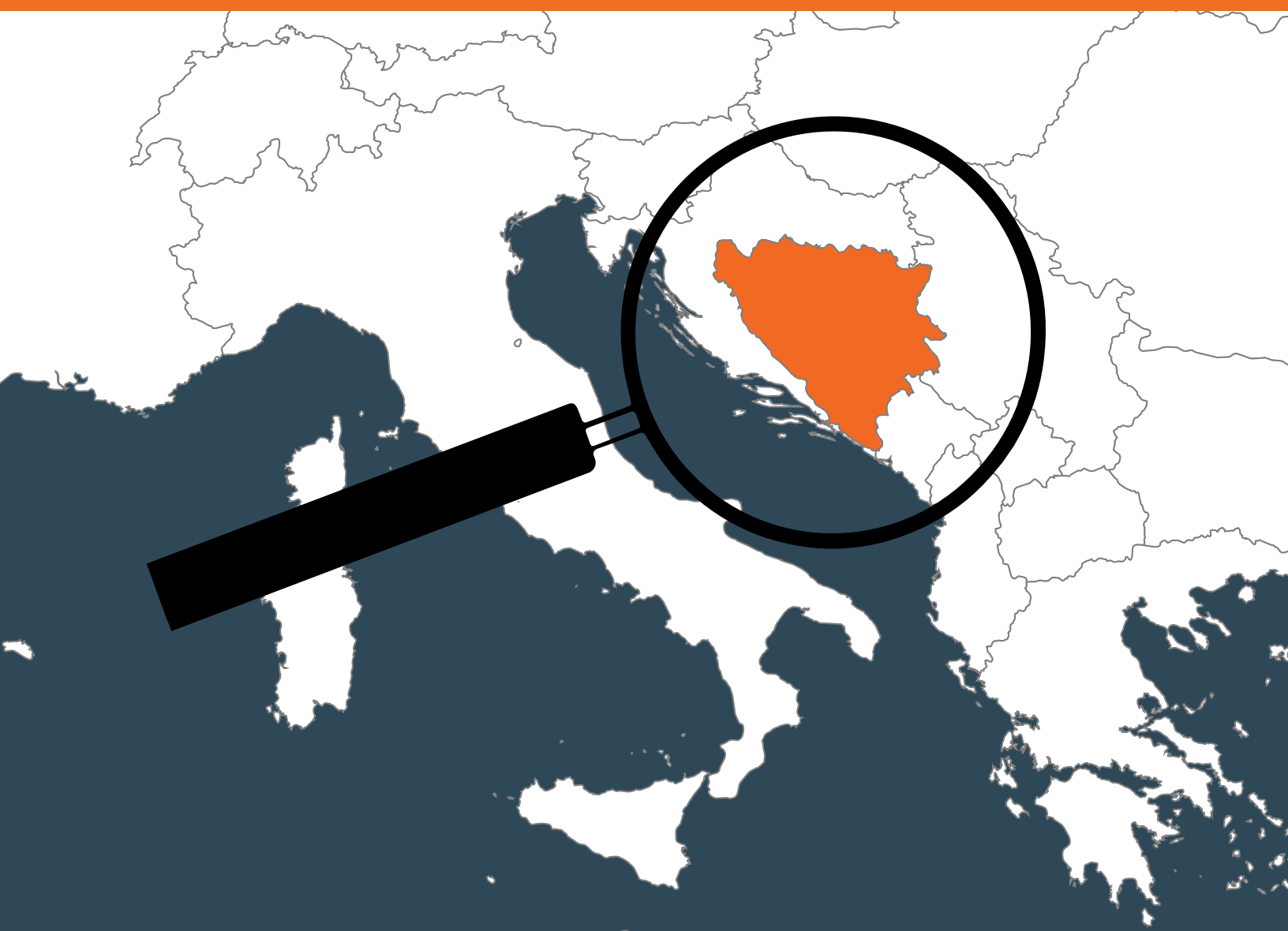


THE RIGHT TO MOVEMENT, HATE SPEECH AND THE PANDEMIC IN BOSNIA AND HERZEGOVINA



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**THE RIGHT TO MOVEMENT, HATE SPEECH
AND THE PANDEMIC IN BOSNIA AND HERZEGOVINA**

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Association for Democratic Initiatives (ADI) is a non-governmental organisation that works on political and economic development, rule of law, human rights protection and EU integration development in Bosnia and Herzegovina by strengthening participatory democratic practices and initiating partnerships between the civil society, state institutions and the private sector. ADI achieves its goals through public policy analyses, implementation of projects and public campaigns, and trainings. One of ADI's specific objectives is support to civil society organisations in building their institutional capacities and promoting their role in society.

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INTRODUCTION



The first COVID-19 case in Bosnia and Herzegovina (BiH) was registered on 5 April 2020 in Banja Luka, the Republika Srpska (RS), whereas the first case in the Federation of BiH (FBiH) was registered on 9 March in Zenica, with cases following in Konjic, Mostar and other parts of BiH.

On 10 March, the RS Government banned all public gatherings and decided to close all schools. On 11 March, the FBiH Government issued a decision to suspend classes for two weeks in all schools, including high schools and universities, and on 17 March, they issued an order cancelling all public gatherings.

The FBiH Government passed the Decision declaring the state of natural disaster caused by the coronavirus on the territory of the Federation of BiH on 16 March. On 16 March, the RS Government declared a state of emergency due to the coronavirus (the RS National Assembly adopted a decision declaring a state of emergency on 28 March). On 17 March 2020, the Council of Ministers of BiH passed the Decision declaring a state of natural or other disaster on the territory of BiH.¹

Following the declaration of a state of emergency, the crisis headquarters – the Federation Civil Protection Headquarters (FCPH) and the RS Emergency Crisis Headquarters (RSECH), as operational and legislative bodies – were tasked with the adoption of measures to protect the population from the COVID-19 pandemic at the entity level. Immediately after taking on this task, the headquarters adopted a series of measures restricting the freedom of movement of citizens.

On 21 March, a curfew was introduced in both the FBiH and the RS, restricting freedom of movement for persons who were on the territory of BiH at that time.² In addition to the curfew, a number of other measures were imposed to restrict the freedom of movement of BiH citizens and foreign nationals who entered BiH in the period after the declaration of the state of natural disaster. The introduction of a mandatory quarantine of 14 days, regardless of whether persons were COVID-19 positive or not, was introduced in different ways in the FBiH and the RS. Also, a decision of the BiH Council of Ministers introduced measures banning entry into BiH for citizens from 13 countries, with the exemption of persons having a BiH residence permit. These are just some of the measures taken by the institutions in BiH at the very beginning of the pandemic, which restricted or banned freedom of movement.

With respect to restrictions on freedom of movement of vulnerable groups (the elderly, children, children with disabilities and people on the move) that this Report addresses, the BiH authorities have adopted a number of measures. In adopting these measures, the authorities have not been sensitive to the needs of these groups and completely neglected their well-being. In addition to violating their human rights, all the measures adopted directly affected their safety, mental and physical health and, in some cases, their economic status. The impression was that these groups were consciously sacrificed for the purpose of ensuring health conditions for the majority of the population. Therefore, the measures can be viewed as inhumane and humiliating and, in that, inappropriate for a democratic society.

¹ Decision declaring a state of natural or other disaster on the territory of Bosnia and Herzegovina <http://www.sluzbenilist.ba/page/akt/bTsBUE4N5GM=>

² The ban did not apply to health workers on duty, persons in urgent need of medical assistance, members of the Ministry of the Interior, other members of law enforcement agencies and agencies exercising public authority. It also did not apply to persons with certificates issued by employers confirming that they need to move due to the nature of their work, and to persons to whom the MoI FBiH or RS issued a movement permit.

In addition, hate speech against people on the move escalated at the beginning of the pandemic as they were labelled the largest potential carriers of COVID-19. Inappropriate content in the media, statements by politicians, and comments on social media caused unjustified fear from people on the move. This resulted in the adoption of even more restrictive measures for this group which continued to dehumanise them. It is very important to emphasise that hate speech against people on the move did not lead to appropriate prevention measures or sanctions that the BiH authorities were obliged to introduce.

