Mehmed Halilović and Amer Džihana

**RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION IN BOSNIA AND HERZEGOVINA DURING THE COVID-19 PANDEMIC**

**Content**

[Introduction 2](#_Toc42085945)

[Decisions, decrees and orders 4](#_Toc42085946)

[Police and fines 5](#_Toc42085947)

[Analysis of decisions 8](#_Toc42085948)

[Concluding remarks 10](#_Toc42085949)

May 2020

# Introduction

During the coronavirus epidemic in Bosnia and Herzegovina (BiH) many abuses came to light. These include political abuses, anomalies of the legal system and inconsistency of domestic regulations of various levels of government with the basic provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which should be applied directly in the BiH legal system and has precedence over all other laws (Constitution of BiH, Article II, 1).[[1]](#footnote-1) Numerous abuses, anomalies and inconsistencies produced negative consequences, especially in the field of human rights protection in general. A series of measures adopted by crisis staffs at all levels of government affected all spheres of life and introduced numerous restrictions for the population – from bans on public gatherings and going out to the introduction of curfew and publishing the names of citizens who were sent to self-isolation or were infected.

Some of the measures taken by the BiH authorities during the current COVID-19 pandemic ‒ decisions, decrees and orders ‒ also affected the work of journalists and more or less restricted the right to freedom of expression, which is particularly important not only for the media but for all citizens. With the explanation that they are fighting against false news and preventing the spread of panic, some BiH authorities threatened journalists and citizens who use social networks with high fines.

At the top of these restrictions are limits for journalists in exercising their right to freedom of the media. Under the pretext of protecting journalists, press conferences were organized without journalists, with pre-set and selected questions. Some of the press conferences even became platforms for attacks on journalists for alleged "inaccurate and malicious reporting", including direct accusations against investigative journalists that they had "taken on the role of institutions".

There were cases when the competent public institutions were not available to journalists, nor did they respond to inquiries from certain media outlets, while at the same time providing exclusive information to selected media[[2]](#footnote-2), decisions were made banning journalists from attending press conferences[[3]](#footnote-3), while public officials avoided answering critical questions and questioning of the appropriateness of certain measures.[[4]](#footnote-4) Further, representatives of the authorities and public institutions directly hindered journalist teams in carrying out their regular activities. In Tuzla, police destroyed footage of an RTV Slon team despite valid accreditations and a permit to be out during curfew.[[5]](#footnote-5) In Banja Luka, the management of the Clinical Center accused journalists for the "entering of the coronavirus into the Clinical Center" and warned them that they were under surveillance of intelligence agencies.[[6]](#footnote-6) The Chief of the BiH Federation Civil Protection Crisis Staff, as one of the most important state representatives in the fight against the pandemic, submitted a request to the Cantonal Prosecutor's Office in Sarajevo for an urgent investigation to examine biased and false allegations in the media.[[7]](#footnote-7)

# Decisions, decrees and orders

Out of a total of 14 levels of government in Bosnia and Herzegovina with a certain degree of competence (state, entity, cantonal and Brčko District authorities), the Republika Srpska (RS) entity took the lead in introducing emergency measures for journalists and citizens in general, explaining that it wanted to prevent the spread of false news and causing of panic under the threat of high fines. But the other entity did not lag far behind, although it did not formally make a similar decision or decree.

On March 19, the Government of the Republika Srpska adopted the Decision Prohibiting Incitement to Panic and Disorder during the State of Emergency on the Territory of the Republika Srpska. Very soon, using the powers based on the imposed state of emergency, on April 6, RS President Željka Cvijanović passed the Decree with Legal Force Prohibiting Incitement to Panic and Disorder during the State of Emergency." (Official Gazette of the Republika Srpska, No. 32, April 6, 2020).[[8]](#footnote-8) Both the Decision and the Decree with Legal Force were adopted at the proposal of the RS Ministry of the Interior.

Apart from slight linguistic differences, there are no significant differences in the content of the Decision and the Decree with Legal Force. The biggest difference is that the Decree with Legal Force has a greater legal significance compared to the Decision which was thus withdrawn. There is no difference in the prescribed fines "for those who spread false news and sow panic" either: for individuals from 1,000 to 3,000 KM, for legal entities from 3,000 to 9,000 KM and for responsible persons in a legal entity from 1,000 to 3,000 KM.

