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## Editorial

This first issue of the *SEER Journal for Labour and Social Affairs in Eastern Europe* for 2021 focuses on the *repercussions of the Covid-19 pandemic* across the region, with a view also to the role of the EU. When the *SEER* devoted an issue to the pandemic a year ago, the region was comparatively less affected than western Europe. Now that it is fully in the grip of a health crisis instigated by the pandemic, this issue takes a closer look, covering mostly Serbia and North Macedonia from different perspectives and taking into account the economic and social security points of view. A further article explores the multinational fashion industry and the situation of workers in shopping malls during the pandemic based on a case study and survey of workers' opinions.

The second part of the issue reaches back to the focus topic of the last edition, 'The legacy of the Dayton peace agreement', presenting also views from Serbian perspectives as well as a unique account linked to a film project on the Siege of Sarajevo.

The article by Jens Becker and Ina Kulić focuses on the role of the EU in dealing with the health crisis in the western Balkans and on how views of this are changing in the region. The states of the western Balkans, which have been relying on an EU perspective for years and which have repeatedly been put off, have also been hit hard, piling problems on top of health services that are, for a number of reasons, already seriously jeopardised. In view of the worsening situation – countries in central and south-eastern Europe are over-represented among those with the highest numbers of Covid-19 related deaths – the authors take a closer look at current practicalities and political realities in the region's 'high incidence areas'.

Snežana Aleksić reviews the initial experiences of Covid-19 in Serbia in the context of other pandemics during the 20th century. The author reviews data on life expectancy, with a particular eye on air pollution, as well as the pandemic's initial impact on mortality and on key life events including marriage and divorce. The main focus of the article is on human life and work, as well as on the consequences for the economy. The author also presents the response of the government in terms of the declaration of the state of emergency as well as the measures set out to mitigate Covid-19's economic impact. She concludes that, after the pandemic has taken its toll, it will have left the country with additional credit indebtedness in the long-run.

A wide-ranging article by Miodrag Komarčević, Petar Čelik and Ivan Arnautović takes a theoretical look at the implications of the Covid-19 pandemic for the concept of the securitisation of a state. The authors discuss the concurrent presence of three social phenomena with global effects: digitalisation and business automation; the securitisation of the systems of health and social protection; and the emergence of the Covid-19 pandemic with all its disruptive potential. They also consider the deliberate use of the concept of securitisation to convince the population of the need to take drastic safeguarding steps, including the announcement of a state of emergency. The authors conclude that the securitisation models applied in health and social security will require, after the end of the pandemic, conceptual elaboration, strategic and operational profiling, as well as an adequate regulatory framework.

Osman Kadriu focuses on states of emergency and discusses legal questions over human rights restrictions. The article examines in particular the possible abuses of human rights in the situation of a state of emergency and the legal safeguards that have been put in place. The article presents the specifics of the constitutional system of the Republic of North Macedonia, with a special analysis of the role of constitutional courts in the protection of human rights during a state of emergency, and concludes with a look at the declaration of a state of emergency in North Macedonia during the Covid-19 pandemic and at the legality of the actions of the various institutions involved.

The article by Tatjana Velkova and Temelko Risteski offers some thoughts on the social implications of the pandemic as regards labour in the early days of the health crisis in North Macedonia, focusing in particular on violations of employment rights and the problems of workers most at risk. The break in economic activities, a (further) fall in standards of living and a decline in GDP, the loss of jobs and the overall increase in unemployment rates further deepen the sense of (inter)national crisis.

Emirali Karadoğan analyses working conditions and protective measures in multinational companies during the pandemic through a case study conducted among employees at Inditex stores in Turkey. The Covid-19 pandemic has deeply affected working life and the question of whether adequate protective measures have been taken in the workplace for workers who have had to work during the pandemic is a critical one. This article examines the measures taken in respect of employees of multinational companies, highlighting the results of a survey of employees of Inditex, the Spanish ‘fast fashion’ company. Covid-19 has ruthlessly exposed both the lack of protection and the risks which workers in shopping malls face on a day-to-day basis.

Qerim Qerimi explores the underlying methodological dimension of measuring the impact or effects of the EU’s policy of conditionality in western Balkans states in the arena of human rights protection and respect for the rule of law. The article also focuses on the adequacy of the measurement instruments used to gauge the impact of this policy, based on the existing trends as well as past experience with enlargement to central and eastern Europe.

The second part of *SEER* 2021/1 reaches back to our previous focus topic, the legacy of the Dayton peace agreement.

The review essay by Christophe Solioz, ‘Catch your breath’, draws on a 2011 film project devoted to the Siege of Sarajevo and locates it in the complex ‘age of immunology’ in which we now live.

Slobodan Petrović examines the political system of Bosnia and Herzegovina along the fault lines set down in the Dayton Agreement. The author reviews some of the problems with the political system of Bosnia and Herzegovina as expressed through the constitutional provisions of the Dayton Agreement. The article then concludes that, while the Agreement brought an end to the physical violence, its creators must have been aware that the type of state system it envisaged, being composed of two entities, only put off the solution to the crucial cause of the problem.

The article by Željko Mirjanić, ‘The Dayton Agreement and social reform: *Omne principium difficile est*’, looks critically at the constitutional system of Bosnia and

Herzegovina as laid down by the Dayton Agreement and examines it from the perspective of social reform. It proceeds from the point that vital discussion on constitutional regulation is leading to a marginalisation of the discussion on harmonising domestic legislation with the EU *acquis*, which the author identifies as *conditio sine qua non* in terms of fulfilling the requirements of the Stabilisation and Accession Agreement, not least in the area of labour law, and gaining admission to the EU.

Finally, Dimitar Nikoloski analyses material deprivation in the context of employment status in post-transition North Macedonia. Drawing on SILC micro data, this article assesses the underlying causes of severe material deprivation in North Macedonia from the point of view of employment status, particularly the differences between employed and unemployed workers. The results show that employed workers face a much greater risk of severe material deprivation if they are positioned in the so-called secondary labour market; while the unemployed with low capital accumulation and those living in households with low work intensity face the highest risks of all. The article concludes with several policy recommendations for additional action to reduce severe material deprivation.

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May 2021



Jens Becker and Ina Kulić

## **‘The skies are empty and the continent is overflowing with insoluble problems’ – The Covid-19 crisis in the western Balkans and the failure of the EU<sup>1</sup>**

### *Abstract*

Many societies are still in the stranglehold of the coronavirus. China, South Korea and Taiwan have apparently overcome the pandemic but problems that are almost impossible to resolve are piling up in Europe. Despite the joint vaccination procurement campaign, the EU in particular is struggling to regulate the crisis domestically. The states of the western Balkans which have been relying on an EU perspective for years and which have repeatedly been put off, have also been hit hard, piling problems on top of health services that are, for a number of reasons, already seriously jeopardised. In view of the worsening situation – countries in central and south-eastern Europe are over-represented among those with the highest numbers of Covid-19 related deaths – we take a closer look at current practicalities and political realities in these ‘high incidence areas’, as the region is currently known (according to the Ost-Ausschuss der Deutschen Wirtschaft). This article focuses on the role of the EU, and how views of this are changing in the region, as well as that being played by other, apparently more nimble and agile, powers.

**Keywords:** western Balkans, Covid-19, EU accession, Covax, vaccine diplomacy, healthcare services, future of EU

### The EU is losing ground

In 2020, it seemed, there would be forwards momentum in the European orientation of the western Balkans. At the EU-western Balkans summit in Zagreb, heads of state and government pledged their solidarity with the region. Coronavirus-related support was combined with an indirect warning to value and prioritise the EU perspective and not that of the Chinese or any other external partner (Becker 2020).

In the meantime, however, the expressed commitments of around €3.3bn are still working their way through the system and the delivery of vaccines is only now get-

1 This article is a revised and extended version of an article co-authored by Jens Becker and Ina Kulić, published in *Blätter für Deutsche und Internationale Politik* issue 5/2021, and specially translated for the *SEER Journal for Labour and Social Affairs in Eastern Europe*. The title of the article is an echo of Richard Wagner (2003) *Der leere Himmel. Reise in das Innere des Balkans* [Empty Skies: Journey to the Heart of the Balkans] Berlin: Aufbau-Verlag, in which the author traces the national and cultural roots of the Balkans.

ting underway. References to delivery bottlenecks from within the EU have become a yardstick for the bloc's own evident failures early in 2021. China and Russia, which are using the current health crisis in a calculated way, are stepping into the breach. This is not only a symbol of the European alliance's geopolitical weakness but also of its lack of interest in engagement. The EU's promises to join 'at some point' are hardly taken seriously by most local people and what remains is deep-seated disappointment and the feeling of being left in the lurch.

For some years, expert assessments have been available as to how the western Balkans could be better integrated. Now China, in particular, is holding the mirror up to the west, says Jacopo Maria Pepe from *Deutschen Gesellschaft für Auswärtige Politik* (the German Council on Foreign Relations), in its pursuit of a clear strategy and in seeking to integrate the Balkans into the global Belt and Road Initiative (Pepe 2017). The EU is threatened with a loss of its function as a regulatory power not only in the western Balkans but also in relation to Hungary and Greece which have become openly dependent on China (Tschinderle 2018). 75 per cent of the region's post-Yugoslav trade takes place with the EU, but gross domestic product is only one-third of the EU average. This is another reason why Chinese investments and loans are becoming increasingly important.

Many states in the region are prepared deliberately to overlook the EU's criticism of China's human rights violations – for example in Xinjiang, where thousands of Uyghurs are locked up in labour and re-education camps. Accordingly they have closed themselves to attempts by the west to denounce Chinese human rights violations within the UN's auspices, in essence shouting 'It's the economy, stupid'<sup>2</sup> at Eurocrats.

According to Dušan Reljić, from the *Stiftung Wissenschaft und Politik* (German Institute for International and Security Affairs), the EU needs to respond by opening up a noticeable economic integration perspective in the western Balkans, align the standard of living there with that in the EU, and over a clear timeframe, and slow down the emigration of highly-skilled people. As is well-known, the western Balkans, already reduced demographically by one-quarter, is bleeding out: in economic terms, it is a cheap workbench for individual EU countries in which the suppliers of Italian and German companies generate little added value domestically (Tschinderle 2018). Reljić considers that an extension of the value chain, allied to an expansion of infrastructural and digital networks, is the required policy response.

A timely goal is important in order to give a fresh boost to the influence of Europeans in the region. Better to have one bird in the hand than two in the bush: a soon-to-be-attainable, partial, connection is more motivating than a distant, uncertain full membership. (Ernst 2019)

This is the only way of limiting the influence of other powers in the Balkans, especially as the EU is communicating precisely its own lack of influence in its regular progress reports, but where states in the region are unable to respond because their

2 Bill Clinton's slogan in the 1992 US presidential election, repeating a phrase coined earlier by James Carville, a campaign strategist.



willingness to accept additional demands is exhausted. However, no-one other than Macron (in 2019) permits themselves to acknowledge this publicly (Becker 2020).

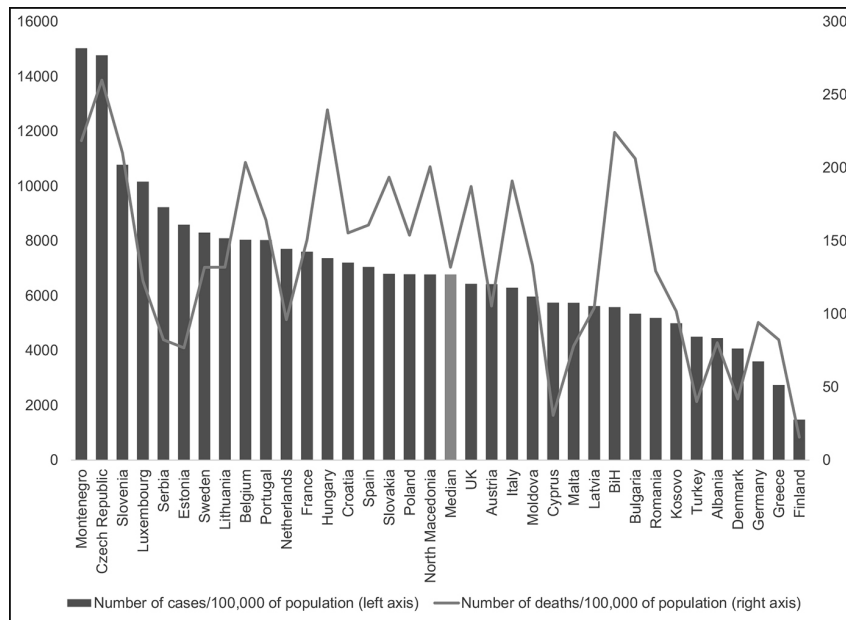
### Sick health systems

The pandemic is relentlessly revealing not only the political failings of the EU but also that which has been in difficulties for decades in post-Yugoslav states. As shown by the examples of Bosnia and Herzegovina, Kosovo and Serbia, separate health systems struggling under the weight of similar problems are exacerbating the crisis induced by the pandemic. The Yugoslav healthcare system, once regarded as the model, has hugely fallen back since the wars of disintegration in the 1990s. Hospitals and other infrastructures were often destroyed or, due to the dire economic situation, could hardly be maintained or even further developed. Well-trained medical professionals have been leaving their home countries in droves to look for better conditions in the EU. Germany is one of the most frequent destinations with around 2,000 Serbian doctors working in that country alone. In addition to the shortage of skilled workers, drugs are often in short supply, not to mention modern medical equipment – there is a lack of ventilators in the significant numbers that are urgently needed for the treatment of severe cases of Covid-19 infections.

Those who need comprehensive medical treatment in Bosnia and Herzegovina, Serbia or Kosovo often cannot avoid having to dig deep into their own pockets which causes additional hardship given low average salaries. This means in part that drugs can now be bought that hospitals can no longer provide; but, frequently also, better or prioritised catering is being bought with individuals' own money. In addition to the rising numbers of private clinics, there is also the obvious amount of corruption within the public health system on top of which there are veritable economic crises that have solidified the high unemployment rates.<sup>3</sup>

Looking at the numbers of the Covid-19 pandemic in Bosnia and Herzegovina, Kosovo and Serbia in terms of the infection rate per 100,000 inhabitants, all three countries were in the top quarter at the beginning of March 2021 – that is, in the worst part in terms of global comparison (in 48<sup>th</sup>, 51<sup>st</sup> and 15<sup>th</sup> places respectively), but they are not doing significantly worse than the large industrial nations of Europe. Even the eleventh place that Bosnia occupies globally in terms of deaths per 100,000 inhabitants brings it into the vicinity of significantly larger, richer and more powerful states such as the USA (9<sup>th</sup> place) and Italy (7<sup>th</sup>). Meanwhile Serbia, with plenty of vaccines, has a higher infection rate than Kosovo – a remarkable outcome.

3 10.3 per cent in Serbia; 28 per cent in Kosovo; and around 17 per cent in Bosnia.

**Figure 1 – Cumulative cases of Covid-19 in Europe and the western Balkans**

Source: World Health Organization. Data drawn from weekly update for 13 April 2021; Kosovo from 6 April 2021.

### Serbia rising

The expansion of Serbia on the regional stage is inextricably linked with the rise of Aleksandar Vučić and his Serbian Progressive Party (SNS). The process of change from nationalist anti-system to flexible pro-EU party, open to all sides, is paying off. The semi-autocratic president has been ruling the country with his party colleagues in various constellations of power since 2012. An extensive clientelist system has been created that also operates in health and the media, among others. SNS confidently won the parliamentary elections in June 2020 with the electoral list 'Aleksandar Vučić: For our children' winning no less than 60.7 per cent of the vote. A divided opposition – as is so often the case – was unable to benefit from the government's initial zigzag course on Covid-19, oscillating between repressive lockdown and opportunistic easing. Civil society organisations continue to suffer from government intimidation and self-inflicted limited political effectiveness. Vučić, who likes to portray himself as the great leader of all Serbs,<sup>4</sup> who emerged under the tutelage of Slobodan Milošević and who is now Angela Merkel's party friend within the European

4 Recurring rumours suggest that there have long been ties between Vučić and those around him with the Belgrade football mafia and thus with organised crime. On 6 March 2021, a staged press conference took place on the orders of the president which the state-controlled

People's Party, recently announced through the tabloid *Blic* that all EU citizens wanted a leader like him.<sup>5</sup>

That a monumental statue of the medieval leader Stefan Nemanja has just been completed in Belgrade, a reminder of a glorious past, fits into the picture especially during the Covid-19 crisis. Serbia, with its 6.9 million inhabitants, started very early with its vaccination programme: by mid-April, over one-quarter of the population had been vaccinated. In comparison: Germany and France had reached just 17 per cent by the same point; and only the UK, which approved the vaccines from BioNTech/Pfizer, Astra Zeneca and Moderna significantly earlier than the EU, and which has been able to benefit from preferential contracts signed initially with the developers of the Astra Zeneca vaccine, has registered a vaccination rate of one-half of the population (as a first dose). The Serbian immunisation programme would hardly have been possible had it been dependent on its own resources – its success has been made possible by bilateral agreements with Russia and China which, so far, have delivered 500,000 and 1.5 million vaccine doses of the SputnikV and Sinopharm vaccines to Serbia.

#### Serbia's close ties with China and Russia

Serbia applied for membership of the EU in December 2009. The Covid-19 fragility of the EU symbolises its manoeuvrings and vacillation in the subsequent course of the accession negotiations with Serbia.

China and Russia, on the other hand, know precisely what they want: to exert influence through aid transfers. 'In times of need, true friends show up,' is how the journalist Jakša Šćekić interprets the initial reactions of the majority of the population (Sorić 2021). People should be just as aware, however, that Vučić is placing his country under the soft power of these two great powers although this seems to have been inevitable in view of the stalling of the global Covax programme to support poorer countries before it could even get underway. The Serbian government has just announced that it will shortly be manufacturing the Sputnik V vaccine within the country as opposed to be simply packing components sent by Russia.

mass media reported in detail and at which Vučić reported: 'There are pictures of disfigured bodies that look as if they have been run through a mincer. They are said to be the victims of a Serbian criminal gang. There is evidence of four murders so far but the gang has probably wiped out many more lives'. The leader held to be responsible is the imprisoned Veljko Belivuk who heads a group of football hooligans attached to Partizan Belgrade and with whom Vučić's SNS has cooperated. His *ultras* have acted, among other things, as hall security and in roles enforcing order at party meetings. Belivuk is charged with drug trafficking, kidnapping, extortion and murder. It is believed in Belgrade that Vučić's press conference was a preventive attack seeking to distract attention from the connection between the mafia and the SNS leadership. See the articles by Michael Martens – one of the foremost Balkan experts in Europe – published originally in *Frankfurter Allgemeine Zeitung* (2021a) and *Frankfurter Allgemeine Sonntagszeitung* (2021b) and available at faz.net.

5 *Blic* 19 February 2021 'Gradani EU zavapili: Hoćemo lidere poput Vučića!' last accessed 15 April 2021 at: <https://www.blic.rs/premium/gradani-eu-zavapili-hocemo-lidere-poput-vucica/pmxcz7c>.

Russia is a traditional ally of Serbia and has repeatedly held a protective hand over the country since the wars of Yugoslav disintegration in the 1990s. As part of the Belt and Road Initiative, China is investing heavily in large infrastructure projects such as bridges, roads and dams but also in learning software for schools. Chinese and Russian companies are working side-by-side to build a high-speed rail line between Belgrade and Budapest. The consequences of this soft dependence of Serbia on its donors to the north and east can only be guessed at: the vaccination campaigns that have made this possible are just another part of the mosaic of a sophisticated politics driven hard by self-interest.

With live media coverage and only after many months of evasion, Vučić finally received the controversial Sinopharm vaccine at the beginning of April, making a point at the time of thanking ‘our Chinese brothers’.<sup>6</sup> Critics accuse Vučić that his hesitation in getting vaccinated has helped to fuel the widespread scepticism about vaccination which exists in the country, stemming otherwise not least from the prevalence of online conspiracy theories and hoaxes, as well as the relaxed, *laissez faire* attitude of the Orthodox Church. Indeed, companies such as Ljuba Invest from Paraćin have resorted to offering €50 as an incentive for employees to get vaccinated.

Consequently it is hardly surprising that Vučić used the recent Serbian National Day (*Sretenje*) to demonstrate his appreciation for his brothers. In addition to the usual numbers of musicians, filmmakers and artists, those receiving national medals and awards this year included the Russian Defence Minister, the head of the Russian Orthodox Church, a Chinese medical research institute and nine Chinese doctors who were sent to Serbia to help combat the pandemic. Vučić is positioning himself not only as the saviour of his nation but also as a responsible statesman showing leadership throughout the region via the expanding concept of ‘Srpski svet’ (Serbian world). He recently made offers to neighbouring countries to provide them with vaccines. North Macedonia’s Prime Minister, Zoran Zaev, gratefully accepted the offer and, on 14 February, his country received the first delivery of almost 5,000 doses of the Sputnik V vaccine – quite clearly a drop in the well but whose symbolic significance, however, would not have missed its strategic effect. As Zaev commented:

I would like to confirm that we have held talks with our strategic partners, NATO and Washington in which we have come to the conclusion that the procurement of vaccinations from China is not a geopolitical question but the sovereign right of every state. (Georgievski 2021)

That such a situation has arisen speaks volumes.

#### Bosnia and Herzegovina and Kosovo in the sights of Serbia

The situation of both these EU ‘potential candidates’ is different according to the official statuses of Bosnia and Herzegovina and Kosovo, in both of which there are

6 *Euronews* 6 April 2021 ‘Serbian President Aleksandar Vučić gets Chinese-made COVID-19 jab’ last accessed 15 April 2021 at: <https://www.euronews.com/2021/04/06/serbian-president-aleksandar-vucic-gets-chinese-made-covid-19-jab>.

significant Serbian populations. So far, each has refused to import vaccines that are not approved in the EU and neither one has approved Sinopharm or Sputnik V, but the Serbian government has verbally announced that it will provide the Serb residents of both countries with these vaccines. It is clear that both countries are desperately waiting for EU aid and the first deliveries of the Covax programme: state finances are too weak in either case to be able to enter into negotiations with vaccine manufacturers. That the Serbian government is creating further tensions and indirectly intervening in the interests of two mostly sovereign states – Bosnia and Herzegovina is officially under UN administration; Kosovo is not recognised by all countries in the world – is another targeted provocation.

In addition, Bosnia and Herzegovina has been receiving a massive international scolding when it comes to dealing with refugees using the Balkan route to get into Croatia and thus into the EU. Camp Lipa serves as a code for the suffering of migrants who, some of them coming from the destroyed Moria refugee camp on the Greek island of Lesbos, have been holding out in inhospitable wintry conditions for months and who are likely to have to wait much longer for vaccinations. As inhumane as their 'accommodation' and the pure neglect of their plight is, the bitter truth also encompasses Bosnia having to bear a burden which the EU has chosen to unload beyond its own external borders and which is the result of wars in Syria, Libya, etc. (Grillmeier 2021). The western criticism of the situation at Lipa is, therefore, not only cheap but it also hits hard at Bosnia and Herzegovina, a country that is scarcely in a position to provide its own population with adequate infrastructure or medical care.

In the meantime, after a precipitously steep rise in the number of cases since March, this small country ranks in a sad 14<sup>th</sup> place in terms of the global death rate. Bosnia and Herzegovina is still a long way away from recovering from the war that tore the country apart between 1992 and 1995. This applies to its statehood, its economy and its infrastructure. The health system in Bosnia and Herzegovina in particular is already finding it hard to make ends meet. The situation here looks particularly bad in respect of the ventilators required to treat patients seriously affected by Covid-19 symptoms.

That Serbian residents in Republika Srpska can now hope for supplies through, or otherwise in, Serbia deepens the ethnic tensions that have never really gone away since the war – due also to the ethnic-based political system that the Dayton Agreement implemented and deeply cemented into the state constitution.<sup>7</sup> Here, glimmers of hope did emerge in November 2020: for the first time, non-nationalist parties managed to achieve important victories in the major cities in local mayoral elections. In Sarajevo Centar, Srđan Mandić, a candidate of an alliance of four progressive parties, ousted the SDA, the party of Muslim Bosniaks, and the dominant party here since the war. It is particularly symbolic that Mandić, who identifies as a Serb, was elected by a majority Muslim population. In Republika Srpska, too, the nationalist Serb party SNSD, which had previously been in power as the sole ruling party, had to surrender to the opposition in the two largest cities, Banja Luka and Bijeljina. On-

7 Editor's Note: see the content on Dayton elsewhere in this issue of the *SEER Journal* for detailed analysis.

ly HDZ BiH, the offshoot in Bosnia and Herzegovina of the conservative HDZ party of Croatia, which surfs even further on the right-wing tide in Bosnia than in its ‘homeland’, was able to maintain its dominance among the three traditional nationalist parties.

In Kosovo, a restrictive but effective lockdown was lifted in June 2020, the population feeling that they had overcome the pandemic. In the meantime, however, greater caution is spreading again. Beqë Cufaj, Kosovo’s ambassador in Berlin, reports:

Like the other peoples of the former Yugoslavia, we are a traumatised people. The lifting of the lockdown was celebrated like a triumph of freedom, like the end of the war. It is difficult to curb this – but we are doing everything we can to convince people to be more careful again. (Lau 2021)

The health system in Kosovo is also separated on ethnic lines – Serbs in the north of the country are insured through Serbian health insurance companies, not Kosovar ones. As in Bosnia and Herzegovina, supply from Serbia is available only to Serbs, a development that the Albanian political ruling class perceives as confrontational, especially as it views Serbia, which does not recognise the sovereignty of Kosovo, as interested only in destabilisation. As a result, there have recently been demonstrations by Serbian health workers in the Mitrovica district who, in turn, feel harassed by the government’s stance in Prishtina.

Serbian interventions may well matter even less in Kosovo in the future since Albin Kurti’s *Vetëvendosje* (Self-determination) achieved a brilliant victory with 50.3 per cent of the vote in the parliamentary elections in February 2021. The prime minister, meanwhile confirmed as such by parliament, and his close ally Vjosa Osmani, who parliament elected president on 4 April, will build on the widespread optimism for the far-reaching reforms set out during the election. They promise a ‘second liberation’, more jobs for women and young people and the elimination of ossified clientelist structures. The corrupt system of KLA ‘commanders’ and their dominant political representation is threatened with collapse, especially since Kurti has, so far, no visible connection with organised crime. It should be highlighted that ‘Never before have so many Kosovan women become members of parliament and of the government.’ President Osmani, a former member of Ibrahim Rugova’s LDK, represents modern middle-class citizens. ‘Pictures of ex-KLA warriors stood with rifles in front of black eagles belong to the past.’ Simply, they brought no jobs (Wölfl 2021).

One year ago, Kurti’s first government collapsed after only six weeks on the subject of how to handle the pandemic: in contrast to coalition partner LDK, Kurti rejected the declaration of a nationwide state of emergency before the coalition was overthrown by a vote of no confidence called by LDK. In the background, the US – represented by Richard Grenell, then ambassador to Germany and the Balkans representative – played a major role, freezing payments of about one-third of development aid totalling around €150m with the intention of putting pressure on Kurti and supporting the US’s preferred point of contact, former president and ex-KLA commander, Hashim Thaçi. This action was also connected with the state of relations between Belgrade and Prishtina.

Meanwhile, Thaçi is no longer in office and must answer to the International Criminal Court in The Hague in respect of accusations of war crimes committed during the Kosovo war. Kurti, who stands for an uncompromising relationship with Belgrade, is in a strong position but the tough tug-of-war between Serbia and its former province will certainly continue. Serbian recognition of Kosovo as a sovereign state will only be achieved through international pressure and considerable concessions. Here, too, however, both are waiting for clear announcements from the EU – so far in vain. Clear announcements are furthermore needed against the latent worrying non-paper launched from Slovenian officials bursting with revisionist aspirations in the spirit of Milošević and Tuđman (Dragojlovic 2021). In the self-interest of the EU, officials should act decisively against the proposal to draw borders based on ethnic criteria in post-Yugoslav countries, *de facto* dividing Bosnia and Hercegovina.

The skies are empty and Europe is no substitute

One could conclude by summarising Richard Wagner's assessment by inverting it. Life in the western Balkans goes on even in the absence of an EU perspective and EU support. The entanglement of the political castes of many countries in the region in dubious business and crime, while the EU looks the other way, alongside the creeping influence of other major powers, leaves people in all three countries disaffected. Confidence in statehood, in leaders and also in health experts is suffering as a result. The most recent protests of the Bosnian population (April) have been directed against the political inability of the responsible bodies to provide vaccines for their citizens and instead to indulge in domestic political disagreement. Fraud and corruption allegations against the Federation Prime Minister, Fadil Novalić, in connection with overpriced masks and ventilators should be only the tip of the iceberg (Sorguc 2020).

One result of all this is that the strict protective measures imposed everywhere are often ignored. It was only in December that the head of the Serbian Orthodox Church, Irinej I, died as a result of Covid-19 infection after he had attended a funeral service for the Metropolitan of Montenegro. No-one adhered to the requirement for masks or kept their distance at this event. In mid-February a huge party with a thousand party-goers was broken up in Belgrade, cafés and restaurants in Sarajevo are still well-attended and election rallies before the elections in Kosovo were often held in front of large crowds, without social distancing and without masks. The Yugoslav author Mehmed Meša Selimović once put it thus:

It is not easy not to be afraid, but it is not worth it. A person's whole life thus passes in fear, as if he had not lived at all. Just what does he get out of life, then?<sup>8</sup>

This sentence seems to be becoming the laconic mantra of those who regard Covid-19 as just one problem among many in Bosnia and Herzegovina, Serbia and Kosovo today.

8 The quotation as originally made read as follows: 'Nije lako ne bojati se, ali ne vrijedi. Prođe čovjeku život u strahu, pa kao da nije ni živio. Šta će mu onda i život?'



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Snežana Aleksić

## **The Republic of Serbia facing the challenge of preserving the health of citizens amidst falling economic activity and the need for credit**

### *Abstract*

*This article reviews the initial experiences of Covid-19 in Serbia in the context of other pandemics during the 20th century. The author reviews the data on life expectancy, with a particular eye on the air pollution from which Belgrade suffers particularly badly and which had reached unprecedented levels immediately prior to Covid-19, as well as the pandemic's initial impact on mortality and on key life events including marriages and divorces. The main focus is human life and work, as well as the consequences for the economy, and the author reports in detail the response of the government of Serbia in terms of the declaration of the state of emergency as well as the measures set out to mitigate Covid-19's economic impact. She concludes from prior experience that the Covid-19 pandemic will, one day, be stopped but that what remains as an open question is the consequences it will leave behind across all segments of human activity. Nevertheless, what is quite certain is that, after the pandemic has taken its toll, it will have left the Republic of Serbia with additional credit indebtedness in the long run.*

**Keywords:** Serbia, Covid-19, economic growth, air pollution, mortality, public debt

### *Introduction*

The twentieth century could be considered the most destructive period of civilisation for several reasons. During this century, two world wars were fought as were hundreds of other smaller wars, among the last of which was the bloody collapse of Yugoslavia which culminated, in this century, in the war in Kosovo and the Federal Republic of Yugoslavia being bombed by NATO in 1999.

The wars of the 20th century not only resulted in human casualties<sup>1</sup> but also the collapse of economic systems and the recomposition of geopolitical forces among nations and states. After World War I, certain international organisations were created whose influence did not, however, have sufficient strength to shape the new world in which nationalism, protectionism and economic crisis grew. After World War II, there was greater co-operation and internationalisation at a global level via the IMF and the Bretton Woods system, the Marshall Plan, the UN, the Agreement on Cus-

1 For the First World War, over 37 million victims – more than 15 million dead and 22 million wounded – while for the Second World War, the data range from 56 million dead to up to 85 million.

toms and Trade, etc. New geopolitical relations were formed while, at the end of the 20th century, the processes of globalisation and expansion of information technologies heralded a new future in the 21st century.

However, these significant and well-known events have put themselves in humanity's collective consciousness in front of some other events that left lasting consequences for people. These are the 20th century pandemics that, between them, had a more disastrous impact than the suffering brought by both world wars. It has been shown that these pandemics, in addition to affecting human health directly, have a greater or lesser impact also on economic and geopolitical trends both at global level and at the level of certain regions and sovereign states.

In this same vein, the Covid-19 pandemic is, probably, permanently changing the world as we know it. Its presence is having a huge impact on all countries and people of the world, including the Republic of Serbia whose citizens, economy and credit indebtedness are the focus of this article.

#### The scale of pandemics, epidemics and other events of consequence for human health

The 1918-1920 influenza pandemic – so-called ‘Spanish flu’ – is considered the most deadly disease to affect the world: no war, famine or other tragic event in the history of civilization has caused so many human deaths in such a short period. It is commonly regarded that this pandemic caused the death of 21.5 million people, with recent studies estimating that number at 50 and even up to 100 million: one-third of the world's population at that time, about 500 million people, were infected and had visible signs of the disease (Cvetnić and Savić 2018).

Influenza had the character of a pandemic on several occasions during the 20th century including ‘Asian flu’ (1957-1958) and ‘Hong Kong flu’ (1968). In the 21st century, the world was threatened by bird flu in 2003 and swine flu in 2009.

In addition to the major flu epidemics, humanity has been threatened by other infectious diseases. Collective consciousness in the Balkans recalls very clearly, for example, the great epidemic of the 20th century *Variola Vera*, the smallpox epidemic which struck in 1972 (Bura 2012; Vučković 1981).