ABBREVIATIONS

- **ADI** – Association for Democratic Initiatives
- **BAM** – Bosnian Mark
- **BiH** – Bosnia and Herzegovina
- **CH USC** – Crisis Headquarters of Una-Sana Canton
- **CRA** – Communication Regulatory Agency
- **ECHR** – European Convention on Human Rights
- **ECtHR** – European Court of Human Rights
- **FBiH** – Federation of Bosnia and Herzegovina
- **FCPH** – Federation Civil Protection Headquarters
- **IOM** – International Organization for Migration
- **Moi RS** – Ministry of the Interior of the Republika Srpska
- **Moi USC** – Ministry of the Interior of Una-Sana Canton
- **NGO** – Nongovernmental organisation
- **OI** – Institution of Human Rights Ombudsman/Ombudsmen of BiH
- **RS** – Republika Srpska
- **RSECH** – Emergency Crisis Headquarters of the Republika Srpska
- **SNSD** – Alliance of Independent Social Democrats
- **UNHCR** – United Nations High Commissioner for Refugees
- **USC** – Una-Sana Canton

METHODOLOGY

This Report was prepared by the Association for Democratic Initiatives Sarajevo (ADI Sarajevo) with the support of the Civil Rights Defenders Office in Bosnia and Herzegovina.

The aim of the Report is to point out the violations of the rights of vulnerable groups, with a focus on the right to freedom of movement and non-discrimination/hate speech, and in relation to a number of decisions and measures taken by the BiH authorities during the COVID-19 pandemic in the period March – September 2020.

The report strives to answer the following questions:

1. Which international standards guarantee freedom of movement?
2. Were these standards respected and applied by the BiH authorities during the pandemic?
3. How did the restrictions imposed by the authorities affect the quality of life of vulnerable groups?
4. How did the protection of people on the move during the pandemic deteriorate?
5. How did hate speech affect people on the move during the pandemic?

In the preparation of the Report, the measures adopted by the BiH authorities in the period March – September 2020 were analysed, that refer to restriction of freedom of movement of vulnerable groups (the elderly, children, children with disabilities and people on the move). They were analysed in relation to whether they were 1) justified, 2) evidence-based so as not to be arbitrary or discriminatory, 3) subject to review, 4) necessary and proportionate to the aim pursued by them.

In cases of human rights violations, ADI Sarajevo regularly receives legal advice requests from citizens via its telephone line. During the period March – September 2020, a total of 17 requests were received pertaining to violations of the rights of vulnerable groups in relation to various measures and actions taken by the authorities during the pandemic. The report specifically focuses on 8 requests from citizens received in the period March – April 2020, which refer to violations of the right to freedom of movement of the elderly, children and children with disabilities. These examples were taken into account in determining the consequences for vulnerable groups that occurred after the measures were imposed. In addition to these measures, the measures adopted by the authorities specifically applying to people on the move who were deprived of the right to move, in the period March - September 2020, were also analysed.

Examples of hate speech against people on the move have been selected from the database that is regularly updated with data collected on the ground or provided by partner organisations involved in the monitoring of human rights violations.³ During this period, ADI registered 9 cases of hate speech against people on the move and submitted 9 complaints to the Press Council in BiH. Part of the data analysed was taken from reports of NGOs dealing with the protection of and assistance to people on the move and the UNHCR report.

The first part of this Report contains Chapters I, II and III. Chapter I provides an overview of international standards and national legislation governing freedom of movement. Chapter II provides an overview of measures adopted by the authorities at the level of BiH and its entities in the period March – May 2020 and the consequences of these measures for

³ To report hate speech and hate crime, citizens can use a form available at the website: <https://adi.org.ba/prijavi-zlocin-iz-mrznje/>

vulnerable groups in BiH. Chapter III provides an overview of the measures relating to people on the move and the consequences of these measures in the period March – September 2020.

The second part of the report (Chapter IV) covers hate speech in the media and statements of BiH officials that labelled people on the move the greatest danger for spreading COVID-19. In defining hate speech, the report uses Council of Europe Recommendation 97 (20) of 1997, which emphasises that forms of expression cause greater and more harmful consequences when transmitted through the media.

The report is part of regular annual human rights monitoring conducted by ADI Sarajevo in Bosnia and Herzegovina.

CHAPTER 1. PROTECTION OF FREEDOM OF MOVEMENT AND RESTRICTIONS ALLOWED IN CRISIS SITUATIONS

To protect the health of citizens and contain the spread of the COVID-19 pandemic in the period after 16 March 2020, the authorities in BiH have adopted a number of conclusions, decisions and measures. The measures that most affected vulnerable groups, foreign nationals and people on the move included restriction and prohibition of freedom of movement.

When adopting these measures, the BiH authorities were supposed to ensure their compliance with international standards, the case law of the European Court of Human Rights, and national laws.

The most important international human rights documents prescribe the possibility of temporary revocation from certain rights and freedoms. Temporary revocation, i.e., derogation from the proclaimed human rights, is different in nature from restrictions in that it is introduced only in the most difficult situations (a state of war or emergency) and can last only until the end of such events.⁴

INTERNATIONAL STANDARDS

The right to freedom of movement is one of the fundamental human rights. **The Universal Declaration of Human Rights**,⁵ in its **Article 13 (1)** stipulates that everyone has the right to freedom of movement and residence within the borders of each State, whereas paragraph 2 stipulates that everyone has the right to leave any country, including his own, and to return to

his country.

Article 5 (1) of the European Convention on Human Rights⁶ (ECHR) stipulates that everyone has the right to liberty and security of person and no one will be deprived of his liberty save in the cases provided for and in accordance with a procedure prescribed by law. **Article 14** reads that **prohibition of discrimination**, enjoyment of the rights and freedoms set forth in the Convention will be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. **ECHR Article 15** reads that in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. **Paragraph 3** defines that any Contracting Party availing itself of this right of derogation from ECHR will keep the Secretary General of the Council of Europe informed of the measures which it has taken and the reasons therefor, as well as when such measures have ceased to operate and the provisions of the ECHR are again being fully executed.⁷

4 Ljubinko Mitrović, Nikolina Grbić Pavlović, Gojko Pavlović, Derogiranje ljudskih prava u vanrednom stanju – slučaj Bosne i Hercegovine, p. 201, Pravni vijesnik, stručni rad, UDK 342.74(497.6:4) 342.76(497.6) 342.78(497.6), 2016, available at: https://hrcak.srce.hr/index.php?show=clanak&id_clanak_jezik=264291

5 Universal Declaration of Human Rights, available at: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

6 European Convention on Human Rights, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680063765>

7 The European Convention stipulates four conditions that must be met for an allowed derogation: war or other public emergency (provided that it threatens the life of the nation); derogations must be strictly required by the exigencies of the situation; and the measures may not be inconsistent with the state's other obligations under international law.

Article 2 of Protocol No. 4 to the ECHR,⁸ securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto, guarantees freedom of movement to everyone within the territory of a State. However, **paragraph 3 of this Article** allows the states to restrict that right but only in accordance with the law, if there is a legitimate aim, if the restriction is necessary in a democratic society, and if it is proportional to the aim pursued.

The International Covenant on Civil and Political Rights⁹ stipulates in **Article 4 (1)**: *“in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”*. **Paragraph 3** reads that *“any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation”*.

