

DEMOCRACY AND HUMAN RIGHTS

# DEMOCRACY AND THE STATE OF EMERGENCY

Functioning of Institutions in Times of Crisis

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The current covid-19 pandemic, as 'an hour of the executive', offers an unprecedented opportunity to elected incumbents for a power grab and erosion of checks and balances.



We have been witnessing a curtailing of civil and political rights on a massive scale, which is unprecedented in peacetime, accompanied by the adoption of new laws and measures that vested extra powers in the executive.



There remains the danger that the COVID-19 crisis will make the already fragile democracies in Southeast Europe even less resilient and more susceptible to executive takeovers.



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# INTRODUCTION

What are the repercussions of the COVID-19 pandemic for the democratic development of the countries of Southeast Europe? It is fairly accurate to say that many elements of their respective democratic systems have been affected by the pandemic: from the elections and political and civil liberties to the functioning of institutions (system of checks and balances). The focus of our study is on the last of these as we believe that this is the area where democracies are especially vulnerable.

In their bestselling book 'How Democracies Die', Steven Levitsky and Daniel Ziblatt<sup>1</sup> have argued that since the 1970s democracies have only rarely disappeared through armed coups, but much more often have eroded and died slow deaths, confirmed by empirical data. As Milan Svobik pointed out, after the 1990s executive takeovers – subversion of democracy by democratically elected incumbents - surged, and "they have accounted for four out of every five democratic breakdowns since the 2000s".<sup>2</sup> The current COVID-19 pandemic, as 'the hour of the executive', offers an unprecedented opportunity to elected incumbents for a power grab and the erosion of checks and balances, i.e., for undermining the key tenets of democracy, which Svobik labeled as an executive takeover. The danger is particularly great in democracies with weak safeguards such as those of this region.

## *Corona as an opportunity for an executive takeover*

We have been witnessing in them a curtailing of civil and political rights on a massive scale, unprecedented in peacetime, accompanied by the adoption of new laws and measures that vested extra powers in the executive. Such an accumulation of power in the hands of the executive has contributed to the further weakening of parliaments, which already had a subordinated role in the relationship with the executive branch, as well as to the further marginalization of the opposition.

Extraordinary times call for extraordinary measures and many of the adopted measures are surely necessary for the fight

against the virus. Yet the fear persists that some of these measures are not just based on epidemiological necessity, but also follow an authoritarian agenda thereby often ignoring checks and balances in the name of executive power. What is more, even an existential threat, such as COVID-19, has not been able to alleviate polarization in Southeast European societies. Many of the countries under investigation have been plagued by a toxic polarization that hampers the proper functioning of the checks and balances, causes gridlocks, undermines the commitment of political actors to democratic norms and values, and increases the willingness of citizens to tolerate democracy-eroding measures. In other words, in such a situation, elected incumbents are able to invoke executive powers and seize a great deal of authority with scant resistance.

All this being the case, there remains the danger that the COVID-19 crisis will make the already fragile democracies of the region even less resilient and more susceptible to executive takeovers (according to the latest Bertelsmann Transformation Index (BTI), only Slovenia and Croatia are classified as consolidated democracies whereby Croatia, with a grading of 8.15, borders the status of defective democracy - designated below the grade 8<sup>3</sup>). In this sense, it is of the utmost importance that incumbents relinquish power commensurate with the decrease in danger of the pandemic. One should not forget that executive takeovers or, in the words of Nancy Bermeo, executive aggrandizement<sup>4</sup> occur through legal channels and follow a constitutional path.

## ALBANIA

Albania is among those countries that reacted to the COVID-19 pandemic outbreak by introducing a State of Emergency (in Albania defined as a State of Natural Disaster) which included severe restrictions on key political and civil rights. They affected freedom of assembly and movement, with curfews both on weekdays and at weekends that were quite extreme and included one hour per day of movement for one family member alone. In order to ensure these measures were respected, amendments to the Penal Code were adopt-

1 Levitsky, S., and D. Ziblatt. 2018. *How Democracies Die*. Crown: New York.

2 Svobik, M. 2019. *Polarization vs. Democracy*. *Journal of Democracy* 30 (3): 20–32.

3 BTI. 2020. *Political Transformation*. Available at: <https://www.bti-project.org/de/home.html?&d=D&cb=00000>

4 Bermeo, N. 2016. *On Democratic Backsliding*. *Journal of Democracy* 27(1), 5-19.

ed enabling the police to arrest those who violated the measures and including punishments of up to 15 years in prison.<sup>5</sup> Hence, the Albanian government ‘relied’ much more on the effect of strict sanctions to ensure citizens’ compliance than on their awareness of the situation, and even deployed the military for this purpose.