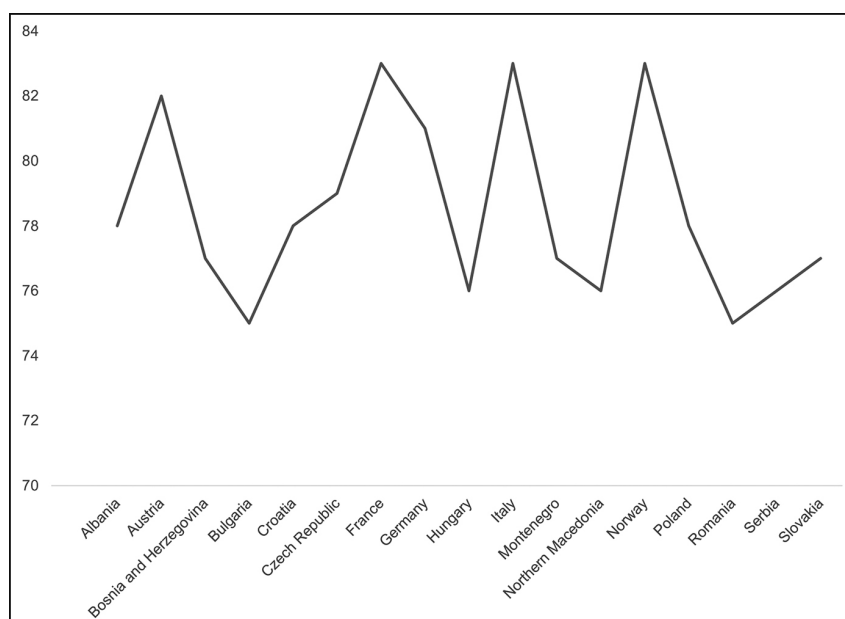
A modern, less infectious disease is the HIV virus and AIDS, which has infected a total of about 60 million people and from whose AIDS-related complications about 25 million people have died. In 2018, some 770,000 people died from AIDS-related diseases and it is estimated that, in 2019, about 38 million people across the globe were living with HIV.

In addition, diseases that today have a high mortality rate are cancer and obesity. The number of people suffering from malignant diseases as a result of obesity is constantly increasing: in 2015, some 15.2 million people fell ill and 8.9 million people died as a result of obesity; figures that are expected to rise by 2035 to respectively 24 million and 14.6 million (Matovina-Brko 2020).

Modern science is bringing a growing trend of the rate of certain diseases into a cause-and-effect relationship with the increasing pollution of nature. For example, it is estimated that, at global level during 2016, as many as 4.2 million people died of

heart, blood vessel and respiratory diseases due to poor air quality (Ministry of Environmental Protection 2019b). According to World Bank data, it can be noticed that the population of central and eastern Europe has shorter life expectancy than the population of western Europe and that the gap is growing (Murthi 2015). According to a United Nations report published in the summer of 2019, air pollution in the western Balkans exceeds the legally permitted health norms by up to five times – the reason why citizens of the western Balkans live, on average, 1.3 years shorter in as many as 19 cities (UNEP 2019).

**Figure 1 – Life expectancy of the population, selected European countries**



Source: World Bank data, drawn down on 15 October 2020.

#### Air quality and road traffic in Serbia prior to the Covid-19 pandemic

On 17 January 2020, the government of the Republic of Serbia formed a working group targeted at the systemic solution of issues in the field of air pollution protection (Ministry of Environmental Protection 2017, 2018, 2019a; *Official Gazette* 4/2020); and then, at its session on 12 March, adopted a Decree subsidising the purchase of new electric vehicles (*Official Gazette* 27/2020). Previous research had identified heat and electricity production processes (the burning of fossil and other fuels), industrial processes and road traffic as the main causes of air pollution in the Republic of Serbia (Besermenji 2007; Đorđević 2018), but the 12 March decision indicates that the Serbian government was focusing on the cause-and-effect relationship between air pollution and road traffic.

Just three days later, however, in order to suppress the Covid-19 epidemic, a state of emergency was introduced in Serbia which, among other things, included the introduction of a curfew and an absolute ban on movement. Although it was to be expected that air quality would improve due to the stoppage of traffic in Belgrade, on 27 March, Belgrade nevertheless broke into first place on IQAir's list of 'the most polluted cities in the world'. Serbia's media all reported that, due to air quality, serious health problems could be expected in healthy people and in vulnerable groups of the population: the elderly; children; and people with heart and lung diseases. The recommendation for the entire population was:

Avoid all physical activities in the outdoor environment, shorten stays in the open air and redirect the performance of normal activities indoors until the air quality improves. (*Danas*, 15 October 2020)

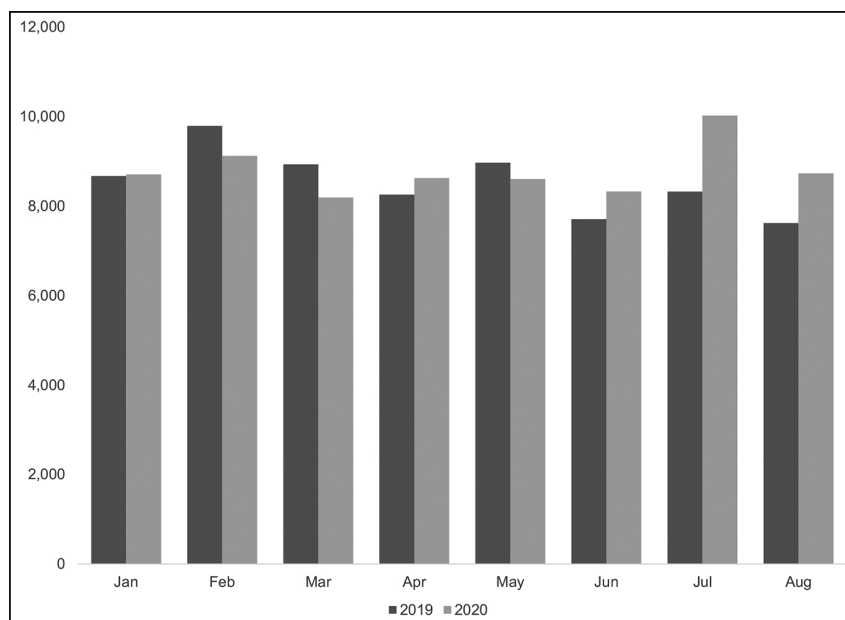
In anticipation of the results of a detailed analysis of air quality measurements in Belgrade for 2020 (to be published in the *Yearbook* of SEPA, the Serbian Environmental Protection Agency), as well as the conclusions of SEPA's professional scientists regarding the causal relationship between air quality and the emission of harmful substances, it is likely that the citizens of Belgrade could thus feel real benefit (in addition to stopping the spread of the Covid-19 pandemic) from the state of emergency as well as from the traffic ban. The latter also saw benefits in terms of the reduction in the level of noise pollution which had exceeded permitted values in 2017, 2018 and 2019 (Petrović 2018: 46; Petrović 2019: 44; Petrović 2020: 9).

Additionally, as a consequence of the ban on movement, it was expected that there would be a smaller number of deaths caused by traffic accidents; this was indeed confirmed later by official statistics.

#### Mortality and social statistics during the Covid-19 pandemic

Results of water, air and soil monitoring in the Republic of Serbia in the period 2005-2019, as reported annually by SEPA, indicate the possible risks to human health and mortality but the effects of air pollution, especially in Belgrade in March 2020, is now entering an unknown scenario given the outbreak of the Covid-19 pandemic. Scientific recommendations regarding air pollution had been aimed equally at banning outdoor trips and movement in general, and mortality statistics clearly indicate that, for the first three months of 2020, 1,381 fewer people died in Serbia than in the same period of 2019 (Statistical Office of the Republic of Serbia (2020d). According to the same statistics, however, the number of deaths in April 2020 exceeded the number of deaths in the same month in 2019, while the same was true (and much more so) in June, July and August – see Figure 2. Given the unprecedented level of air pollution at the end of March, it is possible that some of the consequences of this pollution were reflected through the mortality rate in April 2020.

**Figure 2 – Deaths in the Republic of Serbia, January-August 2019-2020**

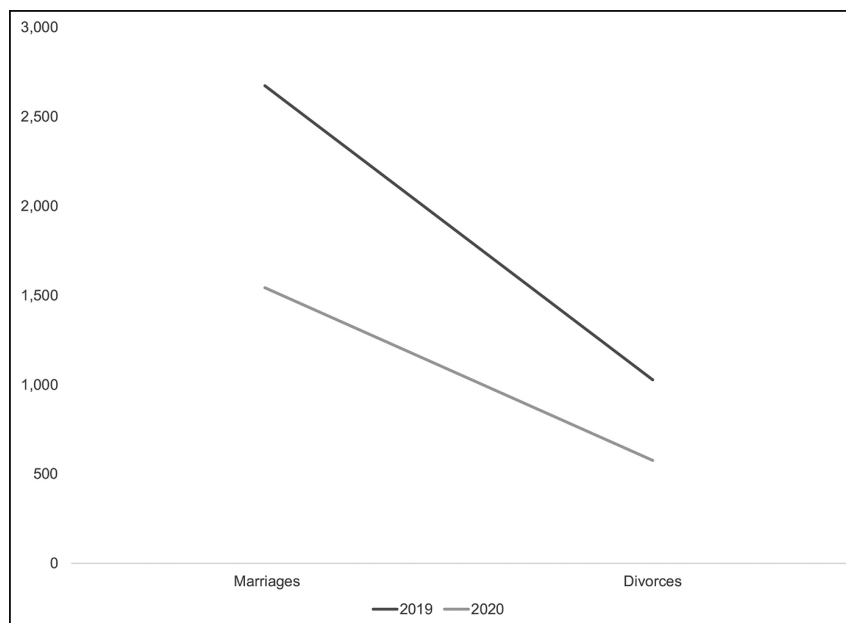


Source: Statistical Office of the Republic of Serbia (2020d)

The mortality rate for the first three months of 2020 was lower compared to the same period in 2019 but it is likely that, by the end of 2020, the population mortality rate in Serbia, for reasons which cannot be attributed to the Covid-19 pandemic, will be higher than at the end of 2019. The point is that, in Serbia, the generation of people born after World War II and in the 1950s is dominant; it is this generation that has now entered the ‘third age’ which will inevitably cause the number of deaths to be higher in the coming years. Special attention should be made that this generation was at an increased risk of other diseases due to the introduction of the state of emergency, the ban on movement and the transformation of health institutions (hospitals, clinics and dispensaries) into Covid-19 hospitals and centres. Serbia is, already, among the top ten countries in the world in terms of the number of deaths from cardiovascular diseases and malignant tumours (Marinković 2012; Marinković and Radivojević 2016).

The state of emergency declared due to the Covid-19 pandemic has significantly affected all segments of life in Serbia – something that is also confirmed by data related to divorces and marriages for the periods January-June 2019 and January-June 2020, as Figure 3 shows:

**Figure 3 – Marriages and divorces in the Republic of Serbia, January-June, 2019-2020**



Source: Statistical Office of the Republic of Serbia (2020c)

### Impact of the Covid-19 pandemic on human life and work in the Republic of Serbia

In order to make the country functional under the conditions of the state of emergency, a number of regulations (decisions, decrees and orders) have been adopted in Serbia at government level regarding the prevention of the spread of Covid-19.<sup>2</sup> The entire education system has been urgently reoriented to online teaching (*Official Gazette* 30/2020) while art has moved from the real framework of theatres, exhibition spaces and concert halls to the virtual world.

During the state of emergency, the internet became a key factor in everyday life, with employees whose jobs are related to the use of modern information technology able to perform their jobs at home (*Official Gazette* 30/2020). However, what must be pointed out is that not all jobs may be done through modern technologies, while not all households in Serbia are connected to the internet. According to research, in 2018, 72.9 per cent of households had an internet connection, an increase of 4.9 per cent percentage points compared to 2017 (Kovačević *et al.* 2018). In 2019, this had

<sup>2</sup> See the list which, as of February 2021, is regularly updated at: <https://www.paragraf.rs/svi-pr-opisi-uputstva-za-sprecavanje-sirenja-korona-virusa-covid-19.html>.



risen to 80.1 per cent (Kovačević *et al.* 2019) and, in 2020, to 81 per cent (Kovačević *et al.* 2020). Between 2017 and 2020 there was thus a noticeable increase in the percentage of households having the internet but, in 2020, 19 per cent of households still did not. Children from households that did not have access to the internet during this time could not attend regular classes in primary and secondary schools, while the same is true for those in higher education institutions. Similarly, households that do not have the internet could not access the ability to work from home and neither could they use other services, for example being able to follow cultural programmes (theatres, exhibitions, concerts, libraries).

Why do households not have access to the internet? Is it because they do not have the necessary knowledge and skills in the use of information technology, or is it because they cannot afford it? According to official data, the at risk of poverty rate in 2019 was 23.2 per cent (compared to 2018, it is lower by 1.1 percentage points); while the rate of risk of poverty or social exclusion was 31.7 per cent (a drop of 2.6 percentage points on the 2018 data) (Statistical Office of the Republic of Serbia 2020e). Eurostat classifies the Republic of Serbia, along with Northern Macedonia, Turkey and Romania, as a country with a very high risk of poverty (Eurostat 2020) with percentages that are higher than those published domestically.

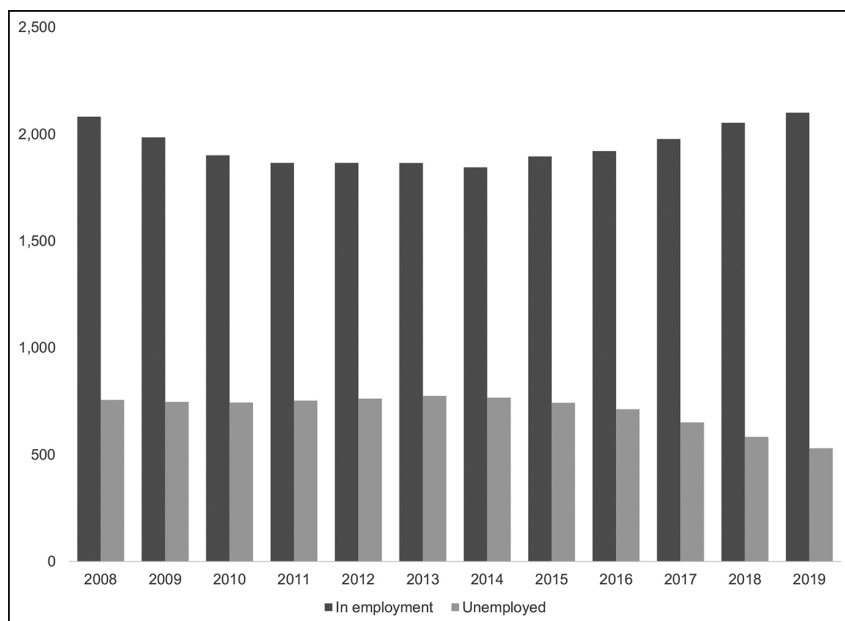
We don't know the impact of the pandemic on the percentage of the population at risk of poverty, but the Covid-19 pandemic certainly threatens to have much wider consequences for the Serbian economy than the health of the population alone.

#### The economy in the Republic of Serbia from the 2008 economic crisis to the Covid-19 pandemic

Data on the employment rate in Serbia in the period 2008-2019 indicate a slight level of change which, from the initial year, shows a downwards trend during the first part of this period, a consequence of the economic crisis in 2009.<sup>3</sup> The slight decline in the employment rate is, however, not proportional to the oscillations observed in Gross Domestic Product, especially in 2009 when a decline in GDP of 2.7 per cent was recorded. In 2012, the decline was 0.7 per cent and, in 2014, there was a 1.6 per cent drop (National Bank of Serbia 2020: 118). From 2015 to 2019, however, employment growth was noticeable while, in the same period, the Gross Domestic Product curve is characterised by sharp changes albeit all in the area of growth.

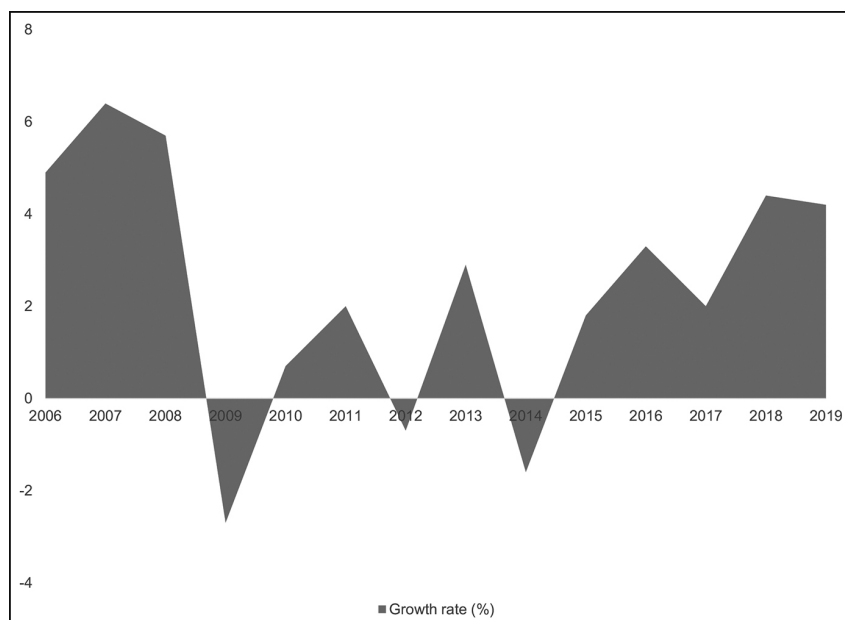
3 The following analysis is based on data published in the *Statistical Bulletin of the National Bank of Serbia* (National Bank of Serbia 2020: 124). The data refer to the number of employees of legal entities and entrepreneurs, excluding registered individual farmers. Only active unemployed people are counted, not all those who are registered with the National Employment Service.

**Figure 4 – Employment in the Republic of Serbia in the period 2008-2019 (000, average)**



Source: National Bank of Serbia (2020)

**Chart 5 – GDP of the Republic Serbia, 2006-2019**



Source: National Bank of Serbia (2020)

The foreign trade balance of Serbia was constantly in deficit between 2015 and 2019. Proportionately speaking, the foreign trade balance was highest in 2016.

**Table 1 – Foreign trade balance of the Republic of Serbia, 2015-2019 (\$m)**

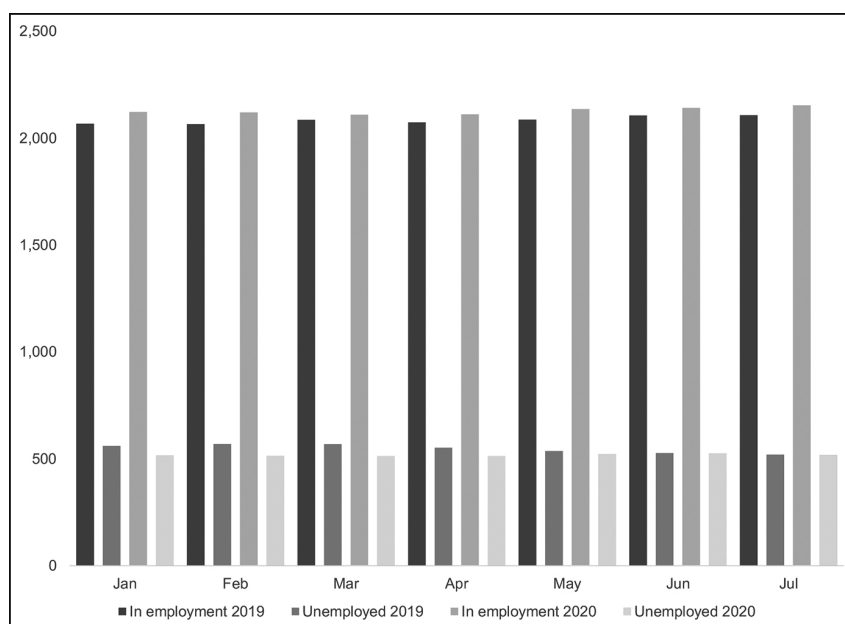
	2015	2016	2017	2018	2019
Exports	13,376	14,883	16,997	19,239	19,630
Imports	17,875	18,899	21,921	25,883	26,730
Deficit	-4,499	-4,016	-4,923	-6,644	-7,101
Coverage of imports by exports (%)	74.8	78.8	77.5	74.3	73.4

Source: Statistical Office of the Republic of Serbia (2020f)

A comparative review of employment in Serbia for the periods January-July 2019 and the same period in 2020 indicates a fairly stable relationship in the labour market, regardless of the impact of the Covid-19 pandemic, with neither employment nor unemployment showing any significant changes. Such a result stems from the activities of the government which, through a series of measures adopted during the state

of emergency and after its abolition, sought to mitigate the negative consequences of the pandemic and preserve economic stability (*Official Gazette*, various, as listed in the References).

**Figure 6 – Overview of employment and unemployment in the Republic of Serbia, January-July, 2019-2020 (000, average)**



Source: National Bank of Serbia (2020)

The Republic of Serbia took on the payment of the March monthly net minimum wage (30,367 dinars – c. €259) for all employees in micro, small and medium enterprises and of entrepreneurs for a period of three months as long as the employer did not reduce the number of employees by more than 10 per cent in the period between 15 March (when the state of emergency was introduced) and 10 April. Large companies were entitled to subsidies of 50 per cent of the net minimum wage for employees put temporarily out of work. Additionally, companies were allowed to postpone tax payments for March, April and June, with the possibility of repayment in 24 monthly instalments starting in 2021, although companies in the financial sector (banks and insurance companies) were not entitled to support via this measure.

Additionally, a capital credit line was extended for micro enterprises, SMEs and entrepreneurs amounting to 24 billion dinars with a grace period of twelve months, a repayment period of 36 months and an interest rate of 1 per cent. The condition for obtaining such a loan was, likewise, that the employer had not reduced the number of employees by more than 10 per cent since March 15. The state also took on the role

of providing commercial bank loan guarantees in order to maintain the liquidity and working capital of micro enterprises, SMEs and entrepreneurs, as well as registered agricultural holdings. The repayment period for these loans is 36 months, including a grace period of between nine and twelve months (*Official Gazette*, various, as listed in the References).

In the public sector, the salaries of health workers were increased by 10 per cent (*Official Gazette* 48/2020). Furthermore, one-off support of 11,759 dinars (€100) was paid to each adult citizen (*Official Gazette* 60/2020).

However, despite all the efforts to reduce the negative effects of the pandemic, economic activity in Serbia dropped significantly in the early days, with industrial production decreasing in April by 16.6 per cent and in May by 9.3 per cent. Retail sales fell by 18.6 per cent in April while the tourism sector experienced a record decline of 97.9 per cent in April and 87.6 per cent in May. Foreign trade also saw a significant decline, falling by 28.2 per cent in April and 26.4 per cent in May (Statistical Office of the Republic of Serbia 2020a, 2020b).

Along with the decline in economic activity, what is additionally burdening Serbia is the level of state support made to reduce the negative impacts. This was not financed from within the economy but from international credit (*Official Gazette* 52/2020). Serbia received a loan of \$100m from the World Bank on 26 May while previously approved credit funds (\$70m) under the name of the Disaster Risk Management Project were also drawn down from the same source. How these newly incurred liabilities will affect public debt remains to be seen. What is clear is that public debt has increased. According to the Public Debt Administration, the public debt balance amounted at the end of 2018 to €23.3bn, rising by the end of 2019 to €24.5bn. The estimated number of inhabitants of Serbia in 2019 was 6.95m, which would mean that each inhabitant is indebted to the tune of €3,531.

We will know how much the Covid-19 pandemic has increased the public debt after the end of the pandemic; but what is already quite certain is that the poor will be even poorer and that a poverty pandemic is yet to come.

## Conclusions

The first case of Covid-19 in Serbia was registered on 6 March 2020. This was followed by various government orders seeking to control the spread of the virus, including the introduction of a curfew, restrictions on movement, the closure of schools, a ban on gatherings, etc. culminating in the declaration of the state of emergency on 15 March. The mitigation of the rigorous measures began on 21 April while the state of emergency was lifted on 6 May although various restrictions remained in force.

From 5 June, life returned to normal and, on 10 June, a football match was played in Belgrade at which 25,000 people gathered. Parliamentary elections were held on 21 June and, just a few days later, the number of new Covid-19 cases began to grow again. As of 1 July, the mandatory use of masks was re-introduced in public places and on transportation and, on 7 July, the President announced the possibility of reintroducing curfews. This provoked protests from citizens, especially in Belgrade although this was where the number of new infections had drastically in-

creased. In September, the epidemic again began to subside and a large number of citizens used this time to go on vacation outside the borders of Serbia, forcing the government to adopt new measures, with October bringing a new wave of infections.

Economic recovery depends significantly on how the pandemic will continue to develop. It is clear that state support in relation to suppressing the negative economic consequences of the pandemic will affect GDP, especially since these have, for the most part, been financed by credit. Experience with the pandemics of the twentieth century suggest that Covid-19 will, one day, be stopped. What remains is the question of its consequences across all segments of human life and work although what is quite certain is that, at this point, it will have created additional indebtedness for the country.

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  - 27/2020: Decree on the conditions and manner of implementation of the subsidized purchase of new vehicles that have exclusively electric drives as well as vehicles that, in addition to an internal combustion engine, also start with an electric drive (hybrid drive)
  - 30/2020: Decision on the suspension of teaching; Decree on organising the work of employers during the state of emergency; Decision on limiting the price of basic foodstuffs and protective equipment
  - 35/2020: Decision on limiting the prices and margins of basic foodstuffs and protective equipment
  - 37/2020: Decision on amending the Decision on a temporary ban on the export of basic products important for the population
  - 38/2020: Regulation on tax measures during the state of emergency; Decree on the use of financial resources of the budget during the state of emergency

40/2020: Decree on limiting the retail price of protective equipment during the state of emergency

41/2020: Decision amending the Decision on a temporary ban on the export of basic products important for the population

42/2020: Regulation on investment of foreign currency funds managed by the Deposit Insurance Agency; Decision on fees in payment operations and transfer of funds for the purpose of receiving donations

43/2020: Decision amending the Decision on a temporary ban on the export of basic products important for the population

48/2020: Decree on the supplement to the basic salary of employees in health care institutions and certain employees performing activities in the field of health

50/2020: Decree amending the Decree on obtaining consent for new employment and additional employment from users of public funds

52/2020: Decree on additional borrowing during the state of emergency by taking loans, issuing government securities on domestic and international financial markets and providing guarantees of the Republic of Serbia; Decision on the formation of a Coordination Body for the implementation of a programme of measures to support the economy of the Republic of Serbia

54/2020: Regulation on fiscal benefits and direct benefits to economic entities in the private sector and financial assistance to citizens; Decree on the procedure for issuing debt securities; Decree on the conditions and criteria for compliance with state aid; Decree on the conditions and criteria for the compliance of state aid; Decree on establishing a programme of financial support to economic entities for maintaining liquidity and working capital; Decree on moving the deadline for the submission of quarterly reports on the implementation of the business programme

57/2020: Regulation on financial support to agricultural holdings through facilitated access to the use of loans; Decree on the postponement of deadlines for holding a regular session of general meetings and the submission of financial reports, as well as deadlines for filing income tax and income tax returns; Decree on establishing a guarantee scheme; Decree amending the Decree on establishing a programme of financial support to economic entities

60/2020: Decree on the establishment of a temporary register and the payment of one-off financial assistance to all adult citizens

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Miodrag Komarčević, Petar Čelik and Ivan Arnautović

## **The influence of Covid-19 on the field of social security – The example of the Republic of Serbia**

### *Abstract*

*This wide-ranging article takes a theoretical look at the implications of the SARS-CoV-2 (Covid-19) virus for the concept of the securitisation of a state, encompassing the debate about whether social security occupies a place within securitisation studies. The authors point to, and explore, the concurrent presence of three social phenomena with global effects: digitalisation and business automation; securitisation of the systems of health and social protection; and the emergence of the Covid-19 pandemic with all its disruptive potential. They also consider closely how these phenomena relate to the already-troubled social position in the Republic of Serbia, alluding also to the deliberate use of the concept of securitisation to convince the population of the need to take drastic safeguarding steps, including the announcement of a state of emergency. The authors conclude broadly on the implications that Covid-19 has for socio-economic development, that social security does play a role within securitisation and, with a sharp prod to nationalisms as a response to the virus, that global problems and risks require global solutions.*

**Keywords:** Covid-19, digitalisation, automation, securitisation, social structures, social benefits, social dialogue

### *Introduction*

The pandemic caused by the Covid-19 virus arose as a public health crisis in China before unprecedentedly quickly, due to the mobility of people and migratory flows, encouraged by the development of traffic infrastructure, growing into a global crisis. It has changed the ways and models of business; restricted the freedom of movement and work of a large number of people; burdened health and social systems, bringing them to the limits of endurance; and led to a general change in everyday habits and conduct. Numerous practical examples confirm that the crisis is richly diverse and multidimensional, and that its duration, persistence and unexpected changes in behaviour have affected all social areas and sectors, starting with the economy, finance, health, social security, culture and education, both with different depths of coverage and with the intensity of its destructive effects.

Precisely because it is complex and multidimensional, which is multiplied by wide and diverse, never fully understood, groups of factors, [a crisis period] produces a large number of distinctly differentiated and difficult to measure effects. (Komarčević *et al.* 2011)

The current pandemic is indeed such a crisis, extending to the large number of processes and phenomena that it manifests and the even denser network of their interactions and mutual conditioning.

It is very frequent to generalise a claim that, in all crisis situations, scientific disputes and ambivalent attitudes deepen and sharpen, while doctrinal and conceptual differences come to the surface both in their sharpness and in relief, which is not the case in ordinary times. We live in the information/digital age and in an increasingly complex and networked world that is changing dynamically, creating a whole new context, and therefore issues that are related to the survival, existence and security of individuals, their interest groups and society as a whole are a priority, not just in politics but also on strategic security agendas.

The result is that, both in normal circumstances and in emergency/crisis situations, issues related to social security in the field of labour law and employment, social protection and social transfers, trends in the labour market etc., due to their existential character, occupy the focus of interest both for the users of social services but also for workers themselves, employers, unions and other social partners including the state.

In the current global environment, three recent social phenomena mark a temporal sequence of changes that are having global effects: digitalisation and business automation; securitisation of the systems of health and social protection; and the emergence of the Covid-19 pandemic with all its disruptive potential. Originating from different sources and contexts, these phenomena nevertheless share a common time frame in which their apparent coincidence comes to be characterised by different and often inconceivable impacts individually, alongside the pronounced interactions between them.

Regardless of the fact that digitalisation appeared earlier in relation to the other two phenomena, in current practice, their challenges act in the same way, resulting in convergent meaning and significance. Mutually, their challenges are very similar in their problem approach as well as in their discursive formations. Although they appear from different perspectives, they are thematically and factually closely intertwined and most often lead to the same or very similar outcomes, most often generating a synergistic effect. (Čelik 2020)

#### Direction and potential of digitalisation and securitisation under convergence with the Covid-19 pandemic

Under the strong pressure of these global phenomena, the social sciences are in a phase of growing social complexity. Given such interaction, the level of complexity involved, unlike in earlier periods, heavily multiplies the challenges and problems, and thus imposes new reflective-conceptual requirements and frameworks. Among other things, this means defining, or redefining, the areas of social work, social protection and social security and especially their scope, focus and prospects.

#### *Correlation between digitalisation and Covid-19*

Digital transformation is not a new phenomenon. In semantic terms, digitalisation is, in short, a gradual process of adapting economic entities to disruptive changes in

the market which include extensive changes in business and management, and thus changing relationships with customers and consumers, as a means of increasing business efficiency and competitiveness.

Digitalisation, both in the field of economy and public services, introduces numerous and profound changes, in the field of business and management as well as in the production and provision of services and, as a rule, has an impact on value creation, competitiveness, organisational design, the reward system and the progress and profiling of development strategy (Çelik 2020: 160-161).

Considering the disruptive impact of digitalisation across the economy in all other social sectors, including in social protection, research findings and empirical evidence indicate that the current pandemic and the crisis it has generated could act as a catalyst for accelerating change in automation and digitalisation, as a way firstly to amortise and then to absorb the negative effects of the pandemic. According to the latest research studies, however, digital transformation under pandemic conditions indicates the need for a major reset not only of the global economy but also of society as a whole (WEF 2020).

Since the beginning of the Covid-19 crisis, internet use has increased by seventy per cent and the use of apps has doubled while streaming services have increased by a factor of twenty. All this has dramatically increased dependence on technology in everyday life. On the other hand, the crisis caused by the spread of the pandemic has accelerated the need to make louder the call on companies to resolve the upcoming social challenges while the market itself indicates that companies must adopt digital business models in their business strategies to establish competitiveness.

Before Covid-19 struck, a company's average existence was about 75 years. That average has now dropped to 15, thanks to technological interruptions. This environment has led to a change in competition rules and management, further jeopardising the survival of a growing number of companies, while the pandemic is causing further disruption and highlighting calls for urgent change in our economies and societies. The time has come for companies to combine two work streams and use the digital business models and technologies of the Fourth Industrial Revolution to transform their businesses and establish systemic changes.

It is estimated that the world's leading companies spent \$1.2 trillion on digital transformations in 2019, thus creating the basis for doing business in the digital age. The pandemic has, however, radically changed the forms of behaviour of all business actors, emphasising the importance of trust and market responsibility.

With respect to informatics, analytics and artificial intelligence, as well as the wide range of innovative and disruptive innovations, many public services such as health and social services can use the Covid-19 crisis to rethink the organisation of their systems, giving priority to improved access to health and social care of their large numbers of users. This implies a change in the existing paradigms that have not borne the weight of the test brought about by the current crisis.

