

FREEDOM OF EXPRESSION AND MEDIA PLURALISM DURING STATE OF EMERGENCY

(REFLECTION ON ACTIVITIES FROM THE ACTION PLAN
FOR CHAPTER 23)



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INTRODUCTION

Although freedom of expression may be restricted, if the restriction is necessary to protect public health, among other things, then this must be done in a manner adequate to a democratic society, without interfering into the substance of the guaranteed right to timely and truthful information. During the state of emergency, a number of regulations were adopted that limited a certain number of fundamental rights covered by Chapter 23, which had a direct impact on the work of journalists, including restrictions on movement, a ban on attending events important for timely and truthful information to citizens, and other government actions which affected the inability of journalists to do their job professionally. Although some of the harmful provisions were later repealed, the fact that they were in direct conflict with the Constitution and relevant laws imposes the need for careful consideration of the consequences they had when it comes to the work of journalists and the quality of the information in general. This is all the more so because the availability of information important for the health of citizens is hindered even after lifting the emergency situation. Also, in the observed period, an increase in incidents was noticed to the detriment of journalists in relation to the time that preceded the state of emergency, but also in relation to the same observed period last year. This report covers all regulations that had an impact on the work of journalists during the state of emergency and later, as well as the most important events in the field of public information, in the field of self-regulatory and regulatory bodies and in connection with the implementation of the Media Strategy. At the end of the report, there is a brief overview of the regulations adopted since the declaration of the pandemic until May this year, which are important for assessing the state of media freedoms and media pluralism in Serbia.

FREEDOM OF EXPRESSION DURING STATE OF EMERGENCY

On March 10, 2020, the Government of the Republic of Serbia adopted a **Decision on declaring COVID-19 disease caused by SARS.CoV-2 a contagious disease**¹ which was the basis for the application of restrictive provisions of the **Law on Protection of the Population from Infectious Diseases**.² This Deci-

¹ Official Gazette of the RS, No. 23/20

² Official Gazette of the RS, No. 15/2016 and 68/20

sion will then become the basis for adopting most of the decisions adopted during the state of emergency. Five days later, on March 15, 2020, a state of emergency was declared in the Republic of Serbia by the **Decision on declaring a state of emergency on the territory of the Republic of Serbia (RS)**.³ With the entry into force of this decision, a number of fundamental rights covered by Chapter 23 have been limited.⁴ In the period **from March 15 to May 6, 2020, several more decisions were made that had far-reaching consequences on the ability of journalists to do their job professionally**. This primarily refers to the Order on restriction and prohibition of movement of persons on the territory of the RS, then the Decision on prohibition of the presence of journalists at Crisis Response Team press conferences and the Government's Conclusion on informing the population about the status and consequences of the infectious diseases COVID-19 caused by the SARS virus, issued on the basis of the Law on Protection of the Population from Infectious Diseases. In the continuation of this report, we will describe the impact of these provisions on freedom of expression and media pluralism during the state of emergency.

Order on restriction and prohibition of movement of persons on the territory of the Republic of Serbia⁵, issued on March 18, 2020, regulates the movement of all persons on the territory of Serbia, depending on their age. Also, a prohibition of movement was introduced for all persons during curfew, including media representatives. In the first week after the entry into force of the Order, the movement of journalists was completely restricted, and then a solution was introduced according to which journalists can obtain work permits (passes / accreditations) that allow them to work smoothly during the prohibition of movement.

The legal basis for such regulation of journalists' work is found in the mentioned Order,⁶ but also in the **Regulation on organizing the work of employers during the state of emergency**,⁷ and the **Instruction to economic entities regarding the procedure for issuing movement permits during the**

³ Official Gazette of the RS, No. 29/2020

⁴ About Chapter 23, please visit [https://www.mpravde.gov.rs/tekst/9849/finalna-verzija-akcionog-plana-za-pre-govaranje-poglavlja-23-koja-je-usaglasena-sa-poslednjim-preporukama-i-potvrđena-od-strane-evropske-komisi-je-u-briselu-php](https://www.mpravde.gov.rs/tekst/9849/finalna-verzija-akcionog-plana-za-pre-govaranje-poglavlja-23-koja-je-usaglasena-sa-poslednjim-preporukama-i-potvrđena-od-strane-evropske-komisi-je-u-briselu-<u>php</u>), accessed on October 7, 2020