The fact that at the moment of the COVID-19 pandemic outbreak Albania was in the midst of a deep political and institutional crisis did not help its democracy to efficiently deal with the pandemic. For more than a year, the parliament worked without the opposition since its MPs had resigned. A cocktail of opposition boycott of parliament, a passive Constitutional Court, and media that predominately reported in favour of the government additionally facilitated the empowerment of the executive (amid disputes between the ruling majority and President Ilir Meta, the executive, however, did not act in unison). The government was accused of politically exploiting the situation created by the pandemic, while Prime Minister Edi Rama was accused of using the pandemic for the personalization of power, which he denied. The executive’s frequent use of normative acts to amend legislation thereby circumventing the regular parliamentary procedures is most certainly worrying.

### *The pandemic aggravated deep polarization*

Even though the role of the opposition in a democratic system is to criticize the government and offer an alternative, it seems that the Albanian opposition was merely waiting for an opportunity to launch attacks on the government. The main opposition parties called upon the public to disregard the measures as unconstitutional and to ‘take back their rights’.<sup>6</sup> The pandemic therefore only aggravated one of the key problems of Albanian democracy – a deep polarization between two blocks who question each other’s legitimacy to govern, a pattern that remains rooted in the Albanian political system.

It must also be emphasized that civil society in Albania was very active and demonstrated its vitality. In spite of the restriction on public gatherings, protests were organized in several cities where citizens protested against government action and the disproportionate restrictions of key rights. It is, of course, completely legitimate to criticize the organization of a protest in the middle of a pandemic as irresponsible. Yet a peaceful protest is one of the key rights in a democracy that is even more important in non-consolidated democracies with weak safeguards such as Albania. This right should, therefore, be nurtured. It is essential for democratic development that the public act as a check to the ambitions of authoritarian-minded politicians.

5 “COVID-19 in Albania: democratic governance put to the test”, available at: <https://idmalbania.org/tales-of-region-albania/>

6 See Dyrmishi, A. 2020. FES Reports. *Democracy and the State of Emergency*.

## **BOSNIA AND HERZEGOVINA**

The COVID-19 pandemic challenged the already complex system of executive power in Bosnia and Herzegovina. Coordination at all levels of government was difficult, as the crisis management bodies in the Federation and Republika Srpska acted in their respective jurisdictions, resulting in distinct decisions and actions.<sup>7</sup>

Given that the BiH constitution does not provide for a State of Emergency at the state level, a State of Natural Disaster was declared at state level, while sub-state units adopted their own decisions, which included: a State of Emergency in Republika Srpska, and a State of Natural Disaster in the Federation of BiH and Brcko District. During the State of Emergency and/or Natural Disaster the executive authorities as key power holders in the pandemic issued numerous legislative acts on a daily basis.<sup>8</sup> Some of them, as shown later, have been significantly contested as overstepping the rights of citizens, both by the constitutional court as well as independent CSOs and the media.

Oversight function in this period in most parliaments in the SEE region, including Bosnia-Herzegovina was limited in its response to the COVID-19 crisis.<sup>9</sup> The state-level parliament suspended its sessions from March to May 2020 due to the COVID-19 pandemic; the Federation entity introduced rules of procedure for online sessions, which was a novelty in the region. In Republika Srpska, on 28 March the parliament declared a State of Emergency, suspending parliamentary activity and entrusting the entity president with the power to issue decrees with the force of law in matters of entity competence.<sup>10</sup>

The parliamentary dynamics of the parliaments in Bosnia and Herzegovina were not significantly affected by the COVID-19 crisis. Although debate in parliament has been assessed as intensive, it did not compensate for the inherited weakness of the legislative government.<sup>11</sup> Parliamentary opposition remained weak, while members of parliament from the ruling political parties usually rubber-stamped the proposed policies and measures of the government. After a significant delay, parliament did manage to adopt a budget proposal for the Bosnia and Herzegovina institutions in mid-July.