LEGISLATION OF BOSNIA AND HERZEGOVINA

The Constitution of Bosnia and Herzegovina¹⁰ was created to ensure the protection of individual and collective rights of all its citizens in accordance with the instruments for the rights and freedoms that exist in a democratic world. It stipulates that BiH and both its entities will ensure the highest level of internationally recognised human rights and fundamental freedoms. **Article II (2) of the BiH Constitution** stipulates the rights and freedoms set forth in the European Convention and its Protocols will apply directly in Bosnia and Herzegovina, and that these will have priority over all other law. The enumeration of rights and freedoms guaranteed by the BiH Constitution in this Article includes the rights to liberty and security of person and freedom of peaceful assembly and freedom of association with others. The constitutions of the entities and the Statute of the BiH Brčko District regulate the liberty and security of person and freedom of peaceful assembly and freedom of association with others in the same manner. **Article II (4) of the BiH Constitution** stipulates that the enjoyment of the rights and freedoms will be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 8 (2) of the Law on Aliens¹¹ reads that aliens lawfully in BiH will enjoy the right to free movement within BiH and free choice of place

⁸ Protocol No. 4 to the European Convention on Human Rights, Paragraph 1 - Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Paragraph 2 - Everyone shall be free to leave any country, including his own. Available at: <https://rm.coe.int/168006b65c>

⁹ International Covenant on Civil and Political Rights, available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁰ Constitution of Bosnia and Herzegovina, available at: http://www.ustavisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_hrv.pdf

¹¹ Law on Aliens, available at: <http://www.msb.gov.ba/PDF/Zakon%20o%20strancima%20H.pdf>

of residence, unless otherwise regulated by this or another law settling the special areas of public interest in a democratic society. **Paragraph (3)** stipulates that the rights referred to in paragraph (2) herein may be partially or fully restricted in accordance with the law and to the extent necessary for a democratic society and the benefit of state or public security, preservation of legal order, prevention of crime, protection of health or morality, or for the protection of the rights and freedoms of others.

individual from enjoyment or realisation, on equal footing, of rights and freedoms in all areas of life. **Paragraph (2)** reads that prohibition of discrimination will apply to all public bodies, all natural and legal persons, in public and private sector, in all spheres, especially: employment, membership in professional organisations, education, training, housing, healthcare, social protection, goods and services designated for the public and public places, and conducting of economic activities and public services.

Article 10 (1) of the Law on Asylum¹² stipulates that aliens who have expressed intention to apply for asylum, asylum-seekers, refugees, persons under subsidiary or temporary protection will enjoy the right to freedom of movement within BiH and free choice of residence. **Paragraph (2)** reads that the rights referred to in paragraph (1) above may be partially or fully restricted under the conditions prescribed by this or other law.

Article 2 (1) of the Law on Prohibition of Discrimination¹³ stipulates that discrimination, in terms of this Law, will be any different treatment including any exclusion, limitation or preference based on real or perceived grounds towards any person or group of persons, their relatives, or persons otherwise associated with them, on the grounds of their race, skin colour, language, religion, ethnic affiliation, disability, age, national or social background, connection to a national minority, political or other persuasion, property, membership in trade union or any other association, education, social status and sex, sexual orientation, gender identity, sexual characteristics, as well as any other circumstance serving the purpose of or resulting in prevention or restriction of any

¹² Law on Asylum, available at: <http://sps.gov.ba/dokumenti/zakoni/Zakon%20o%20azilu.pdf>

¹³ Law on Prohibition of Discrimination, available at: [http://www.fuzip.gov.ba/bundles/websitenews/gallery/files/47/1490684080Zakon_o_zabrani_diskriminacije_\(Sl_glasnik_BiH_-_broj_59_09\).pdf](http://www.fuzip.gov.ba/bundles/websitenews/gallery/files/47/1490684080Zakon_o_zabrani_diskriminacije_(Sl_glasnik_BiH_-_broj_59_09).pdf)

CHAPTER 2. VIOLATION OF THE RIGHT TO FREEDOM OF MOVEMENT IN BIH IN THE TIME OF THE PANDEMIC AND POSITION OF VULNERABLE GROUPS

MEASURES RESTRICTING/BANNING MOVEMENT OF VULNERABLE GROUPS

As early as 20 March, FCPH issued an order banning movement of persons under 18 and over 65 in the Federation of BiH, and on **21 March, RSECH** issued a decision banning movement of persons over 65 and older. Extremely high fines in the amount of BAM 500 were envisaged for violations of the envisaged measures.

Immediately after the introduction of these measures, ADI Sarajevo received 8 complaints from citizens pertaining to violations of freedom of movement and threatening of other rights. Three complaints follow below¹⁴ that were specific to the measures taken.

Complaint number 1: A person¹⁵ is 66 years old and lives with an 83-year-old mother she is caring for. Their health, as assessed by medical doctor, requires outdoor movement for at least one hour a day. Also, because they live alone and are not allowed to move, they face problems with procuring their medicines and groceries. The complainant believes their human rights are violated and they have been discriminated against on the ground of age and that restricting their movement for a long period of time can endanger their health, and ultimately have consequences for their lives.

Complaint number 2: A 65-year-old person living alone owns a property 4 kilometres away from the place where they raise domestic animals and own a greenhouse. The introduction of the above measures has prevented them from taking care of domestic animals on a daily basis and taking care of the greenhouse, which is a

source of food and income. The person cannot hire another person to take over their obligations on the property because they do not have the funds for that, and if they are not able to visit the property, the domestic animals will not survive. The person believes that the measure prohibiting their movement has direct consequences for their economic security and if it is not changed, it can have far-reaching consequences for their life.

Complaint number 3: A mother of a child with developmental difficulties noticed increased anxiety and auto-aggression in her child, because of the disturbance in their routine of daily activities. Due to the measures taken, the mother and the child cannot go for daily walks or visit relatives who normally spend a part of the day with the child. The mother believes that if the measures are not revoked, they can seriously endanger the health and life of the child.

Based on these three complaints and the complaints of five other people, ADI Sarajevo, supported by the Coalition for the Fight against Hate Speech and Hate Crimes, submitted a complaint to the BiH Ombudsmen Institution (OI), FCPH, RSECH, the FBiH Government and the RS Government on 24 March to reconsider these measures and adopt new ones to allow persons over 65 and under 18 to move in certain time slots. The complaint stressed that the reason for restricting movement of people over 65 (they potentially represent a group that is at a higher risk of contracting the virus, that develop a more severe clinical picture and have a higher mortality rate) is not justified, because other groups of citizens, especially those with chronic conditions are also at a high risk. The reasoning that persons under the age of 18 represent a potential channel for transmission of the virus (although their lives are not threatened)

¹⁴ The complaints have been abbreviated.

¹⁵ The identities of persons contacting ADI are protected, full data on persons are in the ADI Sarajevo database and are used in case of complaints to the Ombudsman Institution or initiation of court proceedings.

applied during the adoption of the measure to restrict movement was not based on evidence at the time of adoption and is subject to review. Therefore, the adopted measures violate Article 5 (1) of the ECHR, Article 2 of Protocol No. 4 to the ECHR and the Constitution of BiH.

Some alleviation of the measures happened on **27 March when the FCPH amended the ban and allowed children with disabilities** to go out within a radius of 100 meters from their home.

On 30 March, RSECH allowed people over the age of 65 to go out twice a week between 7 a.m. and 10 a.m., while on 3 April, the **FCPH allowed people under the age of 18 to move in a car, and people over the age of 65 to move from 6 to 10 April** in the period from 8 a.m. to 12 p.m. to get their pensions. On March 31, the BiH Ombudsmen Institution (OI) publicly addressed the institutions in BiH for the purpose of protecting the rights and freedoms of vulnerable groups. The OI letter states, inter alia: *“Recognising the intention of the authorities to suppress the spread of the COVID-19 epidemic by prescribing certain restrictions, we would like to underline that the restrictions may lead to consequences for certain vulnerable groups”*.¹⁶ The OI encouraged the competent authorities to take all necessary measures to protect public health, provided that the measures taken are carefully weighed and kept to a minimum, especially with regard to vulnerable groups.

In the period from 27 March to 22 April, ADI Sarajevo issued 4 press releases and submitted 3 complaints to BiH government institutions warning of violations of the freedom of movement for vulnerable groups.

On 22 April, the **BiH Constitutional Court**¹⁷, based on appeals of two persons – one older

than 65 and one parent of a person under 18 – passed a decision establishing that the ban on movement for persons over 65 and under 18 violated human rights. The Constitutional Court concluded that the appellants’ right to freedom of movement under Article II(3)(m) of the Constitution of Bosnia and Herzegovina and Article 2 of Protocol No. 4 to the European Convention had been violated.

On 24 April, the FCPH issued a new order partially allowing movement of people older than 65 – on Mondays, Wednesdays, and Fridays from 9 a.m. to 1 p.m. – and of **persons under 18** – on Tuesdays, Thursdays, and Saturdays from 2 p.m. until 8 p.m.