⁵ Official Gazette of the RS, No. 34/20, 39/20, 40 /20, 46/20 and 50/20

⁶ The Order was repealed on April 9 by the Regulation on Amendments to the Regulation on measures during the state of emergency, and the Regulation itself became the basic act restricting the movement of citizens on the territory of the Republic of Serbia, and thus journalists. Official Gazette of the RS, No. 60/20

⁷ Official Gazette of the RS, No. 31/20

prohibition of movement.⁸ Media outlets and organizations were obliged to harmonize their work with these regulations.

The Instruction regulates the procedure for submitting requests, issuing permits, drawing up work orders and the responsibility of employers for the truthfulness of the submitted lists, as well as the control of movements. In line with that, the media were also obliged to apply these procedures. The task of collecting lists with the names of journalists and media workers for whom there is a need to perform work tasks during the prohibition of movement and forwarding these lists to the competent Ministry of Interior (MI) is entrusted to the Office for Media Relations of the Government of the Republic of Serbia.⁹

Passes were usually issued only to permanently employed journalists. In contrast, journalists who are not permanently employed by an employer, a media outlet or an organization, or are otherwise hired without interruption by their employers in the media, found it difficult to perform their work normally during the period of prohibition of movement.

The biggest problem was faced by freelance journalists (freelancers) who were granted or denied passes without a clearly defined procedure.

Namely, the Press Service of the Office of the Government of the RS did not provide for clear criteria for granting passes. It happened that individual journalists did not receive passes or that the media did not receive the required number of permits for the movement of their journalists.

The basis for denying passes to certain freelancers or media that required a larger number of accreditations was found in the regulations governing the conduct of employers in relation to the necessary movement of workers. Since freelancers do not belong to this category, they were left without work passes. According to the oral explanations of the Office for Media Relations of the Government of the RS and the Ministry of Interior, the second basis for denying the passes was the prevention of abuse. Namely, since the prohibition of

⁸ The Instruction issued by the Ministry of Economy of the Republic of Serbia, available at <https://www.paragraf.rs/propisi/instrukcija-privrednim-subjektima-izdavanje-dozvola-nocni-rad-vanredno-stanje.html>, accessed on October 6, 2020

⁹ This was an exception to the rule because neither the Ministry of Economy, which performed that task for other companies, nor the relevant Ministry of Culture and Information was responsible for media companies.

movement was introduced in order to reduce the general movement of citizens, according to these interpretations, the need to perform work tasks in the field, on which freelance journalists can be engaged, has also been reduced. According to this interpretation, at the time of the prohibition of movement, journalistic work was mainly related to their place of work and, accordingly, to tasks performed by permanently employed journalists.

The adoption and implementation of these regulations had a negative impact on the exercise of the right to work of freelance journalists, and led to discrimination against these journalists on the basis of the manner in which journalists were hired. Namely, the Constitution of the Republic of Serbia¹⁰ in its Article 60 guarantees the right to work in accordance with the law. **By restricting or banning their movement, freelance journalists were prevented from working under equal conditions,** as a result of which many of them lost their contract jobs, or were prevented from accepting new jobs.

Finally, it is important to say that the procedure for issuing passes could have been more simply regulated, primarily having in mind the process of digitalization of the state administration and the possibility of issuing certain documents electronically. However, the issuance process and the distribution of passes were fully centralized. The distribution of granted accreditations was initially carried out through six centres on the territory of Serbia, while in the following phases of the distribution, it was determined that the accreditations would be taken over in Belgrade. In this process, a key role was played by journalists' associations, which took over accreditations on behalf of their members and delivered them to the requested addresses by courier services.

New restrictions for free and undisturbed work of the media were introduced on March 31, 2020. Namely, by the **Government's Conclusion on informing the population about the state and consequences of the infectious disease COVID-19 caused by the SARS virus**¹¹ the role of informing the public about the state and consequences of the infection is entrusted exclusively to the Crisis Response Team for the suppression of the infectious disease COVID-19. The same decision stipulates that all information to the public can be given only by the Prime Minister or persons authorized by the Crisis Response Team.