7 See Zivanovic, Miroslav, Democracy and the State of Emergency in Bosnia and Herzegovina, 29 April, 2020, available at: <https://europeanwesternbalkans.com/2020/04/29/democracy-and-the-state-of-emergency-in-bosnia-and-herzegovina/>

8 See Zivanovic, Miroslav ‘Bosnia’ in Democracy and Human Rights – Democracy and the State of Emergency, Report 4, <http://library.fes.de/pdf-files/bueros/belgrad/16359.pdf>

9 “Parliamentary response to the Covid-19 crisis in the Western Balkans”, 28 November, 2020, <https://www.wfd.org/2020/07/28/parliamentary-response-to-the-covid-19-crisis-in-the-western-balkans/>

10 “Parliamentary response to the Covid-19 crisis in the Western Balkans”, 28 November, 2020, <https://www.wfd.org/2020/07/28/parliamentary-response-to-the-covid-19-crisis-in-the-western-balkans/>

11 See Zivanovic, Miroslav ‘Bosnia’ in Democracy and Human Rights – Democracy and the State of Emergency, Report 4, <http://library.fes.de/pdf-files/bueros/belgrad/16359.pdf>

## Critical role of media and NGOs

The pandemic spurred activism on the side of the Constitutional Court in terms of assessing the proportionality of the measures of the executive. On April 22 the Constitutional Court decided that the ban on all outdoor activities for those under 18 and over 65 years of age introduced in mid-March violated the constitution and the ECHR. This verdict came as a response to a submission by a group of citizens and civil society organisations took this decision to the Constitutional Court, claiming the ban went beyond what was necessary.

NGOs, coupled with independent media outlets, have played a critical role as watchdogs over the performance of various institutions during the pandemic. Cases that have marked the pandemic are the Silver Raspberry Case, which concerned a highly controversial procurement of medical equipment and is still under investigation.<sup>12</sup> The BH Journalists Association responded strongly to the decree introducing penalties for everyone who “spreads panic and publishes or transmits false news on COVID-19” through media or social networks, introduced between March 17 and April 17, 2020 in the Republika Srpska entity. For them, this act provided for media censorship and restricted citizens’ right to freedom of expression, highlighting concerns for the future, although the accompanying fines were revoked following a public outcry of discontent.<sup>13</sup>

Bosnia and Herzegovina experienced several protests during the pandemic period channeling public discontent in a non-violent manner. The protests targeted both the management of the pandemic, but also other matters of the political life of the country.

As has been the case across the region, the pandemic strengthened the role of the executive in Bosnia, in a system already suffering from weak checks and balances overall. As in other countries, the Constitutional Court conducted an assessment on the proportionality of the measures, as a positive development. Finally, as has been noted in other studies, independent actors such as NGOs and the independent media have been instrumental in uncovering and curbing some of the negative trends such as questionable procurements and excessive limitations of rights.

## CROATIA

Although in its fight against the pandemic the Croatian government also introduced a wide-range of restrictive measures affecting freedom of assembly and movement, the citizens of this country were spared from the introduction of a State of Emergency and the rigours of curfew seen in many neighbouring countries. Key political and civil rights were restricted, but not to the extent seen in many other countries, which is commendable. Across the world one could see too many examples in which governments, at the first sign of trouble, fully suspended key political and civil rights.

In Croatia, the other actors of the democratic system also showed their democratic commitment. Parliament, the political opposition, civil society organizations and the media were not passive. Parliament performed its oversight role with several sessions and confrontational deliberation between government and opposition MPs. The opposition parties, together with NGOs, performed their role as critics of the government by pointing out possible human rights infringements and maintained vigilance that democratic procedures were not violated, i.e., that the government was not going too far. The same applies to the media, whose freedoms were not restricted, and so they were also able to fulfill their watchdog and monitoring functions.

### *Cohabitation as an obstacle to executive takeover*

The fact that since February 2020 the Croatian political system has been marked by cohabitation – Prime Minister Andrej Plenkovic being from the HDZ (Croatian Democratic Union) while President Zoran Milanovic is a member of the SDP (Social-Democratic Party) – also contributed to the better-functioning of checks and balances (this arrangement also being an effective obstacle to executive takeover). Milanovic, who was directly elected and thus enjoys strong legitimacy, also acted as a check, accusing the government that the adopted measures in the fight against the pandemic were based on very weak legal foundations. Hence, the Constitutional Court checked the work of the government and ruled that the adopted measures were in accordance with the Constitution, a decision with which President Milanovic publicly disagreed.<sup>14</sup> The Croatian political dynamic was initially not marked by significant protests against the measures. Yet this changed in October, when protests began which were attended by many advocates of conspiracy theories and thus also assumed an illiberal character.