On 13 May, the FCPH issued a decision terminating movement restriction order for both of these groups, and on **14 May the measures banning movement for persons over 65 in the RS were lifted**.

HOW DID THE MEASURES AFFECT VULNERABLE GROUPS?

It is possible to determine the consequences of movement restriction measures. People older than 65 were in a position of not being able to procure food or medicines, visit a health facility, get their pension, or access a range of other services that require in-person visits (permits, statements, or consents by institutions etc.). As repeatedly pointed out by experts of mental health protection, long-term consequences for mental health are possible in circumstances of prolonged physical and social isolation. In addition, although the competent crisis headquarters organised volunteer services for the purpose of procuring foods and medicines, they

¹⁶ The full text of the Ombudsmen Institution release is available at: <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1513&lang=BS>
¹⁷ Decision of the BiH Constitutional Court abolishing the ban on movement - AP-1217/20, available at: <https://www.pravobih.com/odluka-ustavnog-suda-bih-kojom-se-ukida-zabrana-kretanja-ap-1217-20-t1322.html>

could not meet all the needs in the scope and quality required by this group of people.

In adopting measures restricting movement of persons under the age of 18, FCPH neglected the fact that restricting their movement for a longer period of time without reviewing the measure could have far-reaching consequences for their future physical and mental development. This measure has had a particularly negative impact on children with disabilities who are already discriminated against on many other grounds. Furthermore, the RS did not introduce the ban on movement of persons younger than 18 and they had not experienced an increase in the number of patients compared to the number of patients in the FBIH – it can therefore be concluded that this measure in the FBIH was not justified or based on evidence.

For both of these groups, measures were available that would have had the same effect, such as keeping a distance, wearing a mask, and respecting other preventive and hygienic measures.

CHAPTER 3. VIOLATIONS OF THE RIGHT TO FREEDOM OF MOVEMENT OF PEOPLE ON THE MOVE

THE SITUATION WITH VIOLATIONS OF THE RIGHT TO FREEDOM OF MOVEMENT OF PEOPLE ON THE MOVE BEFORE THE INTRODUCTION OF EMERGENCY MEASURES

From the beginning of 2018 until the outbreak of the pandemic, the largest number of people on the move was located in Una-Sana Canton (USC). For almost three years, the BiH authorities have failed to take responsibility and coordinate the obligations arising from the BiH Constitution, the Law on Aliens and the Law on Asylum, and to respond in an adequate manner to the needs of people on the move in protecting their rights. Most of the responsibilities have been taken on by the International Organization for Migration (IOM).

According to the BiH authorities and the UNCHR report,¹⁸ in March 2020, 1,540 people entered the territory of BiH. At the end of March, 6,557 people on the move had accommodation, as follows: 6,178 in reception centres run by the IOM, 171 in a centre run by the BiH Ministry of Human Rights and Refugees, and 208 in private accommodation. However, the situation on the ground was significantly different. A large number of people on the move could not be accommodated in the existing reception centres, so they had to organise and form so-called informal camps. According to data provided by humanitarian organisations and individuals providing field assistance, between 2,000 and 3,000 people on the move stayed in informal camps, numbering between 10-15 and 300 people each. Most of them were located in Una-Sana Canton near the border with Croatia, followed by Sarajevo Canton and Tuzla Canton. Those who could not, after violent deportations from

Croatia, return to the centres where they were previously housed and all the newly arrived people on the move who could not afford private accommodation found refuge in the improvised camps, which did not meet even the minimum living conditions. The situation was particularly alarming in the forests and abandoned buildings near Bihać, where, despite the winter, a large number of people on the move, including families with children and minors, settled. The situation in Tuzla was also alarming and a large number of people slept at the bus station where they were mostly assisted by volunteers and humanitarian organisations. The situation in the existing accommodation¹⁹ centres, except in Mostar and Bihać (Sedra and Borići) where families with children and unaccompanied minors are accommodated, was extremely bad. The number of people on the move accommodated in them exceeded the capacities; therefore, the hygienic and health situation was poor. In terms of food, people on the move had three meals often inappropriate for a long-term diet. Centres for accommodation of people on the move were not established in the RS, they never stayed longer than one day in the RS and, if the RS police noticed them, they took them to the entity line with the FBiH.

In the fall of 2019, the USC authorities enacted a series of measures restricting the rights of people on the move. On **2 September 2019, the Task Force for the Coordination of Activities and Supervision over the Migrant Crisis in the USC Territory** adopted conclusions that include:

- Deterrence of further influx of migrants to the USC area,

¹⁸ Monthly situation report- March 2020, available at: <https://bosniaherzegovina.un.org/sites/default/files/2020-05/Inter-agency%20Sit-Rep%20March%202020%20Final.pdf>

¹⁹ Article, Oslobođenje, 4 March 2020, Volonteri koji su pomagali migrantima u Tuzli prestali sa radom: Postalo je nemoguće, available at: <https://www.oslobodjenje.ba/vijesti/bih/volonteri-koji-su-pomagali-migrantima-u-tuzli-prestali-sa-radom-postalo-je-nemoguće-536743>

- Prohibition of transport of migrants by all means of transport,
- Prohibition of movement and gathering of migrants in public areas,
- Prohibition of providing accommodation services to migrants.

After these measures, the USC police unconstitutionally stopped people on the move who were literally thrown out of buses or trains that were traveling on the route Sarajevo - Bihać and ended up at the entrance to the USC.

At the same time, the RS authorities refused to work on reception of people on the move or provision of accommodation, and they adopted measures for their relocation to the FBiH. The RS MoI conducted organised raids and forcibly transferred people on the move from the RS to the FBiH. Most of them ended up on the entity line where they spent days outdoors.

THE SITUATION WITH VIOLATIONS OF THE RIGHT TO FREEDOM OF MOVEMENT OF PEOPLE ON THE MOVE AFTER THE INTRODUCTION OF EMERGENCY MEASURES

In early March 2020, the BiH authorities were completely unprepared for the new demands placed on them in terms of humane accommodation, care and protection of people on the move during the pandemic.²⁰ Before declaring a state of natural disaster in the FBiH and a state of emergency, to prevent the uncontrolled spread of the virus, on **7 March**, representatives of the Ministry of Security, the Prime Minister of **Tuzla Canton**, and the Mayor of Tuzla made a **decision to move 491 people on the move** from

Tuzla to the existing camps Ušivak and Blažuj in Sarajevo Canton. On 11 March this decision was implemented and people on the move were transferred, although there were no conditions in the Ušivak and Blažuj camps for all persons to be humanely accommodated. After the accommodation, all of them were ordered a period of 14-day isolation. On **12 March, Sarajevo Canton Police** transferred all persons who were in private accommodation or sleeping in makeshift camps to Camp Blažuj. There was no place for a number of people on the move in the Blažuj camp, so they were forced to spend several days outdoors.²¹

On 13 March, the USC Task Force issued a **series of conclusions** regarding early detection and prevention of the spread of COVID-19 among people on the move, **including a total ban on movement and the implementation of previous conclusions regarding the closure of Bira and Miral reception centres**, and the relocation of people on the move to a new location outside Bihać.

After the introduction of the state of natural disaster in the FBiH on **18 March**, the **Government of Sarajevo Canton** passed a **Decision stipulating measures to restrict movement of migrants in the Canton, and their placement in temporary reception centres**. By the same Decision, the Government introduced a **ban** on migrants from **leaving the centres**, with the consent of the Commander of the Civil Protection Headquarters of Sarajevo Canton.

On 24 March, FCPH issued a special order aimed at protecting health, **suspending visits or exits of all migrants from the centres in which they were placed**.