*Challenges of securitisation in the field of social protection and social security*

In the professional literature, securitisation is defined as a concept, process or analytical tool that explains and considers the way in which certain issues, topics or phenomena become a security issue through the discursive practices of social agents. It is based on the materialist assumption that security threats exist outside of the discourse, as well as on their task being to detect threats before they materialise (Ejdus 2009: 11).

According to Ole Wæver (1993), securitisation has five elements: speech act; securitising actors; functional actors; special measures; and audience.

The Copenhagen School has elaborated the concept and theory of securitisation in great detail, placing special emphasis on three key concepts: the actor or agent of securitisation; the act of securitisation; and the subject or object of securitisation. Actors or agents of securitisation represent the initiators and carriers of the whole process. These are most often key policy-makers, lobbyists, interest groups, etc. – i.e. all those who significantly influence decision-making in the field of security.

Linguistically or verbally, securitising actors mark a new phenomenon as a threat to the reference object; that is, by marking something as a matter of security significance, it becomes so as a result of such a process. Therefore, rhetoric is the basis for the protection of the reference object: it is a precondition for the materialisation of power and the realisation of the security interest. The audience (public or otherwise), through this process, may either accept the position of the securitising actors or simply reject it. The audience is, therefore, the one which decides whether something is a security threat or not and, in that way, gives support to (or indeed withdraws support from) the political elite in the protection of the reference object. In other words, this gives legitimacy to the actors to take special or emergency measures to combat that threat which, as a rule, requires the introduction of a state of emergency or establishment of an emergency situation. In practice, special measures, regardless of their nature, go beyond the scope of everyday political procedures and are located in a special area outside of politics where the use of all legitimate means is allowed to combat or eliminate this threat (Lipovac 2015: 64).

The object of securitisation is the reference value that is existentially endangered by the threat and which, on that basis, has a legitimate legal right to survival and continued existence. In this context, Hansen makes a significant distinction between the concept of the politicisation of an issue and securitisation. The politicisation of an issue means that it is of special importance and implication for a society and, for these reasons, the subject must be open to public discussion. It is clear that politicisation refers to a public decision-making or policy-making process based on discussions and negotiations on a particular topic. In contrast, the securitisation of an issue implies the transition, or transfer, of that issue to a place outside the political sphere and established procedures of action and decision-making, i.e. to a state of emergency in which completely different actors (chiefly, military security structures) are responsible for resolving that issue in the given circumstances (Klinkova 2013).

In order for securitisation to be successful, it is necessary to ensure three conditions: first, the speech act must follow a strictly-defined security grammar; second, decision-makers must possess significant social capital, i.e. possess a generally-ac-

cepted authority to speak credibly about security; and third, the threat posed by securitising actors must be generally accepted by the audience as potentially threatening, and to have significant destructive potential (Ejdus 2017: 90).

In general, a number of securitising actors such as political elites, bureaucracies, governments, lobbyists or pressure groups have the opportunity at any given moment to decide whether or not to securitise a particular issue. In recent years, the theory of securitisation has faced serious criticism that it is not applicable in all situations given the new circumstances and environment.

Wilkinson (2007), studying this matter in the far east, concludes that the Copenhagen School needs urgently to redefine its normative concepts such as state, society and security, emphasising that the act of speech is not appropriate for other states outside the western context, where there are restrictions on speech and where securitisation can take place by other means including action.

On the other hand, representatives of the school, exploring the example of Egypt during the Arab Spring, conclude that securitisation theory presumes a basic level of stability and that it cannot therefore be applied to exceptional situations in which there is no normal policy (Greenwood and Wæver 2013).

Experts agree that the rhetorical structure of an act of securitisation consists of three elements: the occurrence of an existential threat to the survival of an object, requiring special measures to protect and secure the object exposed to the threat and justifying or legitimising the violation of regular democratic decision-making procedures.

According to Agamben, repressive state powers and the establishment of a state of emergency or emergency situation in response to threats in redefined security conditions become, or have become, as in the case of the war against terrorism, a permanent category and norm. According to leading experts in this field, a pandemic is not only a health, economic, social or security risk, it is primarily a global risk belonging to the category of unknown and unpredictable risks that are more closely defined in the American, more precisely psychological, concept of 'unknown unknowns'.

Almost all the countries of the western Balkans have applied the securitisation model in the case of the Covid-19 pandemic, albeit guided by medical and health, not security, expertise. In this way, the effect has been that the crisis has not turned into a catastrophe. The manner of application has, however, caused great controversy in scientific and professional circles but also among the professional classes due to excessive militarisation and the violation of democratic principles.

### Security and social security in Serbia

The extension of numerous measures in the field of social policy to a large part of the population who are beneficiaries of state support has not only a social dimension but also a security one. This not only protects basic human rights but also provides the conditions for maintaining minimum dignity among social categories of the population, primarily in the area of protection and security.

Until the outbreak of the pandemic, social protection and social security were a traditional field of political science and sociology, and specific practice related to so-

cial work and politics. However, after the outbreak, as a consequence of a global trend and through the securitisation process, this area has gradually entered the field of security sciences. This has fundamentally changed their meaning, nature, significance and scope.

Security has been socially constructed in all periods and so different actors give it different meanings and concepts (Malik 2015). Based on these starting points, according to Bourbeau (2015), security is not, as it is assumed, strictly defined, fixed or dispositional, but a dynamic and complex process since security needs are constantly expanding and multiplying.

The international and domestic literature points to the presence of three concepts on which security is based: the type of social and political practice; the way of enjoying well-being and welfare; and the degree of permanence. In this context, contemporary security definitions and security studies have been significantly expanded in terms of content and today include the military, political, social, economic and environmental fields (Buzan 1991). Despite this significant expansion, the field of social security has remained outside the interest of security studies, especially at national level.

Representatives of the Copenhagen School, developing and paving the way for a new concept of security, openly advocate that social security should be excluded from the conceptual and analytical frameworks of national and international security (Buzan and Hansen 2009). Their starting point is that social security, despite its great importance, is not a security area. It possesses semantic similarities with security, but the way of operationalisation and meaning of the term in the field of social protection is radically different from the use of it in the field of national security. However, these views have been heavily criticised by many other authors who emphasise that the two concepts are analytically and empirically related and that the empirical evidence indicates the need to include social security in security studies (Bilandžić 2017).

Citing numerous studies and scientific analyses, and supported by a weight of scientific authority (Tickner, Neocleous, Pampel, Tatalović, Grizold, Cvrtila, Gotz, etc.), all of which advocate the thesis of including social security in the domain of security studies, as well as the desirability of doing so, Bilandžić explains in detail and points out systematically that social security in modern conditions, and especially in crisis conditions, should become, in terms of content and function, a part of national security. This is, primarily, due to the need to respond to the threats and risks facing modern production and economies as well as the presence of foreign capital and actors whose sources of capital are often hidden.

In his concluding remarks, Bilandžić cites a framework that generates at least three reasons for the inclusion of social security in security studies. First, social security is directly related to human security and is thus related to the security of society as a legitimate and indisputable area of security studies. Secondly, the inclusion of knowledge on social security in security studies would have a qualitative effect in the creation of policy and the operationalisation of security practices. And thirdly, social security contains many classic security dimensions as it focuses on protecting vulnerable categories and ensuring their existence through social benefits.



In the school of economic law, which has a long tradition, there is the opinion that:

People created the state precisely to ensure their security and existence. When that security is focused on material and social existence, then it is called social security. (Šunderić, 1978: 35)

Furthermore, in social terms, the term 'social security' usually implies two-pronged measures:

Towards a minimum level of subsistence and health and the maintenance of an appropriate level of income/standards. (Moore 1999: 13)

Accordingly, today it is generally accepted to divide the social security system into:

Basic social security systems and social security systems in the case of unforeseen circumstances. (Jašarević 2009: 153)

Social security is defined as the overall system of protection that a state provides to various categories of vulnerable people and families in old age, concerning the loss of job or unemployment, or due to illness, disability/injury at work, loss of a family wage earner, etc. (ILO 2003: 13). In short, social security creates a feeling among vulnerable categories that, in the event of a lack of the basic means to subsistence, there are elaborate mechanisms that seek to improve and enhance economic and social status through the application of measures of social protection. In essence, most definitions emphasise the human need for security, which is the basic root of the idea of social security.

According to new research, the social security system in Serbia faced serious challenges even before the outbreak of the pandemic and this has been even more the case in the meantime. The biggest challenges are in maintaining the pensions system, which is mostly financed from the state budget, in the context of the growing ageing of the population which is further aggravating the situation as it is leading to a chronic lack of funds. Serious problems are also present in the field of collecting social security contributions due to non-compliance with legal norms and the reporting of lower salaries to the competent state authorities as a result of the constant presence and share of the parallel grey economy.

A significant problem with chronic implications is the lack of an incentive to invest in occupational health and safety, especially when it comes to injuries at work and occupational diseases where the state has made some, but insufficient, progress. An aggravating circumstance is the rather unregulated system of reporting injuries at work and occupational diseases; this is significantly complicating the formulation of effective policies for the prevention of injuries and diseases; as well as of insurance against them.

The effectiveness of social dialogue is limited as a result of the disproportionately lower bargaining power of the weaker social partners and their capacity to influ-

ence decisions. Furthermore, harmonisation with EU legislation in the field of labour and social legislation is not proceeding as planned. Basic regulations in this area and certain strategic documents, such as the Law on Social Protection, are from 2011 while the Social Protection Strategy is even older, dating from 2005 and which has now been completely overwhelmed. The position is particularly disappointing since Serbia is required, in the process of European integration, to be fully transposing EU regulations and harmonising its own regulations with EU law.

Due to the presence of a large number of undeclared workers and the ongoing process of enterprise restructuring, the number of labour disputes in Serbia is continuing to increase. Mediation as an alternative model for resolving disputes is still insufficiently used in disputes which is significantly burdening the work of the courts and increasing costs as a result of reduced efficiency.

In order to improve the current situation in the field of social security and to overcome the problems and challenges arising in accordance with that, the Ministry of Labour, Employment and Social Policy has adopted the National Programme for Decent Work for Serbia for the period 2019-2021 (ILO 2019). In accordance with the recommendations of the EU and the social partners within the country, national priorities are now more precisely defined, extending to a vision for the final outcome of the programme which includes intervention models, benchmarks and indicators of progress.

#### Social security networks in Serbia during Covid-19

From the beginning of the crisis, and during its spread and expansion, countries reacted in different ways, taking a wide set of protective measures including in the area of social protection. Only after the publication of the World Bank's summary review of government responses in the field of social protection were the conditions met for a more harmonised approach to the implementation of social measures and protections, including interventions in the field of social security (Rutkowski 2020).

Overall, more than two hundred countries have now implemented nearly 1,600 social protection measures (see Table 1), of which over sixty per cent refers to social benefits while the rest consist of one-off cash benefits. According to the analysis of the International Labour Organization, social assistance beneficiaries in the western Balkans have received, in addition to regular benefits, additional benefits of various amounts depending on the state.

**Table 1 – The ten most common announced measures in the area of social protection**

Programme measure	No. of countries
Introduction of benefits for workers and their families	241
Introducing benefit for the poor and vulnerable	219
Introducing subsidies to or deferring or reducing the cost of necessities/utilities	131
Increasing the level of benefits	116

<b>Programme measure</b>	<b>No. of countries</b>
Wage subsidies	107
Extending coverage	107
Increasing resources/budgetary allocation	92
Increasing benefit duration	91
Improving delivery mechanism/capacity	90
Deferring, reducing or waiving social contributions	83

Source: ILO (2020); Figures updated on 30 November 2020

In addition to cash benefits, governments have also set aside in-kind assistance.

Serbia, however, has not increased its coverage of programmes aimed at the poorest categories during the crisis. Based on statistical indicators that are regularly updated, the largest segment of measures in Serbia has been aimed at preventing job losses and at the survival of small and medium enterprises due to their increased vulnerability.

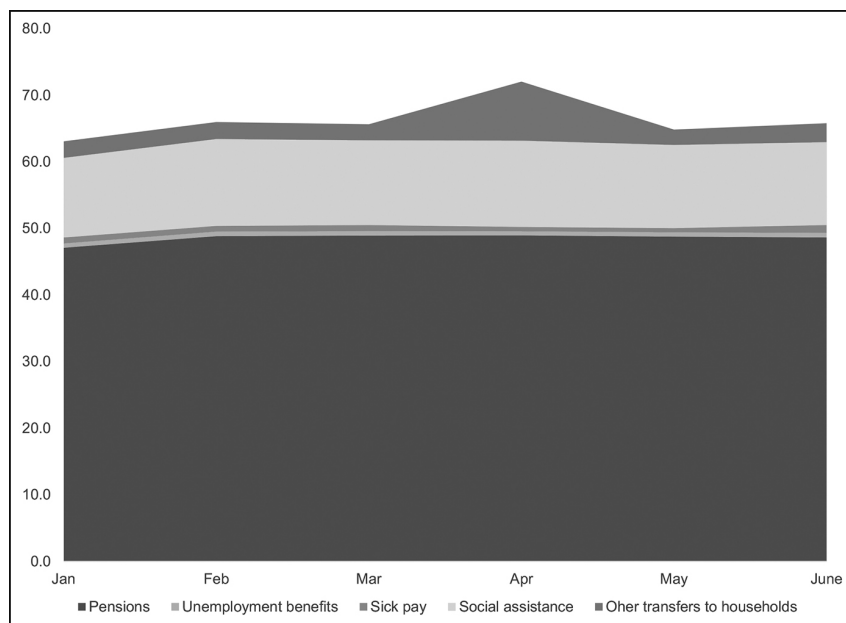
As part of the implementation of such policies, pensioners were paid financial assistance of €35 while, after the abolition of the state of emergency, all adult citizens were paid a one-off amount of dinars to the equivalent of €100. Like other Balkan countries, Serbia applied restrictive measures, closing workplaces while encouraging working from home or part-time work, which has reduced access to services:

Along with the expansion of the crisis and its waves, the coverage of social protection services has decreased, while the demand for services has increased dramatically, especially in the conditions of the ban on movement. (Matković 2020: 6).

During the pandemic, special attention was paid to the protection of the residents of care institutions, i.e. to ensure the functioning of such institutions for the elderly and the sick, firstly since they belong to a particularly at-risk group and later because epidemic hotspots arose in many such facilities.

According to the Ministry of Finance, during the state of emergency and the Covid-19 pandemic, there was no increase in expenditure on the category of social assistance. Expenditure on a monthly basis for the first half of 2020 was stable and amounted to around 12.6 billion dinars (c. €107m) (see Chart 1). However, 'other transfers to households', within the group of items of expenditure on 'social benefits and transfers', was increased in April by over six billion dinars (Ministarstva finansija 2020).

**Chart 1 – Public expenditure on social benefits and transfers, Jan-June 2020 (billion dinars)**



Despite the smoothness of the overall picture for the first half of 2020, in any analysis of multi-year trends since 2005, it is evident that there has been a large increase in annual expenditures on social assistance benefits. Statistics in the category of social protection during the pandemic also record an increase in the number of beneficiaries, as well as potential new beneficiaries not previously entitled to this type of assistance (Matković 2020: 10):

- Elderly households (all members older than 65)
- Households in which, in addition to those over 65, live people with disabilities
- Households with one or more persons with disabilities, regardless of age
- Households in distant rural/mountainous areas cut-off due to the abolition of or drastic reduction in public transport
- Single parents with children with disabilities
- Households in which all members are in self-isolation
- Children of parents who are ill or hospitalised due to Covid-19 or other health problems
- Victims of domestic violence, migrants and homeless people who did not use any services.

During the pandemic, and especially during the state of emergency, numerous regulations passed by the government of the Republic of Serbia have directly affected the employment and social status, labour rights and the everyday lives of citizens.

Meanwhile, social protection measures have affected certain social groups in different ways, especially those who are over 65 and people who are accommodated in facilities for the elderly, people with disabilities, those with chronic diseases, people living in poor settlements without access to drinking water, etc. It is clear that the capacity of social institutions has been simply insufficient to respond to special requests made during the pandemic and the state of emergency (National Convention on the European Union 2020).

## Conclusions

Covid-19 is marked as the largest pandemic in the last 100 years, and at the same time, an extremely significant threat to human existence.

Considering the scale, scope, dynamics and severity of the crisis, it is quite understandable that endangered countries are, in response to this situation, taking measures of unprecedented scope, speed and solidarity, engaging all available resources and capacities.

The pandemic has put an unparalleled series of challenges in front of the world. Up to the end of January 2021, more than 100m cases of the virus had been reported, while over 2.2m people had died. When it comes to the Republic of Serbia, official data show that, since the beginning of the epidemic, a total of 2.6m people have been tested while the total number of patients with the virus has risen over 400,000 with more than 4,000 deaths.

A crisis of this magnitude not only has an impact on the public health sector but has far broader consequences, especially in the economic and social area where the biggest upheavals have been recorded.

According to World Bank forecasts, the Covid-19 pandemic could bring 100m people into extreme poverty by 2021 and, by the end of 2020, an estimated 90m people could already have reached that stage. The consequences of the pandemic on the global economy in terms of the reduction of GDP, the loss of employment and production, disturbed supply and demand in the market, the disruption of global supply and distribution chains, the increase in the rate of poverty, the limited liquidity of companies, the disruption of the European single market, etc. are multiple and have crossover effects.

Due to the new situation, numerous companies are recording a decline in profits and losses although, on the other hand, a few well-placed multinational companies are recording dramatic increases in both turnover and profit. Overall, research shows that the world economy is facing a loss of at least \$126bn due to the pandemic (International Trade Centre 2020).

In addition to economic crisis, Covid-19 has had numerous and overwhelming consequences for the field of social protection and it will have a strongly negative impact on the situation and trends in the labour market. In addition to the loss of employment, there are significant consequences in terms of the health of workers and their families which is reflected in three ways: a reduction in the number of jobs through further automation and robotisation; a declining quality of work; and poor outcomes for those categories of employees who are especially sensitive to negative

outcomes in the labour market, i.e. low-skilled, or 'cheap', labour which, after losing a source of income, automatically falls into the system of social protection.

Overall, and as a result of all these consequences, social protection and the social security sector is operating under strong pressure, trying to strike a balance on the one hand between the extreme level of demand for assistance or aid and, on the other, the limited financial possibilities for the realisation of this.

Some industries, such as transport, tourism, trade and catering, are recording terribly poor business results and where large shares of the workforce are in poverty. The pandemic also has political dimensions that are reflected in the centralisation of power, the militarisation of services, the drastic reduction of human rights and freedoms, the suspension of democracy, the introduction and translation of states of emergency into permanent, or long-term, situations, slowing globalisation, increasing global inequality, heightened political tensions and rising extremism, debt that is increasing globally, the collapse of economic demand and the closure of key industries. The ILO estimates that the pandemic is affecting 81 per cent of the workforce, with 2.7 billion employees out of a total of 3.3 billion workers worldwide belonging to economic entities that have stopped working due to the epidemic, either independently or following government recommendation.

In the area of security, an increase in the crime rate has been recorded, especially in the cyber field. Furthermore, the incidences of violence, civil riots and protests due to the new situation is increasing, even in those countries where this was not previously the case including in the Czech Republic, Germany, Belarus, Slovenia, etc.

Juval Noah Harari, the celebrated historian, stated in a long read for the *Financial Times* that, in this crisis, we face two particularly important choices: the first between totalitarian control and the empowerment of citizens' rights; the second between nationalist isolation and global solidarity (Harari 2020).

At the same time, it is evident that the pandemic has strengthened the importance of the physical availability of key production resources. The direct consequence of that, in the field of the economy, will be smaller markets that function according to a 'winner take all' philosophy, and the virtual market model will take over. Additionally Covid-19 has created a so-called isolation economy that allows all services and material goods to be remotely distributed to the consumer as well as a culture in which 'one works, learns and plays where one lives'. Significant consequences of the pandemic are also reflected in the continuation of geopolitical fragmentation and the further collapse of US domination on a global level. This will lead to a shift in geopolitical power from west to east.

On top of all the expressed reflections, interdependencies and relations, the pandemic, understood as a crisis, has brought three problems and challenges to the fore. The first is the insufficiently developed (especially in the domain of functionality) model for the global management of any issue, including pandemics; the second is the unpreparedness and poor co-ordination, with a lack of adequate early warning and rapid response plans at national level; while the third is the shortage and the limitation of resources, both human as well as material.

Covid-19, given its scope, speed and intensity of expansion, is a crucial and primary challenge to national and international security in the given circumstances. It

constitutes, as the statistics show, a deadly risk with pronounced destructive and destabilising potential regarding the socio-economic and political order.

The key question related to the process of securitisation, but also concerning the overall response to the pandemic, comes down to the question whether the concept of ‘unknown unknowns’, which includes the current pandemic, can lead to the application of protective mechanisms and the ability to learn the lessons. Both analysis and practice suggest that this is not possible and that these mechanisms, experiences and prior solutions can be applied only within the framework of securitisation principles. Here, this extends to health protection and the social security sectors.

In the application of health measures and defensive-protective mechanisms, i.e. security measures, most countries, based on the process of the securitisation of these areas, have developed and applied a new response model that has a number of crucial objectives: control of the infection process and measures to localise it; preservation of health and social capacities; maintenance of minimum economic activity; state-political functionality; and the prevention of panic and fear among citizens. Therefore, these activities and mechanisms have been realised through co-ordinated measures in the health, social and security sector which indisputably suggests that the operation of health and social systems does indeed have a security dimension, content and connotation. In this way, in the conditions of a state of emergency, i.e. the development and inauguration of the concept of securitisation, a completely new security landscape and configuration has entered the scene.

Simply put, a securitising agent – specifically, the governments of individual countries – given fear that the pandemic might cause existential threats to the population and state institutions, turned this via discourse and various narratives into a security problem. In turn, this gave the authorities the powers to introduce an emergency situation and, in such a way, move the issue of the functioning of health and social protection and security from the regime of normal work to the regime of emergency circumstances, i.e. the situation that implies the application of emergency and special measures.

Summarising the above, it is clear that the consequences of the pandemic are multi-faceted and manifest themselves with varying strength and intensity in individual countries, areas, regions, industries, etc.

Unlike some earlier periods, when the hazards or risks were predictable and could be managed more or less successfully, modern risks are completely unpredictable while their composition and distribution exceed the capabilities of existing mechanisms to eliminate them. This implies the need to create new policies, strategies and institutional mechanisms for risk management, as well as the preparation and organisation of operational responses while strengthening logistical support mechanisms.

The securitisation models applied in health and social security will require, after the end of the pandemic, conceptual elaboration, strategic and operational profiling, as well as an adequate regulatory framework. This should include the predictability of the reactions of the state and its specialist services to all risks arising from the concept of ‘unknown unknowns’, which means the definition and design of new political and security agendas. This also applies to the Republic of Serbia.

In general, the pandemic caused by the Covid-19 virus is a global risk and threat; and from that follows a strong proposition: global problems and risks can only be addressed in a global way.

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Osman Kadriu

## **States of emergency and the legal questions over human rights restrictions**

### *Abstract*

*This article starts from the premise that human rights are the singular most important achievement won in political struggle. However, there remains a gap between the ideal and the practical reality which gives room for debate as to how, and in what circumstances, such rights can be restricted when a state of emergency arises. Within this framework, special attention is paid to the provisions of certain international documents related to the field of human rights as well as within a state's own national law. The article discusses in particular the possible abuses of human rights in the situation of a state of emergency and the legal safeguards that have been put in place. The article presents the specifics of the constitutional system of the Republic of North Macedonia, with a special analysis of the role of constitutional courts in the protection of human rights during a state of emergency, and concludes with a look at the declaration of a state of emergency in Macedonia during the Covid-19 pandemic and at the legality of the actions of the various institutions involved.*

**Keywords:** *human rights, state of emergency, restrictions, international documents, Covid-19*

### *Introduction*

Human rights are the most important achievement that has been won by modern struggle. Human rights, among other things, ensure the protection of the physical and moral integrity of each person individually or of all people in a community. In this way, individuals gained the status of a person and a subject of law. This leads us to the conclusion that there is a difference between the two concepts of 'human being' and 'person'.

There are numerous definitions of 'person' within society in political thought. In the full sense, a person is a product of the socio-historical development of ourselves as generic beings. The peculiarities of a generic being are characterised by consciousness, creative abilities, sociability and work as a creative ability, all of which make us 'practical beings'. There are many definitions into which we will not enter, for reasons of limited space in this article, but the one produced by John Locke should give us pause for thought, albeit briefly. According to Locke, a person is defined as a:

Thinking, intelligent being who has reason and reflection and can understand the 'I' as self (see also Miljković and Đorđević 1975: 514-515).

Accordingly, the outstanding characteristic of a person – in terms of law – is the legal regulation and guarantee of their human rights. Human rights determine the legal position of an individual towards the authorities. However, the political struggle to win human rights was long, difficult and complex. In a slave-owning society, as is well-known, certain human beings, as members of a particular group or class, were the object of property and not the subject of law. Legal status was determined by birth within one or other social class. In this political struggle, it was necessary to affirm the understanding that differences between people do not arise by birth or inheritance. On the contrary, people are born equal. Differences between people are of social origin.

The conceptual definition of human rights is important and represents a preliminary issue. As a concept, human rights originates from the spiritual heritage of the school of natural law. The teachings of the school of natural law, among other things, strongly criticise the privileges of the feudal class, discrimination and the omnipotence of absolutist rule. There is indeed a rich legal, political, sociological and philosophical literature on the scientific understanding of what is meant by human rights (Petrović 1998).

In a conceptual definition of human rights, the content may be used, especially today, for various purposes. Namely, what amounts to human rights may also be used for ideological and propaganda-based purposes. From this point of view, human rights emerge:

More as an ideology and less a real programme of emancipation than discrimination. (Tadić 1996: 122)

When it comes to human rights and freedoms, almost no-one today publicly disputes their existence and the need for their realisation. However, even now there is, sometimes more and sometimes less, a gap between established and proclaimed human rights, on the one hand, and their efficient and effective realisation in reality on the other. Therefore, the political struggle is continuing in almost all parts of the world which points to the conclusion that the specific measures which have been taken both by individual countries and by the international community as a whole are, as yet, insufficient.

Numerous measures and activities have indeed been taken to achieve human rights. In terms of precautionary measures, the first and most important place is occupied by legal norms. In other words, it is necessary to establish human rights by legal regulation and to envisage particular mechanisms for their efficient and quality implementation.

In this regard, chronological legal acts have been adopted within each state within the international community. However, as can be seen from the title of this article, a key issue that is now being addressed and explored concerns the restriction of human rights in specific communities and under specific conditions or situations such as under the Covid-19 pandemic. When posed in this way, the question can cause some contradictions. This is due to the well-known principle that human rights are universal and that there should be no barriers to them or to their realisation. This

general rule is important in both domestic and international law. However, the law also accepts that there may be exceptions to each rule, in specific cases and under the conditions which are provided for. What is important about the issue of restricting human rights is that:

1. this can only be foreseen in legal situations, under precisely determined conditions and in a strictly formal procedure
2. it operates only for a specific period provided by the constitution of a country or legally in accordance with the constitution
3. the constitution prohibits the restriction of specific irrevocable rights even where a state of emergency has been proclaimed in one country.

The problem posed in this way requires us first to review human rights legislation and then to turn to important innovations in terms of the restriction of human rights and, of most relevance to us in this current context, in terms of the specific case of the declaration of a state of emergency.

The positive regulation of human rights and the problems posed by their restriction

Analysis of positive human rights regulations requires that important acts of a constitutional nature be taken into account. This speaks to the importance of human rights as a legal and political value within a society. That human rights are established and proclaimed by a constitution – as the most important legal act of a country (*materia constitutionis*) – perhaps testifies best to the importance of the concept. In different periods of human development there have been certain differences; the specifics that lay behind this are dealt with further on in this article.

#### *Legal regulation of human rights in the past*

In the theory of constitutional law, the first written document of a constitutional character on human rights is the Great Charter of Freedoms (*Magna Carta Libertatum*), adopted in England in 1215. According to this view, *Magna Carta* is the first legal act that guaranteed human freedoms of course albeit, as Professor Slobodan Petrović puts it, that this was ‘in accordance with the circumstances of the time’ (Petrović 1996: 99). Indeed, the prevailing view is that human rights within *Magna Carta* essentially represented rights that were reserved to the highest nobility in England (Marković 1995: 559).

The institutionalisation of human rights refers to a much longer period in which those rights become part and parcel of a civil society or political formation (Vračar 1991: 32-33). Alternatively, according to the terminology of Marxism, this would be a bourgeois society, as a special economic, social and political formation within capitalism. In such a view, the establishment of human rights is thus connected with civil society and ultimately with capitalism itself: in the development of capitalist relations of production, the recognition of human rights has come to be a precondition. Such a development rested on notions of the market and of the free movement of capital, labour and goods (Marković 1995: 559).

In the process of developing social relations in civil society, the bourgeoisie, step-by-step, both by agreements and by force of arms, won specific areas of human rights for themselves. In this way, the first steps were taken towards the elimination of any formal discrimination in the area of human rights.

These aspirations in the exercise of human rights are also the subject of legal regulation, first through the adoption of declarations and then through the adoption of constitutions in certain countries. Of the important declarations, it is necessary to mention the Declaration of Independence of the United States from 1776. In the same year, the Virginia Charter of Rights was adopted with special emphasis on the rights to life, freedom, property and to strive for happiness (Petrović 1996: 100). Among other important declarations, there is no doubt that the French Declaration of the Rights of Man and of the Citizen of 1789 is of special importance, although we should note that this, despite being of a constitutional nature, has not been incorporated into a constitutional text and thus remains a solemn declaration of supra-constitutional value. In this way, the human rights proclaimed in this Declaration grew into the state *acquis* of the French Revolution (Vračar 1991: 33).

With the consolidation of political power in modern civil society, human rights has become an integral part of the formal constitutional order; but then another problem arises regarding human rights and that is their realisation in practice (Marković 1995: 561-562).

#### *Legal questions of the restriction of human rights in modern law formations*

Modern law continuously pays 'due attention' to human rights. It does this on two levels: first, at the level of legal regulation; and second, which is very important if not the most important, at the level of their practical realisation. This second is especially significant for the reason that, as underlined in the Introduction, there remains a gap between the human rights proclaimed in the relevant documents and their actual realisation.

In this respect, and from this point of view, the rule applies that human rights proclaimed in documents but which are unfulfilled in practice essentially represent a 'wish list'.

In the context of the legal regulation of human rights and their protection in law, the question of the possibility of their restriction also arises. In cases of human rights restrictions, there is always the potential for the government to abuse its position.

In other words, there is the possibility that restrictions placed on human rights in the event of a state of emergency will be abused by the authorities. Abuses can move in two directions. The first of these is the establishment of restrictions, or derogations, from certain rights and freedoms despite the lack of an emergency justifying it. This will certainly be the case if there is a restriction of those human rights for which specific prohibitions have been placed on their restriction, i.e. the freedoms and rights that are excluded from the group of human rights that may lawfully be limited in the event of a state of emergency. The second case is where the restrictions, even where there is an emergency in place, are extended beyond the period required, or when the emergency has ceased to exist.

These issues may be addressed in national legal regulations or in international legal documents, in the latter case either as international acts at the level of the entire international community or as acts and documents which have a regional domain. Thus there are several levels at which these rights retain importance.

The remainder of this article seeks to present the most important points on the issue of the restriction of human rights in the case of the declaration of a state of emergency.

#### National law and the issue of human rights and the possibility of their restriction

The national law of each country, especially in those countries that opt for democratic forms of organisation, regulates and proclaims the human rights and freedoms of citizens separately. This is often the most appropriate level for such regulation. As a subject or matter of regulation, human rights have a constitutional character, determined and proclaimed by constitutional norms which are the best herald as to the importance and status of such rights.

Modern constitutions contain a whole set of norms on human rights and the freedoms of citizens. For example, in the 1991 Constitution of the Republic of Northern Macedonia more than one-third of the total number of articles concern the issue of human rights.<sup>1</sup>

One of the characteristics of the human rights and freedoms guaranteed by a constitution is their direct realisation on the basis of constitutional principles – thus, they are both established and guaranteed by it. The direct exercise of human rights in this way makes it possible to prevent the occurrence of the recognition of human rights by one constitutional act and then to deprive citizens of the same rights by another act (i.e. a law). Consequently the legislator does not have the authority to influence the scope of human rights as determined by the drafting of the constitution with regard to the guarantee of human rights and their realisation (Marković 1995: 609-610; Skarić 2015).

In this context, however, one explanation is needed. In principle, human rights are exercised directly only on the basis of a country's constitution and its specific provisions. For certain specific human rights, however, as a rule due to their complexity, the constitution contains reference norms and requires the enactment of a special law. The legislator who has the obligation to pass such a law provides the manner and the procedure under which this specific right or freedom might be exercised. Therefore, if the intervention of the law in the field of constitutionally guaranteed rights is allowed, it must be confined to prescribing the manner of their realisation; the law cannot touch upon their content or scope (Marković 1995: 609).

1 The Constitution of the Republic of North Macedonia was published in the *Official Gazette* of the Republic of Macedonia No. 52/1991. It has a total of 131 articles. The provisions of Articles 9-60 of the Constitution concern the basic freedoms and rights of individuals and citizens. Constitutional law on the implementation of the Constitution of the Republic of Macedonia is also published officially.