¹⁰ Official Gazette of the RS, No. 98/06

¹¹ Official Gazette of the RS, No. 48/20.

Since it was in conflict with the Constitution of the Republic of Serbia, the Law on Free Access to Information of Public Importance¹², the Law on Public Information and Media¹³ but also the Law on Protection of the Population from Infectious Diseases, the Conclusion was soon withdrawn.

However, in order to understand the harmfulness of such a regulation, it is important to explain in more detail which rights have been violated by it. By designating the only one “body” that collects data and makes a decision on accurate and verified information, an **attempt was made to narrow and endanger the constitutionally guaranteed rights** of every citizen to full and timely information on issues of public importance. The Conclusion **restricts and denies the flow of information** to the public regarding the so-called “privileged” information concerning endangering and protecting human health and the environment. Also, **the free flow of information is limited** because it is impossible to report on data obtained from bodies and organizations that possess them. Thus, those who, by the nature of things, have information or can check its accuracy - **managers and other employees in health institutions, are prevented from giving information to citizens.**

It can be reasonably concluded that the role of this regulation was to prevent local authorities and health care institutions from providing information to the media. It channelled the method of collecting information, making decisions on publishing information and publishing information and paved the way for the removal of all potentially unfavourable data on decision makers, which would, although accurate, remain hidden from the public. Worded like this, the **Conclusion was also in contradiction with the provisions of the Law on Free Access to Information**, which states that the right to access information can be limited only by the Law. Namely, **if an institution received a request for access to information, it would not have a legal basis to reject such a request referring to the Conclusion.** If, by referring to the Conclusion, such a request for access to information was rejected, the responsible persons in the institutions or local self-governments would act contrary to the Law. Hence, this legally unsustainable regulation, after four days of validity, was replaced on April 3, 2020 by a new Conclusion of the RS Government and ceased to be valid.¹⁴

¹² Official Gazette of the RS, No. 120/04, 54/07, 104/09 and 36/10

¹³ Official Gazette of the RS, No. 83/14, 58/15 and 12/16 – authentic interpretation

¹⁴ Official Gazette of the RS, No. 50/20

Another regulation which was passed in a similar spirit was the **Decision on prohibition of the presence of journalists at conferences held by the Crisis Response Team**. Starting from April 10, 2020, the previous practice of journalists attending conferences organized by the Crisis Response Team changed. According to the announcement of the Office for Media Relations of the Government of the RS, it is envisaged that **journalistic questions will be submitted electronically, and that members of the Crisis Response Team will give (read) answers prepared in advance at press conferences**.

Given that this Decision was published on the website of the Government of the RS, but was not officially confirmed by a certain decision or other document, it remained **unclear what the exact content of that act was**. During the duration and after the withdrawal of the prohibition, a little less than 11 days after its adoption, the document could no longer be found on the official or other pages where the decisions made by the Crisis Response Team or the competent Ministry during the state of emergency were published. One can only assume that this decision or other act, based on the existing prohibition on gatherings of citizens, was made with the aim of preventing the spread of the virus among the journalists attending these conferences. Namely, a few days earlier, unverified information appeared that the COVID-19 infection appeared in certain media whose journalists were attending the press conferences of the Crisis Response Team.

Sending questions electronically and preparing written answers read at Crisis Response Team press conferences **cannot be considered an appropriate form of communication with the media**. On the contrary, the described way of obtaining information **made it impossible to timely inform the public about issues related to the health of the population**. This assessment is also supported by the results of an ad hoc survey among journalists, conducted by the Independent Journalists' Association of Serbia and the Independent Journalists' Association of Vojvodina. 153 members of two associations participated in the electronically distributed survey (40.7% permanently employed journalists and 59.3% freelancers). The results of the survey showed that as many as **95.4% of participants believe that the information obtained in this way is generalized and does not contain all the data that journalists need in their work**. Only 2% of respondents said that this format of press conferences

fully enables professional reporting in the interest of citizens, whereas 2.6% of respondents said they could not assess the quality of information provided. **About 47% of the survey participants said that they sent questions to the Crisis Response Team electronically, and that on that occasion they sent a total of 193 questions, and received 33 answers, i.e. only 17%.** Only 7.7% of survey participants said that the answers obtained by the members of the Crisis Response Team were useful, 16.5% of them said that the answers contained key information to a certain degree, while **27.5% stated that the answer they received did not contain key information they requested.**