²⁰ Article, DW, 31 January 2020, Migranti u BiH: Kako je živjeti po zimi na ulici?, available at: <https://www.dw.com/bs/migranti-u-bih-kako-je-živjetipo-zimi-na-ulici/a-52212689>

²¹ Article, Aljazeera, 11 March 2020, Stotine migranata prebaćeni iz Tuzle u Blažuj, available at: <https://balkans.aljazeera.net/news/balkan/2020/3/11/stotine-migranata-prebaceni-iz-tuzle-u-blazuj>

Given the current situation in camps, after consultations with members of the Coalition for Combating Hate Speech and Hate Crimes on **27 March**, ADI Sarajevo submitted a complaint to the competent institutions stating that the measures significantly worsen the already poor position of people who do not have adequate access to housing, hygiene or food, and that they further stigmatise them. It was underlined that this order could not be considered justified or evidence-based, because at the time of its issuance there was no information to support the claim that a total ban on movement of only people on the move would achieve the aim of the measure. Bearing in mind that the established health protection measures, such as keeping physical distance, wearing a mask and gloves already existed, the adopted measure was not necessary, and as it referred to only one group, it was also discriminatory.

The new measures have made it impossible for people on the move to live in dignity, their situation has further deteriorated and they have been completely deprived of their human rights.

On 16 April, ignoring the gravity of the situation of people on the move, and at the proposal of the **BiH Ministry of Security**, the **BiH Council of Ministers decided to restrict movement and stay of foreign nationals in BiH**. The aim of this decision was to minimise the consequences of the pandemic and prevent the spread of COVID-19. The decision stipulated prohibition of movement or stay outside of their accommodation centres for foreign nationals who do not have valid identification documents on the basis of which their real identity can be established with certainty, who illegally reside in BiH, who have expressed an intention to apply for asylum and have a valid certificate of expressed intention or who have applied for asylum in BiH.

Several civil society organisations reacted to this decision²² pointing out that the ban on movement for people on the move was not in line with the State's obligations under the ECHR, Article 5 (1) and Article 14. Also, the decision was not in line with the Universal Declaration of Human Rights, the Convention relating to the Status of Refugees and its 1967 Protocol, and the Convention on the Rights of the Child. The complaint sent to the BiH Council of Ministers also pointed out that the measures prohibiting the freedom of movement of people on the move, which were adopted with the aim of protecting health and public interest and preventing the spread of COVID-19, cannot be assessed as the most necessary measures required by the exigencies of the situation as no evidence was presented to support them.

It is indicative that, in the decision-making process, the Ministry of Security, the BiH Council of Ministers and other institutions that implemented the measures completely neglected the safety and health of people on the move. Although the World Health Organization identified other measures (physical distancing, hygiene measures etc.) that could achieve the same goal, the authorities have applied the measure of confinement of people on the move to centres with poor conditions without having clear plans for their care or treatment in case of disease. People on the move were disproportionately affected by these measures compared to other groups because, in addition to being deprived of their freedom of movement, they were at a much higher risk of infection.

On 21 April, USC police also transferred the first group of people on the move to the **newly formed Lipa camp** for health and public interest purposes. Camp Lipa is located about 20 kilometres away from Bihać and is intended as

²² On 16 April 2020, ADI Sarajevo submitted a complaint on behalf of the Coalition for the Fight against Hate Speech and Hate Crimes; Vaša prava organisation prepared their individual complaint.

a place to accommodate all people on the move who are in Bihać. At the time of the transfer of the first group of people on the move (persons found in private accommodation and on the streets of Bihać), the camp was not ready. The relocation continued in the following months, although the conditions in the camp were still unsatisfactory.²³

On **20 August**, **Milorad Dodik**, a member of the BiH Presidency and leader of the SNSD party, publicly stated that the RS will not respect the 2019 USC MoI decision banning the transportation of migrants, **and that the RS authorities will continue transporting migrants to the entity line**. With this statement, he confirmed that the position of the authorities in the RS is that they want to restrict movement of people on the move and that **they will not allow their stay or the opening of reception centres in the RS**.²⁴

At the same time, in the period May – August 2020, there were between 50 and 150 people on the move daily in improvised camps on the entity line between the RS and the FBiH. A particular problem happened in August when the new decisions of the CH USC²⁵ completely prevented the transfer of families with children and unaccompanied children to specially designated camps in the USC.

On **21 September**, the **BiH Council of Ministers**, the **Ministry of Security** and the **authorities in the USC** adopted a series of conclusions and measures in relation to the meeting of the Task Force for Coordination of Supervision over the

Migrant Crisis in USC, which was held on August 19.

Highlighting the public health and safety of USC citizens, and protests of citizens against people on the move, the Task Force supported the decision of the Crisis Headquarters of the ministries of health from March 2020, and adopted a series of measures such as: **ban on entry for people on the move to USC, ban on the transport of people on the move by all means of transport, i.e. preventing their free movement, ban on movement and gathering of people on the move in public areas**.²⁶

In addition to violating international standards, these decisions were also contrary to the BiH Constitution, Article 3 of the Law on Aliens,²⁷ Article 8 of the Law on Aliens and Article 10 of the Law on Asylum.

23 Article, Mediacentar_online Magazine, 27 April 2020, Pandemija kao pokriće za dodatno etiketiranje ljudi u pokretu, available at: <https://www.media.ba/bs/magazin-novinarstvo/pandemija-kao-pokrice-za-dodatno-etiketiranje-ljudi-u-pokretu>

24 Article, SRNA 27 August 2020, Dodik: Migranti nemaju šta da traže u Srpskoj, available at: <http://www.srna.rs/novosti/1820196/migranti-nemaju-sta-da-traze-u-srpskoj.htm>

25 Article, DW, 21 august 2020, Nehumane političke igre s migrantima u BiH, available at: <https://www.dw.com/hr/nehumane-politicke-igre-s-migrantima-u-bih/a-54650069>

26 Article, Radio Free Europe, 20 august 2020, Prvi dan novih zabrana za migrante u Unsko-sanskom kantonu, available at: <https://www.slobodnaevropa.org/a/prvi-dan-novih-zabrana-za-migrante-u-unsko-sanskom-kantonu-/30794023.html>

27 Article 3 of this Law clearly defines the state competence and competent bodies for affairs with foreign nationals and it does not transfer the competence from the state level to local levels of government in any case.

HATE AGAINST PEOPLE ON THE MOVE DURING THE PANDEMIC

Persecution, violence and hate speech against people on the move happened even before the pandemic broke out in BiH. News about robberies, rapes, organised drug trafficking, potential sleeping terrorists have been on the pages of print and electronic media in BiH for days. Although analyses of data provided by BiH police administrations indicate that the number of crimes committed by people on the move was far lower than that committed by BiH citizens, the perception was formed in the public that they were dangerous criminals with bad intentions. Comments on the portals of many electronic media often included calls for their killings, expulsions, beatings and imprisonment in camps.

Hate speech is regulated by several international standards and laws in BiH. The most common definition of hate speech used in Europe is that of the Committee of Ministers of the **Council of Europe in Recommendation (97) 20**: *“hate speech shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”*.²⁸

In the context of BiH, the starting point is **ECHR Article 10**,²⁹ **Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination**,³⁰ the **International Covenant on Civil and Political Rights**, **Council Framework Decision 2008/913/JHA**, and other international standards prohibiting incitement to national, racial or religious hatred which constitutes incitement to discrimination, hostility or violence, the spread of xenophobia and incitement to racism.

The BiH Constitution, the criminal codes in BiH,³¹ the **Law on Prohibition of Discrimination of Bosnia and Herzegovina**³² regulate hate speech and its sanctioning. Regulation and self-regulation of the media in Bosnia and Herzegovina is defined by the establishment of the Communications Regulatory Agency for electronic media and the Press Council of BiH, which is a self-regulatory body for print and online media in our country.

28 Council of Europe Recommendation R (97)20, available at: <https://rm.coe.int/1680505d5b>

29 “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.” However, **Article 10 (2)** stipulates that the exercise of the freedom to expression carries “duties and responsibilities” and may be subject to legally prescribed and necessary restrictions for a range of legitimate aims listed in ECHR Article 17, especially in relation to **ECHR Article 14** that prohibits discrimination in the exercise of any right under the Convention.

30 Requires the states to “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination”, and prohibits racist speech even when it does not incite discrimination, hostility or violence; Article 7 stipulates immediate and effective measures with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups.

