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## **THE PARADIGM OF ENDANGERING HUMAN RIGHTS AND FREEDOMS DUE TO THE STATE OF EMERGENCY**

*Libertas inaestimabilis res est*  
*(The freedom is priceless)*  
*Gaius – D.50,17,122*

(Стојчевић, Ромац, 1971: 239)

**Summary:** The paper presents a brief overview of the emergence and development of human rights and freedoms throughout history and their violation and endangerment due to the Corona virus pandemic and the state of emergency that has been introduced in many countries. Given that the state of emergency is an unusual situation that entails a series of repercussions, the aim of this paper is to use comparative and deductive methodology to point out the ways in which all human rights and freedoms are endangered by illegal/legal measures taken by individual states, preventing the spread of corona virus. Each country has adapted the measures against this disease to its own needs and they differ significantly from country to country, and the population has reacted differently to them. Therefore, measures directly related to human rights and freedoms in Serbia, China, Sweden and Italy are comparatively presented. Also, the paper presents the constitutional and legal norms in the Republic of Serbia that regulate the matter of the state of emergency.

**Key words:** human rights and freedoms, state of emergency, Covid-19, corona virus, pandemic, ombudsman

### **Introductory remarks on human rights and freedoms**

Human rights and freedoms are the foundation of every democratic society and the basic principles in the definition of man as a free citizen, who acquires them by birth. So, these rights are innate and woven into every human being, but their expansion and affirmation gained importance only in the last few centuries.<sup>1</sup> The

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<sup>1</sup> There are authors who believe that human rights in the age of globalization represent a utopia and that they have lost their position and relevance to human society. Moyn, S. (2012). *The last utopia: human rights in history*. Harvard University Press. p.212-227., Lagoutte, S., Sano, H. O., & Smith, P. S. (Eds.).

oldest aspects and debates about human rights and freedoms are philosophical and date back to the ancient period. Namely, Greek philosophers dedicated a large number of their works to natural law (лат. *ius naturalis*). The economic and cultural strengthening and development of ancient Greece gave rise to the term "*nomos*", which is now interpreted as "law", although its meaning is disputed, given that *nomos* certainly cannot be treated in terms of today's laws. „Sophists come out with the claim that the law (*nomos*) cannot be the same for all people, that it cannot be imposed from the outside and that it must be in harmony with nature. The most important are the natural laws, with which the valid ones must be harmonized.“ (Ковачевић-Куштримовић, 2011:43) Aristotle had a different opinion, emphasizing the dual nature of man, which causes the difference between justice and fairness, which results in his teaching and the famous division of justice into commutative and distributive justice. (Aristotel, 1988:95) We also find this dualism in the teachings of the Stoics, where one side stands for the idea of a whole represented by the unity of the human community, as opposed to natural law, which is the measure of all existing laws.<sup>2</sup>

During the period of domination of the Roman Empire, the area of today's Mediterranean and Europe, in addition to customary, unwritten law, written law occurs in the form of a law - *lex*. Natural law successively changed its form and slowly turned into laws, with the ultimate intention of remaining eternal and universal. This right, although created more than two millennia ago, today represents the foundation of all legal systems of continental Europe, which includes our law. The legal institutions and principles, based on the sentences and sayings of eminent Roman jurists (Gaius, Modestine, Ulpian, Tacitus,...) even today, for the most part, form the basis of positive legal solutions. However, the emergence of Christianity in the early Middle Ages until the Renaissance had a negative effect on the idea of human rights and freedoms. The period of feudalism and absolute monarchies, with the Christian church and the Inquisition, represent a "dark period" and a negation of everything that was proclaimed by natural law. Christian teaching was turned to Aristotle's doctrine, which is dominated by dogmatism, however, at the heart of Aristotle's teaching is natural rationalism, which is contrary to the eternal right of God and God's law (*lex divina*) which is eternal and governs all in this world, therefore beings and things. Thomas Aquinas spoke openly against natural laws, and in favor of the fact that human nature must be harmonized with God's law. In this way, a new, previously non-existent - canon law was created.