SAFETY AT WORK AND OTHER CHALLENGES IN THE WORK OF JOURNALISTS DURING THE STATE OF EMERGENCY

At the beginning of April 2020, the Independent Journalists' Association of Serbia conducted a survey among its members, which aimed to determine what journalists need to do their job smoothly during a pandemic, as well as to reveal the biggest obstacles in their work during the state of emergency.

228 journalists from all over Serbia took part in the online survey. Almost 58% of survey participants said they needed **gloves, masks and disinfectants**, while 33.9% expressed the need for the ensured safety of digital communications (33.9%) legal aid and support (28.4%) and psychological support (8.7%).

At the same time, the biggest problem for performing journalistic work during the state of emergency was the the fact that **institutions for providing relevant information were closed**. Almost two thirds of the respondents chose such an answer. This is followed by the lack of a sufficient number of work permits during the prohibition of movement (37.6%) and abuse of powers by the authorities (23.3%).

The trend of non-delivery of information continued even after lifting the state of emergency. A large number of journalists complained about **the lack of action by institutions on the basis of requests for free access to information of public importance in connection with the questions asked about the situation in health centres throughout Serbia.**

Safety of journalists

When it comes to the safety of journalists, there has been an increase in incidents to the detriment of journalists in relation to the period preceding the state of emergency, but also in relation to the same period last year (March - April, 2019).

In the period from the introduction of the state of emergency on March 15 to May 6, a total of 47 cases of incidents against journalists were recorded. Among them, **32 cases of pressure and 15 cases of various forms of attacks on journalists**. Out of the 15 attacks, there were **two (2) threats to life, two (2) detentions as a form of physical threat to journalists, seven (7) verbal threats, two (2) physical attacks on journalists and two (2) attacks on property**.

As a special form of pressure, hitherto unnoticed in Serbia, we also mention the paid campaign on various Google services against a female journalist, due to critical reporting during the state of emergency.

At the same time, the Republic Public Prosecutor's Office, according to its latest "Notice on the stages of cases and actions of public prosecutor's offices in connection with criminal acts committed to the detriment of journalists in connection with their safety in the period from January 1, 2016 as of June 30, 2020" informed the members of the Permanent working group on safety that the competent prosecutor's offices have started processing in **only one case** in which there is a suspicion of committing a crime to the detriment of journalists, which includes a period of the state of emergency.

In the period before the introduction of the state of emergency, in twice the time period (100 days), 12 attacks and 11 pressures were recorded, and during the state of emergency, in only 47 days, the attack rate increased by **70 percent** and pressures by almost **150 percent**.

Of the reported cases of attacks and pressure, in **20 cases, pressure and threats came from government officials**.

Journalists' associations reacted to these attacks, and during the state of emergency (from March 15 to May 6), **two (2) reports** were submitted **to the Regulatory Authority for Electronic Media, one (1) notification to the competent prosecutor's office and one (1) to the Ministry of Interior**, while **the Permanent working group for the safety of journalists was informed about five (5) cases of serious forms of endangering the safety of journalists.**

During the state of emergency, the Permanent working group held one (1) meeting to discuss the apprehension and detention of journalist Ana Lalić, the apprehension of journalists Danijel Radić and Robert Bajtai, and the competencies and actions of officers of the Ministry of Interior during the state of emergency. The members of the group concluded that there were no grounds for apprehending and detaining journalist Lalić. The criminal charges against her were rejected on April 20, 2020, and in the meantime, no investigations have been initiated against the officials from the public prosecutor's office and the Ministry of Interior due to the application of severe measures. The proceedings on the filed criminal charges against journalists Radić and Bajtai are still ongoing and after six (6) months they are still in the phase of hearing witnesses by the prosecution.