The Decree with Legal Force, similarly as the Decision, stipulates that it refers to “presenting or disseminating false news or allegations that cause panic or seriously disturb public order or prevent or significantly impede the implementation of decisions and measures of state bodies, other institutions and organizations exercising public authority”. This prohibition, it was pointed out, "also applies to acts committed through the media, social networks or other similar means" (Article 2 of the Decree with Legal Force, paragraphs 1 and 2).

Only two days after the RS Government passed the Decision Prohibiting Incitement to Panic and Disorder, on March 21, the Brčko District Crisis Staff issued an "Order Banning the Public Presentation and Dissemination of False Information Regarding the Coronavirus" (Official Gazette of the Brčko District of BiH, No. 15/2020).[[9]](#footnote-9) However, there are formal and essential differences between the Brčko District's Order and the RS Government's Decision. The first refers to the fact that violation of the Order is treated as a misdemeanor against public order and peace, but also as a criminal offense. The Order states that (violation of the Order) will be "prosecuted as a criminal offense as defined in Article 222 of the Brčko District Criminal Code". The Order does not specify the amount of the fine when it is treated as a misdemeanor, which presupposes that in that case the Law on Misdemeanor against Public Order and Peace applies. A partial explanation for that was given by the head of the Brčko District police, Goran Pisić, at a press conference on March 21: "Such actions may cause fear and panic among the population and we will characterize that as a crime, not a misdemeanor against public order and peace."

In addition, the first article of the Order differs from the Decision and the Decree in the RS in that it formulates this prohibition so that it applies not only to all citizens of the District but also to "all representatives and employees of public institutions of the Brčko District".

In the other entity, the Federation of Bosnia and Herzegovina (FBiH), no formal decision, decree or order was issued. However, as the media noted, by the end of March, the Federal Police Administration had filed five reports about cases "in which panic spread through social networks with the publication of disinformation and false news". "Until then, five cases had been investigated, documented and handed over to the prosecutors' offices in BiH".[[10]](#footnote-10) According to the same source, the Federal Police Administration appointed a team that "throughout 24 hours monitors all criminal events or abuses of position, as well as the spread of panic" and announced that it would "block profiles on social networks." A member of the Federal Civil Protection Staff and Deputy Director of the Federal Police Administration, Ensad Korman, stated that the established "state of disaster" provides "an opportunity for more aggressive implementation of the Criminal Code of the Federation".

There have been similar attempts at the local level, as well. On April 10, the Civil Protection Staff of the Municipality of Stari Grad in Sarajevo issued an "Order Prohibiting the Violation of Public Order and Peace by Causing Panic and Disorder in the Area of this Municipality." The content of the Order is almost identical to that in the Decree in the Republika Srpska (“ban on presenting or disseminating false news causing panic”, "impeding the implementation of decisions and measures of municipal bodies and other institutions"), and everything refers to the media, social networks and other institutions, with the same fines – from 1,000 to 3,000 KM for individuals and from 3,000 to 9,000 KM for legal entities.

## Police and fines

The Minister of Internal Affairs of the RS, Dragan Lukač, specified in the media that the Decision and the Decree of the RS refer to the dissemination of false news through the media and social networks, because "such false information may cause serious consequences". The Minister also pointed out that "the RS police have started to implement measures" and that "those who spread false news through social networks cannot hide."[[11]](#footnote-11) Police will, he said, interrogate those who spread false news and determine whether their intention was to cause panic.

Very soon after the Decision of the RS Government and then the Decree of the RS President, numerous misdemeanor charges followed against several persons in this entity and interrogations by the RS police. According to media reports, several people were fined. In response to an inquiry of the Association of BH Journalists, the Minister of the Interior of the RS wrote that a total of 18 decisions were issued "exclusively to natural persons" and that "none of them refers to a legal entity, i.e. the media." Among the people who were fined was a member of the Presidency of the SDS political party, Maja Dragojević-Stojić, a physician by profession, for allegedly causing panic after she expressed her position on the difficult situation in most healthcare institutions in the Republika Srpska.[[12]](#footnote-12) Blogger Borislav Radovanović was also fined. Basically, Radovanović criticized the response of the Republika Srpska authorities to the pandemic.[[13]](#footnote-13)

This approach and the powers of the police (from whom, as Minister Lukač stated, "those who spread false news through social networks cannot hide") provoked numerous reactions from journalists, journalists' associations, non-governmental organizations and international officials who demanded that no measures may infringe on fundamental civil liberties. The Head of the OSCE Mission to Bosnia and Herzegovina, Kathleen Kavalec, and the OSCE Representative on Freedom of the Media, Harlem Désir, expressed their concern at least twice in March and April about the measures introduced in the RS and the FBiH. The Council of Europe Commissioner for Human Rights Dunja Mijatović warned that these measures by the RS authorities and reports submitted by the Federal Police Administration were restricting media freedoms and the right to freedom of expression.