In contrast to other countries in the region, the July parliamentary elections in Croatia took place in an atmosphere in which their legitimacy was not contested. The incumbent party, the HDZ, emerged as a clear winner and was able to

12 See Radio Slobodna Evropa, Afera ‘Respiratori’: Premijer FBiH Fadil Novalić zadržan u SIPA-I, 28 May, 2020 <https://www.slobodnaevropa.org/a/respiratori-bih-afere-srebrna-malina/30639946.html>

13 See Think for Europe Network <https://www.thinkforeurope.org/wp-content/uploads/2020/07/The-Western-Balkans-and-the-COVID-19-Effects-on-good-governance-rule-of-law-and-civil-society.pdf>

14 Milanovic o Stozeru: “Ustavni se sud prepao, ali to je ljudski”, available at: <https://slobodnadalmacija.hr/vijesti/hrvatska/milanovic-o-stozeru-ustavni-se-sud-prepao-ali-to-je-ljudski-ovo-je-sr-e-stanje-prirodne-katastrofe-1044673>

form a government with junior partners. It seems that voters honoured the initial successful management of the pandemic crisis, bar some mistakes mostly concerning the political-biased decisions of crisis management institutions that favoured the ruling party, which, however, later became an increasing reality. The ruling party namely managed to politically exploit effective crisis management, an achievement that also weakened populist political forces.<sup>15</sup> The populist radical right coalition around the Patriotic Movement, with its political program based on ethnic nationalism and illiberalism, failed to win enough votes to secure the status of king-maker.

In sum, Croatian democracy showed its vitality during the pandemic. One could not detect signs of democratic erosion induced by developments related to the crisis. Yet the crisis also showed a strong presence of patronage politics and misfunctioning of the rule of law that continue to plague Croatian democracy.

## KOSOVO

Kosovo declared a State of Emergency over the entire territory on March 15. With the aim of providing the necessary legal framework for the adoption of required health measures, the Kosovo Assembly adopted a new Law on the Prevention and Fight Against the Pandemic.

A defining conflict of the pandemic in Kosovo was the divergent opinions between the president and Prime Minister Kurti on the State of Emergency. Prime Minister Kurti was strongly opposed as he regarded this as a way for the president to take over power and control decision-making in the country. The outcome was a vote of no confidence resulting in the collapse of the Kurti government 60 days after coming to power.<sup>16</sup> Consequently, a new, wide coalition government was approved by parliament in June and led by the LDK.

### *Political turmoil and fragmentation*

The election of the new government in parliament, following a May 29 decision by the Constitutional Court, created an undemocratic precedent and was subject to harsh criticism by the civil society sector.<sup>17</sup> Moreover, the decision of the Kosovo Specialist Chambers to indict President Thaci and his subsequent resignation led to further polarization of an already fragmented Kosovar public, as well as creating further political turmoil. At the same time, the clash between the president and opposition parties vis-à-vis the management of the crisis by the Kurti government brought about a constitutional crisis as a number of decisions and restrictive measures

were contested at the Constitutional Court. The “Constitutional Court adopted a decision which stated that the imposed restrictions of fundamental rights and freedoms were not in accordance with relevant legislation and the constitution.”<sup>18</sup>

The pandemic has also highlighted the evident fragility of the rule of law and the functioning of the judiciary which have been greatly affected by the pandemic. The work of the courts and prosecution was impeded, while some judges started to deal with cases from their homes.

The Kosovo Assembly “has been marked by a lack of a stable majority, high political polarization and important delays in decision-making, including on issues of major importance related to the COVID-19 crisis, such as the ratification of international financing agreements,”<sup>19</sup> as noted in the EC report on Kosovo.

Civil society and the media managed to play a constructive and active role throughout the pandemic in Kosovo. CSOs continued to provide reliable analysis and data on how different sectors were affected by the pandemic. Moreover, CSOs worked to inform citizens through awareness campaigns to inform them on the mechanisms and tools they have available in cases of violations of human rights and breaches of their liberties. While complying with the measures, civil society also enabled an environment of protest as citizens around the country protested for days from the windows and balconies of their homes by banging pots and pans in condemnation of Kosovo politicians for the uncertainty they created over the future of the leadership of the country in the middle of the pandemic.<sup>20</sup>

The media was another sector that managed to largely maintain a professional image while guaranteeing public access to information, in cooperation with the competent institutions. The media, and in particular public media outlets, operated in a difficult environment as the sector was not included in the Emergency Fiscal Package introduced by the governments.