During and after the state of emergency, the Office of the Protector of Citizens did not react to the published statements of journalists' associations regarding the recorded attacks on journalists and the actions of the bodies (Ministry of Interior) whose actions are under the responsibility of the Protector. Although it does not refer to the state of emergency, we note that twenty days after lifting the state of emergency, on May 22, 2020, the Office of the Protector of Citizens and nine (9) journalists' associations, media associations and trade unions signed an Agreement establishing a "Platform for recording cases of endangering safety of journalists and pressure on journalists and other media actors" which, among other things, envisages that **"journalists address the Protector of Citizens and warn of endangering safety and pressure when performing their profession"**, and that "the Platform will also contribute to more effective action of the competent state bodies so that the Protector of Citizens will use all the powers and competencies available under the Law on the Protector of Citizens in cases of endangering safety and pressure on journalists and other media actors."

WORK OF SELF-REGULATORY AND REGULATORY BODIES

Regulatory Authority for Electronic Media

The binding Instruction of the Government of the Republic of Serbia of March 23, 2020, recommended limiting the entry in the premises of the **Regulatory Authority for Electronic Media (REM)** as well as the performance of all tasks therein. Hence, REM decided to only act on urgent cases which allow no delay in decision-making during the state of emergency. Urgent cases include the implementation of all decisions of public authorities in order to combat the epidemic.

All media service providers and interested parties are instructed to send their requests within the scope of competence of the Regulator during the state of emergency by e-mail to the REM official address. In connection with the received requests, the Service of the Regulator has duly issued delivery receipts.

During the state of emergency, REM held one (1) emergency and five (5) extraordinary sessions. The topics of the sessions were regular affairs and consideration of reports on the work of broadcasters during the election campaign. However, at the sessions, **there was no action on the submitted reports related to the work of broadcasters**, including reports due to violations of regulations during the state of emergency.

Press Council

During the state of emergency, the **Press Council** held two (2) sessions. It was noted that the **number of complaints (28) filed during the state of emergency was many times higher compared to the same period in 2019 (12)**. Of the 28 complaints filed, 14 referred to the state of emergency and the Covid-19 pandemic, 10 were resolved, and four (4) are still in the process (in six of them it was decided that the Journalists' Code of Serbia was violated, in one it was decided that the Code was not violated, and in three cases no decision was made).

MEDIA REFORM

During the state of emergency, the work continued on the Action plan for the implementation of the Strategy for the Development of the Public Information System in the Republic of Serbia for the period 2020-2025. The first draft of the Action plan was completed during the state of emergency and sent to the institutions for observation. In the period from March 15 to May 6, 2020 three meetings of the working group for drafting the action plan were held.

DISSEMINATION OF MISINFORMATION DURING THE STATE OF EMERGENCY

Another phenomenon that marked the media scene during the past period is the **increased dissemination of misinformation**, i.e. malicious information. It is a global trend that the World Health Organization called “infodemic”, alluding to the large increase in fake news and the danger posed by misinforming the public during a pandemic. In Serbia, the **FakeNews tragač and Raskrikavanje.rs portals** have dealt with this phenomenon. The FakeNews Tragač research team detected a total of **43 false and manipulative narratives** about the coronavirus pandemic between March 12 and April 12, 2020, which were shared for a total of **241 times** through various online and traditional media. The detected content was **shared more than 220,000 times on Facebook alone**, which would mean that the average content was shared via different pages and profiles as many as 927 times. The most viral false news was that China declared the end of the epidemic (March 29): it was reported by at least 43 media, and it reached almost 47,000 shares. Some of the observed false narratives came from foreign sources, so they were translated into Serbian and shared through the media and communication applications, **but the dominant content originally was produced in Serbia, since they make up more than two thirds (71%) of the total amount of false news**. The media that created and published the largest number of fake news are Informer, Srbijadanas and Espresso¹⁵. However, the site Raskrikavanje.rs opened a [live blog on misinformation on coronavirus](#), on which it noted 16 texts with controversial content that were incorrect.