Although in the Middle Ages was an attempt to promote individual rights and freedoms and limit the absolute power of rulers, they were all sporadic cases which are aimed at the betterment of position of nobility and certain social groups, rather than the whole population. The best example of this is the Great Charter of Freedoms (*Magna Carta Libertatum*) from 1215, which "is not a charter of human free-

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(2007). *Human Rights in Turmoil: Facing Threats, Consolidating Achievements* (Vol. 92). Martinus Nijhoff Publishers.

<sup>2</sup> We also find this division in Sophocles' tragedy "Antigone", where Antigone does not recognize the earthly, Creon's laws for the polis of Thebes and refers to "divine", eternal, natural laws on burying a dead man, in this case her brother, and she pays for it with her life.

dom but concrete privileges of the purest nobility towards the king - a kind of political contract." (Кутлешин, Голић, 2017: 77) In the dogmatism and exclusivity of the teachings of the Christian church, the germ of the ruin of that teaching was hidden. The dogmatic teaching about divine universality is slowly being suppressed by the idea of the individual and man who is a god on earth. Humanism and the Renaissance shift the focus from the general to the individuality from which the idea of autonomy of will arose. Christianity is losing its dominance and influence, and the focus is changing on the individual, so that man is now building his own destiny and thus realizing the favor of God. Natural law during the 17th and 18th centuries was revitalized again with the idea that laws must be in accordance with natural laws. All this was accompanied by great and turbulent social events: the discovery of America, the creation of nation-states, the development of the natural sciences and the beginning of capitalism. Within the framework of liberal philosophy, Jean-Jacques Rousseau, John Locke, Thomas Hobbes, and Baruch de Spinoza, as the most important representatives of the theory of social contract, advocated the view that all people, before entering society, they were indefinitely free and "lived in a natural state." By mutual consent, according to this theory, individuals group and unite to form a political community to protect themselves from violence and any other form of injustice, since people are by nature prone to violence. They accept common rules and take on responsibilities to achieve the desired goal. However, in order to achieve that, it is necessary to transfer a large part of their rights (by contract) to the state, with some rights remaining non-transferable to the state and inviolable: the right to life, the right to property and the right to freedom. These principles of social contract theory formed the basis for the Declaration of the Rights of Man and of the Citizen (1789) from the period of the French bourgeois revolution, the Declaration of Independence of the United States (1776) and The Bill of rights (1791).

The idea of natural law arose as a correction to the applicable law, and therefore carries a moral, ethical, but also political charge. Natural rights can be said to be original and classical and include: the right to life, liberty, property, equality, security, resistance to oppression and the pursuit of happiness. "There is still the current category of human rights, which is incorporated into important general acts of the international community and which, in the hands of that community, is practically a means of achieving corrective justice in all latitudes. All these rights, and that means the category of human rights, have not been acquired, but they represent "an inseparable part of human beings" which man possesses by the very factor of his existence" (Перовић, 1995: 143). This is a crucial difference between natural and all other, acquired rights, which arise on the basis of legal work and they can easily be lost. Unlike them, every natural right is acquired by birth and is inalienable throughout life. As a result, natural rights are universal, eternal, and autonomous. They stand above all the laws of positive rights, which, as we know, are subject to different solutions in different epochs.

## **The division, types, and mechanisms of protection of human rights and freedoms**

The existence of human rights is related to the nature of human being, because it is considered free born. That is why it is said that every individual is born with their freedoms and rights.<sup>3</sup> In order to achieve his rights, a person is not obliged to do or not do something, just as the state government cannot, at its own will, assign something to an individual that belongs to him by nature. It is the same with the loss of freedom. "The state cannot take away an individual's rights, because it did not give them to him. But even an individual cannot give up his rights, because he was born free, and because of that, he cannot give up the basic quality of his personality." (Гајин, 2011: 16)