31 BiH Criminal Code, Official Gazette of Bosnia and Herzegovina 03/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10, 47/14, 22/15, available at: http://www.sudbih.gov.ba/files/docs/zakoni/ba/krivicni_zakon_3_03_-_bos.pdf, FBiH Criminal Code, Official Gazette of the Federation of Bosnia and Herzegovina 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, available at: http://www.oss.ba/dokumenti/Krivicni_zakon_FBiH.pdf, RS Criminal Code, Official Gazette of RS 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13, available at: http://www.tuzilastvobih.gov.ba/files/docs/zakoni/Krivicni_zakon_lat_RS_49_03.pdf, Criminal Code of Brčko District BiH, Official Gazette of Brčko District BiH 6/05, 21/10, 9/13, 26/16, 13/17, 50/18, 19/20, available at: <https://skupstinabd.ba/3-zakon/ba/Krivic--ni%20zakon%20Brcko%20Distrikta%20BiH/05B19-20%20Krivic--ni%20zakon%20-precisceni%20tekst.pdf>

32 Law on Freedom of Religion and Legal Position of Churches and Religious Communities in Bosnia and Herzegovina, Official Gazette BiH br. 05/04, available at: <http://www.mpr.gov.ba/biblioteka/zakoni/bs/ZAKON%20o%20slobodi%20vjere.pdf>

AN OVERVIEW OF MEDIA MONITORING RESULTS WITH RESPECT TO HATE SPEECH AGAINST PEOPLE ON THE MOVE IN BIH

In the period March – September 2020, ADI Sarajevo registered an increase in hate speech against people on the move compared to the previous year.

Particularly active was the web portal www.antimigrant.ba which already in 2019 was the subject of complaints to the Press Council and the OI submitted by the Network for Building Peace, of which ADI is a member. Following the decision of the Press Council in late 2019, which established a gross violation of the Press and Online Media Code for the inflammatory character of the texts containing hate speech and references to other crimes, the OI sent its response in early 2020. It stated that the OI, after considering both cases, submitted a recommendation to the Prosecutor's Office of Bosnia and Herzegovina, Communications Regulatory Agency (CRA) and the FBiH Police Administration. The recommendation stated: *"The articles published on the online media antimigrant.ba constitute incitement to discrimination and indicate dissemination of hate speech, as well as perpetration of other criminal offences. We call the above institutions to undertake measures within their competences and inform the Ombudsmen Institution thereon not later than 30 days as of the day of the receipt of this recommendation".*³³

In the meantime, the portal www.antimigrant.ba continued to operate. As the portal has a leased domain at the University Tele-Information Centre Sarajevo (UTIC), the Network for Building Peace addressed UTIC in 2020 with a

request to cancel the domain www.antimigrant.ba. The request was supported by explanations from the decisions of the Press Council and the OI, but UTIC rejected the request, finding nothing disputable in the name of the portal.

As this portal continued to publish daily articles and videos containing hate speech against people on the move, ADI Sarajevo continued to send complaints to the Press Council and the OI in 2020. The Press and Online Media Council of BiH accepted all 9 complaints submitted by ADI Sarajevo and found a gross violation of the Press and Online Media Code, stating that the inciting rhetoric against migrants entails criminal liability and that the name of the portal is of an inciting nature and calls for intolerance and negative actions against migrants, which is subject to criminal liability.

In accordance with the principles of media self-regulation, the Council cannot fine or suspend the portal, and the decisions of the Press Council's Complaints Commission do not contain mechanisms for sanctioning those who violate the prohibition principle – this depends on cooperation with law enforcement authorities (prosecutor's office and the police). The Network for Building Peace contacted the OI in March 2020 to obtain information on what the Prosecutor's Office of BiH, the CRA and the FBiH Police Administration – the addressees of OI recommendation regarding the 2019 complaint – have done. ADI Sarajevo, dissatisfied with the lack of promptness, filed another complaint with the OI in August 2020.

This complaint was answered in November 2020 and the OI decided to close both cases (the case of the Network for Building Peace and

³³ The OI Decision can be accessed in the offices of ADI Sarajevo and the Network for Building Peace.

the case of ADI Sarajevo) relating to complaints from 2019 and 2020. After the investigation, the OI sent recommendations to the relevant bodies indicating that the portal www.antimigrant.ba encourages discrimination and spreads hate speech. In their decision, the OI indicated that they were somewhat satisfied with the actions of the competent authorities, especially the CRA. The OI stated with regret that the portal is still active and continues with its discriminatory activities, which undoubtedly indicates the existence of possible criminal offenses. Also, the OI concluded that there were no grounds for taking any further action in the cases and therefore they decided to close them.

The decision of the OI from November 2020 is not at all encouraging because despite the fact that the OI stated that the portal www.antimigrant.ba continues to work smoothly and spreads hate speech, they decided to close the case (two cases, in fact).

Examples of news published on the web portal www.antimigrant.ba

The very name of the web portal incites to intolerance and negative actions against migrants. In addition, the content is full of prejudice, disseminates hate speech, incites to discrimination and hatred against people on the move.

Post on 16 August 2020 relating to the conflict between the residents of Velika Kladuša and the driver who was transporting people on the move

Title: The Situation in Krajina is Escalating: It Is Time for Someone to Start Defending the State of BiH

Text: Dissatisfaction of people from Krajina with the migrant crisis in this part of Bosnia and Herzegovina. (...) Then there is the

European Union whose actions led to Krajina people getting imprisoned in a concentration camp – they must get locked up in their houses, be careful where they and their children go as they are increasingly the target of migrants. But Krajina people will not wait long. Today's events in Velika Kladuša show that. If this continues, the situation will definitely escalate. Once we start having corpses, the problem will become much worse. Someone needs to get serious and stop this; someone needs to order the BiH Armed Forces to deploy to the eastern border but also send some units to USC. If the BiH Presidency or the Joint Staff cannot do that, there are those who can but the question is if they will. It is time for someone to start defending this state!

The full text is available at: <https://antimigrant.ba/eskalira-situacija-u-krajini-vrije-jeme-je-da-neko-pocne-braniti-drzavu-bih/>

On the same day, the following title was posted: Resistance! Pro-migrant Mafia Bus Smashed. The text is available at: <https://antimigrant.ba/otpor-razbijen-autobus-promigrantske-mafije/>

Post on 18 August 2020 relating to the public assembly and protest of Velika Kladuša citizens

Title: Antiimmigrant Revolution in Velika Kladuša

Text: The media in BiH hide the truth about the seriousness of the situation in Velika Kladuša, which is on the verge of war with migrants, since citizens can no longer tolerate migrant terror, burglaries, arson, and more frequent physical attacks. Citizens are determined not to allow the arrival of migrant bandits in the area of Velika Kladuša, and it is expected that others in

the USC will follow their example. The one thing nobody is taking into account, and of which the wartime commander Mirsad Selmanović warned us, is that “someone” might provide the migrants with weapons, which would lead to a bloodshed and conflict like the one in Syria.

The full text and video are available at: <https://antimigrant.ba/antimigrantska-revolucija-u-velikoj-kladusi/>

In addition, this portal mentions in several places the names of organisations, portals and individuals (often with a photo) who are labelled “pro-migrant activists” and subjected to incitement to their punishment.

Post on 6 June 2020 relating to the work of volunteers that help people on the move in Tuzla

Title: While Houses Burn in Tuzla, Pro-migrant Activists Kneel Against Racism

Text: Another proof that pro-migrant activists are ready for anything is the brutal abuse of racist violence in America, where victims of this violence are used as an excuse to protect violent illegal migrants who have just set fire to two houses in Tuzla. Among the useless do-nothings that organised this performance in the centre of Tuzla and allegedly kneeled against racism is the chief Tuzla pro-migrant activist, Senad Pirić Čupo. In the past year or two, he received thousands of illegal migrants in Tuzla, “certainly” for no fee at all, “certainly” in the name of humanism; these people came to Tuzla with the help of human smugglers and he referred them further to Bihać where they terrorise BiH citizens.