Comparative constitutional law does not indicate that the number of cases of the enactment of special laws prescribing the manner of exercising constitutionally proclaimed human rights and freedoms is likely to be small.<sup>2</sup>

Due to human rights being proclaimed only by the constitution of one country, the same rule applies *mutatis mutandis* to the specific restrictions set in place. In other words, this means that human rights and freedoms can be limited only to those cases which are determined by the constitution. Constitutional norms refer to a limited number of cases and apply the *numerus clausus* principle of the cases in which specific human rights may be restricted. Often, this boils down to declarations of a state of war or a state of emergency. Regarding the former, the situation is clear; in our work here, however, we dwell on the declaration of a state of emergency.

#### International law and human rights with special reference to limitations

The importance of human rights is confirmed by the body of basic human rights and freedoms guaranteed by international norms. There are numerous international acts (conventions, resolutions, recommendations, pacts and other documents) which establish and regulate human rights and fundamental freedoms.<sup>3</sup>

We refer here briefly and only to the most important international acts with specific emphasis on the provisions of such documents in relation to the restrictions which may be placed on human rights in emergency situations.

One important international document is the 1945 United Nations Charter which emphasises, among other things, that the peoples creating the United Nations were-determined to reaffirm 'faith in fundamental human rights'. This is stated in the introductory part of the Charter. The provisions of the Charter's Article 13 are significant; these insist on the improvement of international cooperation in several areas of social relations including the exercise of human rights and fundamental freedoms for all regardless of race, sex, language or religion.<sup>4</sup>

The Universal Declaration of Human Rights of 1948 is not just a summary recommendation of the United Nations General Assembly but it represents a practical codification of human rights. According to Vojin Dimitrijević, it signifies 'the source of international law' not as an international treaty but either as customary rules or as general rules recognised by civilised nations (quoted in Marković 1995: 561).

International pacts detailing human rights play a significant role in the realisation of human rights. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were adopted by the

2 Taking the Republic of North Macedonia as an example, since independence in 1991, i.e. over almost thirty years, the Assembly has passed more than thirty laws that prescribe the manner and procedure of the exercise of the specific human rights and freedoms guaranteed by the Constitution.

3 According to our analyses and research in the field of human rights, there are over 100 international acts regulating human rights.

4 The Charter of the United Nations was adopted at the United Nations Conference held in San Francisco on 26 June 1945 by representatives of 51 states. It entered into force on 24 October 1945.



General Assembly of the United Nations in 1966 and both entered into force in 1976.<sup>5</sup>

The International Covenant on Civil and Political Rights explicitly and clearly addresses – among other things – the issue of states of emergency and the possibility of restricting human rights in such situations.

Article 4 of the Covenant provides the scope of the restrictions which may be placed on human rights at the time of a public emergency. However, the Covenant sets and demands the fulfilment of specific conditions in such a case. Firstly, member states are enabled to take specific measures relating to the suspension of obligations only in cases when the public emergency ‘threatens the life of the nation’. The second condition is equally important. The scope for the abolition of the obligations of the state is framed by what is ‘strictly required by the exigencies of the situation’ that has arisen while the public emergency must itself have been ‘officially proclaimed’. Thirdly, the measures taken to restrict rights and freedoms in the public emergency must not be ‘inconsistent with... other obligations under international law’. Finally, the measures must expressly not contravene the principle of discrimination on the grounds of ‘race, colour, sex, language, religion or social origin’ – a concept which is familiar in all modern constitutions as well as in important international documents (see also Vasiljevića 1993).

Anticipating the possibility of restriction and even the abolition of specific freedoms and rights in emergency situations, the Covenant also sets down other provisions. Namely, it explicitly prohibits certain rights and freedoms from being restricted or abolished, these being the most important human values. Article 4(2) lists the rights and freedoms from which a state body does not have the authority ‘to derogate’ in a state of emergency.<sup>6</sup>

In addition to international acts, regional acts elaborated within international law are also of importance in the system of the protection of human rights and freedoms. Among them are, for example: the Convention for the Protection of Human Rights and Fundamental Freedoms from 1950; the 1961 European Social Charter; the 1969 American Convention on Human Rights; and the African Charter on Human and People’s Rights, adopted in 1981 and which came into force in 1986.

The Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in Rome in 1950 and entering into force in 1953, is of particular importance. There is one important specificity regarding the Convention and that is that any violation of the human rights guaranteed by the Convention must be resolved and decided by the European Court of Human Rights. This is an important mechanism that can be used by citizens of all contracting states within the Council of Europe. The decisions of the European Court of Human Rights, whose seat is in Strasbourg, France, are binding on all those states that have signed the Convention.

5 The two covenants were adopted by the UN General Assembly on 16 December 1966. After they had been ratified by the required number of states (35), they entered into force in 1976, some ten years after their adoption. Yugoslavia ratified both in 1971.

6 Article 4(2) refers specifically to Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 17.

The European Convention contains significant provisions regarding restrictions on human rights during a state of emergency. The provisions of Article 15 of the Convention are devoted to this issue. In a time of 'war or other public emergency threatening the life of the nation', any contracting state may take measures derogating from its obligations under the Convention to an extent which is 'strictly required by the exigencies of the situation'. It also stipulates that the measures taken must not be inconsistent with other obligations under international law. We can see that these provisions are, to a large extent, fully harmonised with those of Article 4 of the International Covenant on Civil and Political Rights.

Article 15(2) of the European Convention also prohibits the restriction of some specific rights during a state of emergency. The following rights cannot be restricted: the right to life (Article 2); the prohibition of torture (Article 3); the right not to be held in slavery or servitude (Article 4(1)); and the right not to be punished without the due process of law (Article 7).

#### States of emergency and the possibility of human rights violations

We conclude this article with the issue of the scope of human rights violations during a state of emergency, dwelling in particular on three questions:

1. commitments in principle and important rules on the possibility of human rights violations
2. the role of the constitutional judiciary in states of emergency
3. a few remarks on the constitutional provisions on states of emergency in the Republic of North Macedonia.

#### *Important rules on the possibility of violations of human rights*

So far, we have attempted to investigate and analyse the issue of human rights with specific reference to their violation or the impossibility of their realisation due to the existence of a state of emergency. We have approached the issue from the perspective of legal and political thought as well as the especially important one of legal regulation, the latter rooted within the context of the national law of a country in addition to that of international law.

The problem of human rights violations can appear in two cases. The first is when the constitution of a country regulates the issue of a state of emergency but, with regard to the restriction or eventual abolition of specific freedoms and specific rights, the measures taken were neither adequate nor appropriate. The second case, as a problem, is even more difficult – when a country is prevented, according to its own constitution, from restricting or abolishing particular freedoms or rights.

In the first case, regarding the taking of measures which limit certain rights and freedoms, the reasons for violations are numerous. First, the assessment of the need to declare and establish a state of emergency may be erroneous. This is because the state of emergency itself, as a concept and as a political and legal institution, is very complex. In constitutional law theory and in national constitutions, the circumstances and reasons for establishing a state of emergency may be inaccurately stated. Due to such inaccuracies, it follows that the decision to declare a state of emergency can be

wrong. The circumstances and reasons considered potentially suitable in terms of when a state of emergency may be established include: ‘endangerment of the survival of a nation or state due to some public danger’, ‘epidemics’ and ‘natural disasters (disasters)’.<sup>7</sup> In connection with incorrect assessments of a situation as an emergency, the basis for the restriction of specific rights and freedoms will also, therefore, be wrong. The second criterion is also important: namely, that the scope of the measures should be strictly determined by the requirements of the situation. The provisions of Article 4 of the International Covenant on Civil and Political Rights also point to that.

Violations of freedoms and rights in a state of emergency can also occur through the abuse of power or when the executive exceeds its authority. Namely, in the case of an emergency, if parliament is not in operation, the constitution gives the government special and important powers. More precisely, the government receives a portion of the competence of the legislative power, entitling it to issue decrees which have the force of law. Regulations with the force of law have the status of laws specifying the measures to overcome the state of emergency. These measures, for the reasons stated in this article, may violate a certain right or freedom proclaimed by the constitution.

The second case is a situation in which a certain right or freedom is violated over which there is a constitutional prohibition. Here the situation is clear. Depending on the assessments of the drafters of a country’s constitution, there is a determined ‘list’ of the freedoms and rights of which any restriction is absolutely prohibited during a state of emergency.

In the Republic of North Macedonia, the prohibition of restrictions applies to seven freedoms and rights (similar to those set out in the provisions of Article 4(2) of the Covenant on Civil and Political Rights). In this regard, certain countries are at the forefront of prescribing bans on the restriction on human rights in a state of emergency. For example, in Albania the number of such rights is 19, in Serbia it is 17 and in other countries the situation is similar.<sup>8</sup>

#### *The role and jurisdiction of the constitutional judiciary in a state of emergency*

The role of the constitutional judiciary in each country is of particular importance. In each case, jurisdiction is determined by the constitution of the country in question and the competencies of each constitutional judiciary are numerous. In the first place it is a question of normative control of constitutionality and legality. Fur-

7 The Albanian Constitution also mentions situations arising from ‘natural disasters’. This is set out in Articles 170-176 of the Constitution of Albania, adopted in a referendum held on 22 November 1998.

8 In the provisions of Article 54 of the Constitution of North Macedonia, the restriction of human rights cannot be applied to the right to life; the prohibition of torture or inhuman and degrading treatment and punishment; legal certainty in the case of crimes and punishments; and freedom of conviction, conscience, thought and confession. Discrimination on a range of grounds is also explicitly prohibited in a state of emergency. The Constitution of Albania has provisions on these issues in emergency situations in its Article 175.

thermore modern constitutions also contain important provisions on the constitutional protection of human rights.

In situations of the declaration of a state of emergency in one country, the constitutional court of the country benefits from 'extraordinary circumstances' as a result of its key role. In the event of a state of emergency, there are four institutions which have an irreplaceable function and thus responsibility: the parliament of the country; the president of the state; the government; and, without a doubt, the constitutional court. The constitutional court has the job of evaluating the constitutionality and legality of the legal acts passed by parliament, the head of state and the government where a state of emergency has come to exist.

In these situations, with the government taking over part of the authority of the legislature to issue decrees which have the status of laws, prevailing opinion in the theory of constitutional law indicates that only an ounce of constitutionality is required for such decrees to be endowed with legal status: in practice, this is a given. Given that decrees with the force of law can violate human rights, however, the constitutional court remains the only 'legal controller' of acts passed by the government and the head of state.

*The constitutional system of North Macedonia in connection with the state of emergency*

The Republic of North Macedonia has still not managed to pass a law on states of emergency. Issues related to states of war and of emergency and the question of democratic accountability for the actions taken at such times are, on the other hand, regulated by the constitutional provisions contained in Chapter VII of the constitution – The defence of the Republic and states of war and emergency – i.e. Articles 122-128.

It is therefore only the provisions of the Constitution that regulate the issue of the declaration of a state of emergency, but these are very precise and suitable for implementation and application in specific situations. Regarding a state of emergency, Article 125(1) and (2) of the Constitution stipulate that such a state comes to exist when determined by the Assembly on the basis of the proposal of the president, the government or at least thirty members of parliament. A decision establishing the existence of a state of emergency must be made by a two-thirds majority; given that the Assembly has 120 members of parliament, this means that such a majority must constitute at least eighty members of parliament. A decision on a state of emergency is valid for a maximum of thirty days. Under Article 125(3), in cases where the Assembly cannot meet, a decision declaring a state of emergency may be made by the president and submitted to the Assembly for confirmation as soon as it is able to meet. In such a state of emergency, authorisation to the government to issue decrees with the force of laws remains in place as set out in Article 126 until there is an Assembly declaration on the end of the state of emergency.

In place of a conclusion: the Covid-19 pandemic

During the declaration of the state of emergency in March 2020, the procedure was somewhat different to the 'normal' but was still in accordance with the constitu-

tion. The outbreak of the Covid-19 pandemic in March 2020 imposed an imperative demand for the declaration of a state of emergency. The existence of the pandemic had been declared by the World Health Organization which has authority in education, culture and other spheres of social life representing in the true sense a higher (major) power whose statements have consequences of global proportions.<sup>9</sup>

At the time of the proclamation of the Covid-19 pandemic, the Assembly had been dissolved by its own decision, with the aim of organising and conducting early parliamentary elections scheduled for 12 April 2020. This had been made on 16 February 2020 and was published in *Official Gazette* No. 43/2020.

In this situation, the president, acting strictly according to the constitution, fulfilled the constitutional obligation and, upon the proposal of the government, passed a decision declaring a state of emergency on 18 March 2020, published in *Official Gazette* No. 68/2020. Since the causes behind the declaration of the state of emergency have not ceased to expire, the president has – at the time this article was written – made four further declarations extending the state of emergency. These are special and independent decisions taken with regard to each newly-established state of emergency.

During the entire period of the state of emergency, the government has passed more than 150 decrees with the force of laws. There have been several initiatives put before the Constitutional Court to assess their constitutionality. Out of the total number of initiatives submitted by specific entities against regulations possessed of legal force, more than 97 per cent have been rejected. Consequently, the overwhelming majority of government decrees during this period have been confirmed by decisions of the Constitutional Court. It should also be noted that there was an initiative before the Constitutional Court to assess the constitutionality and legality of the decisions declaring a state of emergency. This initiative was not accepted: all decisions were confirmed as being made in accordance with the Constitution.

While the Covid-19 pandemic continues to rage, this is not the end – so no conclusion to this article is really possible. But it is gratifying to note at this point that the constitutional protections are, in the vast majority of cases so far in these unusual times, at least operating as they should.

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9 The decision of the World Health Organization of 11 March 2020 declared that Covid-19 was a 'pandemic', a term originating from the Greek language and which in medical terminology means a disease that affects an entire nation, country, region, continent or the world.

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Tatjana Velkova and Temelko Risteski

## **Covid-19 implications and the realisation of labour rights in the Republic of North Macedonia**

### *Abstract*

*The Covid-19 virus presents an invisible menace of major proportions. We have as yet no clear study of the causes of the virus – or, more precisely, its precise aetiology is disputed – yet it has had colossal implications. It has imposed a global public discourse which has severely eroded both collective and individual sense and consciousness. This article offers some thoughts on the social implications of the pandemic as regards labour in the early days after the virus arrived in North Macedonia, drawing on media reports of particular developments and focusing in particular on violations of employment rights and the problems of workers likely to be most at risk. The break in economic activities, a (further) fall in standards of living and the decline in GDP and, hence, the loss of jobs and the overall increase in unemployment rates further deepen the sense of (inter)national crisis. We still do not know how long this will last and the death toll that will ultimately be reached; furthermore, countries that are already struggling will, at that point, face a disproportionately sizable task in achieving social reconstruction and rehabilitation.*

**Keywords:** Covid-19, social and labour rights, unemployment, labour inspectorate, payment of wages

### *Introduction*

The symbiotic relationship between the individual and society, i.e. the immediate and wider environment in which the individual lives and works, may produce sets of negative influences that have severe implications at the individual level on the one hand and, at the same time, also for the social processes which frame their existence. This is the case for illnesses which have serious consequences for health, such as those in the shape of epidemics and pandemics, and where these spread widely and with unmatched impact upon the life and health of indefinite numbers of people across the globe.

The development and spread of the Covid-19 pandemic is a specific example of an illness which is dramatically impeding individual human beings and obstructing normal social processes. More precisely, it is deepening the problems already being experienced by individuals and society as a whole. The result is that a vicious circle is formed with negative effects for individuals and society, magnifying human suffering even further.

Socio-pathological phenomena combine extremely negative situations for the individual (personality disorders) piled on top of severe states of disorders in society

(social disorders and social disorganisations). These are the precursors of social illnesses (both physical and mental) which ultimately, in turn, have specific consequences for health. More specifically, a pandemic of pathogenic micro-organisms circulates within a closed, dangerous and deadly determined loop between individual and society, all while the disease is spreading through uncontrolled and unstoppable self-reproduction and multiplication at global level.

Writing amidst the second wave of the Covid-19 pandemic, and with daily increases in the records of the numbers of people infected, critically ill and deceased right around the world, it is clear that, alongside the pronounced health consequences, humanity is at a low ebb. This is due also, and in no small part, to a whole series of impacts on economies and on the social situation of citizens everywhere in the new (ab)normality. These new sets of challenges include decreases in the production of goods and services, freezes in salary payments including those based on minimum wage subsidies from the state, closures of businesses and mass unemployment that predominantly affects those existing on and below the poverty line where it was already hard enough to make ends meet under the old normality.

The Republic of North Macedonia is not immune to this destructive impact on the new socio-economic situation of its citizens. With very few exceptions, citizens are finding it challenging to come across vacant jobs, they are losing work on a mass scale, thousands of employees are living on minimum wages subsidised by the state and a large part of the population is faced with increased costs for information communications technology to help the online schooling of their children. The list of problems goes on with increased electricity bills, problems with public transport as the most affordable means of transportation to the workplace and many other inconveniences including access to health services and quality health and care. To add to this are expenses related to medications and Covid-19 testing.

Such impediments translate into increased poverty at national level and to a first wave of severe implications regarding the standard of living and well-being of citizens. These were pronounced most acutely during the course of the state of emergency, police curfews and the complete lockdown of the country, while the long-term manifestation of the virus will continue in an undetermined time framework. At the same time, the cause of the Covid-19 pandemic and its medical background remains unknown while the virus itself carries on in its surreptitiously destructive path.

To add to the plethora of emerging negative effects are the impaired mental and emotional states of individual citizens expressed through fear, anxiety, panic attacks and aggression, all taking the shape of a form of mass hysteria and all of which will be difficult to prevent and treat even by the world's most developed and advanced health systems.

The socio-economic situation of the workforce during the pandemic

#### *Economic indicators for North Macedonia*

It is indisputable that these broadly-outlined consequences of the pandemic have increased the levels of social disorganisation manifested through domestic family life, in the local community and the working environment in both public and private



sectors, as well as the amount of disorganisation found in the institutions and organs of state governance. The negative trends and processes of disorder have significantly affected basic human rights and freedoms, starting with freedom of movement, the right to work, the right to free communication, the right to assemble and the right to organise and attend public events and festivals. All of these deprive citizens of basic needs and rights, needs which are of a socio-existential, educational, cultural or sporting character to which may be added the need for peace and mindfulness, to security and the safeguarding of physical health: more broadly, the whole range of fundamental living needs. In this new context and reality, citizens are being exposed to a plethora of lies and 'fake news' circulating at an evermore increasing pace from different channels and at different levels, deliberately or not, either out of fear or with malicious intention, to achieve some overt or covert goal or effect.

The impact from the global social disorder caused by Covid-19 is ever more pronounced in the realisation of workers' rights in North Macedonia. Covid-19 has caused a huge hit on the economy – a shock felt both by national markets but also within the world economy at large. North Macedonia was not impervious to any of this, but its economy has been hit particularly hard as the virus continues to snowball.

According to indicators from one recent study, for the first two months of the crisis (March and April), the most severely affected aspects were levels of productivity, sales and wage income (CEFE Macedonia and 'Goce Delčev University 2020). Almost 26.4 per cent of companies surveyed had ceased the bulk of their business activities, resulting in a decrease in revenues, while 34 per cent had reduced the salaries of their employees. At the same time, only 13.2 per cent of companies were strongly concerned about the negative consequences of the Covid-19 crisis – an identical percentage to those who were not worried at all. The remaining responses, forming the bulk of the response base (i.e. 73.6 per cent were somewhat worried).

We believe that, if the research were to be repeated at this point in time (some eight months on from the beginning of the crisis), the results would be much more dramatic than those earlier reported. Thus the reduction in revenues, the postponement or freezing of existing projects and stagnation in the pipeline of new ones, the reduction in demand and consumption and the reduction of payments in respect of debt relief is now likely to be at least twice as pronounced. The CEFE Macedonia/ 'Goce Delčev' University research covered companies from different sectors and did not, however, extend to IT companies and those who intensively use information and communications technology to perform their core business. Nevertheless, based on the results obtained from the questions answered by several companies in Macedonia belonging to different industrial sectors, several recommendations for how the crisis could be mitigated were presented.

The economy in North Macedonia has, up to now, been supported by three government stimulus packages to mitigate the financial effects of the crisis, with several economic measures that have had a slight impact on reducing the negative effects. A fourth crisis package is, at the time of writing, about to be released due to the continuation and deepening of the crisis. This is confirmed in data published by the State Statistics Office which registers losses in both GDP and trade during the second

quarter (Q2) of 2020, compared to the first quarter (Q1), to the tune of a decline in GDP of 12.7 per cent while exports and imports both decreased by 30 per cent.

By the end of April 2020, a total of 8,160 employees had lost their jobs in the period since 11 March 2020, i.e. the beginning of the crisis, according to an analysis of Employment Agency statistics (360 Stepeni 2020). A majority, i.e. 4,279 (54.3 per cent) lost their jobs due to the expiry of a fixed-term employment contract, with mutual agreement on the termination of employment affecting another 1,987 (24.4 per cent), while 853 (10.5 per cent) had been fired by the employer. Some 597 (7.53 per cent) submitted resignations on their own account and the remaining 5 per cent lost their jobs due to business reasons (technological or other reorganisation), bankruptcy, liquidation, termination of the employer's activity or other reasons.

In the second quarter, however, a further 17,690 people lost their jobs, entailing a further decline in GDP, so the government introduced a stimulus package aimed at mitigating the impact on workers and companies. To be able to do so, however, the government had to increase national debt to a figure approaching 60 per cent of GDP, narrowing the fiscal space (World Bank 2020) and thus leading to another rebalancing of the budget.

Data on the number of unemployed people and on incomes, as well as the status of gross national product for the third quarter of 2020, had not, at the time of writing this article, been made publicly available. According to some robust indicators that point to a total number of unemployed standing at more than 143,000 at this point, however, we estimate that more than 40,000 employees have lost their jobs since the beginning of the Covid-19 crisis. This implies a denial of the basic human and social right to work as well as the infringement of other rights arising from the right to employment in times of such a potentially sizable decline in GDP. Given that the duration of the crisis is likely to be uncertain, an extremely unfavourable period must unfortunately be expected in terms of the exercise of employment rights, daily and weekly rest periods, annual leave, the right to employment protection, the right to wages and salaries, etc.

#### *Complexities in the realisation of employment rights*

The number of employee complaints to the State Labour Inspectorate has almost doubled. According to the Inspectorate:

In the first eight months of this year, the State Labour Inspectorate received nearly 6,000 complaints from workers. Last year, there were a total of 3,300 complaints for the whole year. Most of the complaints for this year refer to the catering and textile industry. This year 1,345 people have complained in-person to the Inspectorate, while last year the number was 1,300 for the whole year. 4,500 complaints have so far been sent electronically while for the whole of last year there were 2,000 such complaints. (Radio Slobodna Europa 2020)

The volume of submitted complaints standing at such a level clearly implies the intensification of the violation of workers' rights by employers. The necessary urgent interventions have been undertaken by the non-governmental sector, the Federation of Trade Unions, the Chamber of Commerce and other organisations and institutions.

It must be acknowledged that state institutions reacted relatively quickly after the onset of the crisis to address workers' complaints. Several state-sponsored announcements and appeals were made in which workers were encouraged to file complaints regarding the realisation of their rights and to file complaints about any violations via several e-mail addresses and telephone numbers.

From a worker's point of view, the essential principles are clear: do not sign any documents with the employer before first consulting the trade unions, the Helsinki Committee for Human Rights and the Labour Inspectorate. This is a result of many incidents of employment contracts being transformed from open-ended to fixed duration or from full-time working hours to part-time ones. Furthermore, with regard to the conditions which apply to the termination of employment, employees are frequently informed about these only in the circumstances in which they had already lost their job – whether this be the amicable termination of employment, furloughs due to business reasons or dismissal as a result of lay-offs. Intervention has been frequently required in connection with the non-payment of wages, despite state assistance being made to companies in respect of subsidies equivalent to the minimum wage, with the state intervening with the threat of criminal charges against companies that abused such assistance. Such support and the open calls for assistance made by the State Labour Inspectorate<sup>1</sup> (State Labour Inspectorate 2020) were introduced relatively early after the onset of the Covid-19 crisis and it saw implementation at national level.

An analysis of the consequences of Covid-19 in particular for low-paid workers and those engaged in labour-intensive activities (the textile industry is especially relevant in North Macedonia) drew conclusions and made recommendations for the work of companies in these fields during the pandemic, setting out special conditions aimed at protecting employees (Friedrich-Ebert-Stiftung 2020). This is because low-paid workers were the first to be hit by the crisis, as were those engaged in labour-intensive activities.

To our analysis of the categories of workers most affected by the virus we must clearly add health workers in Covid-19 hospitals who are under constant threat of exposure from patients, those in the public health institutes that carry out Covid-19 testing and police officers. In all these categories, in addition to the very real threat of exposure to health dangers, the crisis has revealed a need for increased employment but in a way which carries with it the risk of increased violations of employment rights.

The academic community has also become involved in the Covid-19 crisis by highlighting and specifying the need for 'first aid' measures to protect workers in particular vulnerable groups (Iustinianus Primus Law Faculty 2020). It is indisputable that there is an evident need for the most urgent national and social response in order to overcome the consequences of the Covid-19 crisis, especially in the provision of human rights in general and employment rights more specifically.

1 A part of the Ministry of Labour and Social Policy of the Republic of North Macedonia.

## Conclusion

The Covid-19 pandemic has caused severe disruption and a state of social disorganisation which has permeated all segments of the social fabric from the global to the local. Crisis-hit economies have also experienced implications for the exercise of social and labour rights including the right to employment, the right to protection at work, the right to rest periods and leave, and the right to wages and salary benefits. Such consequences have been expressed through an increase in unemployment rates following various forms of employment termination, in connection with payments of minimum wages or the late payment of wages, changes in employment contracts that reduce working hours from full-time to part-time, etc. However, Macedonian society and the relevant authorities, right from the beginning, saw an open goal for the abuse of workers' rights and, in addition to providing financial support, they have encouraged employees to report abuses by employers including via the launch of email addresses and dedicated telephone lines.

In addition, the non-governmental sector is led by associations which are particularly active in the textile industry, working hand-in-hand with national and international associations, institutes and foundations, while academia and research institutes are continuously monitoring, analysing and researching in the field of the protection of employment rights.

Workers are, consequently, not alone. However, these are difficult times in terms of the preservation of the range of employment rights on top of a social situation that is already deleterious. Whenever it is that the crisis 'ends', the task of social reconstruction thereafter will be immense, not least in those countries such as North Macedonia where existing capacity indicates a task that is likely to be a disproportionately sizable one.

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Emirali Karadoğan

## **Working conditions and protective measures in multinational companies during the pandemic: The case of Inditex**

### *Abstract*

*The Covid-19 pandemic has deeply affected working life. Workers who have to earn money to proceed with their lives have had to work during this time, even if they did not want to do so. Consequently, the question of whether adequate protective measures have been taken in the workplace for workers who have had to work during the pandemic is a critical one. In this article, the measures taken especially in respect of employees of multinational companies are examined in view of a survey of employees of Inditex, the Spanish 'fast fashion' company. Following a review of the literature on the place of multinational companies, along with their supply chains, in the engine room of global capitalism and on research into the working conditions of shopping mall employees, setting an appropriate context for the survey findings, the article explores what the findings reveal. Malls might well be new venues of insecurity in terms of the threat posed to the need for workplaces to be safe and secure for employees, but Covid-19 has ruthlessly exposed both the lack of protection and the risks which workers in such environments face on a day-to-day basis.*

**Keywords:** Covid-19, multinationals, shopping malls, working conditions, health and safety, PPE

### *Introduction*

The Covid-19 pandemic has engulfed the world and left it facing a health crisis. Since the pandemic was announced, almost all countries have tried to support markets within the framework of their economic capacities by preparing and implementing action plans to combat the virus. In addition, the health crisis continues deeply to affect all aspects of social life and, furthermore, its effects are being felt particularly acutely by countries and their peoples already experiencing long-lasting economic crisis. Therefore, in countries such as Turkey, which cannot finance a halt to its economy, workers who are again on the front line of keeping the wheels turning, despite the pandemic, are being compelled to go to work under dangerous conditions. Capital is struggling with the government to keep businesses open to continue accumulation while workers are trapped between work, disease and hunger. Obviously, working in the conditions of a pandemic has, in this respect, also become a new front in the labour-capital struggle which continues in almost all sectors of the economy. In other words, the class struggle and the conflict of interest that has been going on for nearly 250 years has made itself particularly visible during the pandemic.

This article examines the working conditions of workers in multinational companies during the pandemic. It studies working conditions not across all multinational companies but draws its example from one company operating in the retail textile (so-called 'fast fashion') sector. In this context, the aim of our study is to determine and analyse the working conditions of workers in Inditex, a multinational company of Spanish origin with brand outlets in shopping malls, who have continued to work during the pandemic as well as the nature and level of the protective measures which have been taken on their behalf. One aim of the study is to discover whether the opening of shopping malls has had an impact on the spread of the pandemic. Additionally, the work has been motivated by controversies as to whether multinational corporations are exploiting and mistreating their workers by working them under the conditions of Covid-19.

To these ends, multinational companies and working conditions will first be discussed before we turn to the literature in general on the nature of labour and working conditions for those working in shopping malls during the pandemic. Later, we look at the protective measures taken regarding employees in the Inditex group alongside an analysis of the results of the survey we have carried out to determine working conditions in this sector.

#### Multinational corporations and labour

Multinational corporations (MNCs) appeared after the Second World War. Initially, they were greeted with great enthusiasm because productive capacity, technology, industrial production and income distribution have been viewed as powerful entities for economic development through the promotion of a more equitable distribution across the globe. However, over time, it has been seen that they have had no effects in this direction and MNCs started to move to the centre of criticism, being the subject of significant attention from US and British trade unions in particular, especially as regards the contraction in local employment along with the export of technology with which they had become associated (Gomes 1978: 118).

The concept is used differently in the literature with expressions such as 'multinational corporation', 'multinational company', 'multinational enterprise' and 'international company' used interchangeably to identify companies operating in more than one country and creating added value (Dunning and Lundan 2008; Hijzen 2008; Sklar 1976). On the other hand, there is also the view that it is not correct to evaluate multinational companies alone. Palloix (1975: 85) has claimed that MNCs are part of the broader internationalisation process of capital while Gomes (1978: 119) points out that, in order for a company to be considered truly transnational, it must have the capacity to carry out export activity, foreign licensing and joint venture overseas operations and multinational operations.

With neoliberalism, multinational companies have begun to make their influence felt more globally. The collapse of the Soviet bloc, advances in information technologies, deregulation in all areas including labour markets and the liberalisation of the market have been influential in the rapid spread of multinational corporations over the past three decades (Yeganeh 2019: 193). There has, however, been criticism that multinationals create competitive inequality by taking advantage of low wages



and working conditions in developing countries while they have even been accused of violating human rights, especially workers' rights (Hijzen 2008).

Starting in the 1990s in the US, multinationals such as Levi Strauss, Gap, Phillips-Van Heusen, etc. have become the subject of 'anti-sweatshop'-style campaigns on the grounds that they condoned undesirable working practices in other countries. Similarly the large retailer Wal-Mart, selling clothing made using child labour in the manufacture of clothing in Bangladesh and Honduras, put into question the activities of multinational companies (Brown *et al.* 2003: 4). Nevertheless, some data exists that multinational companies have a positive impact on wages and working conditions, especially in developing countries where they invest (OECD 2008a; OECD 2008b).

Since the 1980s, global framework agreements (GFAs) have been striven for by international trade union federations to protect the economic and social rights of workers in multinational companies. GFAs have been sought to prevent the exploitation of labour that may arise from multinational companies, particularly in underdeveloped and developing countries. The first such agreement was signed in 1988 between the International Union of Food Workers and BSN, whose name was later changed to Danone (Gallin 2008: 26). However after the 2000s we see the signing of international agreements with transnational companies in a wide range of sectors from mining to telecommunications, manufacturing and retail trade (Graham and Bibby 2002).

The purpose of global framework agreements is to protect and enhance the economic and social rights of employees, especially trade union rights, in multinational companies. However, there have been observations that GFAs have been signed by multinational companies as a means of being seen to fulfil their social responsibilities as opposed to being particularly positive on the labour front (Stavis and Boswell 2007: 188).

The result is that those multinational corporations that have become the engine of global capitalism are in a controversial position in areas such as wages, working conditions, union rights, etc. In particular the presence of cheap labour in developing countries as well as the tax exemptions and the privileged support from governments, such as making the labour market more flexible, are attractive to multinational companies. Multinationals are often referred to in terms of the confiscation of the surplus value produced by workers, sometimes directly and sometimes in the form of work intensification. The latterday question is the extent to which this situation might have changed in the conditions of the Covid-19 pandemic. The study on which this article draws has been set up to deliver an answer to this question.

### Shopping malls as the latest link in the capitalist production commodity chain

It is clear from a review of the literature on shopping malls that focused studies have been carried out in several different contexts. The architectural structures of shopping malls and their contributions to urban life have been heavily discussed (Gosseye and Avermaete 2015: 6). Stobart and Howard (2018) emphasise that shopping malls have attracted the attention of a wide range of academics from a diverse range of fields well beyond architecture and urban planning, including history, an-

thropology, sociology and management studies, due to their increasing importance in economic and cultural life. There have also been studies in the field of social sciences. Beiro and colleagues (2018) sought to measure the impact of shopping malls on cities' social inclusion policies. Shopping malls have also been studied in the context of urban life and contemporary consumption patterns (Erkip 2005; Zukin 1998). In her study, Zukin emphasises that discrepancies between daily consumption habits and new consumption areas make shopping malls a simulation of a globalised and standardised city life.