The reactions of domestic and international organizations had a positive result. The Republika Srpska authorities first limited the application of the Decree "only to cases that come after a citizen's report" and excluded the *ex officio* activities of the RS Ministry of the Interior. The decision on the new way of acting was announced by a member of the Presidency of BiH, Milorad Dodik, and the Minister of the Interior of the RS, Dragan Lukač, although the content of the Decree was not changed at that time.[[14]](#footnote-14)

Finally, on April 16, the RS Government, at the suggestion of the RS Ministry of the Interior, adopted a Proposal for a new Decree on the Termination of the Decree with Legal Force Prohibiting Incitement to Panic and Disorder during the State of Emergency.[[15]](#footnote-15) The decree was signed the next day, April 17, by RS President Željka Cvijanović. The published statement of the RS Ministry of the Interior pointed out that the Decree on Prohibition is being withdrawn because "citizens complied with the measures and instructions of the competent authorities" and that they "informed themselves about the epidemiological situation through official notifications from the competent institutions". It was also announced that "in accordance with this, the Ministry of Internal Affairs of the Republika Srpska will withdraw all misdemeanor warrants previously issued in accordance with the Decree with Legal Force Prohibiting Incitement to Panic and Disorder during the State of Emergency, as well as the Decision Prohibiting Incitement to Panic and Disorder during the State of Emergency on the Territory of the Republika Srpska, which was declared null and void by the Government of the Republika Srpska on April 3, 2020."[[16]](#footnote-16)

It is not known whether and when the Brčko District Crisis Staff and the Stari Grad Municipality formally withdrew their orders with identical prohibitions. According to media reports[[17]](#footnote-17), the Stari Grad Municipality Order "was not signed and was not applied". On the other hand, the Brčko District Police Chief stated that the police had prosecuted several people for these offenses, but other information on these cases was not available[[18]](#footnote-18). It is not known whether the prosecutor's offices acted on the reports of the Federal Police Administration and whether there were new cases in the meantime.

# Analysis of decisions

Decisions, decrees and orders prohibiting the "presentation or dissemination of false news" are not based on the constitutions and laws of BiH and are directly contrary to the European Convention for the Protection of Human Rights and Fundamental Freedoms and objectively restrict media freedom and citizens' freedom of expressions on social networks. The passing and existence of such decisions could lead to self-censorship and censorship, as well as to arbitrary and disproportionate penalties, whether fines or criminal penalties.

The wording in these decisions, orders and in the Decree is so undefined and broadly set that it allows for abuse and restriction of freedom of expression. No criteria were set as to what is meant by the terms used (false news, allegations, panic, serious disturbances of public order or peace), nor was the procedure or public authority prescribed which is supposed to deal with these issues. All powers of interpretation and conduct were handed over to the jurisdiction of the Ministries of the Interior and possibly the misdemeanor courts, which have neither the political nor the professional qualifications to make appropriate decisions in the field of restricting the right to freedom of expression. Since no "serious disturbance of public order or peace" or "panic" were registered and so there was no consequence of the alleged spread of false news (which is a condition for an action to be legally qualified as a misdemeanor or criminal offense), a logical question arises – what was the basis for the misdemeanor and criminal charges that the police filed?

The possibility of abuse is all the greater because the Decision/Decree in the RS states that prohibitions also apply to false news which "prevents or significantly impedes the implementation of decisions and measures of state bodies and organizations exercising public authority" (RS Decree, Article 2, paragraph 1). In this way, any criticism of the actions of public authorities and omissions in work could be interpreted as "impeding of decisions and measures of state bodies and organizations." The above-cited example of issuing a fine to the physician M.D.S., which the media claim is not the only one, is evidence of political abuse and points to the possibility of political persecution of dissidents.