## MONTENEGRO

A State of Emergency was not introduced in Montenegro either. Yet the adopted measures to fight the COVID-19 pandemic strongly affected civil and political rights, foremost freedom of assembly (banning public gatherings and rallies – a measure often violated by the Serbian Orthodox Church and supporters of both political camps) and mobility of citi-

15 See Zakosek, N. 2020. FES Reports. *Democracy and the State of Emergency*.

16 L. Krasniqi-Veseli, A. Konushevi, ‘The Kurti government falls’ in Radio Free Europe, 28 November, 2020. <<https://www.evropaelire.org/a/30508373.html>>

17 Democracy and Human Rights – Democracy and the State of Emergency, Report 4, pg. 20, <<https://www.fes-skopje.org/e/democracy-and-the-state-of-emergency/>>

18 “Parliamentary response to the Covid-19 crisis in the Western Balkans”, 28 November, 2020, <<https://www.wfd.org/2020/07/28/parliamentary-response-to-the-covid-19-crisis-in-the-western-balkans/>>

19 European Commission, Kosovo 2020 Report, 28 November, 2020. <[https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo\\_report\\_2020.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf)>, pg. 9

20 COVID-19: The Effects to and the Impact of Civil Society in the Balkan Region, 27 November, 2020. <<http://www.balkancsd.net/novo/wp-content/uploads/2020/04/78-5-Balkan-Civil-Society-in-the-COVID-19-Crisis.pdf>> pg. 3

zens (the daily curfews), and vested extra powers in the executive branch as well. Although there have been no significant protests against the curtailing of civil and political rights since the outbreak of the pandemic, the accumulation of power in the hands of the executive has not passed without dissent. In other words, other ‘stakeholders’ of the democratic system have been visible and active.

In general, the old opposition - after the August 30 elections a new parliamentary majority was constituted and after 30 years in government the Democratic Party of Socialists (DPS) went into opposition - did not contest the substance of the measures, but it did challenge their legal foundations, claiming that official introduction of a State of Emergency was necessary, something the government denied. Although justified, the mere accumulation of power in the hands of the executive demands a more active role of the parliament as a body with direct legitimacy. Particularly at this critical moment of de-parliamentarization of political decisions, parliament should perform its oversight role. At the beginning of the crisis, this was not the case, but it later changed, and parliament was active, with sessions marked by deliberation and confrontational debates between government and opposition MPs.

### *A pattern of national identity based toxic polarization*

In the new reality and circumstances for political processes, NGOs and the media have a crucial role to play in defending democracy by monitoring policies and shining a light on critical issues. No measures were adopted which prevented civil society actors from performing their duties or the media from freely reporting on government activities and the entire situation in general. NGOs checked the implementation of the measures thereby criticizing the detention measures and incarceration of citizens accused of violating measures to fight the pandemic. The same cannot be said for the Constitutional Court. Only months after the outbreak of the pandemic it decided to begin performing its role and for the first time checked the actions of the executive thereby confirming their legality.

The pandemic demonstrated that even a major shock such as this could not destabilize a strong, enduring relational pattern in the form of the national identity-based toxic polarization of the Montenegrin party system. Political competition continued to be dominated by zero-sum conflicts, which are regarded as existential and possess a winner-takes-all logic, and in which Montenegrin politicians often do not respect the difference between an enemy and an adversary. All this can only be detrimental to Montenegrin democracy.

In sum, besides allegations of the instrumentalization of the pandemic (through patronage networks) in order to improve its electoral chances, there were no signs that the ‘old’ government used the current public health crisis as a cover to seize new powers that have little to do with the outbreak or to systematically crack down on dissent. It remains to be seen

how the newly-elected government (on 4 December) will handle the crisis in the coming period. Its weak legitimacy – being a government of experts and not politicians –, fragile support in parliament, and the fact that Montenegrin President Milo Djukanovic (DPS) belongs to the other political camp significantly reduce the dangers of executive takeover.

## **NORTH MACEDONIA**

North Macedonia entered the COVID-19-crisis with a dissolved parliament and a caretaker government, composed of both position and opposition ministers from the beginning of January 2020. In order to enable a rapid response during the crisis and to afford the government the right to legislate, the president declared a State of Emergency in mid-March, and extended it on five separate occasions until the announcement of the parliamentary elections in mid-June. The early parliamentary elections originally scheduled for mid-April were finally held in mid-July 2020 and a new government took office at the beginning of September 2020.