It is evident that rights and freedoms are discussed in a plural, because an individual enjoys not only one right and one freedom, but several of them. In terms of content, these rights are different and there are a large number of them, and given their importance, they are regulated by the most important legal acts of international and domestic law, like Constitutional acts and international conventions and declarations. When we talk about international acts regulating the matter of human rights, the most important are the following documents: the United Nations Universal Declaration of Human Rights (1948), the United Nations International Covenant on Civil and Political Rights (1966), the United Nations International Covenant on Economic, Social and Cultural Rights (1966) and the European Convention on Human Rights (1950).<sup>4</sup> In the Constitution of the Republic of Serbia from 2006, out of a total of 206 articles, almost half of them regulate the matter of human rights. Almost 70 articles of the Constitution provide a guarantee of human rights, while some articles provide several different guarantees.<sup>5</sup> However, the Constitution is not the only legal act that contains and regulates the matter of human rights and freedoms in national law. A large number of laws contain a catalog of human rights, regulating each of these rights in more detail. Thus, in our positive law, we have laws in the field of: environmental protection, freedom of the press, labor law, family and marriage law, procedural law, etc. After the Second World War, and especially in the last two decades, we have witnessed a sharp increase in the number of guaranteed human rights and freedoms incorporated into positive law. Their number grows exponentially and from one right it happens to derive more of them. Thus, for example, the constitutional guarantee of free access to information of public importance held by state bodies and organizations entrusted with public authority is a special law<sup>6</sup>

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<sup>3</sup> See more: Lewis, James R., and Carl Skutsch (2001): *The human rights encyclopedia*, Sharpe Reference, p.13.

<sup>4</sup> In addition to these, the Republic of Serbia has signed and ratified a large number of documents on human rights. It is worth mentioning the UN Convention on the Rights of Persons with Disabilities and the Revised European Social Charter of the Council of Europe, both from 2009.

<sup>5</sup> For example, in Article 33 of the Constitution of the Republic of Serbia, which regulates the special rights of the accused, there is a guarantee of as many as seven special rights

<sup>6</sup> Закон о слободном приступу информацијама од јавног значаја ("Сл. гласник РС", бр. 120/2004, 54/2007, 104/2009 и 36/2010)

divided into four special rights: the right to be informed whether the state authority possesses the requested information, the right to make information of public importance available to it by enabling it to inspect a document containing information of public importance, the right to a copy of that document, the right to have, upon request, a copy of the document sent by post, fax, e-mail or otherwise. (Art. 5, para. 2) Therefore, today we are in a situation where there is almost no human right or freedom that is not covered by a legal text, and this process of expanding the sphere of human liberties and rights continues to flow at the same speed.

In theory, we find different classifications of human rights and freedoms, since it uses different criteria and methodologies.<sup>7</sup> We believe that the classification accepted in the Constitution of the Republic of Serbia from 2006 is one of the most general because it divides protected rights into human and minority rights. Human rights are contained in the second section of the Constitution, entitled: "Human Rights and Freedoms", while the provisions on minority rights are found in the third section entitled: "Rights of persons belonging to national minorities". Differing from our Constitution, the Swiss Constitution of 1999 has a tripartite division into basic, civil, and social rights, with civil rights containing both citizenship and political rights. The Spanish Constitution of 1978 has a dual division of rights and freedoms, where the first part regulates fundamental rights and public freedoms, while the second part regulates the rights and duties of citizens.

It is difficult to provide a single general classification applicable to all legal systems that would be global. "Different criteria are often applied within the same classification. Hence the classifications are not consistent. Classification criteria that rely on the content of rights, and which are most often used, cannot be successfully applied to all freedoms and rights. Given the complexity of individual human rights, there are difficulties in classifying any freedom or right using only one classification criterion. Freedom of the press could, for example, be classified as personal freedoms that protect the spiritual integrity of the individual. But it can also be classified as a group of political freedoms." (Пајванчић, 2011:69)

In terms of content, rights and freedoms are divided into personal, economic, political, social and cultural, and within each of these groups it is possible to further classify on the basis of numerous criteria. Apart from the basic division, duties stand out, as an analogy of obligations towards other people, because human rights and freedoms contain not only benefits and privileges, but also the obligations of individuals. That is why the protection of all human rights and freedoms is their important element, because without effective protection, their existence becomes meaningless. This is a sensitive area, prone to abuse and violation if there is no institutional care for them.

