mental Freedoms (European Convention on Human Rights – ECHR) (1950). This measure was not necessary to prevent the spread of the pandemic, the principle of proportionality was not respected, and it was not based on scientific evidence. Further, the movement ban had a negative impact on the mental and physical health of those affected (Human Rights Watch, 2020), who were further marginalized. Our original research (carried out by Aldina Jahić) regarding the ban found that 75% of 56 respondents agreed with the statement, “I believe that in making the decision to ban the movement of minors and those over 65 years, the basic human needs and psychophysical health of these persons were not considered”.

In another decision (AP-3683/20 of 22 December 2020), the Constitutional Court found that the decisions of the Crisis Staff with respect to the ban on movement and mandatory wearing of protective masks constituted "interference with basic human rights and freedoms guaranteed by the B&H Constitution and the European Convention on Human Rights" (Balkans Aljazeera, 2020). "In this particular case, there are violations of the right to private life and freedom of movement, which were committed by orders of narrow segments of the executive power on mandatory wearing of protective masks and restriction of movement, crisis staffs of health ministries," the Constitutional Court said (Decision of the Constitutional Court of Bosnia and Herzegovina, AP-3683/20 of 22 December 2020; Balkans Aljazeera, 2020). It is also stated that the decision of the Ministry of Health was a violation of these human rights, given that "there was no active participation in the adoption and review of ordered measures by the highest legislative and executive bodies" (Radio Free Europe, 2020).

State authorities in the Herzegovina-Neretva Canton (HNK) have adopted a measure restricting freedom of movement in the form of a ban on movement outside one's place of residence, with the goal of restricting civil movement, the implementation of which is the responsibility of the Ministry of the Interior of the HNK (Order of the Civil Protection Headquarters of the HNK, 2020).

On 20 May 2020, the state Constitutional Court announced its decision to decline the appeal filed by Slaven Raguž and Ivan Džalto (AP 1485/20) challenging the orders of the HNK Crisis Staff on 9 April 2020, and its amendments of 10 April 2020, prohibiting movement outside one's place of residence. The request was rejected due to a change in the legal circumstances of the case whereby the disputed orders had been revoked. However, the both the government and the Crisis Staff interpreted the Court's ruling as saying that their decisions were not unconstitutional and had been made in the interest of public health. In addition, they asserted that the appeal to the Court had been only a political game of the opposition (i.e., the Croatian Republican Party) (Vlada Hercegovina-neretvanske županije/kantona, 2020). The Applicants noted, however, that the Court had found a violation of human rights despite a change of legal circumstances, which was the intent of their motion.

Conclusion

The COVID-19 pandemic poses a generational challenge to governments around the world. The world is experiencing a change in both political and social paradigms. At the same time, whenever tectonic changes occur, human rights are the first to come under attack. This is what happened in Bosnia and Herzegovina. Specifically, as this paper shows, human rights violations in B&H did in fact occur in some cantons. Although in emergencies states may legally deviate from certain obligations under human rights law, it is their duty to bring these deviations into line with the principles of legitimacy, temporality, proportionality, non-discrimination, and the balancing of collective and individual interests. The alignment of containment measures with these principles during a pandemic is a test of democracy and human rights that many countries, including B&H, have failed to pass. Under the pretext of protecting life and public health, the authorities have resorted to abuse of power, leading many an ordinary citizen to echo the words of Ayn Rand (1966): “We are nothing. Humanity is everything. Only by the grace of our brothers are we enabled to live. We exist from our brothers, through our brothers and for our brothers who make up the State.”

Violations of human rights and freedoms via restrictive, unjustified, repressive and asymmetrical measures, together with the lack of coordination among the levels of government and the lack of adequate strategy, have only deepened the crisis that the COVID-19 pandemic brought with it, especially regarding the democratic functioning of institutions in Bosnia and Herzegovina.

As such, the human rights crisis brought about by the pandemic is, in the words of Karl Popper (2003), “a warning that if we relax our watchfulness, and if we do not strengthen our democratic institutions while giving more power to the state by interventionist ‘planning’, then we may lose our freedom. And if freedom is lost, everything is lost.”