¹⁵ Novi Sad School of Journalism “Corona Virus and Infodemic in Serbia”, published on April 20, 2020, available on <https://fakenews.rs/wp-content/uploads/Korona-i-infodemija-u-Srbiji-2020.pdf>, accessed on October 7, 2020

LEGAL FRAMEWORK

The Order on restriction and prohibition of movement of persons on the territory of the Republic of Serbia, issued on March 18, 2020, prohibits movement in public places, i.e. outside apartments, premises and residential objects in residential buildings and outside the households entirely to persons aged 65 and above in populated areas of over 5,000 inhabitants, as well as persons aged 70 and above in populated areas of up to 5,000 inhabitants, while other persons are prohibited from moving from 8 pm to 5 am. This measure restricts the movement and makes it difficult for journalists to perform their tasks. The problem was partially solved by issuing work passes during the prohibition of movement.

[Government's Conclusion on informing the population about the status and consequences of the infectious diseases COVID-19 caused by the SARS virus](#), adopted on March 31, 2020 stipulates that informing the population about the status and consequences of infectious diseases represents a special measure to protect the population from infectious diseases, and that measures to prevent the spread of infectious diseases, in accordance with the law, are determined by the Government, so the following is stipulated:

- with the explanation of the absolute imperative that citizens receive only verified and accurate information regarding the status and consequences of the infectious disease COVID-19 caused by the SARS-CoV-2 virus, the Crisis Response Team for the suppression of the infectious disease COVID-19 headed by the Prime Minister is authorized to inform the public about the status and consequences of the disease. It is provided that all information to the public is given by the Prime Minister or persons authorized by the Crisis Response Team;
- mayors, heads of municipalities and crisis response teams of local self-government units are tasked with routing all information regarding the status and consequences of the infectious disease COVID-19 caused by the SARS-CoV-2 virus in local self-government units exclusively to the Crisis Response Team, which will ensure that necessary checks are carried out and appropriate measures are taken to inform the public in a timely and accurate manner;
- health institutions, health professionals or legal entities that perform health care activities submit medical information exclusively regarding the part of the measures they implement themselves to the competent

institute, i.e. institute for public health, for which it is planned to forward that information to the Crisis Response Team;

- finally, notifications of health measures taken and other information related to the treatment of COVID-19 caused by SARS-CoV-2 virus given to the public by unauthorized persons cannot be considered accurate and verified, thus allowing the application of regulations related to liability and the legal consequences for the dissemination of misinformation during the state of emergency.

The Conclusion stipulates that the source of information on COVID-19 can only be the Crisis Response Team and persons authorized by the Team, thus restricting the right to provide information to all other public authorities that had until then possessed specific information related to endangering the protection of health of the citizens of the Republic of Serbia. Due to these provisions, the Conclusion is in conflict with the Constitution of the Republic of Serbia, the Law on Free Access to Information of Public Importance, the Law on Public Information and Media, but also the Law on Protection of the Population from Infectious Diseases, which is the basis for the adoption of this Conclusion.

Article 51 of the Constitution of the Republic of Serbia stipulates that “everyone shall have the right to be informed accurately, fully and timely about issues of public importance, and the media shall have the obligation to respect that right.” The Constitution also stipulates that “everyone shall have the right to access information kept by state bodies and organizations with delegated public powers, in accordance with the law.”

Article 4 of the Law on Free Access to Information stipulates that there is always a justified interest of the public to know when it comes to information available to the authority relating to endangerment, i.e. protection of public health and the environment (Article 2, paragraph 1 of the Law). Thus, information concerning endangering the protection of human health and the environment is that in which it is not possible to further restrict or prove an overriding interest with the aim of challenging or restricting the bodies in their possession or other public authorities that believe they are entitled to it.

Article 4 (3) of the Law on Public Information and Media stipulates, among other things, that the free flow of information through the media must not be threatened.

The Law on Protection of the Population from Infectious Diseases in its Article 17, paragraph 1, item 12 provides for informing health professionals and the

population, and Article 47 stipulates that institutes for public health are obliged to inform health professionals and the population about the reasons and the manner of implementation of special measures for the suppression and prevention of infectious diseases, and especially in cases when the cooperation of health professionals and the population in the implementation of special measures for the suppression and prevention of infectious diseases is required.