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<sup>7</sup> Thus, for example, in the textbook "Constitutional Law" by Marijana Pajvančić, we find a division of human rights based on thirteen criteria, and the author then gives her division: "Typologies created in theory group human rights into: personal, political, social, cultural - educational, duties, special rights of national minorities, rights of foreigners. In the group of personal freedoms and rights, there are two subgroups: personal rights that protect the bodily integrity and personal rights that protect the spiritual integrity of the person." (Пајванчић, 2011:69)

When it comes to the protection of human rights and freedoms, it is impossible not to mention the institution of ombudsman (Swedish: commissioner, representative).<sup>8</sup> First introduced in Sweden in 1809, this institute aimed to control the executive branch, only to be later accepted in most countries as a protector of endangered and violated citizens' rights. In Serbia, the institute of ombudsman was introduced in 2005 with the adoption of the Law on the Protector of Citizens, and a year later it was confirmed by Article 138 of the Constitution of the Republic of Serbia, which determined its competence, responsibility and manner of election and dismissal. In addition to the ombudsman, the Constitutional Court has a significant role in protecting rights and freedoms. Courts and administrative bodies also appear as general protectors of human rights and freedoms, but their basic competence does not lie exclusively in protection, so they do so within their regular competences. Since the rights and freedoms are regulated by legal texts, the public prosecutor's office also takes care of their protection and, in addition to criminal prosecution, has legal instruments at its disposal, all with the aim of protecting constitutionality and legality.

### **State of emergency in the Republic of Serbia – normative regulation**

A state of emergency is introduced in a state of extreme necessity. This is not a normal situation and the state is having a difficulty in functioning in it because its integrity has been called into question. There are disturbances in the work of institutions, many mechanisms do not work, and human rights and freedoms are usually the first to be hit. The basis of this concept is the "principle of necessity", according to which in a state of emergency, when the integrity of the state is threatened by extreme dangers of war, economic recession, natural disasters, secession, rebellion or subversion, the state has the right to take all necessary measures to defend its existence.“ (Гајин, 1995: 839)

The two most important legal acts that regulate the state of emergency in the Republic of Serbia are the Constitution<sup>9</sup> and the Law on Defense.<sup>10</sup> In Article 200 the Constitution regulates the reasons, conditions and the procedure of introducing the state of emergency („When public danger threatens the survival of the state or its citizens, the National Assembly declares the state of emergency”). What this danger means is regulated in more detail by the Law on Defense in Article 4: "A state of emergency is a state of public danger in which the survival of the state or citizens is endangered, and it is a consequence of military or non-military challenges, risks and

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<sup>8</sup> In Serbia, the name "Protector of Citizens" is used, and each country has its own name for the ombudsman: Defensor del pueblo in Spanish-speaking countries, such as Spain, Argentina, Peru and Colombia; "Parliamentary Commissioner for Administration", in Great Britain; "Protector of the Citizen" - Protecteur du Citoyen, in Canada; "Defender of the Citizens" - Difensore Civico, in Italy. Retrieved from: <https://sh.wikipedia.org/wiki/Ombudsman> (09.08.2020.)

<sup>9</sup> Устав Републике Србије, "Сл. гласник РС", бр. 98/2006.

<sup>10</sup> Закон о одбрани "Сл. гласник РС", бр. 116/2007, 88/2009, 88/2009 - др. закон, 104/2009 - др. закон, 10/2015 и 36/2018

security threats." It is clarified later in the same article that non-military challenges, risks and security threats are manifested in the form of: terrorism, organized crime, corruption, natural disasters, technical-technological and other accidents and dangers. The answer to the question whether the deadly virus pandemic is one of the natural disasters is provided in the Law on emergency<sup>11</sup> where Article 8 states: "... a natural disaster is an event of hydrometeorological, geological or biological origin, caused by the action of natural forces, such as: earthquake, flood, torrent, storm, heavy rains, atmospheric discharges, hail, drought, landslides, snowfalls and avalanches, extreme air temperatures, accumulation of ice on watercourses, epidemics of infectious diseases, epidemics of livestock infectious diseases and pests and other natural phenomena of greater proportions that can endanger human health and life or cause large-scale damage."