Ersoy (2018) describes shopping malls, which have become among the most important economic and social habitats of our time, as attractions of order while Bau-drillard (2008: 20) describes them as a synthesis of abundance and design. The seventh largest shopping mall in the world, in terms of gross leasable area, is Manila's SM Megamall which has a daily pedestrian traffic of 800,000 people and a maximum capacity of four million: the most concrete indicator that shopping malls have become attractions of daily life in their own right. When we take into account also that the Dubai Mall, which ranks fifth on the list of the largest malls, is home to 1,200 stores, 22 cinema screens, 120 cafes and restaurants, a 5-star hotel and one of the world's largest aquariums, we can also estimate the size of the consumer audience flowing into these venues (Touropia 2020).

Shopping malls have fundamentally decried traditional consumption habits: the service and product offered to the consumer/public has gone way beyond the traditional grocer shop. Therefore, shopping mall vendors are also carefully selected. Two types of party benefit from shopping malls: the first is the owners of, or investors in, the mall (as a structure); and the second is the store vendors (or brand owners). Mall owners obtain rental income from the vendors, while the latter draw revenue by selling products or goods and services that appeal directly to the types of consumer attracted into malls. In this way, the costs of the product offered for sale by those vendors who are able to pay shopping mall rents (commercial capital) are imposed directly and compulsorily on the consumer and accepted instinctively.

Depending on the locations of shopping malls, the services and products they offer for sale are changing and diversifying. A brand with the power to pay mall rents does not imply that it is able to participate in every shopping mall development. In practice, those brands in shopping malls that address upper income groups are separated from the ones that address lower- and middle-income groups (Erkip, 2005: 89). From here, we can say that retail capital follows a strategy of seeking to appeal to every income group. This also indirectly reinforces class separation in the context of both space and consumption.

It is also worth noting in this respect the work of Beiro and colleagues (2018) who analyse the mobile phone records of hundreds of thousands of customers in sixteen shopping malls in Santiago de Chile with a view to highlighting issues of social mixing in cities. According to the authors, shopping malls have an important place in the daily activities of modern cities, the structuring of social relations and the mobility of residents. Shopping malls are open and available to everyone from all walks of life and social classes but they are, in practice, venues which belonging to people from white middle- and upper-income classes. The clearest indicator of this is the

lack of public transportation infrastructure that would allow lower-middle income groups to reach shopping malls. It is underlined that this indirectly increases exclusion and discrimination against minorities and people from lower-income classes; something which Beiro and his colleagues are keen to address.

Products of both international and domestic brands are sold in shopping malls, with the latter also being of an international nature since many brands of Turkish origin are offered in different countries of the world. From here, we can also define shopping malls as centres of commerce that contribute to the movement of international capital.

We must be clear that the store vendors are not the manufacturers of the products sold on behalf of the international brands: using supply chains in countries where capitalist relations of exploitation are at their most intense, their colourful and attractive shopfronts in malls supply the consumer with goods produced for their brands by sub-contractors. Undoubtedly, the production of goods by suppliers – in other words, the business of the supply chain – lies not with the shopping malls. According to Özügürü:

The supply chain or global production/commodity chain is the main form in the organisation of the capitalist production process, starting in the 1970s and gaining momentum and depth worldwide in the last three decades... The supply chain is the chain which generates value and confiscates the present value produced. (Özügürü 2009: 123)

Shopping malls have replaced the factory, market or fair of old. While factory order dominated the capitalist system in the past, factories have today been replaced by places of consumption such as shopping malls whose palaces are offered up by ‘casino capitalism’ as the new cathedrals of the consumer society (Ritzer and Jurgenson 2010: 13-15). Indeed, the utilisation of goods and services, but also personal free time, is at the heart of the goal of shopping mall capital: alongside the purchasing of products, shopping malls also offer opportunities for purchasing entertainment services and food. The capitalist system, which commoditises everything, has managed to market options for the evaluation of free time to be presented to the consumer. And it does this today through shopping malls.

Thus the filling of the time away from the job also becomes dependent upon the market, which develops to an enormous degree those passive amusements, entertainments, and spectacles that suit the restricted circumstances of the city and are offered as substitutes for life itself. Since they become the means of filling all the hours of ‘free’ time, they flow profusely from corporate institutions which have transformed every means of entertainment and ‘sport’ into a production process for the enlargement of capital. (Braverman 2008 [1974]: 263).

#### The nature of labour found in shopping malls

After the industrial revolution, developments in the manufacturing sector shaped production relations and, in this context, social relations. The emerging industrial society began to experience a new transformation after the Second World War, a transformation that was heralded as being from the industrial community to the service community (Bosch and Lehdorff 2005: 1). Lying at the heart of this transformation

was the expectation of better working conditions, higher wages and especially healthier workplaces for the masses who were unemployed at the end of the Second World War.

In recent decades, we have seen shopping malls become indispensable social spaces in urban living. The use of the concept of 'social space' here is a conscious choice: we can define social areas as places where socialisation is experienced/ provided in a simple way. However, it should be stated that socialisation in shopping malls has taken on a socio-economic quality beyond that of simple definition. While shopping malls are seen by the consumer as areas of socialisation, for the shopping mall management and the owners of store retailers who provide services in them, they are, on the other hand, economic areas where commodities produced under capitalist production relations may be brought together with the consumer. Capitalist production relations within these places are thus processed to the finest detail. Özkaplan and his colleagues state that:

Consumption today has become not only an economic phenomenon but also a social, cultural and psychological process with its own indicators and symbols. (Özkaplan *et al.* 2020: 245)

The phenomenon that makes shopping malls the trading base of neoliberalism is that the goods produced by brand-value multinational companies within the framework of the free movement of goods can be presented to the consumer at the same moment as different brands. In these places, however, it is the labour of the workers that brings together the consumer and the product. The amazing image and quality of service in shopping malls is founded upon the labour of workers in stores which supply hundreds of brands designed to meet every need.

#### *Working conditions in shopping malls: New venues of insecurity*

There have been many studies focusing on this issue. Ünsever (2014) has carried out a study on the class experiences of workers through a study of cleaning workers in shopping malls in Ankara. Başol and Saruhan (2018) examine the working conditions of shopping mall employees in the context of decent work, finding that the working environment was poor and extremely stressful, the work-life balance disturbed and decisions taken to improve working conditions not implemented. However, they do determine that:

Nearly all employees are insured and occupational health and safety measures are being fulfilled. (Başol and Saruhan 2018: 140).

Like Başol and Saruhan, Özkaplan and his colleagues highlight in their study the problem of work-life balance, additionally establishing that no less than 99.3 per cent of employees are insured and that, in such a context, the:

Sales business is among the limited number of secure workplaces in the service sector in Turkey. (Özkaplan *et al.* 2020: 80-81, 93).

Especially with developments in the fashion industry which have seen it gain a global dimension, the brand has started to stand out ahead of the quality of goods and services offered to the consumer. Brands are thus symbolising the creative fiction of a consumer society. Women and young people are used in the presentation and marketing of branded products in the fashion clothing industry, now defined as 'fast fashion', and thus shopping malls are workplaces where a higher number of women and young employees may be found. On this point, it has been seen in research studies in the field that these trends of employment based on age and gender have been making themselves felt since the 1990s. Başol and Saruhan, researching working conditions in shopping malls in the context of 'decent work', comment thus:

Shopping malls are generally able to provide temporary employment to unqualified workers during the construction phase while, after being built, they can provide employment opportunities to women and young employees mainly in accordance with the working principles of the retail sector. (Başol and Saruhan 2018: 132)

Cindoğlu and Durakbaşa (1996) conducted field research to determine the level of discrimination associated with the feminisation of professions such as sales and clerical work. Extending their research, they have come to define the work done in these workplaces essentially as belonging to consumer communication professions since stereotypically 'female' qualities, such as beauty and attractiveness, have been developed into important assets in the name of service to others, regardless of the quality of work on offer in shopping malls.

Özkaplan *et al.* (2020) take a gender-based approach to working conditions in shopping malls, finding that the gender distribution of employees was close (53.5 per cent male and 46.5 per cent female) and that employees were predominantly in the 18-25 age group and with a high school graduate education level.

The occurrences of repetitive movement, intensive body control based on standing up for hours, correcting hangers, scanning products and packing them into bags, alongside the nature of temporary and flexible labour and long working hours, make shopping mall work tough for employees. Therefore, the worker turnover rate is high. Özkaplan and colleagues (2020: 72) explore this issue, concluding that long-term work in the same workplace is very rare. They determine that 42 per cent of employees in the 18-25 age group have been working in their current workplace for less than six months while those with service of five years or more account for just 17 per cent. From this data, they calculate that the average period of service in the same workplace was more than two years but less than three. They do conclude, however, that there is no significant gender-based difference in wages (Özkaplan *et al.* 2020: 95).

With retail trade being the basis of the service offered in shopping malls, it is possible to establish a direct face-to-face relationship with customers and, therefore, to be confronted with negative attitudes and behaviours from customers as well as from the employer. This is quite unlike the situation for those working in production. Indeed, verbal violence and the harassment of customers in stores is one of the most common problem areas (Giaccenno and Di Nunzio 2002: 4).

The offer of a hygienic, sterile, well-lit, well-heated or chilled, institutionalised environment in shopping malls makes them especially preferable to families (Durakbaşa and Cindoğlu 2002: 82). Tellingly, however, Ünsever (2014: 1) has established that the safe, clean and modern appearance of shopping malls hides this being ultimately dependent on the employment of workers from lower classes whose employment is neither secure nor safe.

#### Working conditions during the pandemic

The impact of an economic and social crisis which has been deepened by the Covid-19 pandemic is becoming more and more severe. The working class compelled to go into work in the midst of all this are being forced into a choice between absence and existence. In this process, we see a reflection of the brutal capitalism of 250 years ago: workers are forced to work with profit in view despite the risk to their lives.

Whether adequate safety measures are being taken for employees in this process is a matter of debate. However, the data indicates that not enough measures have been taken. It is known that the most effective way to protect against the pandemic is to observe the rules of hygiene, masks and distance. However, it is clear that this is not the case in workplaces in which workers are crowded together. Workers in mines, factories, markets and shopping malls alike are thus endangered in the name of capital accumulation with Covid-19 cases among workers in such workplaces increasing every day due to the insufficient measures on offer (Çakır 2020).

A study by the International Trade Union Confederation (ITUC) finds that, at global level, governments have started to withdraw from support while lay-offs from workplaces continue to increase (ITUC 2020). There have been several research studies carried out into the working conditions of workers during the pandemic. Studies conducted on behalf of retail workers in the UK, Ireland and Turkey establish that workers are not adequately protected and are suffering losses of income while being increasingly infected with coronavirus (USDAW 2020; Mandate 2020; Karadoğan 2020). A study of metalworkers has also examined income losses and the levels of indebtedness experienced by workers during the pandemic (BİSAM 2020). According to these study findings, 75 per cent of workers have lost income in this process. It is also observed that no less than 47 per cent of the workers who participated in the study were on some form of short-time working allowance.

DİSKAR (2020), in its research into union members in nine different workplaces, also finds that 75 per cent of employees have experienced a loss of income and that, furthermore, the safety measures which have been taken in the workplace are inadequate. It reports additionally that 29 per cent of workers in the workplaces surveyed had been diagnosed with Covid-19 and that 82 per cent considered themselves and their jobs in danger.

From the above, it can be seen that the findings of studies carried out during the pandemic are coincident with one another and that adequate protection is not being provided despite the importance given to economic and social development and to worker health and safety for all workers regardless of country and industrial sector:

Crisis periods are times when the lives of the working masses are under direct threat. Directing the costs of the crisis to the working class is the reflexive behaviour of the capital class; it doesn't need to think about it, consider measures or develop future scenarios. The capitalist state mechanism operates entirely in accordance with the capital reflex... (Özügürü 2020)

### Survey of working conditions and protective measures at Inditex during the pandemic

After Covid-19 had been declared a pandemic, almost all countries started to take measures to protect their citizens from its effects. From March, governments generally declared lockdowns in which schools, universities and shopping malls were closed and public meetings and sports events prohibited; only essential workers such as health care providers, food retail workers, public transport workers and postal workers continued to work. However, when Covid-19 cases started slowly to become the 'new normal', governments started opening shopping malls as a result of economic concerns.

We wanted in this work to establish the working conditions of shopping mall employees and, because of multinational companies being among our primary research interests, chose to concentrate on Inditex, a Spanish company that includes a number of brands including Zara, Zara Home, Bershka, Pull&Bear, Stradivarius, Oysho, Massimo Dutti and Uterqüe. According to the company's annual report for 2019, it operates in 172 countries and employs more than 175,000 people. In contrast, there are some 1,985 suppliers who produce goods for Inditex, together contributing a total of 1.4 million workers (Inditex 2020a).

A research survey was therefore conducted among employees at Inditex stores in Turkey, where most of the brand names mentioned above can be found.

### *Research methodology*

Quantitative research techniques were used in the research with an online survey instrument consisting of both closed and open-ended questions. In the conditions imposed by the Covid-19 pandemic, an online survey method was preferred due to the risks to the health of both workers and researchers. The survey was conducted between 6 June and 15 August 2020.

Survey participants were reached by the snowball method and the survey questionnaire was sent directly to participants' e-mail addresses. Questionnaires were also sent via e-mail to Inditex employees in the author's network on the LinkedIn social media platform. A total of 121 workers working in ten different shopping malls responded to the survey. Survey responses were analysed via the SPSS statistical program which revealed a Cronbach's Alpha value of 0.846, indicating that the results are reliable and which endorses their validity.

Nevertheless, a number of potential respondents were clearly put off responding to the survey, either as a result of some of the questions posed, including on gender, or from, as we understand from the returned e-mail responses, many workers not responding as a result of fearing job loss. The conditions of the pandemic and the im-



plementation of short-time working and unpaid leave schemes by political powers in favour of the ruling elites have also made it difficult to carry out field work.

The first part of the study explores the survey findings in relation to the measures taken at mall level, in particular those taken before the closure and after the re-opening of stores/workplaces. The second part focuses on evaluating and analysing data on the working conditions of workers during the pandemic.

#### *Demographic characteristics*

According to the survey, workers' gender distribution is very different from other sectors. Inditex workers are, in the main, women: 55 per cent of respondents were women compared to 44 per cent being men and 2 per cent LGBTI. In Turkey, people identifying as LGBTI generally prefer to work in multinationals such as Inditex, H&M, etc. so the questionnaire added an LGBTI option to the question on gender. Inditex and H&M – the leading multinational clothing brands in shopping malls – specifically emphasise their stance against gender discrimination in their publications (Inditex 2020b; H&M 2018).

When we look at the age distribution, we can see that Inditex workers are very young: some 35 per cent are under 25 years old while 80 per cent are under thirty and very few are 35 or older. We concluded that this sector – especially 'fast fashion' – demands young workers. Findings from the literature survey on the use of young workers in shopping malls are also, therefore, confirmed by our study.

Inditex workers generally have a level of education that is above high school: some two-thirds of respondents already had a bachelor's degree while 93 per cent, including undergraduates and those with a master's or associate degree, had university-level education.

We mentioned above the research by Özkaplan *et al.* (2020), highlighting a concentration of shopping mall workers among those who had graduated from high school. It should be mentioned that the generally high level of education among mall workers is the result of another problem – youth unemployment. Young people now have to take their chances in more unskilled and temporary jobs because, while they may have finished university, they are unable to find work in their own professions.

#### *Part-time work is preferred*

Working on a part-time basis is particularly preferred in the multinational retail textile trade (fashion clothing). It is possible to say that part-time work has become the rule in shopping malls and especially for multinational brands. Inditex brands are no different in preferring part-time workers to full-time ones and, indeed, 56 per cent of our respondents had part-time status.

The International Labour Organization has identified that temporary and precarious employment in developing countries has become the rule; the general trend emphasises the direction of fixed-term contracts and part-time employment (ILO 2016).



People generally do not work in a shopping mall for a long period

About 72 per cent of respondents had worked at Inditex for fewer than five years, while only 3 per cent of respondents had worked there for ten years or more.

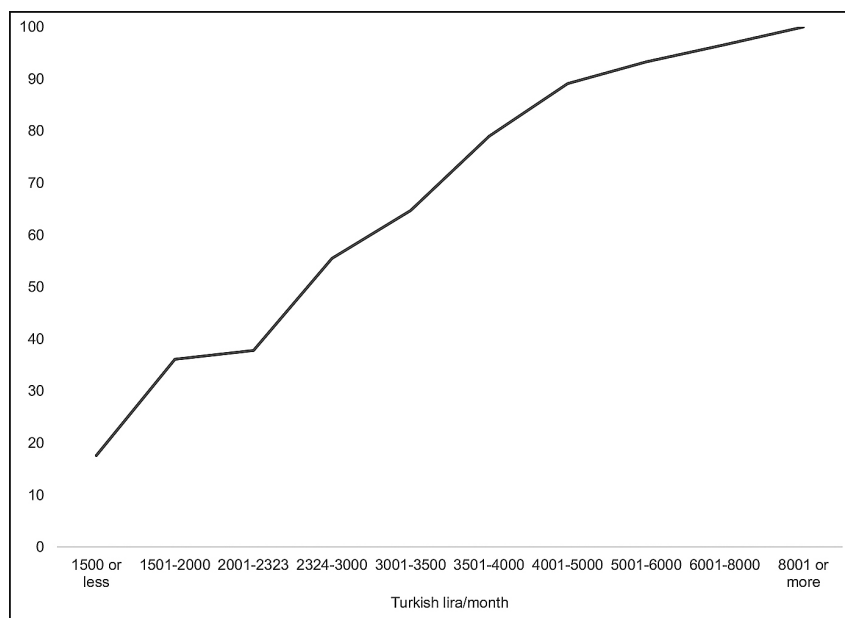
Labour turnover is very high

When we take account of the duration of working at Inditex with the duration of working in the sector, we can see that labour turnover is very high. Forty six per cent have worked in the sector for less than five years while fewer than one in ten have experience of ten years or more.

The factors affecting employee turnover are in accordance with the research discussed above. When we look at the reasons why interviewees quit or leave their jobs, these are focused on poor working conditions and not being able to get a full-time, permanent job. It is understood from the opinions expressed that irregularity – and specifically irregularity in the shifts offered, in spite of the hard work people put in – are among the factors affecting labour turnover.

Wages are higher than in other local companies

In Turkey, the official (mandatory) minimum wage is 2324 TL (approximately €250). Some two in five of our respondents work for wages which are below the minimum (see Figure 1). As we established previously, over half of our respondents work part-time, which means that some part-time workers are receiving wages which are higher than the minimum wage.

**Figure 1 – Wage curve for survey respondents in Inditex (cumulative per cent)**

At the same time, comparing Inditex with other textile retail companies, Inditex wages are slightly higher.

Workers' income has been affected by the duration of Covid-19: over 70 per cent of respondents state that their monthly income had decreased during the pandemic. The causes of decreased income are being put on short-time working or on unpaid leave when the malls were closed – and mostly the former: over 90 per cent respondents state that they had made use of short time working allowance with just 3 per cent on unpaid leave (the remainder had not benefited from any protective arrangements).

Inditex workers are not under the trade union umbrella

Trade union density in Inditex is not high: just 37 per cent of respondents are members of trade unions and, at the same time, there is as yet no collective bargaining agreement covering workers in the company.

The organisation of Inditex workers remains a continuing trade union project.

#### *Protective measures taken by malls*

The measures taken by malls in relation to the pandemic are insufficient

Fever is considered one of the most important symptoms of Covid-19. For this reason, temperature is regularly measured at mall entrances: some 87 per cent of our

respondents state that their temperature is regularly measured before they go into a mall.

On the other hand, respondents report that the measures which are found in toilets and at the food courts within malls are insufficient: less than 12 per cent of respondents are satisfied with the measures in place (see Figure 2, which graphically displays responses to a number of survey questions based on a 'strongly agree' to 'strongly disagree' continuum). Furthermore nearly two in three respondents (65 per cent) do not believe that shopping mall managements regularly audit whether or not the rules are obeyed while fewer than one in five believe they do.

Taking into account all the measures put in place to protect employees in shopping malls, no less than 64 per cent of respondents find the measures taken to be inadequate, of which 18 per cent describe them as 'very bad'; just 4 per cent describe them as 'very good' while 32 per cent comment they are 'good but could have been better'. This means that workers in shopping malls are working under conditions that could be described as 'unsafe'.

#### *Occupational health and safety in the workplace*

When the government decided to open malls during the pandemic, mall workers were fearful and a large number were unwilling to go to work: half of the respondents in our survey were given no choice but were obliged to come into work (although the other half acknowledge that they were given some say in the matter).

In terms of evaluating the workplace measures undertaken to protect workers' health and safety, we asked workers about which measures had been taken. Like with mall customers, the presence of fever is supposed to be measured in-store by employers or store managements with additional measures required where anyone is found to be running a fever. However, a high percentage of respondents (58 per cent) said that their temperature was not measured while a further 13 per cent said it was measured only sometimes.

The pandemic lockdown meant that shopping malls remained closed for two months. After the decision had been made to re-open them, store cleaning and disinfection were required. It is understood that the cleaning and disinfection of stores was not carried out by shopworkers: just 8 per cent state that cleaning and disinfection was done by them the day they started back while 15 per cent said it was done professionally by specialist cleaners on that day.

Occupational health and safety training is very important and indeed mandatory. In the time of the pandemic, such training is both vital and crucial. However, one in four workers have received no health and safety training on the outbreak of the pandemic while a further 10 per cent say that such training was only given once they were back at work.

Risk assessment and analysis is even more important during a pandemic than in normal times. However, 22 per cent of respondents state that no risk assessment and analysis had ever been made in respect of Covid-19 while 61 per cent had no idea whether such assessments had been made. This means that workers are operating without knowing the dangers and risks applying to their work.

Being involved in the decision-making process is important for industrial democracy and social dialogue. During the pandemic, decisions about health and safety measures ought to be made in conjunction with workers. However, our respondents point out that, when it came to such decisions, they had been simply excluded: two in three workers state that they had not been consulted on any coronavirus measures being taken in their own workplace.

Cleaning and ventilation of malls as well as stores is vital in the pandemic since it is known that poor cleaning and ventilation assist the spreading of the virus. Figure 2 reports that just over half our respondents disagree that adequate cleaning and ventilation was provided in their stores; on the other hand, only 28 per cent are satisfied with the level of cleaning and ventilation.

Sufficient personal protective equipment (PPE) has been supplied

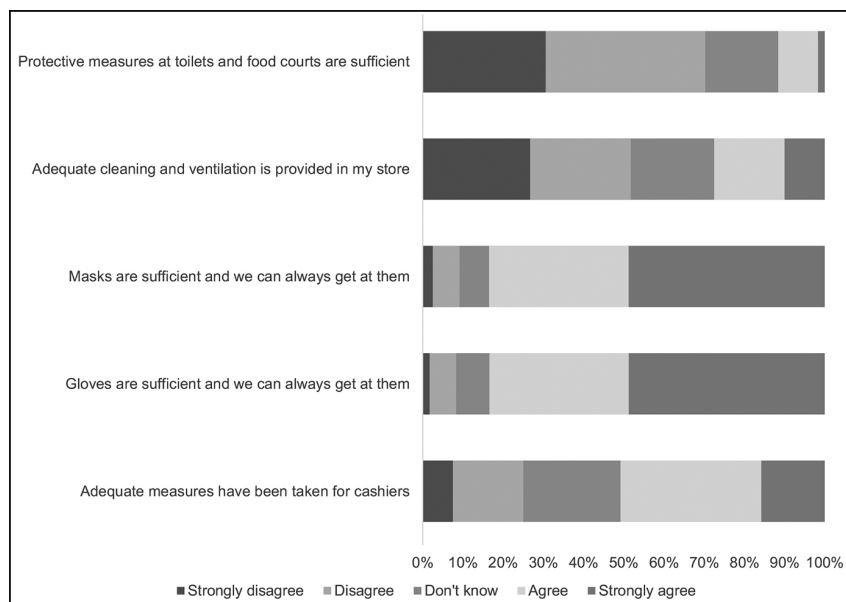
It is clear that PPE – masks, sanitiser and gloves – has been supplied by the employer in sufficient quantities (Figure 2). Despite this positive result, however, training on the use of PPE has not been given to all workers, of whom 30 per cent have had no training on the PPE which had been distributed in their workplace.

Avoiding crowds and ensuring physical distance is important in the prevention of the spread of Covid-19. The crowded area of stores is generally at the cash desks and, as a result, cashiers and the cash desk area ought to be protected with equipment such as shields or visors and plexiglass screens.

Some 87 per cent of respondents state that shields or visors had been installed so as to allow cashiers to keep their distance from customers; but six per cent point out that there was no shields or visors for cashiers at all while a further seven per cent reported that they were not in place for all cashiers. According to 71 per cent of respondents, protective screens had been provided but this left 29 per cent reporting that screens were either not in place at all or had not been provided at all desks (and overwhelmingly the former).

Not all respondents evaluated positively the general preventative measures which had been taken in respect of cashiers and cash desks in their stores; only just over one-half say that adequate measures had been taken while one in four disagree (Figure 2).

**Figure 2 – Respondents' level of agreement with a variety of statements on in-store (or in-mall) safety**



#### Customers and in-store measures

One measure to prevent overcrowding in stores is to place warning signs at store entrances. Some 61 per cent of respondents say that adequate precautions had been taken in this respect although 23 per cent disagree (while 16 per cent say they had no idea).

In addition to hanging warning signs at store entrances, avoiding in-store crowding is helped by observing the rule that there should be one person per every eight square metres of floor space. When we asked workers, 64 per cent say that this rule was observed although 21 per cent say directly that it was not. This means that one in five respondents answered negatively and that the measures taken had, therefore, been inadequate.

Customers do not observe the rules in stores. We asked workers which rules were not observed by customers, allowing them to make multiple selections. For the most part (84 per cent), respondents feel that customers do not comply with social distance rules while 74 per cent report that wearing a mask is not always observed. Just 11 per cent of respondents state that customers do observe the rules in place.

People who do not observe the rules must be warned and this is, mostly, the case although 86 per cent of respondents report that customers were warned by other workers, compared to small percentages reporting that this is a responsibility of store

managers or security staff. This is therefore a new type of duty for workers in the 'new normal'.

According to our findings, customers in the majority of cases do not behave properly towards workers: just over one-half of our respondents express the opinion that customers behaved 'badly' or 'very badly' towards workers compared to just under one-half reporting that they behaved 'well' or 'very well'.

We asked respondents to evaluate all the measures taken at stores to protect employees against Covid-19 transmission after the opening of their workplace. We find that only a minority assess the measures positively with 52 per cent assessing them as 'poor' (41 per cent) or 'very poor' (11 per cent).

#### *Working conditions*

It is known that, after the outbreak of the pandemic, online shopping has become preferred to the physical version. We wanted to find out how working conditions had been affected during the pandemic once shops had been re-opened compared to the position beforehand.

First, we investigated whether there had been a change in workload. In contrast to the low customer numbers in stores, we can see that the workload of employees has increased compared to before the pandemic. Due to workers being put on unpaid leave or short-time working, stores continue to operate with insufficient numbers of staff. Some 69 per cent of respondents agree that their workload has been higher after the re-opening of stores, of whom 40 per cent strongly agree (Figure 3). At the same time, over one in five survey participants (22 per cent) disagree that breaks are insufficient or that they are able regularly to take their breaks.

In the pandemic, all shopworkers are working in a risky and dangerous environment. It is known that some employers provide extra pay or bonuses to their workers for working during dangerous times. We wanted therefore to find out whether our respondents had seen anything like 'danger money', or risk pay. The largest number – 15 per cent – of respondents state that they had been on short-time work while receiving full pay; and four per cent indicate they had been given additional paid leave. Nevertheless, 79 per cent of respondents had not received any additional pay or leave.

#### *Shopping malls as a source of infection*

In this survey, it was very important to understand the number of in-store Covid-19 cases: in everyday life, thousands of customers visit a store for shopping which means that stores occupy a highly convenient location for an outbreak of coronavirus infection: from customer to worker; from worker to customer; from customer to customer; and from worker to worker.

However, just one employee in our sample of 121 respondents had been diagnosed with Covid-19 and received treatment.

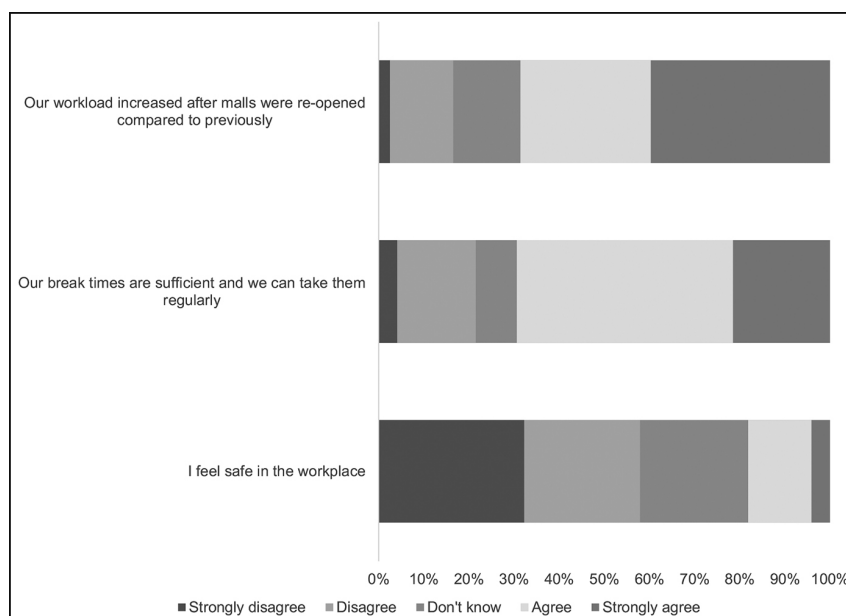
Although the rate of infection among our survey respondents is very low, their witness of coronavirus in their workplaces is rather high: 17 per cent of respondents had at least one of their work colleagues who had been diagnosed with Covid-19.

This is a very important finding since it means that at least 17 per cent of employees may have been contaminated with Covid-19 by their colleagues within the workplace.

All workers are afraid of catching Covid-19 as a result of being at work. The biggest source of personal fear about transmission of the virus (when respondents were asked to name just one) are customers (66 per cent) or public transportation (26 per cent) while colleagues or other employees at the mall rank lowly (just 4 per cent in each case).

When respondents were asked to evaluate safety measures on the whole (Figure 3), 58 per cent disagree that they feel safe at work while just 18 per cent are in agreement.

**Figure 3 – Respondents' level of agreement with a series of statements on working conditions**



## Conclusion

Our study demonstrates that multinationals have been found to be incompetent in taking and overseeing measures in relation to workers' safety during the Covid-19 pandemic. Furthermore it is possible to state that this inadequacy has contributed to the spread of the pandemic: employees have had to work in unsafe conditions both in malls and in stores; and, although customer flow has decreased, workloads have increased as a result of measures related to the pandemic being taken and controlled in-

store by employees. In other words, workers are subject to more intensive work and are unable to rest adequately.

Inditex has benefited from the government's pandemic packages for employers. However, since these packages were not in favour of workers, it is workers who have been the more greatly affected by the pandemic. Both the short-time working allowance and the practice of unpaid leave have had a negative impact on workers' incomes. Any loss in the income of workers, who have to live off their labour, deeply affects the entirety of their living conditions. That those who have experienced a loss of income during the pandemic numbers so highly reflects the burden of the pandemic falling on the working class.

As a result, our survey has found that the multinational company Inditex is not sufficiently supportive of its employees economically and has not been able adequately to protect them against the spread of the pandemic. Capital has made a choice here in terms of costs and occupational health which stems from its class preference, choosing the way of saving costs and maintaining capital accumulation rather than the health of workers. Workers are also trapped in exercising their decision to come to work between catching the virus and poverty. Despite their fears of becoming sick, workers have chosen – entirely understandably – to avoid near-poverty: the task for trade unions in representing workers continues to be to make that decision both easier and less costly.

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Qerim Qerimi

## **The impact of EU conditionality policy on human rights and rule of law in the western Balkans: An attempt at a methodology**

### *Abstract*

*This article seeks to explore the underlying methodological dimension of measuring the impact or effects of the EU's policy of conditionality in western Balkans states in the arena of human rights protection and respect for the rule of law. These are critical issues in which aid conditionality has global dimensions, while the EU itself remains a valid international actor. The article also focuses on the adequacy of the measurement instruments used to measure the impact of this policy, based on the existing trends as well as past experience with enlargement to central and eastern Europe. The author identifies the major research questions that need to be confronted and suggests an appropriate methodological approach to resolve these, including an important gender dimension. In the process, he identifies the deficiencies concerning the measurement of conditionality which have come to haunt the application of the policy. The central aim kept in mind throughout is to seek improvements in the application of the policy itself and with a view to the wider lessons regarding the role that conditionality has come to play.*

**Keywords:** EU enlargement, western Balkans, human rights, conditionality, methods of measurement, Covid-19

### *Introduction*

Western Balkan states have been a focus of European foreign policy for the last two and a half decades from the Yugoslav wars to asylum seekers arriving through the Balkan route. Both the most recent (Croatia) and the upcoming EU accessions concern countries from the region and the reforms made in each such case have been largely conditioned by some form of external involvement. This has made the EU's engagement central for the future of this region.

All the major events of the recent past, from the Kosovo-Serbia dialogue to the internal functioning of Bosnia and Herzegovina, political crisis in Macedonia or fundamental justice reforms in Albania have been defined by the active participation of and a critical role for the EU. Indeed, enlargement is considered to be the EU's most efficient foreign policy instrument in terms of its ability to transform existing practices and institutional structures outside of its borders. Less is known, however, about how it works on the ground in specific contexts.