“These were mostly penalties for posts on social networks, which have absolutely nothing to do with spreading panic or disturbing public order or peace, or obstructing the work of the competent authorities. On the contrary, these were contents that criticized the government or certain holders of public office, for which the defendants should not have accepted blame, nor should a misdemeanor warrant be issued for such a form of behavior at all" − Banja Luka lawyer Jovana Kisin told BIRN.[[19]](#footnote-19)

At the very beginning of the application of these measures, both in the Republika Srpska and in the Federation, these actions were taken ex officio and according to the assessment of the police. The manner in which this was done can be inferred from the aforementioned statements of the RS Minister of Police ("no one can hide") and the Deputy Director of the Federal Police Administration ("aggressive behavior"). A few days before the withdrawal of the Decree in the RS, however, this was changed and, without amending the Decree, it was "agreed" (between the member of the Presidency of BiH and the Minister of Police[[20]](#footnote-20)) that police actions should be taken after warnings and reports from citizens.

Political interpretation of legal norms and actions, of course, leads to legal anarchy and enables political and other abuses.

# Concluding remarks

The right to freedom of opinion and expression is one of the fundamental rights guaranteed by the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international instruments promoting human rights and freedoms. "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas
without interference by public authority and regardless of frontiers…”[[21]](#footnote-21)

On the other hand, it should be borne in mind that the right to health is a fundamental and inalienable human right guaranteed by the United Nations General Assembly through the Universal Declaration of Human Rights and that governments have an obligation to take effective measures to minimize the transmission of infectious diseases. [[22]](#footnote-22)

Under the International Covenant on Economic, Social and Cultural Rights, adopted by the UN General Assembly in 1966 and in force since 1976, which most countries have adopted, the right to health is defined even more explicitly:

*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.* (Article 12.1.)

As the Human Rights Watch noted in its report on Human Rights Dimensions of COVID-19 Response, the Siracusa Principles, adopted by the UN Economic and Social Council in 1984, and the UN Human Rights Committee general comments on states of emergency and freedom of movement provide authoritative guidance on government responses that restrict human rights for reasons of public health or national emergency.[[23]](#footnote-23) These Principles speciﬁcally state that 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.

According to the Human Rights Organization, governments are responsible for providing information necessary for the protection and promotion of rights, including the right to health. “A rights-respecting response to COVID-19 needs to ensure that accurate and up-to-date information about the virus, access to services, service disruptions, and other aspects of the response to the outbreak is readily available and accessible to all”.[[24]](#footnote-24)

On the other hand, freedom of expression is defined in international documents, including the European Declaration of Human Rights, as a qualified human right, which may be restricted under certain conditions. Permitted restrictions on freedom of expression include the protection of health. This means that the right to freedom of expression will not, in essence, be jeopardized if it is restricted in an adequate manner, i.e., if the restriction is prescribed by law, necessary in a democratic society and proportionate.

Freedom of expression is an individual right, but it also has a general social benefit and is the foundation of a democratic society. In one of the most important judgments handed down in 1976 (*Handyside v. United Kingdom*)[[25]](#footnote-25), the European Court of Human Rights extended these rights not only to “information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb
[…] such are the demands of that pluralism, tolerance and broadmindedness
without which there is no democratic society”. The European Court extended these rights to the press (all media) "which has the task of disseminating information and ideas" but also "to the public which has the right to receive them". These rights may be limited only under certain conditions laid down in Article 10.2 of the Convention. In such cases, the European Court uses a three-part test: 1) any restrictions must be prescribed by law; 2) the restriction must serve one of the prescribed reasons set out in the Convention, and 3) it must be necessary to achieve the prescribed purpose.

In all these cases, the restrictions imposed in Bosnia and Herzegovina during the current crisis caused by the presence of the coronavirus pandemic were not prescribed by law, only formally serve one of the prescribed reasons (health protection), and are not necessary to achieve the prescribed purpose – spreading of false news.

Efforts of the authorities and society to oppose the spreading of false information which can create panic and disorder in the context of a health crisis such as the current pandemic may be justified, but the measures taken are neither legitimate nor proportionate to the goal set. On the contrary, such measures and decisions could have led to self-censorship, censorship and restrictions on media freedom and the right to freedom of expression.

The best way to prevent the spreading of false news is to continuously and objectively communicate with journalists and citizens and provide credible information on the measures, rights and obligations for individuals and legal entities. Prohibitions, drastic restrictions and censorship are not helpful and may jeopardize public confidence in the institutions of the system. The free flow of information and the free operation of the media without any pressure are the only basis for the public to receive accurate and verified information.