Article 200 of the Constitution stipulates that "a decision on a state of emergency shall be valid for a maximum of 90 days" and allows that "by declaring a state of emergency, the National Assembly may prescribe measures derogating from constitutionally guaranteed human and minority rights." However, which rights will be limited depends primarily on the circumstances due to which the state of emergency was introduced. What is certain is that there is a certain range of rights and freedoms guaranteed by the Constitution (Art. 202 para. 4) which during a state of emergency cannot be restricted in any way: the right to life, the right to dignity and free development of personality, inviolability of physical and mental integrity of the person, prohibition of slavery and forced labor, rights related to the treatment of a person deprived of liberty, the right to a fair trial, the right to legal certainty in criminal law (presumption of innocence, *nullum crimen sine lege*, *nulla poena sine lege...*), the right to legal personality, the right to citizenship, freedom of thought, conscience and religion, conscientious objection, freedom of expression of nationality, prohibition of incitement to national, racial and religious hatred, the right to enter into marriage and equality of spouses, freedom to procreate, children's rights and the prohibition of forced assimilation. Apart from these, all other rights may be restricted during a state of emergency: freedom of movement, right to security and liberty, secrecy of letters and protection of personal data, freedom of assembly, freedom of the media, right to information, freedom of opinion and expression, inviolability of the apartment, regarding the duration of detention, etc.

### **Examples of restrictions of basic human rights in Serbia and some other countries during the COVID-19 pandemic**

It is certain that the history of human civilization will remember the year 2020 by the pandemic of the virus that spread all over the planet in a short period of time. There is no country in which the incidence of the disease has not been recorded, and the rate at which the coronavirus (COVID-19; Coronavirus infectious disease 2019) is transmitted among the population differs between countries depend-

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<sup>11</sup> Закон о ванредним ситуацијама, "Сл. гласник РС", бр. 111/2009, 92/2011 и 93/2012

ing on the measures taken and the discipline of the population. In order to prevent the spread of the deadly virus, each state has taken a number of restrictive measures that were not only of a health and economic nature, but also significantly restricted basic human rights and freedoms. "And while some countries were hit more than others regardless of the activities taken, a common denominator for nearly all of them was the fact that the economy received the strongest blow. The fact that this pandemic takes place at the moment when the Internet is a dominant form of disseminating information and communication caused that numerous controversies and disinformation." (Bjelajac, Filipović, 2020:399) That is particularly dangerous in the circumstances of a pandemic, but it is not new, since one of the ways of the destructive activity of continually growing number of media is "a permanent emanation of an incredibly large number of untrue information." (Bjelajac, Filipović, 2018:19)

On March 15<sup>th</sup>, 2020, a state of emergency was imposed in Serbia due to the coronavirus pandemic (COVID-19), by Decision on declaring a state of emergency<sup>12</sup>, based on Article 200, paragraph 4 of the Constitution. According to the Constitution, the National Assembly is authorized to declare a state of emergency, and since it could not be convened due to the danger to the health of deputies, the decision was signed by the President of the Republic, the President of the Assembly and the Prime Minister. Without going into whether the adoption of such a decision was justified and whether the protection of life and health of citizens could be achieved by introducing emergency situation, which considerably less endangers the freedoms and rights of citizens, it is the fact that during the state of emergency in Serbia, certain basic human rights and freedoms were restricted. The impression is that the measure of limiting freedom of movement in the form of "curfew" hit the citizens hardest. Based on the Decision on declaring a state of emergency, the Government passed the Decree on measures during the state of emergency<sup>13</sup> (in further text: Decree), which was in force until the state of emergency was revoked on May 6<sup>th</sup>, 2020. A misdemeanor and criminal liability were envisaged for the conduct contrary to the provisions of the Decree.

Pursuant to Article 2 of the Decree, and Article 15, paragraph 1 of the Law on State Administration, the Minister of the Interior issued an Order restricting and prohibiting the movement of persons on the territory of the Republic of Serbia. (hereinafter: the Order) The Order prohibits movement to "in public places, meaning outside apartments, rooms and residential buildings in residential buildings and outside the household (garden), as follows: 1) persons over 65 years of age and older - in populated areas over 5,000 inhabitants; 2) persons over 70 years of age and older - in populated areas up to 5,000 inhabitants. In addition to this restriction, which applied exclusively to the elderly, the Order prohibits "all persons from going out of apartments, rooms and facilities in residential buildings and outside the household (yard) between 5 pm and 5 am, except on Saturdays when the ban lasts from 3 pm to 3 am and on Sundays when the ban lasts from 3 pm to 5 am." It should be borne in

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<sup>12</sup> <https://www.propisi.net/odluka-o-proglasenju-vanrednog-stanja/> (14.08.2020.)