Despite high leverage at the general level and the monitoring efforts which have been made, for example through assessments in the Commission's annual (progress)

country reports, a large part of the enlargement literature shares the view that the EU's record in spreading human rights and democratic norms in a credible and effective fashion during the accession process is, at best, mixed. Compliance may stop at the level of formal changes, seemingly satisfying both sides – the candidate country's government as well as the EU – while falling short of bringing about sustainable reforms that are hard to be reversed.

This article is interested in the particular policy of conditionality adopted by the EU as an instrument to condition and bring about change. How it works, or indeed whether it works, is a subject that has intrigued a wide array of actors obviously including academia. Even so, not much attention would seem to have been paid to discrete spheres of decision- and policy-making that form a critical part of both the EU's internal values and its foreign policy goals, namely the promotion and protection of human rights. Moreover, a desirable systematic inquiry into the adequacy of the methods employed to measure impact would also appear to be lacking. This article seeks to offer a general survey of these issues and makes an attempt at recommending certain methodological insights which could help improve the measurement of the impact of the EU's policy of conditionality. The end result sought is improvements in that same policy.

#### Pertinent background

The experience of central and east European<sup>1</sup> enlargement has revealed the limits of the EU's democratic conditionality as measured by implementation, sustainability and post-accession performance. This means that new member states carry their democratic and human rights deficiencies with them. In turn, this calls for new mechanisms to address problems with human rights and the rule of law within the EU. A specific example could be the new mechanisms established for the EU member states of Bulgaria and Romania, i.e. the Mechanism for Cooperation and Verification (CVM) through which the European Commission assesses and supports the progress of Bulgaria and Romania in many predefined areas.

Academic research should aim to map the factors that explain the under-performance of pre-accession conditionality and suggest ways of improving the effectiveness of human rights conditionality (Bartels 2005; Fierro 2003; Nogueras and Martinez 2001; Nowak 1999).

Few studies have looked into the details of human rights conditionality during the accession process and what has been done has an almost exclusive focus on central and east European countries that are already EU members (Sasse 2008; Epstein and Sedelmeier 2008; Houghton 2007; Schimmelfennig and Sedelmeier 2005; Grabbe

1 The term 'central and eastern Europe' is understood to mean the following countries: Estonia, Latvia, Lithuania, Czech Republic, Hungary, Poland, Slovakia and Slovenia. Where relevant, the south-east European countries of Bulgaria and Romania could also be referenced. The western Balkans, as politically conceived by the EU institutions, encompasses the south-east European countries of Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia. Geographically, Croatia (now an EU member state) forms part of the region.

2001). Otherwise, the research programme is focused either on the (almost) exclusive domain of minority protection (Vermeersch 2004, 2003; Topidi 2003; Pentasuglia 2011) or on the broader confines of democracy and the rule of law (Sadurski 2004; Schimmelfennig and Sedelmeier 2004; Schimmelfennig *et al.* 2003; Dimitrova 2002).

The abundance that defines the literature on the content and consequences of EU conditionality in the region of central and eastern Europe, or on other countries that have already acceded to the EU, misses the developing context of EU-aspirant countries in the western Balkans.

As regards the process, one can observe the overall lack of at least two methodological approaches: first, the absence of a structured mapping of the types of rights and legal and policy instruments analysed in order to determine both the priority for and the significance of intervention by the EU; and, second, the lack of empirical evidence generated from structured tools such as interviews with relevant stakeholders in the policy- and decision-making bodies of the EU and in the affected western Balkan countries.

Overall it can be stated that, while conditionality can play a more productive or enabling role in generating progress, growth and compliance with EU conditions, the perceived picture so far is painted with a degree of confusion at both national and regional levels concerning ownership, credibility and the effectiveness of the existing measures and strategies which form the policy of conditionality. To change this view and better relate the realities on the ground to the intended objectives, the EU should build an evidence-based narrative demonstrating how its policy of conditionality can enable the delivery of structural reforms. One of the many measures to be explored and employed would be the introduction of stringent impact assessments to show the role and effects of *ex ante* and macroeconomic conditions (Huguenot-Noël *et al.* 2017).

#### Conceptual considerations of conditionality

Much has been said and written about the EU's policy of conditionality, but it can hardly be said that there is a clear and singular description of what it means. It can, however, be stated with some degree of confidence that the EU's image of itself as an international actor remains at the heart of this policy. Besides the implications of the EU's effectiveness at discharging its financial and foreign policy functions, its policy of conditionality is also critical for the quality of the institutions and governance among its prospective members.

Standing as a prime example of a unique regional structure of authority, conditionality is derived from the EU's legal and political identity and its aspirations of broader international influence consonant with its values. This policy is, however, yet to be fully understood, particularly its effects on reform or the results in discrete sectors such as human rights protection, the rule of law or sustainable development.

Therefore, further research is needed to understand in full the more precise impact of EU conditionality on these values and its effect on improving the human condition, particularly in enlargement countries and overall across both enlargement and neighbourhood regions.

*Recent applications of the EU's policy of conditionality in the western Balkans*

The EU has most recently applied conditionality as a measure to mitigate the socio-economic challenges of the Covid-19 pandemic.

On 25 May 2020, the European Parliament and the Council of the European Union adopted Decision 2020/71 to make macro-financial assistance (MFA) available to five western Balkans countries and five other countries from the neighbourhood region for a maximum total amount of €3bn. The five western Balkans countries are Albania, Bosnia and Herzegovina, Kosovo, Montenegro and North Macedonia; while the neighbourhood partners are Georgia, Jordan, Moldova, Tunisia and Ukraine (European Union 2020a).

The MFA's fundamental aim is to support economic stabilisation among the partners given the challenges of the pandemic and a substantive reform agenda (European Union 2020a, Art. 1). Thus, it supports economic stabilisation by restoring a sustainable external financing situation for the targeted countries, ultimately looking to support renewed economic and social development.

The policy justification for Decision 2020/71 is linked to Covid-19's highly damaging effects on economic and financial stability in the enlargement and neighbourhood regions. Additionally, there are considerations that partner countries from these regions are presently facing a weak and rapidly worsening balance of payments and fiscal situation with economies moving into recession. Therefore, the EU considered that it had a compelling case to move quickly and decisively to support those economies.

The EU's Decision clarifies that assistance should be subject to economic policy conditions laid down in a separate Memorandum of Understanding (MoU) individually negotiated and concluded between the European Commission (on the EU's behalf) and partner countries. More specifically, Article 2 of the Decision lays down the principles that form the contents of the policy of conditionality in this specific situation, providing that:

A pre-condition for granting the Union's macro financial assistance shall be that the partner respects effective democratic mechanisms, including a multi-party parliamentary system, and the rule of law, and guarantees respect for human rights. (European Union 2020a, Art. 2).

In other words, the decision on granting financial assistance is guided by a commitment to the EU's quintessential values of democracy, rule of law, good governance, respect for human rights, sustainable development and the reduction of poverty, as well as to the broader economic principles of open, rule-based and fair trade.

Article 3 details further the operationalisation of these pre-conditions in that it authorises the European Commission to agree with the authorities in each partner country clearly-defined economic policy and financial conditions focusing on structural reforms and sound public finances. Those economic policies and financial terms are laid down in the MoU (European Union 2020a, Art. 3).

On 11 August 2020, the Commission agreed MoUs on MFA programmes with eight partners: Albania, Georgia, Jordan, Kosovo, Moldova, Montenegro, North Macedonia and Ukraine. Negotiations of the MoUs are underway in respect of the



two remaining countries, i.e. Bosnia and Herzegovina and Tunisia (European Commission 2020b).

For Albania, the policy conditions for its €180m MFA programme relate to strengthening public finance and the resilience of the financial sector; improving governance and fighting corruption; and enhancing social protection. In the case of Kosovo, the policy conditions for the €100m programme put in place here relate to strengthening public finance and financial stability; addressing youth unemployment; improving good governance; and fighting corruption. For Montenegro, the policy conditions for the €60m programme drawn up here relate to strengthening public finance and the fight against corruption; enhancing financial stability; improving the business environment; and reforming social protection. For the fourth and last western Balkans beneficiary country, North Macedonia, the policy conditions for its €160m programme relate to strengthening fiscal governance and transparency; the fight against corruption; enhancing financial sector supervision; improving the business environment; and tackling youth unemployment (European Commission, 2020b).

The policy of conditionality articulates what academic literature has elsewhere referred to as ‘the EU factor’, which is best conceived in terms of an instrument that conditions economic and political reform and alignment with the EU’s *acquis communautaire*, creating in aspiring EU member countries stable political arenas and attractive markets that are ultimately conducive to EU membership. The EU factor manifests itself through broader and more diverse economic instruments, more considerable political influence and overall stabilising effects exerted in regions that fall under the European umbrella or are in its immediate neighbourhood (Qerimi and Sergi 2017, 2005; Sergi and Qerimi 2008, 2006).

#### An agenda for future research

This section proposes and addresses some of the fundamental questions in need of examination, forming an agenda for future research in the field.

Conditioning accession with reform and results has become a common *modus operandi* in the EU’s enlargement policy. The next stage of enlargement or extension of the wider EU family is expected to occur in the south-eastern European region of the western Balkans where human rights and respect for the rule of law have both been a major problem and concern. Both issues also represent a cornerstone of the EU’s foundational values and aspirations.

Implicit in these aims is an inquiry into two inter-related questions forming the specific questions which need to be explored in the course of future research:

1. to what extent has the EU’s policy of conditionality successfully influenced human rights protection and rule of law reform in the western Balkans?
2. what are the factors that have conditioned success or failure in the course of implementing the policy of conditionality?

The ultimate objective should be to understand the degree and type of impact of the policy of conditionality on human rights and rule of law (separately or taken to-

gether, depending on the type and scope of the research), which can be split into three micro-objectives, as follows:

1. identify gaps in the rhetoric and action undertaken by the EU
2. distinguish between the factors that work best and what do not work in terms of the policy instruments that are intended to bring about change
3. invent or identify an alternative policy design; and recommend solutions in line with an order based on effective human rights and rule of law.

In order to implement such a research agenda, a more elaborate and adequate methodology remains the key.

#### A proposed methodology

Given the nature of the questions to be examined, the article proposes at least two key methodological tools:

1. a systematic inquiry into a wide array of EU instruments, both in financial and in policy terms, thus going beyond a mere analysis of the EU country progress reports (which have been the almost exclusive point of reference in existing research). This should also encompass the decisions and declarations of the Council as well as the resolutions and recommendations of the European Parliament
2. qualitative research based on structured or semi-structured interviews conducted in line with a set questionnaire which would allow sufficient flexibility to ensure the desired depths and results. The interviews could be organised with the following core groups:
  - a) key decision-makers in the EU dealing with the western Balkans and enlargement policies in general
  - b) NGO representatives in each examined country
  - c) governmental representatives in each of the observed countries.
3. The relevant experience of the researchers taking part in the research project could form a third component to the methodology.

Other important complementary sources ought also to be consulted. These would include reports from NGOs; the reports of international organisations present in the region (primarily the UN, CoE and OSCE); and the reports of independent human rights associations such as the Ombudsperson institutions. Careful selection and the contextual application of this amalgam of sources would give the research project a uniquely positioned advantage concerning its overall contribution and visibility in the light of the intensiveness of the policy-oriented academic universe.

More traditional theoretical concepts would come from institutional analysis, the study of law, pertinent social science theory and the literature on Europeanisation.

Academic literature that analyses or observes the actual content and results of the EU's promotion of human rights, placed in terms of conditionality, has been absent when it comes to the western Balkans. A similar conclusion is valid with regard to studies of the impact of EU conditionality in western Balkan countries from the perspective of specific individual human rights or group rights, or institutional reforms that seek to enhance human rights protection.

Key methodological features which are absent in the present doctrinal discourse need also to be applied. A comprehensive presentation of these and other aspects of the proposed methodology is summarised in Table 1.

**Table 1 – A proposed methodology**

Item	State of the art	Proposals / advancement
Study of EU's conditionality policies	Analysis of EU country progress reports	Systematic inquiry into legal and policy instruments
Measurement of EU's conditionality policies	Doctrinal insights and interpretation	A multiple-element approach, composed of a diverse set of elements: (1) structured or semi-structured interviews; (2) the personal experience of the researcher in the region; (3) reports of independent organisations
Territorial objective	Almost exclusive focus on central and east European countries; or existing EU members	Exclusive focus on EU-aspirant countries from the western Balkans
Scope of question	Broader examination of the policy of conditionality with broader democracy considerations	Examination of conditionality and its effects on specific individual human rights, including institutional reforms that have enhanced human rights protection
Result	Absence of clear answers and comprehensive multi-method measurement of impact	New insights on the impact of EU conditionality on the protection of human rights in EU-aspiring western Balkan countries; lessons with worldwide policy implications

A gender dimension should also be included in the scope of observation. Here, several aspects could be investigated. By way of example, one particular component that could be looked at in detail is the political participation of women (e.g. representation in parliament and municipal assemblies) and the weight allocated to this by the EU in its conditionality policy. Certain countries in the region do apply percentage quotas for women representatives. The feasibility of this policy should be assessed in the light of oft-debated questions concerning the quality and influence of such formulas.

## Conclusion

The EU's role as an international actor remains a most valid point of inquiry. Beyond the implications pertaining to the EU's effectiveness in discharging its financial and foreign policy functions, its conditionality is critical for the quality of institutions and the governance of its prospective members. Being a prime example of a unique regional authority structure, both for reasons of its legal and political identity and its broader international influence, the implications of an enhanced understanding of the impact of conditionality on the fundamental tasks of protecting human rights and

fundamental freedoms, and thus improving the human condition, could also be of paramount importance in other regions of the globe.

This article has sought to further our existing understanding of conditionality and its effects in human rights protection or respect for the rule of law (in the present case in terms of EU-aspirant western Balkans countries). In doing so, it has proposed a methodology whose ultimate aim is to inform and influence relevant policy-making with the singular goal of improving the policy of conditionality expressed in terms of being more likely to achieve its expressed aims. A better, more influential and more assured EU integration path would surely be the result.

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Christophe Solioz

## Catch your breath

### Review essay

Christophe Solioz explores the use of 'Pathétique' from Tchaikovsky's sixth symphony in *1395 days without red*, a 2011 film project focused on the Siege of Sarajevo, and locates it in the complex 'age of immunology' in which we now live.<sup>1</sup>

The past, when described, written, filmed or set to music, is familiar to us. At the same time, when a book or film seems to uncover the essentials of our daily lives after the event, it does not do so without arousing some uncanny (*unheimlich*) feelings.

The film project *1395 days without red* by Anri Sala and Šejla Kamerić (2011)<sup>2</sup> brings into the present a past which is composed simultaneously of the first movement of Tchaikovsky's sixth and last symphony (1893), the Siege of Sarajevo (1992-1996) and the multiple crises of the emerging twenty-first century, our age of immunology.<sup>3</sup> Thus, three different layers of time are involved.

The Siege of Sarajevo acts as an advance warning of the now-ubiquitous paradigm demonstrated by immunisation: that societies are becoming increasingly compartmentalised communities that tolerate the 'other', the foreign body, only in small doses. Following the same (or a similar) path, biotechnological manipulations of the human body and the logic of vaccination ought to prevail; in this way biopolitics is becoming a shared frame of reference for an order which is as much political as medical.<sup>4</sup>

This new era, which strangely recalls the previous century's 'age of crowds', is a time when:

Everybody knows about the superior force of enveloping danger. Still, to overcome it: nobody knows where to locate it, nobody knows from which direction it

1 This essay appears simultaneously in French in *Ligeia, dossiers sur l'art* and in the *SEER Journal*, for which it has been specially translated as well as extended with an English-speaking audience in mind.

2 *1395 Days without Red* is a film project by Šejla Kamerić and Anri Sala in collaboration with Ari Benjamin Meyers, starring Maribel Verdú. Conceived, developed and filmed in Sarajevo as a collaborative project, it resulted in two independent films: Šejla Kamerić's *1395 Days without Red* (2011), single channel video, colour, sound, 65 mins; and Anri Sala in collaboration with Liria Bégéja *1395 Days without Red* (2011), single channel video, colour, sound, 43 mins 46 secs.

3 See A. David Napier (2003) *The Age of Immunology* Chicago: University of Chicago Press.

4 See Roberto Esposito (2011) *Immunitas. The Protection and Negation of Life* Cambridge: Polity Press.

comes, nobody is really able to look it in the face, nobody is able to really oppose the danger.<sup>5</sup>

Hermann Broch here seizes hold of the spirit that is used as much by the totalitarian regimes of yesteryear as the Sarajevo snipers of the 1990s and, today, by computer viruses and the pandemic that has besieged us and put us into lockdown. Each time, the stake is the same: the body, the memory, and also the memory of the body, and, above all, 'life death' – signifying the paradox that the policy of life as its object becomes a policy of death as its outcome.<sup>6</sup> During the Siege of Sarajevo, crossing roads, walking through 'Sniper Alley', was to shake hands with 'life death'.

That the specific context of the Siege is only suggested in the film, together with the absence of any dialogue, heightens the image of a musician crossing Sarajevo to the TV hall at the other end of the city to join her orchestra for a rehearsal. At each crossroads, her progress is interrupted: a moment of silently waiting. In order to escape the sniper fire, you have to wait for the right moment to cross, holding your breath, then grab your chance with both hands and set off. Arriving on the other side, you breathe out and continue on your way. Experiencing the city as a movement over road crossings is structured on several levels by repetition, the fabric of the city joining the phrasing of the musician's score.

The particularity of this movement, the musician's breathing literally producing the sound – her instrument is a bassoon – gradually recovers the memory of the score: what is at first only hummed takes shape and asserts itself, continuing to gain strength and conviction. We then recognise the 'Pathétique' which begins, we should remember, with a bassoon solo drawn from the lower register – a sombre and plaintive *adagio*, a muffled murmur. The theme that follows is taken up in breathtaking fashion in the first movement in the *allegro non troppo*.

## Symphonie pathétique

(Nr. 6)

FAGOTT I

P. Tschaikowsky, Op. 74

I



- 5 Herman Broch (1979 [1939]) 'Proposal for the Foundation of a Research Institute for Political Psychology and Study of the Manifestation of Mass Hysteria,' text from early 1939 published as the first chapter of his unfinished work *Massenwahntheorie* Frankfurt: Suhrkamp.
- 6 See Jacques Derrida (2020) *Life Death* Chicago: University of Chicago Press; and Roberto Esposito (2008) *Bios. Biopolitics and Philosophy* Minneapolis: University of Minnesota Press.



The inevitably jolted rhythm, dictated by the fabric of the city and the 'war logic' of the Siege, tears apart the phrases rendered by the bassoonist the melody of which is, nevertheless, being simultaneously preserved by the Sarajevo Philharmonic. The juxtaposition of these two elements within the same score – that is to say, the score hummed by the bassoonist and the one played by the Orchestra – at first dislocated but then gradually brought together, creates a 'singular plural' space<sup>7</sup> in which the bassoonist and the city become one, towing the concert-goer along in its wake.<sup>8</sup> For the bassoonist herself, it is also the city that is catching its breath, its arteries once again pulsating to the rhythm of music – the city which, in defiance of those that would destroy it, comes back to itself and to life.

The key element of the film, the humming produced only for one's self, like 'hearing oneself speak', stems from independent and basic self-experience (auto-affection). Below reflection is a self-awareness: an experience of 'my own', of self; an absolute experience of oneself that is both immediate and contrary to other experiences (for example the experience of 'otherness') that are mediated. In Husserl's view, both breath and voice offer a model for 'an absolutely pure auto-affection'. Furthermore this experience is related to the experience of the 'living present.' But this 'now point' is 'thick' as it includes the immediate memory of the now that has just elapsed and the anticipation of the now that is about to appear (thus creating layers of time).<sup>9</sup>

As the Philharmonic is playing in this same dimension, the bassoonist meets the orchestra long before she joins it. Thus, the film composes this 'singular plural' space that allows an encounter between pure auto-affections without the assistance of any external force: an experience that everyone can reproduce by listening to an interpretation of 'Pathétique' while, at the same time, humming along to it.

The above-mentioned purity of the auto-affection of the voice facilitates self-awareness and tends towards a theme of universality: a process that Hermann Broch sums up as follows:

What distinguishes this supra-rational universalised knowledge contains *a priori* lived experience, an immediacy and breadth of life which remain, so to speak, inaccessible to rational knowledge.<sup>10</sup>

In one sense, this is about composing along with the city, or recomposing its score, but it is more than just that. To familiarise oneself with the unspeakable, to find again that breath of 'pure differential vibration' evoked by Jacques Derrida:

You dream, it's unavoidable, about the invention of a language or of a song that would be yours, not the attributes of a 'self', rather the accentuated paraph, that is, the musical signature of your most unreadable history. I'm not talking about a

7 See Jean-Luc Nancy (2000) *Being Singular Plural* Stanford: Stanford University Press.

8 Anri Sala developed this approach in collaboration with Ari Benjamin Meyers in *The Breathing Line* (2012).

9 I refer here to the Husserl phenomenology as presented by Jacques Derrida (2010) *Voice and Phenomenon* Evanston: Northwestern University Press.

10 Herman Broch (2005 [1934]) *Logique d'un monde en ruine* Paris: Éditions de l'éclat, p. 10 – text originally published in 1934 in tribute to Arnold Schönberg.

style but an intersection of singularities, habitat, voices, graphism, what moves with you and what your body never leaves.<sup>11</sup>

Neither fiction nor documentary, Anri Sala and Šejla Kamerić's project belongs to the art of the fragment, 'the in-finite explosion of the finite.'<sup>12</sup> They do this by masterfully staging the 'city effect': 'that which the city does and that which makes it – but also that which undoes it', in the process putting it back together.<sup>13</sup> Each city has its words, its language, its writings and also its music. Words, discourse and gesture, writings and graffiti<sup>14</sup> – the scores are all cartographic palimpsests of our urban space.

*Christophe Solioz, political scientist, philosopher and leader of the nomadic MAP (Multiplex Approach) network, in Geneva.*

11 Jacques Derrida (1995) *Points... Interviews 1974-1994* Stanford: Stanford University Press, p. 119.

12 Jean-Luc Nancy (1997) *The Sense of the World* Minneapolis: University of Minnesota Press, p. 132.

13 See Jean-Christophe Bailly (2013) *La phrase urbaine* Paris: Seuil, p. 8; and Christophe Solioz (2017) 'L'effet ville Sarajevo' in Pierre Courtin, Pierre-Philippe Freymond and Christophe Solioz (Eds) *Sarajevo l'\*a\*tribu\*t de l'art* Paris: Riveneuve éditions, pp. 5-7.

14 See Christophe Solioz (2020) 'Sarajevo à livre ouvert' *Urbanisme* 418, pp. 28-35.

Slobodan Petrović

## **The political system of Bosnia and Herzegovina and the fault lines set down in the Dayton Agreement**

### *Abstract*

*This article seeks to review some of the problems with the political system of Bosnia and Herzegovina as expressed through the constitutional provisions of the Dayton Agreement. While the Agreement brought an end to the physical violence, its creators must have been aware that the type of state system it envisaged, being composed of two entities, only put off the solution to the crucial cause of the problem. The entire mechanism of the political organisation of BiH is based on the fault lines set down in this Agreement, while the continuing inter-ethnic struggle in BiH is focused on the questions which it poses for constitutional government. Furthermore the moderators of the process retained the right to monitor the Agreement's implementation, institutionalising the involvement of the international community and introducing a continuing role for NATO in the Balkans. The article considers the political system of BiH as developed under the Dayton Agreement but turns first to setting the scene by exploring the territory of the country as a whole and some of the essential characteristics of its peoples.*

*Keywords: Dayton Agreement, political systems, Bosnia and Herzegovina, politics, state regulation, constitutional order*

### *Introduction*

Bosnia and Herzegovina officially gained independence on 3 March 1992 following a referendum in which those voting confirmed overwhelmingly that they wanted independence from the Socialist Federal Republic of Yugoslavia from which Slovenia, Croatia and Macedonia had already withdrawn prior to BiH. The work of the Government of BiH began on 14 December 1995, on the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement) designed to end the four-year war and stabilise the entire area of the Balkan peninsula. Here, the international community has assumed a key role since the Peace Implementation Council, established at an implementation conference held in London, and the Office of the High Representative, based in Sarajevo, continue to occupy significant positions of authority until such times as the country is adjudged to be politically stable and self-sustaining.

The political system of BiH, as set out under the Dayton Agreement, might be said to be a *sui generis* one. Zarije Seizović puts it thus:

BiH, legally-politically and ethnically torn, subjected to artificial state-legal and political re-suscitation under the patronage of the international community, is only seemingly re-integrated but in the form of an unusual creation – one state, two entities and three peoples, consisting of one republic and one federation...

We can freely say that the political system of BiH is, by categorisation, a mixed system of government, but it is unusual in nature because it contains elements of both presidential and parliamentary systems. The theory that it is part-presidential is supported in that the BiH Presidency consists of three members – one Serb, one Bosniak and one Croat – elected to the role by their own constituencies. Based on legal documents and the organisation of the political system, one could conclude that in the Federation of BiH it is the parliamentary form of government which is stronger while in Republika Srpska it is the elements of the presidential system which are more dominant.

The structure of government in BiH consists of: state government; entity authorities; cantonal authorities; the authorities of Brčko District, which has special status; cities; and municipalities. Sovereignty in BiH is exercised by citizens directly electing deputies to the House of Representatives of the Parliamentary Assembly of BiH; the House of Representatives of the Federation or the National Assembly of the Republic of Srpska, as appropriate; the cantonal assemblies (in the Federation); and the municipal councils. Furthermore sovereignty is realised based on the principle of a parity of representation between the constituent peoples.

Modern theorists of political systems might claim that BiH is an unfinished state. Such a claim would have real justification in the incomplete nature of the institutions of state: for example, the non-existence of a specific supreme court at state level – even though the Constitutional Court fulfils some aspects of such a court – is an indicator not only of the legal insecurity of citizens across the entire territory but also of the non-existence of unity within the judiciary. Another shortcoming is that the political system was established quite some time after the signing of the Dayton Agreement. Judicial institutions and prosecutors offices were fully developed at cantonal level. However, the state and local government were not structured and established in detail, needing a lot of readjustment. The BiH constitution does not mention local self-government and, therefore, it does not regulate it but the European Charter of Local Self-Government is an integral part of the BiH legal system, so this anomaly is somewhat reduced.

### **Territory**

Bosnia and Herzegovina covers an area of 51,209 km<sup>2</sup> and is located on the Balkan peninsula of south-east Europe. It borders Croatia, Montenegro and Serbia, and, around Neum, has some 20 km of coastline opening on to the Adriatic Sea. The capital of BiH, reinforced by Dayton, is Sarajevo. BiH consists of two entities – the Federation of Bosnia and Herzegovina; and Republika Srpska – while Brčko District is an independent self-governing unit established following arbitration.

Geographically speaking, Bosnia and Herzegovina consists of two areas; namely the larger Bosnian part in the north (about 42,000 km<sup>2</sup>) and the smaller part, Herze-

govina, in the south of the country. Bosnia is more populated and wooded, while Herzegovina has a more rocky terrain. In the north, the area of Posavina stretches, turning further into the Pannonian Plain, and extending from there the area of Semberija has the most fertile soil for crop-growing. Herzegovina consists of mountainous and Adriatic Herzegovina.

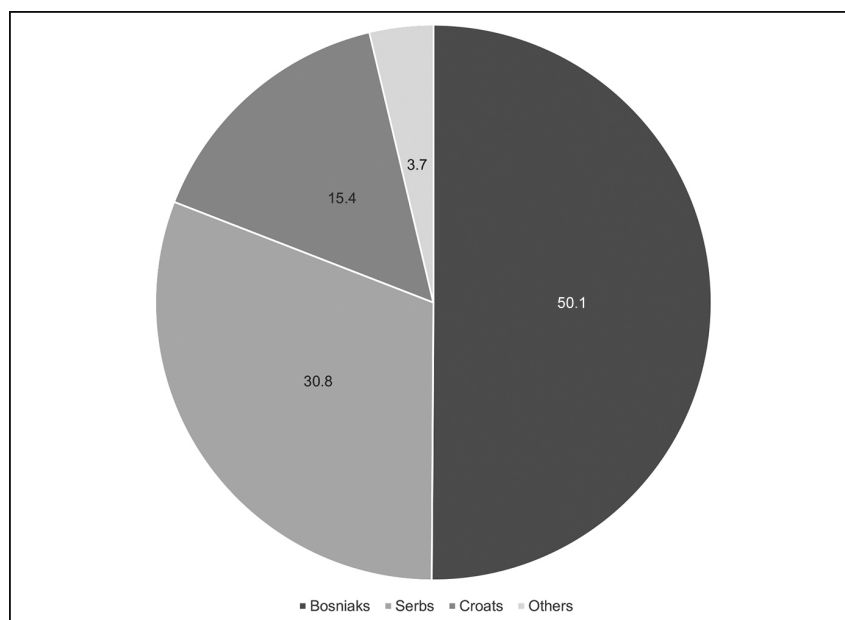
Some 42 per cent of the total territory of BiH is agricultural land while around the same percentage is forested, of which 30 per cent is mountainous. The remaining 15 per cent is set aside for other uses. BiH is extremely rich in natural resources such as iron, bauxite, chromium, zinc and copper, while a special gem is a rare and noble species of tree suitable for making top-quality furniture.

The highest peak in BiH is Mount Maglić (2,386 m) which is in the southern part of the country close to the border with Montenegro.

#### Population structure

According to the 2013 census, which is the one most recently conducted and the first one since the war, Bosnia and Herzegovina is inhabited by Bosniaks (50.1 per cent), Serbs (30.8 per cent) and Croats (15.4 per cent) while a smaller percentage (3.7 per cent) are other peoples or not declared (see Figure 1). At this date, BiH had a total population of 3,531,159. It is worth noting that the census results encompass citizens who have lived and worked abroad for several years and, for that reason, they are contested by Republika Srpska officials.

For comparison, the 1991 census reported there to be 4,377,033 inhabitants, with 43.4 per cent Bosniak, 31.2 per cent Serb and 17.4 per cent Croat, with the remaining 8 per cent or so constituted from smaller nationalities.

**Figure 1 – Ethnic composition of BiH (2013 census data)**

Other, more recent data have put the population higher than the census by some 300,000 people, at more than 3.8m. The age structure in Table 1 is drawn from this dataset.

**Table 1 – Age structure of Bosnia and Herzegovina**

Year	< 14	15-24	25-54	55-64	> 65	Total
Male	261,430	214,319	859,509	284,415	249,624	1,869,297
Female	244,242	201,214	848,071	300,168	372,594	1,966,289
Total	505,672	415,533	1,707,580	584,583	622,218	3,835,586

Source: CIA World Factbook (2020 data)

Taking Table 1 at face value – though it is hard to reconcile recent lived experience in BiH with the thought that there has been population growth since 2013 – it is evident that young people aged 15-24 represent a rather small minority, just 11 per cent of the total, although children represent another 13 per cent. In comparison, people aged over 65 represent 16 per cent. Clearly, this is an ageing society and one which might benefit – all other things being equal – from a sound birth rate policy in the future.

The average (mean) age of the population in BiH stands at 43.3 years (CIA 2021), significantly higher for women (44.8) than for men (41.6). Partly, this difference reflects the gender balance among the over 65s, where women significantly outnumber men and where the war will be a major factor. The high mean age is a common problem among all the republics of the former Yugoslavia, reflecting a low birth rate (just 8.5/1,000 head of population) among other factors which also include infant mortality, migration and conflict. Indeed, the population growth rate is negative, with the current figure standing at -0.21 per cent (CIA 2021).

Life expectancy is comparatively reasonable, standing (at birth) currently at 77.7 years (80.9 for women; 74.8 for men). This is higher than anywhere else in the Balkans other than Albania (and Greece), although it is inevitably lower than most of central and western Europe (CIA 2021). Given that there was a war in this area, that the population has been faced with many life adversities and existential problems, that state institutions had collapsed and the state was built out of the ashes, such results are positive.

When it comes to the language used in BiH, Bosnian, Serbian and Croatian are 'mutually intelligible' and all three are official in both entities. To all intents and purposes, the three constituent peoples speak the same language. The 2013 census data records figures for mother tongue which are inevitably close to – but not quite the same as – the population breakdown, with 52.9 per cent speaking Bosnian, 30.8 per cent Serbian and 14.6 per cent Croatian. The difference is likely to be based on people declaring themselves according to the needs of the statistical organisations.

Likewise, the breakdown of BiH by religious confession essentially reflects similar percentages mirroring the political image of the country. Religious confession is an important component of political culture and guides the movements of the political actors: faith and identity in the Balkans, along with history, are intertwined. Even so, the different religions served as a cloak for the war and are a means of manipulation that gives desired results to those able to manage them.