Available at: <https://antimigrant.ba/dok-gore-kuce-u-tuzli-promigrantski-aktivisti-klece-protiv-rasizma/>

Post on 20 May 2020 relating to the reaction of the Network for Building Peace to the Press Council BiH about hate speech on www.antimigrant.ba

Title: Atheist Portal prometej.ba: Selected Works from Antimigrant

Text: As migrant attacks on Bosniaks become more open and as resistance becomes more inevitable, we will be disclosing that the main sponsors of the settlement of migrants in Bosniak-majority areas are the prominent Islamophobic media and intellectuals – those who wanted to ban Islamic religious education in schools, who had a problem with Arab investors – and, suddenly, they do not have a problem with illegal migrant hordes from Islamic countries. The so called Network for Building Peace, sponsored by Srebrenica genocide deniers and portals such as “FGR – nice city crew”...

The full text is available at: <https://antimigrant.ba/ateisticki-portal-prometej-ba-izabrana-djela-sa-antimigranta/>

It should be underlined that it was not only www.antimigrant.ba that incited hatred and hate crime against people on the move in this recent period. Unfortunately, during the pandemic, many media outlets unjustifiably wrote or transmitted information about people on the move as a potential risk to the safety and health of citizens in BiH, thus inciting xenophobia, discrimination and ultimately violence against people on the move.

CONCLUSIONS



The COVID-19 pandemic is still a major challenge for all countries and their governments around the world. They are forced to make many decisions and undertake many measures to combat the spread of the pandemic on a daily basis.

What is specific for BiH is that, at its very beginning, the pandemic exposed all the weaknesses and unpreparedness of the BiH authorities to handle complex situations. At the beginning of the pandemic, the BiH authorities failed to take adequate measures to protect all the citizens and foreign nationals who happened to be in BiH during that period, by enabling them to fully enjoy the human rights guaranteed to them by international standards and national legislation.

All measures taken that referred to persons over the age of 65 and under the age of 18, and to people on the move, were discriminatory, not taken with a prior assessment of whether these measures were lawful, justified and based on evidence, and whether they were proportionate and necessary for the aim they are pursuing. In addition, the application of some of the adopted measures was not limited in time and the authorities did not present evidence that as such they could not be replaced by other, more lenient measures.

The authorities failed to meet the obligation to always and without exception do everything possible to protect the rights of all persons regardless of their personal characteristics, as any restrictions on the enjoyment of human rights in the interests of public health or national security must be non-discriminatory.

The authorities completely neglected the well-being of all four of these groups, which were consciously sacrificed for the purpose of ensuring conditions for the health of the majority of the population. Their physical and mental health, as well as their security,

did not have an impact on the adoption of the measures, which is why they are as such inappropriate for a democratic society, inhumane and humiliating.

People on the move were exposed to even more rigorous measures than other vulnerable groups. At the time of the pandemic, the increase of hate speech against them was not met with appropriate prevention measures or sanctions that the institutions in BiH were obliged to impose.

The OI reacted relatively late to violations of the right to freedom of movement of vulnerable groups, and their recommendations to government institutions were not specific. The OI closed some of the cases related to hate speech without insisting on the implementation of the recommendations given to the competent institutions. From the decisions of the OI that we received, it is completely unclear what the OI will specifically do regarding the existence of a portal that continues to spread hate speech for two years now.

The Prosecutor's Office of BiH, the CRA and the FBiH Police Administration have not yet fully complied with the 2019 recommendations of the OI.

It is very concerning that government officials have used hate speech to justify some of the measures taken against people on the move, which will have far-reaching consequences for this group. Some politicians often put people on the move in focus in order to achieve their goals.

Some media outlets created and disseminated content in which people on the move were presented not only as a danger to the health of citizens but also to the stability of BiH.

Generally speaking, hate speech in BiH is rarely prosecuted or sanctioned, although

the law provides for such a possibility. As the pandemic is not over, similar or the same measures can be expected that will limit not only freedom of movement but also other human rights of all citizens, because the authorities used this period to adopt many public policies in urgent procedures that did not pass mandatory consultations or harmonisation.

RECOMMENDATIONS

- When the authorities adopt new COVID-19 related measures in the future, as well as in other similar crisis situations, which suspend or restrict human rights, they should always assess whether these measures are lawful, justified and evidence-based, and whether they are proportionate and necessary to the aim pursued, and they should make sure that their application is limited in time.
- The authorities, even in such crisis situations, must be particularly sensitive to the needs of vulnerable groups. In the process of adopting decisions/ measures, no group should be overridden by the interests of other groups and the authorities must always do their utmost to protect the rights of all persons, regardless of their personal characteristics.
- The OI must be even more proactive in its responses to crisis situations, especially when it comes to violating the rights of vulnerable groups; their recommendations to institutions must be more specific; and the OI must persevere in monitoring the implementation of recommendations.
- The authorities in BiH, regardless of the COVID-19 pandemic, must urgently protect people on the move, in accordance with international obligations and national laws. It is especially important that when adopting measures concerning people on the move, the institutions that should protect their rights do not stigmatize and discriminate against this group.
- Every instance of hate speech against anyone in BiH, and especially against people on the move, should be urgently prosecuted and sanctioned because they are not able to use the existing protection mechanisms. For hate speech to be prosecuted as a criminal offense under the existing laws, the competent prosecutor's offices and police administrations must assume their obligations and responsibilities.
- CRA has executive powers,³⁴ i.e., the authority to impose sanctions, which are in line with European regulatory practice, for the purpose of ensuring compliance with existing codes of conduct and rules. CRA must be more actively involved in solving the problem of spreading hate speech and must use all its powers.
- In crisis situations, the media have a major role and responsibility in creating and transmitting information, so it is important to adhere to existing laws, guidelines³⁵ and the Press and Online Media Code³⁶. The media should refrain from conveying negative stereotypes and portraying people on the move as "abnormal" or "dangerous" groups or otherwise socially undesirable. Hate speech always precedes hate crime, so the media must be aware of the consequences of the uncontrolled spread of hate speech in the media.

34 Law on Communications provides for the possibility of issuing verbal or written warnings; fines commensurate with the gravity of the offense; issuing an order to suspend broadcasting; revoking the license. Law on Communications, available at <https://docs.rak.ba/articles/da724391-4a61-429b-8859-14d77fbfbf43.pdf>

35 The Guidelines for the Application of the Code on Audio-Visual Services of the Communications Regulatory Agency of BiH, Article 3 (3): "Media service providers shall not present content that includes any discrimination or bias based on sex, race, ethnicity, nationality, religion or belief, disability, special needs, age, sexual orientation, social origin, as well as any other content that has the purpose or consequence of preventing or endangering any person's recognition, enjoyment or exercise on an equal basis, of their rights and freedoms." Available at: <https://www.rak.ba/bs-Latn-BA/articles/105>

36 Press and Online Media Code, the Press Council, Article 4: "Journalists must avoid prejudiced and offensive allusions to one's ethnic group, nationality, race, religion, gender, sexual orientation, physical disability, or mental condition." Article 4A: "Journalists will avoid direct or indirect comments that disadvantage or discriminate against individuals on the basis of their sex, gender, sex identity, gender identity, gender expression and/or sexual orientation." Available at: https://www.vzs.ba/index.php?option=com_content&view=article&id=218&Itemid=9

- Politicians must stop using hate speech against people on the move in their addresses.