These circumstances of a caretaker government and dissolved parliament created several specific challenges for state institutions during the COVID-19 crisis. The general constitutional provisions on the State of Emergency were not further regulated at the national level. Lacking such provisions, the government was pressed to act quickly and the absence of a functional parliament left many legal gaps which, largely due to the lack of a functional parliament, were often filled without proper information or dialogue. Lastly, the participation in the caretaker government of both ruling parties and the opposition largely created a shared responsibility of the management of the crisis in the first couple of months.

Declaring a State of Emergency in effect gave the power to the government to adopt legally binding decrees, in an institutional setting already suffering from weak checks and balances.<sup>21</sup> Numerous restrictions were introduced including a derogation from the European Convention on Human Rights.<sup>22</sup> Freedom of movement limitations,<sup>23</sup> prohibition of public gatherings, cancellation of all public events and clos-

21 “Decision Establishing State of Emergency on the Territory of the Republic of North Macedonia for a Period of 30 Days [Одлука за утврдување на постоење на вонредна состојба на територијата на Република Северна Македонија за период од 30 дена],” Official Gazette of RNM, No.68/2020 § (2020).

22 Derogation from: Article 8 (Right to Respect for Private and Family Life), Article 11 (Freedom of Assembly and Association), Article 2 of Protocol 1 (Right to Education) and Article 2 of Protocol 4 (Freedom of Movement). Source: “Nota Verbale, JJ9021C Tr./005-232, Council of Europe (02.04.2020)” (Council of Europe - Directorate of Legal Advice and Public International Law, April 2020), <https://rm.coe.int/16809e1288>.

23 “Decision on Prohibition and Special Regime of Movement on the Territory of Republic of North Macedonia [Одлука за забрана и посебен режим на движење на територијата на Република Северна Македонија],” Official Gazette of RNM, No. 72 § (2020).

ing of venues,<sup>24</sup> and imposing self-isolation<sup>25</sup> were some of the adopted measures. While these measures were largely not much different from the overall approach in the region, their enforcement as well as the monitoring of their impact has been questionable.

The burden of the crisis management has largely fallen on the Ministry of Health as the lead in the epidemiological response. The recommendations of the Committee of Infectious Diseases, as the responsible expert body, were generally respected by state officials.

The absence of a functioning parliament between January and August 2020 significantly affected the possibility of any parliamentary oversight over the executive in this period. Given the duration of the State of Emergency in the country and the contestation over the elections date, MPs of one of the ruling parties SDSM petitioned for signatures in support of reconvening the Assembly in operation. Yet, the Speaker of the Parliament was of the opinion that there was no legal possibility to reconvene the Assembly which, as a result, remained dissolved for the entire period.<sup>26</sup>

The Constitutional Court provided for the only form of check on the activities of the government on several occasions during the pandemic. This court declared as unconstitutional the bans of movement at certain periods of the day for the elderly and adolescents, as in other countries of the region.<sup>27</sup> In terms of the institutional response to the crisis, the court did not accept to review several initiatives' key submissions, such as an initiative to review the constitutionality of several of the presidential decisions to declare a State of Emergency; also, a question from a judge in court to assess whether the decision to dissolve the assembly was constitutional.

NGOs and the media highlighted the sluggish responsiveness of the institutions, including on issues such as free access to information.<sup>28</sup> While the opposition parties started organizing anti-government protests towards the end of the year, these were not directly related to the institutional impact of the COVID-19 crisis.

## SERBIA

After the outbreak of the pandemic, people joked in Serbia that COVID-19 was as present in the media almost as much as President Aleksandar Vucic. This joke says much about the country's political dynamic. In Serbia, a State of Emergency was immediately introduced. However, this decision was not initially confirmed by parliament in plenary, which the Serbian Constitution requires. Representatives of the parliamentary groups were not even consulted prior to its declaration even though key civil and political rights were suspended (Serbia adopted tough restrictive measures which included daily curfews that occasionally even lasted for more than 80 hours).