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

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A Pandemic in a Pandemic: Domestic Violence in Croatia

By Igor ŠLOSAR*

In the fight against the global pandemic of COVID-19 lockdowns were enforced across the globe in order to protect the population against the virus. Lockdowns and other restrictions led to people spending more time at home than earlier. During the last year, second-hand consequences of long-lasting restrictions became visible. One of those is the rise in domestic violence. Often, the victims of such violence are women. Croatia has experienced a surge in cases of domestic violence and an increased influx of victims seeking shelter. The network of safe houses, shelters and call centers taking in these cases was already underfunded before the pandemic, and the increase in cases will only exacerbate the issues already present. The Croatian government has promised funds to increase the capacities of the system, but that has yet to materialise.

Key words: Croatia, domestic violence, pandemic, COVID-19, women, right to safety.

Introduction

The COVID-19 pandemic has changed our lives and the world we live in. It has transformed the way we perceive things, the way we interact with each other and the way we work. When the Director-General of World Health Organization (WHO) declared the COVID-19 pandemic on March 11, 2020, most of us could not imagine how serious was the crisis we were about to face. The world was hit by something new that is highly transmissible and with unclear symptoms. Along with that, national healthcare systems were not prepared for the surge in cases. Most poignantly, they were not organized adequately, specialised medical and personal protective equipment (PPE) was scarce, there were not enough hospital beds, and there was a shortage of ventilators and monitoring equipment for the most critical COVID-19 patients. Most importantly, there was no cure for this virus, no treatment, and no vaccine. Finally, the public was poorly informed about the virus and its spread.

When faced with such a dire situation, it was essential first to organize the healthcare system, inform the public of the prevailing conditions, and hope for as few infections as possi-

ble. Lockdowns and other restrictions on the movement, travel, association, and social gatherings were put in place. The lockdown in Croatia was implemented in the second half of March 2020. Restrictions included limitations on public gatherings and events, restrictions on outdoor and indoor activities, suspending public transportation, limiting the number of people in stores, etc. (Civil protection Directorate press release, 2020).

Countries had different approaches to lockdowns and other restrictions, but the common aim was to limit personal contact and transmission of the virus. Unfortunately, for many nations, those were only the first measures.

Less personal contact, less COVID-19 virus transmissions, fewer problems overall. Or so we thought. Further, all these measures, in particular lockdowns, have had significant side-effects. Because the priority of the state system was containment of the COVID-19 virus and the consequences of the pandemic, many other medical conditions were put aside, and their treatments postponed. This will eventually catch up with us and burden us for years to come. After an immensely difficult year, the research and statistics have surfaced regarding the price of putting our focus solely on COVID-19. An exploratory analysis by Elmer, Mepham and Stadtfeld (2020) points out the problematic trajectory of students' mental health in Switzerland between September of 2018 and April 2020. Mental health issues are a serious problem among adolescents (Guessoum et al. 2020). Williams et al. (2020) highlight other medical conditions that were also left unchecked between March 1 and March 31, 2020, such as circulatory system diseases (43.4 percent drop), type 2 diabetes (49 percent drop) and cancer (16 percent drop).

Lockdowns and other restrictive measures to keep people in their homes and prevent socializing with others were introduced. But what if home is not a safe place? What if being locked down with a member of your family or a partner is the very definition of being unsafe and at risk of physical injury or psychological abuse?

Staying at home in a way implied that the general population was avoiding contact with everybody except the members of their own immediate families. The sanctity and safety of home was implied. Stopping the spread of COVID-19 was the main objective for not only the government but also the entire society, and everything else simply became a secondary issue. Remote work was introduced, and it is still in place for many in countries around the globe.