Thus, the adopted Conclusion:

- 1) narrows and jeopardizes the rights provided by the Constitution that everyone shall have the right to full and timely information on matters of public importance. In this way, the right to access data kept by authorities with delegated public powers is denied; The Crisis Response Team is designated as the only “body” that collects data and makes a decision on accurate and verified information, so we believe that such centralization poses a danger that certain information may be delayed and may be processed and displayed in a different way than the original data available to local crisis response teams, clinical centres and hospitals;
- 2) In this way, public authorities that have been designated as unauthorized, contrary to the Law on Free Access to Information of Public Importance and the Constitution of the RS, are restricted and denied the flow of information to the public regarding so-called “privileged” information concerning endangering and protecting human health and the environment. With regard to privileged information, a public authority is not allowed to prove that the public has no legitimate interest in knowing about it. We take the view that the Conclusion does just that. In this case, only the Crisis Response Team (designation and disclosure) and persons authorized by the Team (disclosure) are allowed to select and announce information that they deem to be accurate and verified to the public;
- 3) The right to limit information is inadmissible, especially at a time when such information can be assumed to be important for the protection of the health of the population. Article 16 (2) of the Law on Free Access to Information of Public Importance states that “if the request refers to information that can be assumed to be important for the protection of life or freedom of a person, or for endangering or protecting the health of the population and the environment, the authority must notify the applicant of the possession of that information, provide him with a document containing the requested information, i.e. issue him a copy

of that document no later than 48 hours after receipt of the request.” The information that is the subject of the Conclusion certainly belongs to this group of information;

- 4) Contrary to the Law on Public Information and Media and Article 4 (3), the free flow of information is limited in this way because it prevents reporting on data obtained from bodies and organizations that have them in their possession, and which would be determined by the Conclusion as unauthorized;
- 5) Contrary to the Constitution and legal regulations, the Crisis Response Team and persons authorized by the Team are given the exclusive right to determine true, accurate and verified information. Regardless of the state of emergency and the broader powers of the bodies of the executive government, we believe that it is not possible to suspend legal regulations in a way that restricts or changes the original information, affects its flow and the timeliness of placement or prohibits information to bodies, so-called unauthorized persons. It should be so, particularly because these persons have an obligation to inform, considering that the information was created in the course of their work.
- 6) The Law on Protection of the Population from Infectious Diseases, which is the basis for the adoption of the Conclusion (adopted on the basis of Article 6 of the Law), provides for “informing the population and health professionals” and precisely stipulates that informing should be done by the “institutes for public health.” Such an obligation determined by the law cannot be derogated from by a Conclusion of the Government which is based precisely on the regulation which provides for the very same obligation. Essentially, the problem is that the Conclusion prevents citizens from being given information by those who, by the nature of things, have the information or can check its accuracy – heads and other employees in health care institutions.
- 7) By sharing true information, the source of which is not the Crisis Response Team, journalists could be held responsible for spreading misinformation and false news only because they published information that did not originate from the Crisis Response Team. This would constitute a restriction on freedom of expression which is disproportionate to the purpose the Government states to want to achieve with the Conclusion in question. Journalists could also be held responsible if the interviewee (in the capacity of an independent expert, citizen, politician, medical worker, etc.) comments on the existing solutions taken by the

state during the pandemic, which completely paralyzes the dialogue on the currently most important topic in the country.

- 8) The key problem of this measure is that it leaves the media without sources of information from the local level, i.e. without relevant interlocutors, primarily health professionals and local politicians, who could confirm or deny the information coming from the field, since such sources and interlocutors are now obliged by the Conclusion to route the information exclusively to the Crisis Response Team, i.e. institutes for public health. If the media do not have relevant sources and interlocutors, they will not be able to inform or deny the misinformation that was present in the public, despite the described measures of the Government of Serbia.