<sup>13</sup> Уредба о мерама за време ванредног стања, "Сл. гласник РС", бр. 31/2020, 36/2020, 38/2020, 39/2020, 43/2020, 47/2020, 49/2020, 53/2020, 56/2020, 57/2020, 58/2020 и 60/2020.



mind that the ban on movement is not unconstitutional, however, if it endangers "absolute rights" then it is. For example, if a ban on movement endangers someone's life, it certainly is an unconstitutional restriction.

By doing so Serbia became one of the countries that introduced the most stringent measures during the COVID-19 pandemic, and strongly limited one of the elementary human rights – freedom of movement. However, freedom of movement was not the only right that was derogated during the state of emergency. The right to a fair trial is one of the constitutionally guaranteed rights that has been largely derogated from by the practice of holding trials online during the state of emergency via Skype. A case of a journalist who was deprived of liberty only because she pointed out the lack of adequate protection of medical staff in a health institution was recorded. The reason given for her deprivation of liberty was: "spreading panic". However, during the state of emergency in Serbia, in addition to the effects on human health, the results also appeared in terms of prevention of criminal activities. „During the state of emergency, there was a significant drop in the crime rate compared to the same period last year. More precisely, for a period of a month and a half, from March 15<sup>th</sup> to May 1<sup>st</sup>, about 60 percent fewer crimes were recorded than in the same period last year.“<sup>14</sup>

On April 7<sup>th</sup>, 2020, the Council of Europe sent the European governments a toolkit on respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, which stipulates that: “any derogation must have a clear basis in domestic law in order to protect against arbitrariness and must be strictly necessary to fighting against the public emergency. States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort should be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness.“<sup>15</sup>

The approach in the fight against the COVID-19 pandemic differs among countries because the recommendations of the World Health Organization are not mandatory. The first official cases of coronavirus were recorded in China in December 2019. It is still not known who the “patient zero” was, but it is known that disease first started spreading in city of Wuhan, Hubei province. As soon as they realized how dangerous the virus was and how quickly it was transmitted, the Chinese authorities began to apply rigorous measures. Wuhan and surrounding cities have been quarantined, depriving more than 50 million people of their freedom of movement, but also preventing the virus from spreading to other provinces. „The Chinese government has made an unprecedented effort to find contacts of confirmed cases. In Wuhan alone, more than 1,800 teams of five or more people have found tens of thousands of contacts.“<sup>16</sup> In doing so, the right to privacy and protection of personal data was endangered, but that was justified by a higher goal. Two widely used mo-

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<sup>14</sup><http://www.politika.rs/sr/clanak/454357/Tokom-vanrednog-stanja-zabelezen-pad-kriminala-od-60-odsto> (13.08.2020.)

<sup>15</sup><https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40> (10.08.2020.)

<sup>16</sup><https://www.sciencemag.org/news/2020/03/china-s-aggressive-measures-have-slowed-coronavirus-they-may-not-work-other-countries> (10.08.2020.)

mobile phone apps, AliPay and WeChat - which have replaced paper money payments in China in recent years - have helped enforce restrictions by allowing the government to track population movements and even prevent people with confirmed infections from traveling. Aggressive "social distancing" measures implemented throughout China included the cancellation of sporting events and the closure of cinemas. Schools extended breaks that began in mid-January for the lunar new year, denying another basic right - the right to education. Many companies closed their stores, depriving thousands of people of the right to work, which also endangered their livelihoods. Such rigorous measures, along with the application of other hygienic and health measures, have yielded results. Today in China, there is the lowest number of deaths in percentage per million inhabitants.

Unlike China, Sweden has a different approach to fighting the coronavirus. In order to save its economy, mandatory quarantine was not introduced in Sweden, and companies continued to work full time without any restrictions. No restrictions have been introduced on public transport, and children under the age of 16 go to school regularly and attend classes. The borders have remained open and all prevention measures are not repressive but based on the principle of recommendations. Sweden has opted for a strategy that is a combination of a couple of binding restrictions, while everything else is based on open recommendations on maintaining a physical distance. This model respects human rights and almost does not endanger or restrict them at all. Sweden is known as a country in which high democratic standards have been achieved and these measures only support that statement. Freedom of movement is not limited, which allows the population to perform their daily routine, and even wearing protective masks is not mandatory. It remains to be seen whether the "Swedish model" is more efficient and whether the collective immunization of the population with a large number of infected people will be achieved faster. According to current data (Table 1), Sweden, the number of infected and dead in Sweden does not deviate drastically from the countries that have introduced much more rigorous measures.