At the same time, worrying issues that existed before the pandemic, such as domestic violence, only continued to rise. Lockdowns were expected to have consequences. Domestic violence has skyrocketed across the globe, most notably in China, during the shelter-in-place mandates (Campbell 2020). Why is that? The answer lies in multiple factors, but one is quite clear: along with the lockdowns came an economic recession. Jobs were lost and incomes have dried up for those who were let go from their jobs. The stress this has caused

people, especially those with violent tendencies and a history of abuse, served as a catalyst for acts of domestic violence, as did uncertainty regarding the future, the meaning of life, and the ability to pay the bills, buy food, and meet medical expenses. Maybe the most important factor of all was a reality where the end was not in sight and new jobs could not be found quickly. The author does not want this to be seen as making excuses for abusers. However, to help the victims of abuse, we should understand, or at least try to understand the reasons behind it.

All forms of domestic violence were on the rise in Croatia in 2020 (Ministry of Interior Affairs. 2020, p.7-8). As an example, attempted rape cases were up by 34 percent, while reported cases soared from 73 in 2019 to 168 cases in 2020. Murders were up by 10 percent.

Unfortunately, it is expected that these trends will continue in 2021, and the state systems designed to help the victims are now being tested on a scale never seen before. That is if we assume the victims are going to muster the courage and come forward. However, the reality is there is little hope of that happening. It is, of course, to be expected that more women are going to report domestic violence; however, that also means that the number of women who do not report abuse is also going to be much larger. Notably, victims of domestic violence are not always women, although they are disproportionately affected.

The state infrastructure in Croatia is flawed and poorly equipped to help domestic violence victims. For them, reporting the violence means dealing with a multitude of obstacles in starting long criminal proceedings, a lack of sufficient support in the community, and a system that is paralyzed. Before getting a clearer picture of how the Croatian system helps victims, or tries to help them, and what steps are needed to improve the services offered to victims of domestic abuse, we should define what constitutes domestic violence according to international law. Unfortunately, the term includes only physical abuse, and for that reason many do not understand that violence comes in many forms.

What is domestic abuse and why it is important to know that?

Article 10 of the Croatian Family Violence Protection Act of 2020, defines domestic abuse as any act of physical violence without inflicting injury, corporal punishment or other humiliating treatment of children, mental abuse, sexual harassment, economic violence (prevention of finding employment, prevention of the use of personal or communal property, withholding funds, etc.) and negligence toward the elderly or disabled (Zakon.hr, 2020). According to the United Nations (2021): "Domestic abuse, also called "domestic violence" or "intimate partner violence", can be defined as a pattern of behaviour in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse is physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behaviours that frighten, intimidate, terrorize, ma-

nipulate, hurt, humiliate, blame, injure, or wound someone.” Another definition, that of the UK organization Woman’s Aid, defines it as “an incident or pattern of incidents of controlling, coercive, threatening, degrading and violent behaviour, including sexual violence, in the majority of cases by a partner or ex-partner, but also by a family member or carer.” According to the same source, domestic violence comes in following forms: “Coercive control (a pattern of intimidation, degradation, isolation and control with the use or threat of physical or sexual violence), psychological and/or emotional abuse, physical or sexual abuse financial or economic abuse, harassment and stalking, online or digital abuse.” Finally, the Mayo Clinic (2020) in the US says that “domestic violence — also called intimate partner violence — occurs between people in an intimate relationship. Domestic violence can take many forms, including emotional, sexual, and physical abuse and threats of abuse. Domestic violence can happen in heterosexual or same-sex relationships.”

Each of these definitions adds a layer to the complexity of the issue. Further, it is challenging to provide one conclusive definition because the world itself is changing and, therefore also the forms of domestic abuse that occur. Decades ago, social media was not present in our everyday lives. While it aims to connect us, it can be used to abuse others. Hence, the definition of domestic abuse is evolving. Crucially, by including these changes in the definition, we could help the abused recognize their victimhood.