#### Constitutional structure of BiH according to the Dayton Agreement

Annex 4 of the Dayton Agreement refers to the constitutional organisation of BiH and thus, given the purpose of this article, is worth quoting at length:

##### **Preamble**

*Based on respect for human dignity, liberty, and equality,*  
*Dedicated to peace, justice, tolerance, and reconciliation,*  
*Convinced that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society,*  
*Desiring to promote the general welfare and economic growth through the protection of private property and the promotion of a market economy,*  
*Guided by the Purposes and Principles of the Charter of the United Nations,*  
*Committed to the sovereignty, territorial integrity, and political independence of Bosnia and Herzegovina in accordance with international law,*  
*Determined to ensure full respect for international humanitarian law,*

*Inspired* by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments,

*Recalling* the Basic Principles agreed in Geneva on September 8, 1995, and in New York on September 26, 1995,

Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows:

**Article I: Bosnia and Herzegovina**

1. **Continuation.** The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be 'Bosnia and Herzegovina,' shall continue its legal existence under international law as a state, with its internal structure modified as provided herein and with its present internationally recognized borders. It shall remain a Member State of the United Nations and may as Bosnia and Herzegovina maintain or apply for membership in organizations within the United Nations system and other international organizations.
2. **Democratic Principles.** Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.
3. **Composition.** Bosnia and Herzegovina shall consist of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska (hereinafter 'the Entities').
4. **Movement of Goods.** Services. Capital. and Persons. There shall be freedom of movement throughout Bosnia and Herzegovina. Bosnia and Herzegovina and the Entities shall not impede full freedom of movement of persons, goods, services, and capital throughout Bosnia and Herzegovina. Neither Entity shall establish controls at the boundary between the Entities.
5. **Capital.** The capital of Bosnia and Herzegovina shall be Sarajevo.
6. **Symbols.** Bosnia and Herzegovina shall have such symbols as are decided by its Parliamentary Assembly and approved by the Presidency.
7. **Citizenship.** There shall be a citizenship of Bosnia and Herzegovina, to be regulated by the Parliamentary Assembly, and a citizenship of each Entity, to be regulated by each Entity, provided that:
  - a. All citizens of either Entity are thereby citizens of Bosnia and Herzegovina.
  - b. No person shall be deprived of Bosnia and Herzegovina or Entity citizenship arbitrarily or so as to leave him or her stateless. No person shall be deprived of Bosnia and Herzegovina or Entity citizenship on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
  - c. All persons who were citizens of the Republic of Bosnia and Herzegovina immediately prior to the entry into force of this Constitution are citizens of Bosnia and Herzegovina. The citizenship of persons who were naturalized



- after April 6, 1992 and before the entry into force of this Constitution will be regulated by the Parliamentary Assembly.
- d. Citizens of Bosnia and Herzegovina may hold the citizenship of another state, provided that there is a bilateral agreement, approved by the Parliamentary Assembly in accordance with Article IV(4)(d), between Bosnia and Herzegovina and that state governing this matter. Persons with dual citizenship may vote in Bosnia and Herzegovina and the Entities only if Bosnia and Herzegovina is their country of residence.
  - e. A citizen of Bosnia and Herzegovina abroad shall enjoy the protection of Bosnia and Herzegovina. Each Entity may issue passports of Bosnia and Herzegovina to its citizens as regulated by the Parliamentary Assembly. Bosnia and Herzegovina may issue passports to citizens not issued a passport by an Entity. There shall be a central register of all passports issued by the Entities and by Bosnia and Herzegovina.

Article II goes on to define in detail human rights, with both entities called upon to ensure the highest level of internationally recognised human rights and fundamental freedoms; while Article III sets out the responsibilities of and relations between the institutions of the state and the entities.

Despite the view of the Dayton-led constitution of Bosnia and Herzegovina as unique, it is actually modelled on the US constitution. The BiH constitution contains several core constitutional principles: democracy; a complex state; a single market and freedom of movement; the protection of human rights; the constituency of the peoples; the separation of powers; and the rule of law. The US constitution was both methodologically and substantively the basis for the BiH constitution: Annex 4 of the Dayton Agreement was written by lawyers from the US administration – in particular the Ministry of Justice and the State Department, along with other US governmental institutions. This view is supported in that Article 9.2 of the BiH constitution is Amendment 27 of the US constitution; Amendment 10 of the US constitution has been rewritten in Article 3.3(a) of the BiH constitution; Amendment 56 of the US constitution is Article 3 of the Republika Srpska constitution; etc.

### *Legislature*

Article IV of Annex 4 specifies that the Parliamentary Assembly of BiH is a bicameral parliament, consisting of the House of Peoples (*Dom Naroda*) and the House of Representatives (*Predstavnički dom/Zastupnički dom*)

The House of Peoples is composed of 15 delegates, two-thirds of whom are from the Federation, and is set up on the basis of equality based on ethnicity (five Bosniaks and five Croats), with the other one-third coming from Republika Srpska (i.e. five Serbs). As far as the Federation is concerned, each national group elects representatives to its House of Peoples, so the five members representing the Croat nationality are elected from the ranks of Croats living in the Federation and the five members representing Bosniaks are elected from the Bosniak constituency. The five members of the Serb nationality are elected by the National Assembly of Republika Srpska. To be quorate the House of Peoples must have the presence of at least three members from each national group, amounting thus to a total of nine members. The

House of Peoples may be dissolved by the Presidency or by the House itself provided that such a decision is approved by a majority that includes a majority of delegates from at least two peoples.

The House of Representatives consists of 42 members with two-thirds (28 members) elected from the Federation and one-third (14 members) from Republika Srpska in accordance with the Election Law. The House of Representatives is quorate as long as it consists of a majority of the members elected to it.

Both chambers must meet in Sarajevo no later than thirty days from the day of their election and, while both are able to adopt their own internal regulations they must elect one Serb, one Bosniak and one Croat as chair and deputies, with the chair rotating between the three. All legislative decisions must be adopted by both chambers and subject to a majority requirement which includes at least one-third of the representatives from the territories of each entity. If such a level of consensus cannot be reached, the chair and the deputies will meet in a commission and try to reach agreement within three days.

The constitution also defines other aspects of the functioning of the Parliamentary Assembly and its decision-making process. Both chambers are required to deliberate publicly and to publish a complete record of their deliberations. During their term of office, members of the Parliamentary Assembly enjoy immunity.

The Assembly of Brčko District consists of 29 deputies, while its government consists of the mayor and the heads of departments. The mayor is elected by the Assembly and performs the duties of the office during the mandate of the Assembly, remaining in office until the election of a new mayor.

#### *Presidency of BiH*

Article V of Annex 4 to the Dayton Agreement stipulates that the Presidency of Bosnia and Herzegovina should consist of three members: one a Bosniak and another a Croat, each of whom is elected from the territory of the Federation; while the third member should be a Serb, elected directly from the territory of Republika Srpska. The first member of the Presidency is the candidate who wins the most votes in the elections; while the Chair of the Presidency of BiH changes every eight months as provided for in the principle of rotation set out in the BiH Election Law. The mandates of the members of the Presidency last for four years; members may serve two terms but are then ineligible to stand for the next four years. The Presidency determines its own rules of procedure, but the aim is to adopt all decisions by consensus; where this fails, however:

A dissenting Member of the Presidency may declare a Presidency Decision to be destructive of a vital interest of the Entity from the territory from which he was elected, provided that he does so within three days of its adoption. Such a Decision shall be referred immediately to the National Assembly of the Republika Srpska, if the declaration was made by the Member from that territory; to the Bosniac Delegates of the House of Peoples of the Federation, if the declaration was made by the Bosniac Member; or to the Croat Delegates of that body, if the declaration was made by the Croat Member. If the declaration is confirmed by a two-thirds vote of those persons within ten days of the referral, the challenged Presidency Decision shall not take effect.

Article V also clearly sets out the competencies of the Presidency. The Presidency appoints the Chair of the Council of Ministers who takes office subject to the approval of the House of Representatives and who then nominates expressly a Minister of Foreign Affairs, a Minister of Foreign Trade, and other ministers, who take up their duties following approval from the House of Representatives. The Council of Ministers is the highest executive body and it carries out the duties of the government. It consists of ten members, being nine ministers plus the Chair. The Council of Ministers proposes laws to the Parliamentary Assembly and is responsible for implementing the decisions of the Assembly; and must report on its work to the Assembly.

The principle of proportional territorial representation is also taken into account so that a maximum of two-thirds of all Council ministers can be from the territory of the Federation. If the Parliamentary Assembly has a vote of no confidence in the Council of Ministers, the Council must resign.

Furthermore, when it comes to armed forces and military issues, the Presidency has very clear powers via the establishment of a Standing Committee:

- a. Each member of the Presidency shall, by virtue of the office, have civilian command authority over armed forces. Neither Entity shall threaten or use force against the other Entity, and under no circumstances shall any armed forces of either Entity enter into or stay within the territory of the other Entity without the consent of the government of the latter and of the Presidency of Bosnia and Herzegovina. All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina.
- b. The members of the Presidency shall select a Standing Committee on Military Matters to coordinate the activities of armed forces in Bosnia and Herzegovina. The Members of the Presidency shall be members of the Standing Committee.

### *Judiciary*

The judicial system of Bosnia and Herzegovina is composed of regular and specialist courts, with the BiH constitution stipulating that judicial jurisdiction is within the powers of the entities. At the BiH level, the Constitutional Court of Bosnia and Herzegovina has the competency to decide on appeals against judgments reached by the supreme courts of the entities, thus in some manner serving as a senior court for the whole of Bosnia and Herzegovina.

Article VI stipulates that the Constitutional Court of BiH has nine members, four elected by the House of Representatives of the Federation and two by the Assembly of Republika Srpska, while the remaining three were elected initially by the President of the European Court of Human Rights (ECHR) following consultation with the Presidency. Judges should be 'distinguished jurists of high moral standing'; any eligible voter may serve as a judge but those elected by the President of the ECHR must not be citizens of BiH or of any other neighbouring state. Judges can stay in post until the age of 70 but may be removed by peer consensus.

The work and manner of decision-making are defined in detail by the constitution:

Disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity.

However, the Constitutional Court also has appellate jurisdiction over constitutional matters arising from the judgment of any court in Bosnia and Herzegovina. It also has jurisdiction over questions referred to it by any court in BiH as to whether a particular law is compatible with the constitution, the European Convention for Human Rights and Fundamental Freedoms or the laws of BiH; or in terms of the existence or scope of a general rule of public international law relevant to its decision.

Decisions of the Constitutional Court of Bosnia and Herzegovina are final and binding.

The Court of Bosnia and Herzegovina has three divisions, namely: Criminal; Administrative; and Appellate. The Criminal Division has a War Crimes chamber (Section I); an Organised Crime, Economic Crime and Corruption chamber (Section II); and a General Crime chamber (Section III). The Administrative division has a litigation office and a single chamber; while the Appellate division rules on appeals against decisions made within the Criminal and Administrative divisions and also decides on complaints of breaches of the election law.

The BiH judiciary currently has 49 local judges as well as a number of international ones. All court chambers are composed of three judges.

#### Electoral system

In Bosnia and Herzegovina, elections are held every four years. General elections are where the representatives (members) of the Presidency of BiH are elected, as well as for members of the House of Representatives of BiH, the House of Representatives of the Federation, the National Assembly of Republika Srpska, the President of Republika Srpska and members of the Assembly of Brčko District. Municipal elections see representatives elected to the representative bodies of the municipalities; BiH is composed of 97 municipalities in the Federation of BiH and 62 in Republika Srpska. Councillors on the municipal councils are elected by secret and direct ballot in local elections for a term of four years (according to the principle of 'Open Lists'); while mayors are also elected directly.

All those citizens who have reached the age of 18 and who are legally capable, but also those who are at least 16 years of age and who are employed (being in employment is a condition for the right to vote in this case) have the right to vote.

Following the adoption of the BiH Election Law in 2001, the BiH Election Commission was formed (after April 2006, this body was renamed the Central Election Commission), replacing the previous Provisional Election Commission. Elections in Bosnia and Herzegovina are regulated by the following laws: Election Law of BiH; Law on Conflicts of Interest; Law on the Financing of Political Parties; and the Law on the Council of Ministers of BiH.

## Office of the High Representative

The Office of the High Representative of BiH is an organisation for the civilian aspects of the implementation of peace in Bosnia and Herzegovina. Under the provisions of the Dayton Agreement, the High Representative is responsible, on behalf of the international community, for overseeing the implementation of the provisions of the Agreement. The Office also has the task of coordinating the activities of international civil society organisations and agencies operating in the country.

In addition to all the above institutions, the following are worth mentioning as continuing to play a key role in the life of the country:

1. EU Delegation to BiH
2. OSCE mission to BiH
3. NATO headquarters in Sarajevo
4. UN Mission in BiH
5. UNHCR in BiH
6. UN Office in Sarajevo.

## Conclusion

When we talk about the political system and the constitutional government of Bosnia and Herzegovina we can conclude that the structure of government which has been put in place does contain the legitimacy of the three nations. Considering that constitutional power is not state power but that, as such, it derives from the state, state powers and state organisations, this leads us to the conclusion that the level of constitutional power embodies the expressed sovereignty of the people in the socio-historical circumstances that actually exist. Today, the three ethnic nations in Bosnia and Herzegovina form a constitutional government, uniting the three national sovereignties.

However, in the ethnic form of the expression of individual nations in Bosnia and Herzegovina, the general state nation being made up of three nations implies the question of the precise location of sovereignty. It is this that stands out as one of the biggest flaws of the Dayton Agreement. Considering that the people, as the bearer of sovereignty, determine the organisation and function of the state, the overall inter-ethnic struggle in Bosnia and Herzegovina continues to be waged in the sphere of constitutional power. Defining and building one common national interest, above that of the three separate ethnic nations, is a condition for political, cultural and economic progress, as well as any other social progress, in Bosnia and Herzegovina. The problem with this process remains how to define the measure of expression and realisation of ethnic-national interests within a national identity that is still in its infancy, as well as determining subjects that would be relevant and acceptable by people on all three sides as a means of determining the measure of expression and the realisation of the national identity of a singular nation.

The independence and supremacy of the constitutional courts of Bosnia and Herzegovina could be a generally-accepted indicator of the existence of a singular state – but there is a major problem to this: the procedure for electing judges. In democratically underdeveloped societies, which includes Bosnia and Herzegovina,

political entities can influence the staffing of constitutional courts through the electoral procedure.

In many ways, the Dayton Agreement is a political document which has been manifested in formal practice. Annex 1-A setting out the Agreement on the Military Aspects of the Peace Settlement calls in its Article 1 for a multinational military force (IFOR) to be deployed in BiH for land, air and naval operations, operating through the NATO chain of command, to ensure the implementation of the Dayton Agreement. Indeed, the parties to the Agreement are expressly committed to IFOR's commencement of the implementation of the military aspects of the Agreement after the transfer of authority from the UNPROFOR Commander to the IFOR commander, with the modalities of the participation of other states involved in implementing the Agreement to be subject to agreement between those countries and NATO. This 'Peace Agreement', among other things, therefore introduced NATO to the Balkans. Also, this 'Peace Agreement', in the same Article 1 (paragraph 2c), states that the signatories agree on the establishment of:

Lasting security and arms control measures as outlined in Annex 1-B to the General Framework Agreement, which aim to promote a permanent reconciliation between all Parties and to facilitate the achievement of all political arrangements agreed to in the General Framework Agreement.

One of the strengths of the Dayton Agreement in shaping the political system of Bosnia and Herzegovina is the establishment of peace in the Balkans, the return to normal of socio-political life and the immediate cessation of conflicts of all kinds.

However, the Dayton Agreement is also a short-term document because other than delivering the conditions for a return to peace, it leaves everything else about the political organisation of the entities within Bosnia and Herzegovina entirely open. In this way, and in the light of its heavy emphasis on the ethnicities of peoples within the entities, while it has ended the violence, it has yet to win the peace.

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## **The Dayton Agreement and social reform: *Omne principium difficile est***

### *Abstract*

*The Dayton Agreement rests on the principle of establishing a self-sustaining system that respects the multinational and multiconfessional structure of the population of Bosnia and Herzegovina, composed of entities with independent constitutive, legislative, executive and judicial functions. The organisation and functioning of the constitutionally-determined institutions of power in BiH is based on the constituent nature of the nations, enclosed in amendments to the entity constitutions made after the 2000 Decision of the Constitutional Court on the Constituency of Peoples, which regulate representation and the manner of the protection of the interests of the peoples. This article proceeds from the point that vital discussion on constitutional regulation is leading to a marginalisation of the discussion on harmonising domestic legislation with the EU acquis, conditio sine qua non in terms of fulfilling the requirements of the Stabilisation and Accession Agreement, not least in the area of labour law, and gaining admission to the EU. Above all, society is only changed through reform in which – panta rei – everything flows.*

**Keywords:** Dayton Agreement, constitutions, constitutional courts, social reform, labour law reform

### *Introduction*

The General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement after the city of Dayton, Ohio, where it was agreed in November 1995), contains the constitution of BiH in its Annex 4. The constitutional organisation of Bosnia and Herzegovina was an important topic of the negotiations that lasted over four years and it was an element of all the peace plans – Cutileiro, Vance-Owen, Owen-Stoltenberg, the Contact Group and, eventually, the Dayton Agreement which had been developed during the war. The negotiations offered models of civil authoritarian state, cantonal state, regional state and a republic. Considering the reality and the possible functioning of a state model, it was decided that the first two of these (civil authoritarian and cantonal state) be discarded and the constitution should be built on the basis of a model of a republic and regions which was reflected in the two entities proposed in Dayton (Kuzmanović 2012: 17).

The Dayton Agreement rests on the principle that it is necessary to establish a self-sustaining system that respects the multinational and multi-confessional structure of the population, composed of entities with independent constitutive, legislative, executive and judicial functions.



## Framing the debate

According to the principles agreed in Geneva under the auspices of the Contact Group, prior to the Dayton Agreement, Bosnia and Herzegovina was to be composed of two entities, Republika Srpska and the Federation of BiH. Republika Srpska is a single and indivisible entity while the Federation of BiH is a decentralised entity with ten cantons – as envisaged by the Washington Agreement signed prior to Dayton – five with a majority Bosniak population, three with a majority Croat population and two with a mixed Bosniak/Croat population.

It is not easy to ascertain the nature of the Dayton Agreement not least since it is not a product of national sovereignty but the result of a peace contract and the political wills of international and domestic political representatives. The legal effect of the Dayton-originated constitution of BiH does not derive merely from civic and national elements but also from other principles of specific constitutional regulation – ethnic and territorial; a mixed composition of state bodies composed both of locals and foreigners; a right of representation and a national-territorial key; majority decision-making with a right of veto; and the basic principles of capitalist organisation which yet calls for the observance of social rights (Orlović 2017: 296). The internal difficulties (a loose compromise and the lack of comprehension of the precise nature of a complex political community of three constituent peoples) alongside the external ones (the illegitimate and unconstitutional meddling of the international community), indicate that the organisational order of post-Dayton BiH may be defined by a three-fold perspective – elements of federal (state-legal) and confederal (international-legal) on the one hand; and an international protectorate (political) on the other (Petrov 2018: 145).

The organisation and functioning of the constitutionally-determined institutions of power in Bosnia and Herzegovina is based on the constituency of the nations as a basic characteristic. This was embodied in the amendments to the entity constitutions which were required as a result of the Decision of the Constitutional Court on the Constituency of Peoples in 2000.<sup>1</sup> These amendments regulate the representation of the peoples and the manner of the protection of their interests in the institutions set up within the entities and the cantons. Changes to the entity constitutions were made in 2002, after the intervention of the High Representative, with the aim of establishing the equality of the three peoples on the whole territory of Bosnia and Herzegovina. The entity constitutions were then changed in such a way that the constituent peoples, citizens and others, may participate in power without discrimination. Furthermore regulations on the distribution of power, including vetoes based on vital national interests, were introduced in the entities and cantons similar to the regulations applying to BiH's state-level institutions. Rules which evenly shared the most prominent positions among the constituent peoples were introduced into the entity constitutions and the representatives of the three peoples were accorded a strong constitu-

1 Partial decision regarding the Constitution of Republika Srpska and the Constitution of the Federation of BiH, brought in a session of the BiH Constitutional Court on 30 June and 1 July 2000; U-5/98.



tional blocking position in different units, even in areas where they represent a very limited number of voters (Venice Commission 2005).

This notable Decision of the Constitutional Court stated that, under the circumstances of a multinational state, representation and participation in governmental structures – not only as the right of individuals belonging to particular groups as such but also of ethnic groups, in the sense that those rights are collective ones – do not violate the fundamental precursors of a democratic state. The preamble of the BiH constitution was thus given normative significance, listing Bosniaks, Serbs and Croats as constituent peoples, in contrast to the widely-accepted position that the preamble to a constitution does not have normative character. This had been the position in the previous, single-party, socialist system in which Bosnia and Herzegovina was not Serb, Bosniak or Croat but, at the same time, all of them and others altogether.

The most senior institutions of Bosnia and Herzegovina – the Parliamentary Assembly and the Presidency – function in such a way that the representation of the entities or the constituent peoples is quantitatively regulated in advance, as is the manner of the protection of the interests of the entities and the vital interests of the constituent peoples, along with the principle of the rotation of the Chair. Constitutional norms, including norms on the manner of protecting the interests of the entities and peoples, may be applied and changed in a way that the collective rights defined by those regulations are protected.

In legal analysis, the starting point is that there is no deadline for the implementation of the constitutional regulations of Annex 4, just as there is no deadline for the implementation of the Dayton Agreement. It is not possible, normatively or otherwise, to foresee in advance a timeline for the application of constitutional norms in a multinational, sovereign and democratic country, as Bosnia and Herzegovina is defined in the Dayton Agreement.

The functioning of the institutions in line with the regulations on the protection of vital national interests and the protection of the entities has been a topic of a number of discussions in parliament as well as an ongoing discussion in legal circles since the start of Dayton. Different approaches on how to regulate the organisation, composition and functioning of the institutions show that inter-relations between the peoples, i.e. the entities, are observed as an issue of ethnic and civic reality. The discussions have surfaced a number of different positions, from seeking cooperation and compliance from peoples and entities in accordance with Annex 4 to the opposite demand to give up those regulations, eliciting the question of how to secure Bosnia and Herzegovina's functioning as an independent and democratic country.

The essence of these differences, as shown by surveys, is the different perception of Bosnia and Herzegovina from the individual perspective of each of the three peoples. Here we can find significant differences: for Bosniaks, it is a divided, multi-ethnic European state of three constituent peoples; for Serbs, it is a country of three constituent peoples under the surveillance of the international community; and for Croats, it is a divided state of three constituent peoples under international supervision (Skoko 2011: 66). The internal problems of the two entities – political, economic and social – and, on top of that, intolerance between the three ethnic groups

(each believing that it has been discriminated against) is an indicator that struggle between the ethnic groups is still a present factor and that the conflict is not yet completely over (Blajs 2017: 75).

Nevertheless, discussions on that and the other issues relating to the implementation of Dayton are vital since, as has been mentioned in theoretical texts on the importance of the principle of discussion, if the participants in a discussion do not agree about anything, there still remains one thing that binds them and that all deem fundamental – that is, the essential questions themselves to which they are giving different, opposing or exclusive answers. Different answers to the same question should not be a basis for conflict but a reason for discussion and understanding (Šušnjić 1997: 80).

The downside to the series of conversations on issues relating to the organisation and manner of decision-making in the institutions is that it shifts the attention away from the question of how to fulfil the criteria for admission to the EU. This is critical *per se*, regardless of the dynamics of integration, since its effect is to marginalise the important discussions on the Copenhagen criteria set long ago to judge an applicant country's readiness for membership of the EU: how to harmonise local laws with the EU *acquis*; on the political criteria (stable institutions guaranteeing democracy, the rule of law and the protection of minorities); and on the economic criteria (a functioning market economy able to cope with competition). Despite the efforts to make the 'European perspective' more concrete, Balkans peoples have not been adequately presented with the advantages of EU membership; people have the impression that it is all about the political commitment of the institutions and that accession to the EU will have little effect on their personal, economic and social position. Such an impression is very real (Gori 2007: 144).

A major commonality between the process of transition of the EU – which is also taking place – and the process of the transition of the Balkans is that they are running in parallel, on both a formal and a real plan. The formal plan relates to adopting laws and creating a legal framework for the establishment and creation of institutions, formal procedures, etc. The real plan relates to the real, everyday life of people, the proper functioning of the system, the precise power of the institutions and the dynamics of economic and technological development, as measured by the quality of life of ordinary people. Obviously, processes within the formal plan may go easier and more efficiently in both cases of transition. This is, however, particularly noticeable when it comes to the transition countries of the Balkans. There is also quite a distinguishable discrepancy between the norm and the reality compared to EU countries (Marinković 2012: 85).

Admission of BiH to the EU is not a sufficient motor for changes, nor is it a sufficiently strong magnet that would compel people to make concessions to others, or concede their own particular interests to the benefit of ones that are held in common (Skoko 2011: 74). The counterpart to the idea that candidacy for admission to the EU is fundamental to resolving internal relations and achieving constitutional (re)composition is that the Dayton system has been functioning for decades and the country's development has been following the development of other countries in the region of the western Balkans. Fitting into European standards has been an ongoing process from the outset of Dayton and this only shows that Dayton is being upgraded and not

cancelled; thus, the so-called European (Brussels) stage is merely a logical continuation: Dayton and the Brussels stage are not mutually contradictory (Kuzmanović 2012: 22).

This article starts from the assumption that Annex 4 of Dayton – setting out the constitution of Bosnia and Herzegovina – represents a beneficial basis for the functioning of the institutions both within the EU Stabilisation and Accession Process and outside of it.<sup>2</sup>

### Protection of the interests of the entities

Protection of entity interests in the BiH Parliamentary Assembly is achieved through the voting procedures in the House of Representatives, while the representation of the entities there is protected in the way of the (s)election of deputies who are elected within each entity acting as a discrete electoral unit. Deputies are elected according to the constitutionally-determined quantitative representation of each entity in the House which leads to the question of how to protect the interests of a ‘minor’ entity in terms of the potential for being outvoted. The application of legal norms in the behaviour of citizens depends on their relationship towards those norms which is, in turn, formed based on whether the norms respect the position found in wider public opinion. The precondition for this is that the norms have been brought in as part of a democratic procedure. Regarding legislation by BiH institutions, this primarily refers to whether they were adopted through compliance or were imposed (Mirjanić 1996: 98).

According to the principle of one person one vote, in line with the constitutions of the entities, given that the entities are electoral units, deputies are elected to the National Assembly of RS and the House of Representatives in the Parliament of the Federation of BiH, all according to the Election Law brought in at the level of Bosnia and Herzegovina as a whole.

Decisions in the House of Representatives of the BiH Parliamentary Assembly are reached where there is a majority of the total number of deputies, as long as this encompasses one-third of the votes of deputies from each entity. If such a majority is not there, the chair and the deputy chairs attempt to reach compliance within three days; if they fail, a decision may be reached by a majority provided that the votes against do not include two-thirds (or more) of the deputies elected from one of the entities. These entity-based voting measures make it possible that deputies from one entity are not simply outvoted, i.e. that the deputies representing one nation or one entity do not get outvoted on the basis of weight of numbers by deputies from the other nation(s) or the other entity. The importance of these entity-based requirements is underlined by data on the ethnic composition of the House of Representatives after

2 Editor’s Note: The following two sections of this article do not go into significant detail about what Annex 4 of the Dayton Agreement says about the design of the constitutional institutions of BiH. If such detail is required, the reader is directed to the article by Slobodan Petrović in this issue of the *SEER Journal*.

the parliamentary elections of 1996 and data on the ethnic structure of the population in the entities obtained in a census.<sup>3</sup>

A number of reforming laws and laws introducing new institutions into BiH and regulating their authority have been brought to the BiH Parliamentary Assembly in the past decades.<sup>4</sup> The system of voting in the House of Representatives is, *per se*, not an obstacle to the adoption of laws; as a rule, difficulties are caused by the differing or conflicting interests of the entities; for example different interests in respect of the financial costs of new BiH institutions.

With the aim of providing equal representation of all peoples in the executive positions, there is a rotation of office-holders regarding the chair and the two deputy chairs in the two chambers (the House of Representatives and the House of Peoples) of the BiH Parliamentary Assembly.

Rotation in the three-member Presidency of BiH, as a collective body, enables the representatives of all the constituent peoples equally (in terms of time) to perform the functions of a president. The composition of the Presidency corresponds to the entity structure of the country and the ethnic structure of the population since the members of the Presidency are, likewise, elected on the principle of one person one vote within an entity as an electoral unit.

Protection of entity interests in the Presidency is similarly regulated and secured through the manner of the voting procedure. The Presidency adopts decisions by consensus and, if this fails, a decision may be adopted by two members of the Presidency. A member of the Presidency who departs from the consensus may proclaim the decision destructive to the vital interests of the entity/territory where he/she was elected within three days of the adoption of the decision. Such a decision is immediately forwarded to the National Assembly of Republika Srpska, if the statement was made by the Serb member of the Presidency; to the Bosniak delegates in the House of Peoples of the Federation of BiH, if the statement was made by the Bosniak member; and to the Croat delegates of the House of Peoples, if the statement was made by the Croat member. In the Federation of BiH, the protection of the interests of the entity and of the peoples is merged as only the Bosniak or Croat delegates may express compliance or non-compliance. If non-compliance is confirmed by a two-thirds majority of the appropriate delegates within ten days, the disputed decision of the Presidency has no effect.

In the past period, however, the number of disputed decisions of the Presidency is negligible in comparison with the total number of decisions made; the regulation on the protection of entity interests has actually been used only rarely.

The inability of 'others' and citizens who do not belong to either of the constituent peoples to participate in the election process for a member of the Presidency

3 Data on the composition of parliaments is available on the website of the BiH Parliamentary Assembly ([www.parlament.ba](http://www.parlament.ba)); while data on the population is on the website of the BiH Agency of Statistics ([www.bhas.ba](http://www.bhas.ba)).

4 Institutions such as the State Border Service, the armed forces, the State Investigation and Protection Agency (SIPA), the Indirect Taxation Administration, etc, some of which were imposed by the High Representative.

and for delegates in the House of Peoples of the BiH Parliamentary Assembly is discrimination which violates the European Convention for the Protection of Human Rights and Fundamental Freedoms, according to the decision of the European Court of Human Rights in Strasbourg.<sup>5</sup>

#### Protection of the interests of the constituent peoples

The protection of the interests of the constituent peoples within the House of Peoples is connected to the protection of entity interests in the House of Representatives of the BiH Parliamentary Assembly since all legislative decisions have to be approved in both chambers. Protection of the interests of the constituent peoples in the House of Peoples is based on equality in the number of delegates and, again, on the decision-making procedures in place.

Decisions in the House of Peoples are brought by majority vote that must include at least one-third of delegates from each of the peoples. If this should not be the case, the chair and the deputy chairs try to reach agreement within three days of the vote. If they fail, a decision may be reached by majority vote provided that the votes against do not include two-thirds (or more) of the deputies elected from one of the entities.

A proposed decision may be proclaimed destructive to the vital interests of the Bosniak, Croat or Serb people by majority vote of the Bosniak, Croat or Serb deputies. If a majority of the Bosniak, Serb or Croat delegates call upon this clause, the Chair immediately convenes a joint commission. If this harmonisation procedure does not succeed within five days, the issue is transferred to the Constitutional Court which decides under its urgent procedures on the procedural regularity of the case.

The Constitutional Court, however, in its deliberations on such cases, has also been deciding whether the issue, in essence, may be considered an issue with the character of being vital to a national interest and only after that whether the disputed decision was truly, in the round, destructive of that interest. Thus it has put itself in the position of a subject deciding on the content of the vital national interest instead of the delegates in each specific case (Ožegović 2018: 388).

According to the opinion of the Venice Commission (2005), the most significant mechanism ensuring that no decision can be brought against the interests of any constituent people is a veto based on vital interests. However, the BiH constitution does not define what constitutes a veto based on vital interests, unlike the entity constitutions that do give such a definition, albeit ones that are overly wide.

The entity constitutions regulate the protection of the interests of the constituent peoples by prescribing the manner of decision-making in the entity Houses of Peoples. In addition, the representation of the peoples is regulated by there being an equal number of delegates from each of the peoples elected to the House.

After the changes and amendments to the constitutions, legislative power in Republika Srpska lies with the National Assembly and the House of Peoples. Laws and

5 In the case of *Sejdić and Finci vs Bosnia and Herzegovina* (*Aplikacije br. 27996/06 i 34836/06* Evropskog suda za ljudska prava); verdict handed down on 22 December 2009.

other regulations brought by the Assembly that deal with the vital national interest of some of the constituent peoples come into force only after adoption in the House of Peoples (Article 69(2) of the Republika Srpska constitution, amended by point 1 of Amendment LXXVI). The parity composition of the House is reflected in the constituent peoples each having eight members while others have four members with the right to participate equally in a majority vote procedure. Members of the House of Peoples are elected by caucuses in the National Assembly that are composed on the basis of ethnic affiliation (Article 71(1) of the constitution, replaced by Amendment LII).

The House of Peoples in the Federation of BiH has parity composition such that each constituent people has seventeen delegates while there are seven delegates from others, who have the right to participate equally in the majority voting procedure (Article 6 of the constitution of the Federation of BiH).

The constitutional courts of the entities each have a council for the protection of the vital interests of constituent peoples, which is not the case with the Constitutional Court of Bosnia and Herzegovina. These councils were introduced in the entity constitutions through amendment to deal with an issue which is not recognised under the BiH constitution. In the Constitutional Court of BiH, entity representation is secured but the way of making decisions is not determined other than via simple prescription.

It seems legitimate that the issue of the protection of the vital interests of the constituent peoples should be raised at this level, especially as a result of the competencies given to the Constitutional Court. In Court practice, however, there have been cases of the outvoting of judges of one or two constituent peoples from one or both entities, with the support of the three international judges. The BiH Parliamentary Assembly may bring a law that defines a different way of electing these three judges; such a law has not been brought although several formal legislative proposals have been made. That judicial functions in the Constitutional Court have been carried out by foreigners for more than 25 years now shows that there are different attitudes towards how the Dayton definition of BiH being an independent and sovereign state may actually be realised.