The Government's Conclusion has direct implications to the rights deriving from media freedoms and freedom of expression, and is inconsistent with the claims of transparency of the state of emergency and the measures taken in its course and sets a serious precedent. Freedom of expression may be restricted, inter alia, if necessary for the protection of public health, but to the extent necessary in a democratic society and without interfering with the substance of the guaranteed right. Although at the time of the largest increase in the number of infected, the Republic of Serbia was going through a period in which public health was seriously at risk, the question is whether such a scope of restrictions was really necessary. In addition to checking at the source, additional checks serve to collect data and waste time for publication in the Republic Crisis Response Team, which leads to delays in publishing data, which calls into question the timeliness of informing the public.¹⁶

During the state of emergency, the Government can restrict certain constitutional rights (for example, freedom of movement) by enacting legal acts which have less legal force than the laws. Still, it is very problematic to regulate legal relations differently by conclusions than they are regulated by systemic regulations.

Regarding the powers of the Government during the state of emergency, the fact is that all decisions made by the Government in such a situation are legally disputable. The decision to declare the state of emergency was made jointly by the President of the State, the Prime Minister and the Speaker of the National

¹⁶ Law Firm Živković, Samardžić, "Informing the public about the condition and consequences of COVID-19, Government may have taken things a step too far" published on April 1, 2020 <https://www.zslaw.rs/informing-the-public-about-the-condition-and-consequences-of-covid-19-government-may-have-taken-things-a-step-too-far/> accessed on October 7, 2020

Assembly. However, their constitutional authority to declare a state of emergency in this way depends on whether the National Assembly can convene or not, and it took almost 45 days.

Journalists and other associations reacted regarding the consequences of the entry into force of the Conclusion, after which it was repealed on April 2, 2020 at the session of the Government of the Republic of Serbia. However, as the application of regulations on information and notification of the public continued, there are still omissions when it comes to the provision of basic information and data related to the virus (for example, information on the number of ventilators, data on testing, number of tests, certain statistical data still remain unavailable in numerous examples).

By the Decision on prohibition of the presence of journalists at the conferences held by the Crisis Response Team of April 10, 2020, the Government of the RS stipulated that regular daily press conferences organized by the Crisis Response Team would be organized without the presence of journalists. The Office for Media Relations of the Government of the RS announced that journalists will no longer be able to participate in conferences. The Decision introduces a prohibition on the presence of journalists at press conferences of the Crisis Response Team, but also envisages that journalists ask questions by e-mail. To questions received in such a manner, members of the Crisis Response Team will prepare answers and then publish those answers at press conferences. We note that according to our knowledge and research, the document providing for the prohibition of the presence of journalists was not officially published, nor could it be found on the website of the Government of the RS or on other pages where all regulations in the Republic of Serbia are officially published. The Government said in a statement that *"due to growing concerns of fellow journalists, cameramen and photo-journalists about their health, and after complaints about the endangerment at press conferences of the president, members of the Government and experts"* questions are expected to be asked via e-mail.

The Decision is to some extent contrary to the Law on Public Information and Media because it is contrary to the realization of public interest in the field of public information which requires timely and complete informing of all citizens of the Republic of Serbia (Article 15, paragraph 1, item 1 of the Law). Sending emails and preparing written responses read at press conferences cannot be considered timely information, and given previous events (attempts to restrict access to data) there is a real possibility that such responses do not contain complete information. In this way, the flow of information and answers within

a reasonable time was interrupted, considering that these are issues related to endangering or protecting the health of the population. It is not only about the information that is made available to journalists and the public because the information can be fully available in this way as well, but also about the opportunity to ask direct questions to responsible experts or representatives of the authorities live. Given the attempts in the previous period to limit the flow of information and availability, we believe that organizing press conferences without the presence of the media is a way to avoid direct questions and provide controlled answers, and thus limit direct control of the Crisis Response Team. The very direct questions to experts and responsible government officials proved to be a very good form of control.

The prohibition most likely tried to prevent the asking of “inconvenient” questions at conferences that were held live and to which representatives or authorized experts (doctors) on behalf of the Crisis Response Team did not have answers. Also, more time was given for the preparation of answers and the possibility was created for their safe reading at press conferences. This Decision created a situation in which the recipient of the question has the opportunity to restrict access to information.

As of April 21, journalists are again allowed to attend press conferences organized by the Crisis Response Team.