There are several motives behind this ever-changing definition of domestic violence. The first is control over every aspect of the other person’s life. This can come in many forms, from controlling their finances to monitoring their use of communication devices and restricting their movements outside the home. Second, the abuse does not need to be physical. The physical element is what most people, even victims themselves, see as abuse. However, the physical element is only a part of it. Third, domestic violence knows no boundaries. Everybody can be a victim no matter their gender, sexual orientation, religion, race, age, or any other characteristic.

In order to address domestic violence properly, all parties involved in the prevention or prosecution of it need to be cognizant of its shapes and prevalence. A crucial party in this chain is the healthcare system. Victims are often in a dire physical state and require immediate assistance. Further, following triage will typically be years of psychological treatment and that may never end.

Domestic abuse can happen to anyone at any point in their lives. During the COVID-19 pandemic even more so. Many people not only work from home, but also cannot leave it due to lockdowns, cannot socialize with others, and cannot seek help without first having a negative test for COVID-19. A 2020 study ordered by the Center for Sexual Rights, whose aim was to list all the issues safe shelters and support systems faced during the pandemic while helping victims of abuse, portrayed a very grim picture of the situation in shelters in Croatia. The problems were divided into 3 areas: those related to working di-

rectly with victims, those connected to the work of various government institutions, and issues involving epidemiological measures and the provision of the necessary working conditions. The first area included problems such as the inability to stay in contact with victims of violence except by phone, lack of real insight into the situation in the family, confidentiality of conversations with children, and difficulty accessing crisis counselling where victims did not have continuous systemic support. Government institutions did not provide much-needed help, were unavailable, or failed to enforce court decisions, e.g., the right to see a child, and there was a lack of joint action and coordination with social welfare centers, the judiciary, and public health institutions. Finally, the report listed issues related to the epidemiological measures themselves. Lack of medical equipment needed for testing, lack of proper medical care due to the approach by medical services to deal only with the most critical situations, and further self-isolation of the victims due to unclear safety protocols (Centar za seksualna prava, 2020). Consequently, the only way out of the abusive situation was effectively taken away due to the pandemic. There are of course merits to this approach, however, this could be a matter of life and death. It makes the situation even more difficult when children are involved.

A unique hand signal, also called #SignalForHelp, is the latest example of how women can silently ask for help via a video call while their abuser is around. The signal is performed by holding your hand up to camera with your thumb tucked into your palm and then folding your fingers down by symbolically trapping your thumb.

Comprehending domestic violence is the first and most important step towards a solution. If a victim does not know s/he is a victim, how is s/he going to report a crime? Also, even if the abuser ends up in a jail (which may take a while in Croatia), s/he could be released very soon. This way, inadequate jail sentences can also be a motive not to report domestic abuse. Such minimal sentences may reflect that this kind of crime is either not taken very seriously by the prosecutors or that only a small part of the society considers it reprehensible.

Consequently, the number of unreported cases may rise. If a legal framework is flawed and the system does not have the capacity to deliver justice for the victims, how can we know the true extent of the problem? If a safe place for victims is available only to those who have experienced physical abuse, how can we claim success in addressing all forms of the problem? If the community does not believe the victims and does not provide support for them, how can we expect them to muster the courage to speak up about the abuse? For the victims, having support among friends, family members, or others who care is crucial for putting a stop to the abuse. For many women, who are victims, the most important aspect of getting out of the abusive relationship is what is going to happen to their children if they report the crime. The idea of losing access to her child is often enough for a woman not to report the abuse. Not only do they not want their children to be handled by other people, but they also do not want to risk their children ending up with the abuser.

Rise in violence both globally and in Croatia

The rate of domestic violence rose across the globe during the COVID-19 pandemic. For example, the cases in the United States went up by 8.1 percent from the start of the year 2021 through mid April (*National Commission on COVID-19 and Criminal Justice*, 2021). Further, according to the United Kingdom's Office for National Statistics (2020), the rise in domestic violence began as soon as the initial lockdown measures were introduced in March 2020. Also, according to the newly released *Insecurity and Delinquency Report of 2020* by the French Interior Ministry, domestic violence in France in 2020 rose by 14 percent compared to a year earlier. In the Chinese province of Hubei, the number of cases of domestic abuse tripled in February 2020 (Ebrahimian in Rauhaus, Sibila, Johnson, 2020). Finally, according to the Australian Institute of Criminology (2020), "During the initial stages of the COVID-19 pandemic, one in 20 women (4.6 percent) experienced physical or sexual violence over the last three months, 5.8 percent experienced coercive control, and one in 10 (11.6 percent) experienced at least one form of emotionally abusive, harassing or controlling behaviour perpetrated by a current or former cohabiting partner".