BIBLIOGRAPHY

1. Alaburić, Vesna. "Ograničavanje "govora mržnje" u demokratskom društvu - teorijski, zakonodavni i praktički aspekti - I. dio." *Hrvatska pravna revija* January 2003: 1 - 18. https://www.pravo.unizg.hr/_download/repository/Alaburic_I_dio.pdf.
2. Boračić-Mršo, Selma. Prvi dan novih zabrana za migrante u Unsko-sanskom kantonu. 20 August 2020. Radio Free Europe, <https://www.slobodnaevropa.org/a/prvi-dan-novih-zabrana-za-migrante-u-unsko-sanskom-kantonu-/30794023.html>.
3. Committee of Minister, Council of Europe. Recommendation R (97)20 of the Committee of Ministers to member states on "hate speech". Council of Europe, 1997. 145 - 160. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680767bfe.
4. Constitution of Bosnia and Herzegovina." 14 December 1995. http://www.mvp.gov.ba/dobro_dosli_u_bih/drzavno_uredjenje/ustav_bih/?id=261.
5. Criminal Code of Bosnia and Herzegovina. Sarajevo: Official Gazette of Bosnia and Herzegovina 03/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10, 47/14, 22/15, 24 January 2003. http://www.sudbih.gov.ba/files/docs/zakoni/ba/krivicni_zakon_3_03_-_bos.pdf.
6. Criminal Code of Brčko District of Bosnia and Herzegovina. Brčko: Official Gazette of Brčko District BiH 6/05, 21/10, 9/13, 26/16, 13/17, 50/18, 19/20, June 2005. <https://skupstinabd.ba/3-zakon/ba/Krivic--ni%20zakon%20Brc--ko%20Distrikta%20BiH/05B19-20%20Krivic--ni%20zakon%20-precisceni%20tekst.pdf>.
7. Criminal Code of the Federation of Bosnia and Herzegovina. Sarajevo: Official Gazette of the Federation of Bosnia and Herzegovina 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 2003. http://www.oss.ba/dokumenti/Krivicni_zakon_FBIH.pdf.
8. Criminal Code of the Republika Srpska. Banja Luka: Official Gazette of the Republika Srpska 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13, 25 June 2003 http://www.tuzilastvobih.gov.ba/files/docs/zakoni/Krivicni_zakon_lat_RS_49_03.pdf.
9. Decision declaring a state of natural or other disaster on the territory of Bosnia and Herzegovina. 17 March 2020. <http://www.sluzbenilist.ba/page/akt/bTsBUE4N5GM>.
10. Decision of the BiH Constitutional Court abolishing the ban on movement - AP-1217/20." 22. april 2020. <https://www.pravobih.com/odluka-ustavnog-suda-bih-kojom-se-ukida-zabrana-kretanja-ap-1217-20-t1322.html>.
11. European Convention for the Protection of Human Rights and Fundamental Freedoms. 3 September 1953 https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2013041003092706bos.pdf.
12. Guidelines for the Application of the Code on Audio-Visual Services of the Communications Regulatory Agency. n.d. <https://www.rak.ba/bs-Latn-BA/articles/105>.
13. International Covenant on Civil and Political Rights. 16 December 1966 <http://www.mhrr.gov.ba/pdf/medunarodnipakt%20b.pdf>.
14. Katić, Nikolina. *Ograničenje prava na slobodu kretanja u vrijeme izvanrednog stanja prema Konvenciji za zaštitu ljudskih prava i temeljnih sloboda*. Sarajevo: Fondacija Centar za javno pravo, 2020. http://www.fcjp.ba/analize/Nikolina_Katic3-Ogranicenje_prava_na_slobodu_kretanja_u_vrijeme_izvanrednog_stanja_prema_Konvenciji_za_zastitu_ljudskih_prava_i_temeljnih_sloboda.pdf.
15. Law on Aliens of BiH. 17 November 2015. <http://www.msb.gov.ba/PDF/Zakon%20o%20strancima%20H.pdf>.
16. Law on Asylum of BiH. 19 February 2016. <http://sps.gov.ba/dokumenti/zakoni/Zakon%20o%20azilu.pdf>.
17. Law on Communications of Bosnia and Herzegovina. 21 October 2003. <https://docs.rak.ba/articles/da724391->

- [4a61-429b-8859-14d77fbfbf43.pdf](#).
18. Law on Freedom of Religion and Legal Position of Churches and Religious Communities in Bosnia and Herzegovina. n.d. <http://www.mpr.gov.ba/biblioteka/zakoni/bs/ZAKON%20o%20slobodi%20vjere.pdf>.
 19. Law on Prohibition of Discrimination. Sarajevo: Official Gazette BiH 59/09, 66/16, 23 July 2009. <http://www.mhrr.gov.ba/PDF/LjudskaPrava/Zakon%20o%20zabrani%20diskriminacije.pdf>.
 20. Maglajlija, Vedrana. *Stotine migranata prebačeni iz Tuzle u Blažuj*. 11 March 2020. Aljazeera, <https://balkans.aljazeera.net/news/balkan/2020/3/11/stotine-migranata-prebaceni-iz-tuzle-u-blazuj>.
 21. Maksimović, Dragan. *Nehumane političke igre s migrantima u BiH*. 21 August 2020. Deutsche Welle, <https://www.dw.com/hr/nehumane-politi%C4%8Dke-igre-s-migrantima-u-bih/a-54650069>.
 22. Mirašćija, Mervan. Diktatura nedoraslih ili funkcionalna i demokratska država koja štiti ljudska prava? *NOMAD* 17 April 2020. <https://nomad.ba/diktatura-nedoraslih-ili-funkcionalna-i-demokratska-drzava-koja-stiti-ljudska-prava>.
 23. Mitrović, Ljubinko, Nikolina Grbić Pavlović i Gojko Pavlović. "Derogiranje ljudskih prava u vanrednom stanju – slučaj Bosne i Hercegovine." *Pravni vjesnik: časopis za pravne i društvene znanosti Pravnog fakulteta Sveučilišta J.J. Strossmayera u Osijeku*, Vol. 32 No. 3-4 (2016): 201-211. https://hrcak.srce.hr/index.php?show=clanak&id_clanak_jezik=264291.
 24. Nikolić, Predrag M. *Govor mržnje u internet komunikaciji u Srbiji*. Doktorska disertacija. Belgrade: University of Belgrade, Faculty of Political Sciences, 2018. https://www.fpn.bg.ac.rs/wp-content/uploads/2018/07/Nikolic_Predrag_Disertacija_FPN.pdf.
 25. OSCE ODIHR. *Razumijevanje krivičnih djela počinjenih iz mržnje: Priručnik za Bosnu i Hercegovinu*. Priručnik. Varšava: Ured OSCE-a za demokratske institucije i ljudska prava (ODIHR), 2010. <https://bit.ly/2XYMZLJ>.
 26. Press and Online Media Code of Bosnia and Herzegovina." 29 April 1999 https://www.vzs.ba/index.php?option=com_content&view=article&id=218&Itemid=9.
 27. Raosavljević, Predrag. *Govor mržnje u Bosni i Hercegovini - unapređenje regulative u BiH u skladu sa međunarodnim standardima*. Report. Banja Luka: Human Rights Ombudsmen Institution of Bosnia and Herzegovina, 2015. <http://univerzitetpim.com/wp-content/uploads/2019/07/Govor-mrznje-u-Bosni-i-Hercegovini.pdf>.
 28. Šabanović, Faruk. *Migranti u BiH: Kako je živjeti po zimi na ulici?* 31 January 2020. Deutsche Welle, <https://www.dw.com/bs/migranti-u-bih-kako-je-%C5%BEivjetipo-zimi-na-ulici/a-52212689>.
 29. Sali-Terzić, Sevima. *Govor mržnje na internetu: međunarodni standardi i zaštita*. Report. Sarajevo: Fondacija Centar za javno pravo, n.d. http://www.fcjp.ba/analize/Sevima_Sali_Terzic7_Govor_mrznje_na_internetu_medjunarodni_standardi_i_zastita.pdf.
 30. Sali-Terzić, Sevima. *Govor mržnje: međunarodni standardi ljudskih prava i pravni okvir u Bosni i Hercegovini*. Report. Sarajevo, 2013. https://bhnovinari.ba/wp-content/uploads/2013/01/govor_mrznje_ljudskopravaski_aspekt_sevima_sali_terzic.pdf.
 31. SRNA. *Migranti nemaju šta da traže u Srpskoj*. 27 August 2020. SRNA, <http://www.srna.rs/novosti1/820196/migranti-nemaju-sta-da-traze-u-srpskoj.htm>.
 32. Stokić, Vanja. *Pandemija kao pokriće za dodatno etiketiranje ljudi u pokretu*. 27 April 2020. Mediacentar, <https://www.media.ba/>

[bs/magazin-novinarstvo/pandemija-kao-pokrice-za-dodatno-etiketiranje-ljudi-u-pokretu.](#)

33. UNHCR. *Monthly situation report - March 2020*. Monthly situation report. Sarajevo: United Nations in Bosnia and Herzegovina, 2020. <https://bosniaherzegovina.un.org/sites/default/files/2020-05/Inter-agency%20Sit-Rep%20March%202020%20Final.pdf>.
34. Universal Declaration of Human Rights. 10 December 1948. https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2013041003050667cro.pdf.



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