1. <http://www.ccbh.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf> [↑](#footnote-ref-1)
2. <https://bhnovinari.ba/bs/2020/03/31/bh-novinari-javni-poziv-kriznim-stabovima-federacije-bih-i-kantona-sarajevo/> [↑](#footnote-ref-2)
3. <https://bhnovinari.ba/bs/2020/04/22/bh-novinari-protest-kriznom-stabu-stozeru-hercegovacko-neretvanskog-kantona-zbog-krsenja-prava-na-slobodu-izrazavanja/> [↑](#footnote-ref-3)
4. <https://bhnovinari.ba/bs/2020/03/24/bh-novinari-javni-protest-fadilu-novalicu-premijeru-fbih/> [↑](#footnote-ref-4)
5. <https://bhnovinari.ba/bs/2020/04/21/bh-novinari-javni-protest-mup-u-tk-zbog-nezakonitog-postupanja-prema-ekipi-rtv-slon/> [↑](#footnote-ref-5)
6. <https://bhnovinari.ba/bs/2020/05/06/bh-novinari-javni-protest-direktoru-ukc-rs-vladi-djajicu-i-njegovom-zamjeniku-nenadu-stevandicu/> [↑](#footnote-ref-6)
7. <https://bhnovinari.ba/bs/2020/04/30/bh-novinari-javni-protest-fahrudinu-solaku-direktoru-federalne-uprave-civilne-zastite/> [↑](#footnote-ref-7)
8. <https://mail.google.com/mail/u/0/?pli=1#inbox/FMfcgxwHNMShkmfXpHZXxthXSsNWLRhT?projector=1&messagePartId=0.1> [↑](#footnote-ref-8)
9. <https://www.paragraf.ba/propisi/brcko/naredba-o-zabrani-sirenja-laznih-informacija.html> [↑](#footnote-ref-9)
10. <https://detektor.ba/2020/03/30/podneseno-pet-prijava-za-sirenje-panike-na-internetu-u-federaciji/> [↑](#footnote-ref-10)
11. <https://www.slobodnaevropa.org/a/doktore-i-novinare-po-u%C5%A1ima-i-nov%C4%8Daniku/30546070.html> [↑](#footnote-ref-11)
12. <https://detektor.ba/2020/04/07/prosirene-ovlasti-za-cenzurisanje-i-kaznjavanje-medija-i-gradjana-u-rs-u-tokom-pandemije/> [↑](#footnote-ref-12)
13. <https://radovanovicborislav.blogspot.com/2020/03/koronaludilo-jos-jedna-prilika-za.html> [↑](#footnote-ref-13)
14. <https://detektor.ba/2020/04/13/promijenjen-nacin-provjere-sirenja-panike-u-rs-u-moguce-povlacenje-uredbe/> [↑](#footnote-ref-14)
15. <https://mup.vladars.net/lat/index.php?vijest=23281&vrsta=novosti> [↑](#footnote-ref-15)
16. <https://mup.vladars.net/lat/index.php?vijest=23281&vrsta=novosti> [↑](#footnote-ref-16)
17. <https://www.media.ba/bs/magazin-novinarstvo/policija-ne-moze-odrediti-sta-je-dezinformacija> [↑](#footnote-ref-17)
18. <https://www.otisak.ba/sef-policije-brcko-distrikta-o-otvorenim-istragama-i-prijavama-vezanim-za-korona-virus/> [↑](#footnote-ref-18)
19. <https://detektor.ba/2020/04/13/promijenjen-nacin-provjere-sirenja-panike-u-rs-u-moguce-povlacenje-uredbe/> [↑](#footnote-ref-19)
20. <https://detektor.ba/2020/04/13/promijenjen-nacin-provjere-sirenja-panike-u-rs-u-moguce-povlacenje-uredbe/> [↑](#footnote-ref-20)
21. <https://www.echr.coe.int/Documents/Convention_ENG.pdf> [↑](#footnote-ref-21)
22. <https://apps.who.int/iris/bitstream/handle/10665/252815/9789241511384-eng.pdf;jsessionid=4E7C42B6F55D5F979597C0392A2444F6?sequence=1> [↑](#footnote-ref-22)
23. <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response> [↑](#footnote-ref-23)
24. <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response> [↑](#footnote-ref-24)
25. <https://www.mediadefence.org/sites/default/files/resources/files/MLDI.IPI%20defamation%20manual.Croatian.pdf> [↑](#footnote-ref-25)