Italy is one of the countries which were worst affected by the coronavirus, the number of deaths per million inhabitants was until recently the highest in the world, and because of that, stringent measures were introduced. From March 9th, special rules apply in Italy for leaving the house, from which one can leave only out of necessity. Two people cannot go shopping, and during the strictest measures, parents were allowed to walk with their children only around the house.<sup>17</sup> High fines are envisaged for non-compliance with the introduced measures.

The address of the President and the announced reintroduction of the state of emergency and the denial of freedom of movement in Serbia at the beginning of July 2020 resulted in mass protests of citizens in Belgrade that lasted for several days. On August 1<sup>st</sup>, 2020, demonstrations were held in Berlin with tens of thousands of people gathered to express dissatisfaction with the government's measures taken due to the coronavirus.

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<sup>17</sup> <https://www.bbc.com/serbian/lat/svet-52135576> (12.08.2020.)

Table 1. – *Number of COVID-19 cases and deaths in Serbia, China, Sweden, Italy and the United States of America, August 13<sup>th</sup>, 2020<sup>18</sup>*

Country	Number of cases	Number of deaths	Deaths per 1 million
Serbia	28,751	658	75
Sweden	83,455	5,774	571
China	84,756	4,634	3
Italy	251,713	35,225	854
USA	5,360,488	169,135	511

### Concluding remarks

Human rights and freedoms are the heritage of civilization and the struggle for them has lasted for centuries. This sensitive area is the target of attacks by all authoritarian and dictatorial regimes and serves as a litmus test for assessing whether a society is democratic or not. The emergence of a world-wide epidemic is not a novelty in human society. From the outbreak of the plague in 1347, which killed 50 million inhabitants (representing 60% of the European and 1/3 of the world's population) or the Spanish flu in 1918, which according to some estimates killed 100 million people (given the fact that penicillin was discovered only in 1928), through bird and swine flu from the beginning of the 21st century, we can see that human society always managed to survive, with more or less victims.

Due to the global pandemic, two areas are particularly affected: human health and the economy. However, in practice, it has been shown that this situation, under the pretext of containment of the virus, is used as an excuse to suppress the most critical human freedoms and citizens' rights. The institutional framework for their protection exists "on paper", but in practice, it is not fully implemented because officials and institutions only react declaratively. There are justified fears that under the pretext of protecting human health, freedom of movement, the right to information, a fair trial and the confidentiality of personal information could be permanently restricted or abused.

It is evident that during the coronavirus pandemic, human rights and freedoms were violated in most countries. What remains uncertain is the question of whether, after the end of this state of affairs, things will be returned to their previous state, or whether their restriction will a priori be understood *pro futuro*. Human civilization is on a great test, and it remains to be seen whether and how it will be able to cope with this challenge.

<sup>18</sup> <https://www.worldometers.info/coronavirus/#countries> (12.08.2020.)

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## ПАРАДИГМА УГРОЖАВАЊА ЉУДСКИХ ПРАВА И СЛОБОДА УСЛЕД ВАНРЕДНОГ СТАЊА

**Сажетак:** У раду је приказан кратак осврт на настанак и развој људских права и слобода кроз историју и на њихово кршење и угроженост услед пандемије корона вируса и ванредног стања које је због тога уведено у великом броју земаља. Обзиром да је ванредно стање несвакидашња ситуација која за собом повлачи и низ реперкусија, циљ рада је да се, компаративном и дедуктивном методологијом, укаже на начине како су све људска права и слободе угрожена (не)законитим мерама појединих држава, које су их предузеле у циљу спречавања ширења корона вируса. Свака држава је мере против ове болести прилагодила сопственим потребама и оне се битно разликују од државе до државе, а становништво је различито реаговало на њих. Због тога су компаративно приказане мере које се директно тичу људских права и слобода у Србији, Кини, Шведској и Италији. Такође, у раду је изложена позитивно правна уставна и законска норматива у Републици Србији која регулише материју ванредног стања.

**Кључне речи:** људска права и слободе, ванредно стање, COVID-19, корона вирус, пандемија, омбудсман