In political terms, the fight against COVID-19 was a one-man show. The pandemic led to an increasing personalisation of power, with President Vucic playing the leading role in the fight against it and being omnipresent (sometimes in a very macho manner telling the media that Prime Minister Ana Brnabic had been calling him several times a day to cry over the phone).<sup>29</sup>

### *Personalization and centralization of power*

This caused even further degradation of Serbia's institutions. In the spirit of a rubber-stamp parliament, the Serbian parliament only convened to confirm the decisions of the executive. There was neither confrontational deliberation, nor critical assessment of the government's handling of the crisis. The government also tried to silence those media not under its control and exercised increasing pressure on journalists with attempts to centralize the spread of information and restrict media freedoms. Additionally, since the Constitutional Court was also mute, there was no proper control of the executive's activities.<sup>30</sup>

In other words, President Vucic used the pandemic and the "victory over the virus" for the further accumulation of power in his hands, i.e., for the consolidation of power of his Serbian Progressive Party (SNS). At the parliamentary elections organized as early as June, and boycotted by the majority of the opposition parties, the incumbent party was the clear winner. In an authoritarian manner, President Vucic announced at the press conference the scheduling of new elections for no later than April 2022 before the new government was even formed.<sup>31</sup> Until then, Serbia is to have a rubber-stamp parliament that will further subordinate it in its relationship with the executive. The already very weak opposition is now even more marginalized.

24 "Decree with Legal Force for Application of the Law on Public Assemblies in a State of Emergency [Уредба со законска сила за примена на Законот за јавните собири за време на вонредна состојба]," Official Gazette of RNM, No. 71 § (2020).

25 "Decree with Legal Force for Application of the Law on Protection of the Population from Infectious Diseases during a State of Emergency [Уредба со законска сила за примена на Законот за заштита на населението од заразни болести за време на вонредна состојба]," Official Gazette of RNM, No.72 § (2020).

26 For more on this see Parliamentary response to the Covid-19 crisis in the Western Balkans, 28 November, 2020, <https://www.wfd.org/2020/07/28/parliamentary-response-to-the-covid-19-crisis-in-the-western-balkans/>

27 See Decision no. 60/2020, available at: [ustavensud.mk/?p=19320](http://ustavensud.mk/?p=19320)

28 See <https://prizma.mk/koronata-ja-namali-transparentnosta-na-institutsiite/>

29 „Zvala me Ana 15 puta, plače, brine se“, available at: <https://www.alo.rs/vesti/drustvo/aleksandar-vucic-korona-virus-u-srbiji-pre-drag-kon-ana-brnabic/304291/vest>

30 See Tepavac, T. and T. Brankovic. 2020. FES Reports. *Democracy and State of Emergency*.

31 "Vučić: Vanredni parlamentarni izbori najkasnije 3. aprila 2022", available at: <http://rs.n1info.com/Izbori-2020/a662868/Vucic-Vanredni-parlamentarni-izbori-najkasnije-3.-aprila-2022.html>

## *Serbia is on the way to full executive takeover*

Serbian civil society showed that it continues to be the most vibrant part of Serbia's democracy. In a creative way and during the curfews, the citizens of Serbia appeared every night at their windows and on balconies to bang pots in protest against the government. A subsequent announcement on the re-introduction of the curfew (from Friday to Monday) triggered protests that prompted a brutal reaction by the police. Yet these protests had a rather mixed character. On the one hand, there were civic activists protesting against the increasingly authoritarian regime. On the other, there were right-wing extremists for whom Vucic's regime was not nationalist enough.

In the last few years, President Vucic and his SNS party have founded their legitimacy on two pillars: firstly, on personal benefits to party members and supporters, made possible through state capture and widespread patronage networks the SNS has built; and secondly, on the promise of collective dignity and the myth of national greatness. In the spirit of the nineties, President Vucic has been portraying himself not as the president of Serbian citizens, but as the leader of all ethnically-defined Serbs in the region. These are all signs that Serbia is on its way to full executive takeover. The COVID-19 pandemic has just facilitated this process.

## **SLOVENIA**

Slovenia declared a State of Emergency on the basis of ordinary Public Health Law, as there are no provisions in the Constitution involving parliament in decisions on the introduction or prolonging of a State of Emergency.<sup>32</sup> Therefore, some acts and emergency measures adopted by the executive were contested by the Constitutional Court. In addition, key proposals for increasing police powers so that they could monitor those infected with COVID-19 via mobile phone as well as authorizing the police to enter private premises of infected people were not passed by parliament, since one coalition party opposed the proposal. This proposal also faced criticism from the Human Rights Ombudsman and the Information Commissioner.<sup>33</sup>

At the beginning of November, the extension of restrictions, provoked outrage and gave rise to protests on the streets of Ljubljana. The demonstrations became quite violent as protesters clashed with riot police and tried to cause public damage. The bicycle protests, going on since mid-March, and coinciding with the new government coming to power and the spread of COVID-19, were directed against the rule and

management of the crisis by the government but were put on hold in October as the number of cases significantly increased, but also due to the new restrictive measures.