On a global level, developments are also worrisome: "Globally 243 million women and girls aged 15–49 years have been subjected to sexual and/or physical violence perpetrated by an intimate partner in the previous 12 months. The number is likely to increase due to the COVID-19 pandemic as security, health and money worries and strains are accentuated by cramped and confined living conditions" (Anant, 2020). Further, "nearly a fifth (18 per cent) of women and girls aged 15 to 49 who have ever been in a relationship have experienced physical or sexual violence by an intimate partner in the previous 12 months (UN Women, 2020)". Many countries have therefore established hotlines and shelters, along with declaring those who are in contact with the victim a part of essential services (European Institute for Gender Equality, 2020), as a first step in combating these problems.

These sources attest to the fact that the rise in cases of domestic violence is not limited to any nation. The global surge is attributed to the COVID-19 pandemic and to its unfortunate consequences. The economic recession that followed the lockdown and the global fight against COVID-19 in general has caused uncertain prospects for people's lives and well-being. Stress and anger in many situations make a bad situation even worse. To make things even more problematic, the victims cannot go anywhere. Being in close proximity to their abuser only exacerbates the situation and leads to more violence. By far the worst aspect of the current situation is that there is no clear end in sight. Many nations are facing multiple COVID-19 waves in combination with a never-ending lockdown. The situation that used to look inescapable now looks even more dire.

Furthermore, working from home might continue as the preferred way of working or running a business. In such a case, victims have no exit except to call for the state system or

other civil organizations to help them escape the situation.

Governments should have been prepared for these developments from the onset of the pandemic by providing further resources to programs that aim to assist victims. Unfortunately, that did not happen, or at least not to the extent needed.

The situation in Croatia in 2021 is only deteriorating. Croatia's Gender Equality Ombudsperson presented a report revealing that the rise in domestic violence against women in 2021 was up by 43,4 percent in comparison to 2019 (Vlada Republike Hrvatske, 2020). The numbers from civil organizations combating domestic violence speak to the same issue. Svjetlana Knežević of B.a.B.e., an association providing help to abuse victims, said that there was a 25 percent rise in calls within the first two weeks of the lockdown in Croatia back in March of 2020. She added that most calls came from mothers of underage children who had been exposed to the violent behaviour of their spouse or partner.

Research by the Organization for Security and Co-operation in Europe (OSCE, 2019) shows that 70 percent of women in the Western Balkans (Albania, Montenegro, Bosnia and Herzegovina, Northern Macedonia, Serbia and Kosovo) experienced some form of violence in 2018. Although Croatia was not included in this study, we conclude that, based on geographical proximity as well as cultural and other similarities among these countries, Croatia could be experiencing the same worrisome trend of violence against women.

In September 2020, Prime Minister Andrej Plenković presided over a meeting of the National Team for the Prevention of Abuse Against Women and Other Forms of Domestic Violence, where he pointed out that the increase in the number of offences related to domestic abuse is a problem, confirming the Ombudsperson's data as well as that of the Gender Equality Committee to the effect that that domestic violence has risen by over 40 percent (ravnopravnost.gov.hr, mrosp.gov.hr).

Capacity of accommodation for the victims of domestic violence in Croatia is at 45 percent (136 individuals using the facilities), while at the peak of the COVID-19 pandemic in 2020, it was 71 percent at the national level. Moreover, despite the fact that, for a multitude of reasons, only a small percentage of victims actually seek help, we are talking about 50 - 71 percent of the total capacity of the system (vlada.gov.hr). If women reached out for help just a little bit more, the system in Croatia would not be able to handle it.