## *Disruption to the overall system of checks and balances*

The government under Prime Minister Janša continues to face serious criticism by the opposition in addition to that of the public, for introducing illiberal policies which are seen to be incrementally moving towards authoritarian rule. COVID-19 management and the measures introduced are largely seen as insufficiently transparent as well as disruptive to the overall system of checks and balances. The overall management of the pandemic is the central topic of political debate as well as exemplary of the illiberal policies of the current government.

Civil society actors have expressed concerns that the government is attempting to enforce a 'police state' and that it "has tried to pass many measures which affect basic human rights under the pretence of COVID-19."<sup>34</sup> For its part, the government is using the pandemic to launch further attacks on what they regard as opponents, namely the media and NGOs. NGOs are increasingly seeing a cut in government funding with the excuse that funds are being redirected to deal with the COVID-19 pandemic. Most government-critical media outlets blame the government for "using the coronavirus crisis to attack independent and critical media."<sup>35</sup>

The state of liberal democracy in Slovenia has been seriously put to the test under the current right-wing government as a result of their overall management of the COVID-19 pandemic. As the government turns towards illiberal tactics, they seem to have an overflow in restrictive measures as a way of silencing civil society and the media. Nonetheless, strong public pressure, the media and a vital civil sector in Slovenia are managing to curb some of these attempts. These practices have also come under criticism by EU institutions, namely the parliament, while the Council of Europe constantly urges member states to deal with the pandemic in a way which will not pose threats to the rule of law, human rights and democracy.

32 States of Emergency in Response to the Coronavirus Crisis: Situation in Certain Member States II, 25 November, 2020. <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651914/EPRS\\_BRI\(2020\)651914\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651914/EPRS_BRI(2020)651914_EN.pdf)>

33 See Igor Luksic, Slovenia in DEMOCRACY AND THE STATE OF EMERGENCY, Report One, <http://library.fes.de/pdf-files/bueros/belgrad/16119.pdf>

34 SLOVENIA: Government Uses the Covid-19 Pandemic as a Pretext to Curtail Civic Freedoms, 25 November, 2020. <<https://civicspacewatch.eu/slovenia-government-uses-the-covid-19-pandemic-as-a-pretext-to-curtail-civic-freedoms/>>

35 Slovenian government using coronavirus to attack press, 27 November, 2020, <<https://www.deccanherald.com/international/world-news-politics/slovenian-government-using-coronavirus-to-attack-press-908233.html>>

## CONCLUSION

The COVID-19 pandemic is, in a way, a mirror held up to each country, showing the strengths and weaknesses of their democracies. Our analysis clearly shows that in some countries the systems of checks and balances are faring better than in others, which not only concerns the role of the parliament in checking the activities of the government, but of the Constitutional Court and civil society as well.

Although in some of the countries, more than in others, the legislative and judicative were active, in all of them one could witness an ensuing, dominant, decision-making pattern: the representatives of the executive, together with medical experts, reached an agreement in an informal body created to fight the pandemic, and only then did parliament debate, thereby turning the democratic system upside-down. This might have been acceptable at the beginning of the crisis when there was a great deal of uncertainty and immediate decisions were required. But certainly not later on in the second phase when much more was known about the challenges.

### *Circumvention of the parliament*

Decisions that directly affect the key tenets of democracy such as curtailing political and civil rights must not circumvent parliament. Focusing solely on output (in this case the successful fight against the pandemic) and ignoring established democratic norms and procedures is a dangerous path. Normalizing the exclusion of the parliament in the decision-making process and establishing such an approach as a model for future crises could encourage authoritarian-minded political actors to go a step further next time. For the fragile Southeast European democracies marked by an already dominant executive, this could be fatal.



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# DEMOCRACY AND THE STATE OF EMERGENCY

## Functioning of Institutions in Times of Crisis



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Decisions that directly affect the key tenets of democracy such as curtailing political and civil rights must not circumvent parliament. Focusing solely on the successful fight against the pandemic and ignoring established democratic norms and procedures is a dangerous path. Exclusion of the parliament in the decision-making process could encourage authoritarian-minded political actors to go a step further next time. For the fragile Southeast European democracies marked by an already dominant executive, this could be fatal.

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