Two sets of questions should be addressed at this point: first, why do women not step forward in greater numbers? What are the obstacles they face if they decide to do so? And what needs to be done to help the victims and to provide them with a peaceful and violence-free life? In the next section we will explore shortcomings in the government in Croatia, as well as in the organizations that aim to help the victims of domestic abuse. Specifi-

cally, what are the plans to improve care in the future, and are these plans achievable?

Domestic violence in Croatia

According to the 2018 Croatian Interior Ministry report, the ratio between women and men as victims of domestic violence is five to one. In total, in 2018, Croatian police recorded 56 cases of rape, and 11 cases of attempted rape. In 2019, the numbers went up a bit, with 73 cases of rape and 12 attempts, but in 2020, the numbers were significantly higher, with 168 rape cases and 16 attempts reported (Secretary of Interior Statistics, 2021). All of these categories are treated as felonies.

The European Agency for Fundamental Rights (2014) reports that when it comes to acts of sexual violence in Croatia, only one in ten cases is reported, while the EU average is 14 percent. The reason for the underreporting is a myriad of different obstacles at every step. Let us start with public awareness of domestic violence. Many victims do not have the support of the community. People who live in the urban areas of the country can be more inclined to take action after noticing that kind of violence, and might be aware that domestic violence can be psychological as well. Help would also be more accessible. On the other hand, women living in rural areas might not get any kind of help. Their closest community, starting with their own family, can be indifferent to their situation. It could be regarded as the norm and not something that should be addressed.

The second reason why some women do not report abuse is their children, as it might end badly, not just for the mother, but also for the children.

Another major reason for not reporting abuse is a slow judiciary system. While certain progress in this area has been observed in the last decade, Croatia is still below the EU average, with an average of 374 days until the first hearing. By comparison, in Switzerland it takes on average 11 days for a court to start the proceedings (CEPEJ, 2018). Further, in Estonia, the judiciary is empowered to issue temporary restraining orders, protecting victims from homelessness and pinning accountability on the abuser from the moment the reporting occurs.

Finally, many women are ashamed of what happened to them. Many believe that they are the ones to blame for the abuse and that they deserve it. Others feel that they should have picked a better partner, or that abuse is a private, personal matter.

Is Croatia going to address these issues? Maybe, but the change cannot happen overnight. The government must primarily inform the public through coordinated campaigns and raise awareness of domestic violence. Second, Croatia must increase its the capacity of its shelters for victims of domestic abuse. As one of the major steps, the government in 2020 announced that it would provide 400.000 EUR in financial assistance to around 20 organiza-

tions who assist victims of domestic violence. The government is also providing free food, accommodation, and legal and psychological help to victims for up to 12 months. Further, the Ministry of Labor, the Pension System, and Family and Social Policy will support women living in safe houses and ensure that they receive 50 percent of the minimum wage. Furthermore, a new hotline has been set up to provide victims with much-needed help. However, there is some question as to the qualifications of the those answering the calls. Therefore, a more systematic approach to this layer of the issue is also called for. In 2021, a national campaign to raise awareness of domestic violence called "Let's stop violence against women and in the family" will be put into place by the Croatian government. While these steps seem positive and their implementation raises hopes, similar promises have been made before. As an example, the government promised six new safe houses for women by the end of 2019, but none were built.

Finally, Croatia has been a member of the European Union for eight years. Funding for programs is available for institutions that help victims of domestic abuse. Such funds could allow for an upgrade to facilities or the purchase of additional equipment.

Conclusion

When we talk about domestic violence over the course of the COVID-19 pandemic, we have to know which factors serve as a catalyst. We also need to be cognizant of what needs to change to better help the victims. The most important thing is to realize that addressing the domestic abuse issue is a matter of concern for the whole society. Further, no single act of government will be enough. Change must be systemic if we are to prevent a collapse of the support system in Croatia, which is flawed, underfunded and slow at almost every level.

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