#### Reforms on the road to Europe and a reflection on the reform of labour law

Annex IV of the Dayton Agreement establishes a constitutional basis for the implementation of reform as well as a framework for cooperation between, and the co-ordination of, the institutions of power in the process of stabilisation and accession, seeking reforms in the field of law, social policy, the economy, etc. This is a long-term process with the participation of institutions at various levels, according to the agreed mechanisms of coordination. However, such issues do not attract as much attention from the interested public as regulations on the protection of the interests of the peoples and the entities in the BiH institutions. This is in spite of the European road depending, first and foremost, on the quality and speed of the implementation of reforms. At the same time, surveys do show that the majority of citizens support the participation of BiH in the European integration process, leading to the establishment of a society with respect for pluralism, non-discrimination, tolerance, justice and sol-

identity – the basis of the EU's values as expressed in Article 2 of the Treaty on European Union, as amended at Lisbon in 2007.

The manner of decision-making in the BiH institutions may have a partial impact on the speed of implementing reform since the issues of most significance for economic, social and legal reform fall mainly within the competencies of the entities. Nevertheless, along with regulated legislative authority, there is a conflict between two tendencies: a trend towards the centralisation of legislative activity through constitutional amendments or gradual 'evolution'; and trends towards preserving the legislative authority of the entities (Mirjanić 2012: 88). In the same way, differences on how to define coordination in the Stabilisation and Accession Process reflect different approaches to the functioning of the institutions. A reasonable invitation has thus consequently been sent to all levels of authority in order to secure the efficient implementation of a coordination mechanism to secure communications and to reach a joint position and joint solution regarding European integration issues (European Council 2019). The coordination mechanism determines a system in which the activities of the various institutions could be coordinated towards the process of EU integration as well as the establishment of joint bodies within the system along with procedures for their composition, competence and mutual relations.

Economic and social organisation rests on the market economy and the free movement of goods, labour and capital in which the goal of economic and social policy is to stimulate economic development and expand the social well-being of citizens, in spite of the social consequences of the 'tragic conflicts in the region' and the unfinished transition. Unemployment is a central problem of modern society. With high unemployment, resources are scattered and people's income dissipated. In such times, economic troubles hit peoples' feelings and their family lives (Samuelson and Nordhaus 1992: 574). By attaining security in terms of working and living conditions, the initial but also the most important element of the human security system is created. We cannot speak of a free individual, nor can he/she feel free, if they are not able to realise their own social security. In contrast, the realisation of social security means, in fact, the realisation of the right to live and to develop, the right to self-realisation and the acknowledgement of other rights and freedoms (Šunderić 2003: 55).

Within international labour law, the tendency towards socially-inspired changes which bend economic development to the ideas of justice and freedom, as security for the benefit of all, is increasingly present. 'Social Europe' points to the need to guarantee the realisation and protection of social rights by means of socio-economic cohesion and solidarity. Without these rights in a community with economic rights, other human rights cannot be realised or implemented (Bogićević 2003: 121). Employment cannot be shrunk to the issue of the mere provision of social security: to have a job in modern society is important for self-respect and, even when working conditions are not particularly pleasant, and the work itself is boring, it nevertheless becomes a constitutive element in peoples' psychological profile and provides a framework for their everyday activity (Giddens 2007: 379).

An important element in social and legal reform is changes to the labour legislation. We could ask what impact the division of competences between the entities and



the manner of regulation has on the function of labour legislation to promote social justice, achieve a positive impact on economic change and contribute to social stability and the reduction of social conflict (Mirjanić 2003: 110). The current stage of development of labour law is based on the concept of a social market economy and changes to the world of labour under the influence of neoliberal globalisation. The idea of globalisation as an organised, gradual historical process of establishing a global community under the auspices of international law, including international labour law, is qualitatively different from the idea of neoliberal globalisation that started in the 1980s (Mirjanić 2018: 71-76).

Harmonisation of the labour legislation in the entities with that of the EU is *conditio sine qua non* in terms of fulfilling the obligations under the Stabilisation and Association Agreement (SAA) put in place with Bosnia and Herzegovina. In this respect, signing the SAA means that certain obligations have been accepted such as the gradual harmonisation of the legislation with the EU *acquis* in the field of working conditions, health and security at work (Article 77 SAA) and developing the cooperation of the contracting parties with the aim of strengthening the rule of law and institutions at all levels, but particularly in the implementation of laws and the execution of court verdicts (Article 78) (Mirjanić 2014: 133).

Furthermore the constitutional regulation that the highest level of internationally-recognised human rights and basic freedoms shall be secured in BiH is important in the legal regulation of rights and obligations in the field of labour relations. This regulation essentially provides an instruction that international labour standards be built into the domestic labour legislation. Economic and social rights are important in regulating labour relations as they form a basis for the development of labour legislation according to European and international standards (Mirjanić 2017: 194). The BiH constitution and its Annex I, set out at Dayton, highlights that a number of international human rights agreements are to be applied, the most prominent among them, in terms of the regulation of labour relations, being the European Convention for the Protection of Human Rights and Fundamental Freedoms, expressly listed in Article II of the constitution; while Annex I lists, among the 'additional' international documents to be applied, the 1966 Covenant on Economic, Social and Cultural Rights and the 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (Mirjanić 2003: 112).

## Conclusion

Bosnia and Herzegovina is defined as a sovereign and democratic country in the Dayton Agreement and changes to the constitutional regulations are permitted in a democratic procedure in the Parliamentary Assembly in a way that respects the political will of the peoples and citizens. Disrespecting the real will of democratically elected representatives, along with foreign interventions, creates the possibility of these regulations being changed against the will of the people and citizens. Considering that members of the European Union must be sovereign and democratic countries, one may ask how the candidacy of BiH looks from the standpoint of the EU where the High Representative is acting as a replacement for democratically-elected



institutions of power, independent of any consideration of how efficient they actually are.

In addition we can say that, according to Article 49 of the Treaty on European Union, a request for membership may be submitted by a European country that respects the values of the Union set out in Article 2. Annex IV of the Dayton Agreement (the constitution of BiH) contains a legal framework that enables the participation of the country in the process of EU integration and the implementation of reforms. However, success depends on the willingness of the EU to respect the importance of protecting the interests of the peoples and entities and to have a position that resolving the relations between the peoples, i.e. the entities, is an internal issue.

Continued discussion of constitutional regulations is, however, leading to a marginalisation of the discussion on harmonising domestic legislation with the EU *acquis*, the rule of law, basic freedoms and other important social problems. We tend to forget that society changes only through reform, i.e. that everything may change and that everything is in a state of flux: *panta rei*.

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Dimitar Nikoloski

## Material deprivation and employment status in post-transition: Evidence from North Macedonia<sup>1</sup>

### Abstract

*Poverty and social exclusion are often associated with unemployment, but being employed is not always sufficient to provide decent living conditions for workers and their families. In this context, the aim of this article, drawing on SILC micro data, is to assess the underlying causes of severe material deprivation in North Macedonia from the point of view of employment status, particularly the differences between employed and unemployed workers. The results show that employed workers face a much greater risk of severe material deprivation if they are positioned in the so-called secondary labour market; while the unemployed with low capital accumulation and those living in households with low work intensity face the highest risks of all. North Macedonia's adjustment mechanisms do help cushion the consequences, but the article concludes with several policy recommendations for additional action to reduce severe material deprivation covering: education and training; active labour market policies; unionisation and collective bargaining; wage subsidies and taxation; and a statutory minimum wage.*

**Keywords:** material deprivation, labour market, employed, unemployed, low pay, in-work poverty, collective bargaining

### Introduction

Poverty and social exclusion are often associated with unemployment, but being employed is not always sufficient to provide decent living conditions for workers and their families. 'Low wage' workers, similarly to the unemployed, are often associated with an image of men and women struggling to support their families and living on the edge of poverty and social exclusion. The Republic of North Macedonia is positioned among those European countries with the lowest level of workers' wage compensation and, consequently, it scores on average much lower regarding indicators of poverty and social exclusion *vis-à-vis* more developed EU countries. In these circumstances, it is a challenging task to reveal the potential implications of unemployment compared to low-paid employment for the various poverty indicators including material deprivation.

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Apart from creating hardship for workers and their families, unemployment as well as low-paid work imposes a financial burden on countries' welfare systems. The costs of improving the living conditions of vulnerable segments encompass unemployment benefits, the costs of activation programmes and social assistance as well as other cash transfers. In addition, the administration of all these programmes requires a complex system of social assistance which is associated with sizeable government spending. For instance, the current social assistance system in North Macedonia is fragmented, consisting of many types of programmes rather than one single comprehensive one, while the total spending on social assistance is about 1 per cent of GDP (Petreski and Mojsoska-Blazevski 2017).

Most former socialist countries have substantially reduced the initially high levels of unemployment they experienced after transition but, during post-transitional development, they are still struggling to attain satisfactory wage levels. Decent work means opportunities for everyone to find work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration. Since wages represent the most prominent determinant of household well-being, relatively stagnant real wages compared to more developed European countries have been considered as an important factor in the high and persistent rates of poverty and social exclusion in these countries. Therefore, sub-optimal labour market outcomes in post-transition are generally the result of the initially high unemployment followed by the sharp decline in real wages which have remained stagnant despite the subsequent reduction in unemployment. In other words, post-transition can be distinguished as a specific period of development in which the transitional recession has had long-lasting economic and social implications even after its formal termination.

In this context, the aim of this article is to assess the underlying causes of severe material deprivation in North Macedonia from the point of view of employment status, particularly the differences between employed and unemployed workers. Despite the existence of a large body of literature on wage determination, income inequality, various aspects of employment structure and labour market segmentation, no studies up to now have specifically addressed the interplay between employment status and material deprivation in North Macedonia regarding the identification of the profile of that part of the population which is materially deprived.

The article is structured as follows. First, we outline the main context of the research followed by a presentation of the data and the sample used for this analysis. The next section presents the results of our empirical analyses before the final section concludes and summarises the main policy recommendations.

### Research context

One of the most important development goals of economic policy is that of full, productive and sustainable employment, i.e. employment for all those who are able to work, who wish to be employed and who are actively looking for a job. This is why the United Nations included the goal of full employment, decent work for all and economic growth among its Sustainable Development Goals (SDG8). The commitment to decent work opportunities becomes even more pronounced in the case of

former transition economies where economic shocks have contracted the level of employment and redistributed wealth (Nikoloski 2009). Bearing in mind the social implications of persistent open unemployment, manifested in rising poverty and social exclusion, all transition countries have placed unemployment reduction since the outset of the transition among their most important macroeconomic goals.

However, the overall well-being of the population is determined not only by the level of employment but also by the general level of wage compensation from work. Besides the shortage of decent work opportunities, relatively low real wages are considered a source of poverty and social exclusion and are often referred to as 'in-work poverty' (Lohmann 2008; Halleröd *et al.* 2015).

Material deprivation refers to a state of economic strain and duress, defined as the enforced inability (as opposed to the choice of not doing so) to pay unexpected expenses; afford a one-week annual holiday away from home; prepare a meal involving meat, chicken or fish every second day; heat a dwelling adequately; have durable goods like a washing machine, colour television, telephone or car; or being confronted with payment arrears (mortgage or rent, utility bills, hire purchase instalments or other loan payments).

According to the OECD glossary, material deprivation refers to the inability of individuals or households to afford those consumption goods and activities that are typical in a society at a given point in time, irrespective of people's preferences regarding these items. The analysis of material deprivation stems from the need to complement a purely monetary understanding of poverty by considering poverty as a multi-dimensional phenomenon. Nevertheless, the level of material deprivation is, to a great extent, related to the amount of income that a household has. Complemented with macro factors, this plays an important role in determining the incidence of material deprivation in a country and as regards specific income groups (Bárcena-Martín *et al.* 2014). Hence, in contrast to relative poverty indicators, we should anticipate that it is not a household's income position in relation to the rest of the population but the heights of its income in absolute terms which will be important regarding its ability to afford basic goods and services.

Furthermore, measures based on income are 'input' based methods or which embody an 'indirect approach' of how these inputs are used to achieve a certain level of well-being. Measures focusing on 'outcomes' or a 'direct approach' concentrate on the actual standard of living of people and not on the means available to achieve a certain level of well-being. The final conditions of individuals can differ between people with identical resources depending on needs, health conditions, social networks or other personal constraints and abilities (Eurostat 2009; Eurostat 2012).

In addition, it is worth mentioning that material deprivation is understood as the 'enforced absence' of certain goods that a household would like to possess but which it cannot afford due to the lack of resources. Therefore, differences in the availability of or preferences for certain goods are excluded from the definition of deprivation. An important reason for the EU to include material deprivation in its indicators is that it offers a way of taking into account the different living standards among various countries, particularly between the EU-12 and the new member states. Namely, if only relative national poverty thresholds were considered, the risk of poverty would

seem to be rather similar among EU countries, masking the significant difference in living standards among the population (Stávková *et al.* 2012).

Persistent material deprivation among certain segments of the population can be partly attributed to the prevailing segmentation of the labour market. According to this theory, labour market segments can, to some extent, operate independently because the jobs and workers in each segment are matched according to particular conditions on the demand and supply sides (Cain 1976). On the supply side, labour market segmentation occurs as a result of differences among workers such as age, gender, level of education, skills, professional preferences, etc. On the demand side, segmentation refers to the characteristics of jobs such as: stability, the wage level, required level of skills and education, etc. Furthermore labour market segmentation can be differentiated according to various attributes of the labour market. According to dual labour market theory, labour market segments are differentiated by stability characteristics. In this context, the primary sector is characterised by a higher level of wages, health benefits and pensions, as well as a higher level of job security. On the other side, the secondary sector is characterised by low wages and a lower level of job security with jobs requiring low-skilled workers and relatively little training. Moreover, primary jobs are rationed which means that not all workers who are qualified for primary sector jobs, and who desire one, are able to obtain one (Reich *et al.* 1973).

The existence of labour market segmentation in transition countries has already been the subject of empirical assessment. For example, Pailhé (2003) has found that the allocation of labour in central European labour markets during the first years of transition differs from one segment to another. According to this author, labour market segmentation results from the growth of market uncertainty, a combination of new formal institutions and the presence of old informal institutions. In addition, by using flow analysis, Lehmann and Pignatti (2007) identify the existence of a segmented labour market in Ukraine. They identify that most workers try to enter formal employment as the most attractive option and seem to use unemployment and informal employment as waiting stages for entry into formal employment. The peculiarities of the transitional context contribute to specific features of poverty, including the existence of poverty even among households with employment (Brück *et al.* 2007). In this context, alternative adjustment mechanisms have emerged in less developed transition countries alongside traditional forms of adjustment. These alternatives include mechanisms such as employment in the informal sector, inactivity and emigration (Nikoloski and Pechijareski 2017).

This problem is not only a personal problem for the people who experience it, but it has become a problem for the economy as a whole since labour market segmentation has adverse effects on social stratification. Hence, dealing with the social stratification engendered from the employment status of workers in post-transition countries represents a challenging task for academics and policy-makers alike. Most of the policy measures undertaken by governments in these countries are based either on the reduction of extensive payroll taxes, improvements in the social dialogue, the attempt to establish a balance between the adjustment flexibility of employment and income security for workers or the placement of increased emphasis on active labour

market programmes (Cazes and Nesporova 2003). However, not all post-transition countries have successfully coped with the problem of labour market segmentation. In this context, western Balkan countries, including North Macedonia, also called ‘lagging reformers’, are still facing significant reform challenges.

The unemployment rate in North Macedonia has marked a continuous decrease during the last decade, but it continues to be one of the most pressing social problems. In this context, advocates of greater labour market flexibility consider flexible wage setting as an opportunity to fight persistent unemployment but neglect the deteriorated conditions of those individuals located at the bottom end of the wage distribution. In these circumstances, it is the low-paid, low-skilled and less protected labour market segments that generally bear most of the burden in terms of both lower wages and the higher incidence of unemployment (World Bank 2015). In consequence, the labour market of North Macedonia is affected by strong segmentation meaning that certain social groups, such as young people, less skilled workers and women, face a higher risk of unemployment and inactivity than the rest of the labour force. The country’s high unemployment rate also has enormous social implications including rising poverty, income inequality and the social exclusion of deprived social segments (Nikoloski 2011).

## Data and sample

### *Survey on Income and Living Conditions*

This analysis draws on an examination of micro data from the Survey on Income and Living Conditions (SILC) whose main scope is to enable the compilation of statistics on income distribution as well as provide indicators of monetary poverty. This survey is conducted under regulations set down by the European Parliament and the Council<sup>2</sup> that include definitions; rules for the framework of the survey and the sampling frame; rules for monitoring households; lists of the main and secondary variables; and specific variables in terms of housing conditions, social and financial exclusion, material deprivation and other rules applied across all European countries (Eurostat 2010).

The advantage of SILC as a household survey consists of its extensive coverage as it captures earnings in both the formal and informal sectors and can account for the combined pay of individuals who have several jobs. Alternatively, since the data are collected directly from individuals in a household they have a higher measurement error than a survey based on company records (Lee and Sobeck 2012). Namely, due to the self-reporting character of SILC, the survey data may be affected by serious under-reporting.

The SILC project was launched in 2003, originally on the basis of an informal agreement reached between six EU member states (Belgium, Denmark, Greece, Ireland, Luxembourg and Austria) and Norway. The starting date for the EU-SILC instrument under the Framework Regulation was 2004 for the EU-15 (with the exception of Germany, Netherlands and the UK which had derogations until 2005) as well

2 Regulation EC No.1177/2003.



as for Estonia, Norway and Iceland. The remaining new member states (i.e. other than Estonia) started in 2005 (Eurostat 2007: 196).

SILC is conducted in accordance with international classification systems. The main classifications used are ISCED 2011 for levels of education; ISCO 08 for occupational categorisation; and NACE Rev.2 for economic activity.

The primary purpose of SILC is to establish a common framework for the systematic collection of data on income and living conditions. The survey is the basis for calculating structural indicators for comparative analysis at EU level, for laying the groundwork on which income redistribution policies might be based and for highlighting the manifestation of poverty and social exclusion. For instance, by using SILC data, statistical officials produce the 'Laeken' set of common European poverty indicators, called in line with their establishment at the European Council of December 2001.

The target population in SILC consists of all those in private households who are aged 16 years and over. The manner of conducting this survey makes it possible to monitor both households and individuals. Information on social exclusion and housing conditions is collected at household level while labour, education and health related data are obtained in respect of all individuals aged at least 16. Those living in collective households and institutions are excluded from the target population. The income and living conditions of a particular sub-set of the sample are observed for four years in order to obtain data on certain long-term indicators. The reference period for earned income is the 12 months of the previous calendar year.

#### *SILC in North Macedonia*

The State Statistical Office in North Macedonia conducted SILC for the first time in 2010 as a new source of data on poverty and social exclusion. The survey has been carried out continuously each year while the research on which this article is based focuses on the results for the period 2012-2015.

The sampling design for the survey consists of a stratified two-stage sample. In the first stage, it is based on a simple random sample from the population of primary sampling units. In the second stage, it is based on a simple random sample of secondary sampling units (households) by using random number generation. Stratification is done at regional level (eight regions of the country, in line with NUTS3) and the degree of urbanisation (urban or rural), resulting in a total of 16 strata. The sample size in 2015 was 5,115 households while in 2016 this was increased to 5,370 households. All regions by type of settlement are covered in proportionate to the target population. Therefore, the entire territory of North Macedonia is represented in the survey in line with its geographical representation.

All individuals aged 16 and over are categorised according to their most frequent activity status. The most frequent activity status is defined as the status that individuals declare to have occupied for more than half the number of months during the reference year. The categories of most frequent activity status are employed, self-employed, unemployed, retired and 'other inactive'. The distribution of household members by most frequent activity status for 2015 is presented in Table 1.



**Table 1 – Distribution of household members by activity status**

Status	Share (%)
Employed	25.0
Self-employed	8.3
Unemployed	16.3
Retired	9.3
Other inactive	23.0
People under 16	18.1

Source: State Statistical Office of the Republic of North Macedonia, SILC

In this context, the ‘employed’ are defined as individuals who work for a public or private employer and who receive compensation in the form of wages, salaries, fees, gratuities, payment by results or payment in kind. The current economic status of employed individuals in the sample is self-identified in line with individuals’ own perceptions of their main current activity. It is, in principle, determined on the basis of how most of their time is spent although no criteria have been specified explicitly. This differs from the International Labour Organization concept which is based on a strict definition. For instance, many people who would regard themselves as full-time students or homemakers may be classified as ‘ILO employed’ if they have a part-time job. Similarly, some people who consider themselves ‘unemployed’ may not meet the strict ILO criteria of taking active steps to find work and being immediately available for it.

The concept of ‘current’ implies that any definitive changes in the activity situation are taken into account. For instance, if a person has lost a job or has recently retired, or whose activity status has otherwise changed in a definitive manner, then the situation as at the time of the interview should be reported. In this sense, ‘current’ overrides any concept of averaging over any specific reference period. If the person combines different part-time jobs as an employee that result in the equivalent hours of a full-time job, the person should consider him/herself as an employee working full-time. In this context – and just to reiterate the concepts – ‘work’ means any work for pay or profit; while pay includes cash payments and payments in kind (goods and services rather than money).

#### Empirical analysis

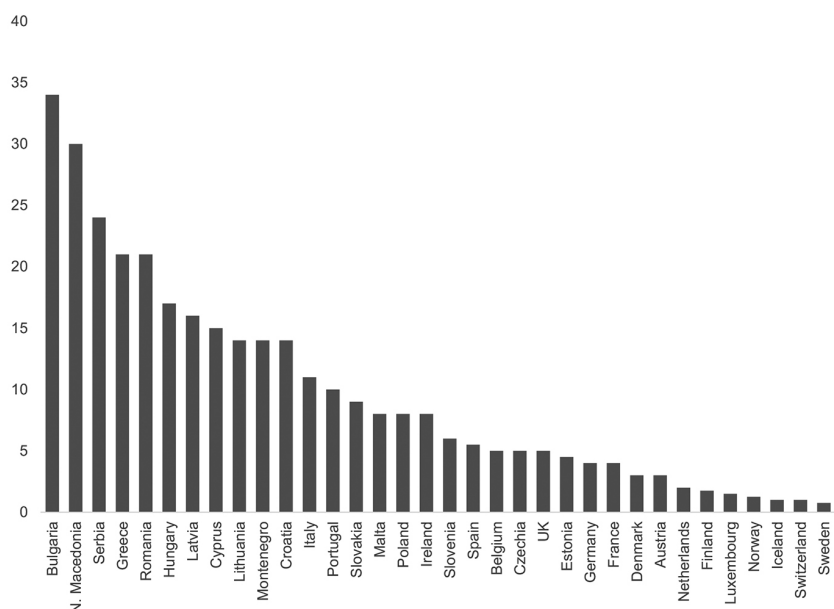
The material deprivation rate is an indicator within SILC that expresses the inability to afford some items considered by most people to be desirable or even necessary to lead an adequate life. The indicator distinguishes between individuals who cannot afford a certain good or service and those who do not have this good or service for another reason, e.g. because they do not want or do not need it. In the context of SILC, this indicator measures the percentage of the population that cannot afford at least three of the following nine items:

- a. to pay their rent, mortgage or utility bills
- b. to keep their home adequately warm
- c. to face unexpected expenses
- d. to eat meat or protein regularly
- e. to go on holiday
- f. to afford a television set; a washing machine; a car; and a telephone (each treated as separate items as regards the list).

The severe material deprivation rate is defined as the enforced inability to meet the cost of at least four of these items. In addition, the persistent material deprivation rate is defined as the enforced inability to pay for at least four of these items in the current year on top of at least two of them during the preceding three years.

The severe material deprivation rates for European countries are presented in Figure 1.

**Figure 1 – Severe material deprivation rates, EU-SILC (2015)**



From Figure 1 we can see that Bulgaria and North Macedonia, followed by Serbia, Greece and Romania, face the highest severe material deprivation rates. This suggests a need to supplement the income-based measure used to identify and monitor the risk of poverty and social exclusion across the EU with indicators of material deprivation. That there is a clear inverse link between the proportion of people who report being materially deprived and median levels of income per capita across countries gives an added reason for this, since such a move would help to overcome the

limitations of defining the income measure in relative rather than absolute terms when making comparisons between countries.

Certain problems are nonetheless present when using material deprivation as a poverty tool for comparative analysis. Namely, the presumption that the same list of resources is of the same relevance in all European countries seems questionable. While the usage of no preference weighting enables a cross-country comparison, it is assumed that the same set of standard goods is necessary to be an accepted part of society in all countries. However, given diverging living standards across Europe, the assumption that these goods and services assume exactly the same social importance throughout different countries does not hold. The lower the average level of disposable income in a given country, the sharper will be the consequences of an unfavourable socio-economic position since social stratification is more pronounced in countries with lower average disposable income.

The incidence of severe material deprivation among unemployed workers in North Macedonia is as high as 48.9 per cent, followed by low-paid workers whose incidence runs at about 36 per cent, while it is lowest among highly-paid workers whose incidence of severe material deprivation stands at 19.6 per cent. Regarding the relationship between income poverty and material deprivation, it can be emphasised that the populations identified as 'income poor' and 'severely materially deprived' do not perfectly overlap. In the case of North Macedonia, the proportion of people who are neither income poor nor deprived is 75.7 per cent. On the other hand, the proportion of individuals combining both income poverty and severe material deprivation is 4.2 per cent. Despite the link between income poverty and severe material deprivation, the profile of each of these groups is likely to be different (Gerovska Mitev, 2012).

We further assess the determinants of severe material deprivation by estimating a logistic regression model based on SILC data for 2015. According to the theory of labour market segmentation, the profile of the materially deprived should differ significantly among workers with different employment statuses. In this context, we consider employed and unemployed workers separately. The specification of the logistic regression model is as follows:

$$\text{logit}(E[Y_i|X_i]) = \text{logit}(p_i) = \ln\left(\frac{p_i}{1-p_i}\right) = \beta_0 + \beta_1 x_{1,i} + \dots + \beta_m x_{m,i} \quad (1)$$

where the dependent variable takes value '1' if the employee has been considered as severely materially deprived and '0' otherwise. As independent variables we consider a number of personal, household and employment status characteristics that are often cited as the most important micro-level determinants of material deprivation (Bárcena-Martín *et al.* 2014).

The individual explanatory variables are the following: Secondary and Tertiary (both reflecting level of education); (work) Experience; Sex; Marital status; Place of living; General health; and Chronic illness.

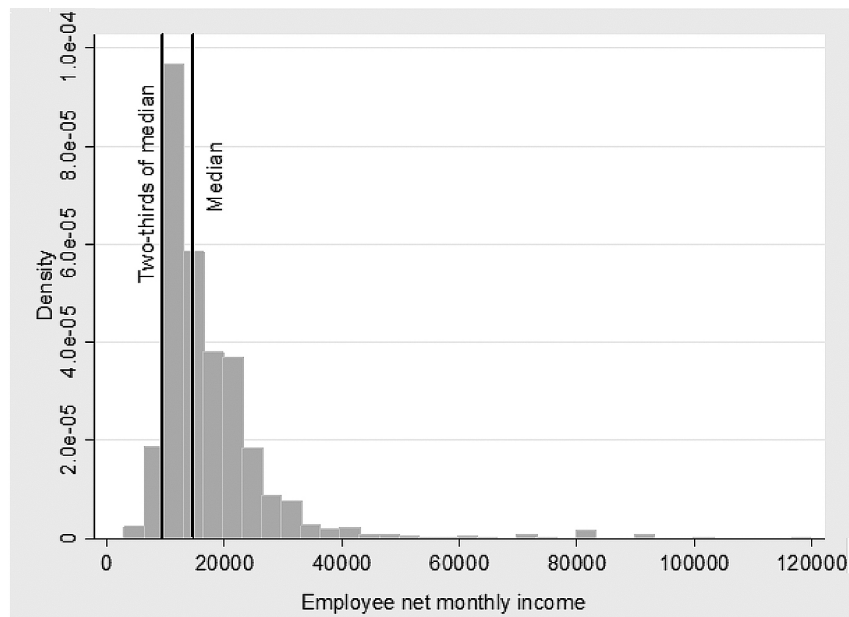
According to previous studies, the presumptions of human capital theory that higher education reduces deprivation and improves the life prospects of people are

strongly confirmed (Boarini and Mira d'Ercole 2006; Berthoud and Bryan 2011; Figari 2012). In our model we consider elementary education as a reference category while introducing dummy variables for secondary and tertiary education. Similarly, work experience increases workers' human capital and is likely to improve the living conditions of their household. Most studies find that women are generally more likely to rank as deprived than men although this gender gap remains largely unexplained (Halleröd *et al.* 2006). Marital status and place of living (urban/rural) have ambiguous effects on material deprivation although theory assumes a marital wage premium as a result of increased productivity due to the need to provide the necessary living conditions for the family. In addition, it can be assumed that people in poor health and/or having chronic illnesses are much more at risk of being materially deprived compared to other people.

The explanatory variables at household level are the following: Household size; Single adult household; and Number of dependent children. In this context, previous studies have found that people living alone and lone parents, as well as families with dependent children, are especially vulnerable to material deprivation (Boarini and Mira d'Ercole 2006). Here it might be that intra-household transfers play an important role in maintaining the well-being of the household: namely, in deprived households with one or more unemployed members, income from various sources can be distributed among all members of the household in order to satisfy basic needs (Nikoloski and Pechijareski 2017).

The work intensity of a household is the ratio of the total number of months that all working age members of the household have worked during the income reference year and the total number of months the same household members could theoretically have worked in the same period. The indicator of very low work intensity is defined as the number of people living in a household where those of working age worked less than 20 per cent of their total potential during the previous twelve months. Previous studies have shown that households with low work intensity face a higher probability of being in severe material deprivation (Mussida and Parisi 2019). Among employed workers we consider those who are low-paid by taking two-thirds of median income as the low pay threshold. The distribution of employees' net monthly income for 2015 is presented in Figure 2.

**Figure 2 – Distribution of employees' net monthly income in North Macedonia, 2015**



The results of the estimated logit model, together with the calculated differences in odd ratios for the sub-sample of the employed, are presented in Table 2.

**Table 2 – Estimated logit model for severe material deprivation among the employed**

Independent variables	Coefficient	p-value	Difference in odd ratio
Constant	-0.13442	0.791	
Secondary	-0.4562	0.321	
Tertiary	-1.6190***	0.001	-80.2%
Experience	-0.0127**	0.026	-1.3%
Sex (1= female)	-0.0770	0.486	
Marital status (1= married)	-0.2569*	0.082	-22.7%
Place of living (1= rural)	-0.2861**	0.011	-24.9%
General health (1= bad or very bad)	1.1150***	0.001	205.0%
Chronic illness (1= yes)	0.1703	0.481	

Independent variables	Coefficient	p-value	Difference in odd ratio
Household size	-0.0635	0.190	
Single adult household (1= yes)	0.3667	0.342	
Number of dependent children	0.0471	0.547	
Low work intensity	0.0622	0.608	
Elementary occupation	0.3914***	0.010	47.9%
Low-paid (1= below 2/3 of median)	0.6522***	0.000	92.0%

Note: \*/\*\*/\* indicate significance at the 10/5/1 percentage level respectively.

From Table 2 we can observe that being in poor or very poor general health doubles the probability of severe material deprivation, while being low-paid increases the probability of an employee being severely materially deprived by 92 per cent. Regarding educational attainment, those with completed tertiary education are some 80.2 per cent less likely to be under threat of severe material deprivation. An additional year of work experience reduces the incidence of severe material deprivation by 1.3 per cent while being married reduces this incidence by 22.7 per cent. Employees in rural areas are 24.9 per cent less likely to be affected by severe material deprivation. With respect to household characteristics, we do not observe a statistically significant impact on the incidence of severe material deprivation.

Similar to employed workers, the logistic regression model is estimated for the sub-sample of unemployed workers. As previously, the dependent variable takes the value '1' if the unemployed worker is considered as severely materially deprived and '0' otherwise. In this specification we additionally take into consideration the explanatory variables 'Ever worked' and 'Available to take a job' while excluding the occupation and low-pay status variables from the previous specification. The results of the estimated logit model, together with the calculated differences in odd ratios, are presented in Table 3.

**Table 3 – Estimated logit model for severe material deprivation among the unemployed**

Independent variables	Coefficient	p-value	Difference in odd ratio
Constant	2.2558	0.001	
Secondary	-1.4781***	0.007	-77.2%
Tertiary	-2.7648***	0.000	-93.7%
Experience	-0.01262	0.249	
Sex (1= female)	-0.2311	0.121	
Marital status (1= married)	-0.2262	0.179	

Independent variables	Coefficient	p-value	Difference in odd ratio
Place of living (1= rural)	-0.3822***	0.007	-31.8%
General health (1= bad or very bad)	0.2372	0.547	
Chronic illness (1= yes)	0.4004	0.166	
Household size	-0.1492***	0.004	-13.9%
Single adult household (1= yes)	1.1368	0.325	
Number of dependent children	0.0151	0.873	
Low work intensity	0.8699***	0.000	138.7%
Ever worked (1= yes)	-0.1022	0.584	
Available to take a job (1= yes)	-0.0174	0.958	

Note: \*/\*\*/\*\* indicate significance at the 10/5/1 percentage level respectively.

From Table 3 we can notice that living in a household with low work intensity increases the probability of severe material deprivation by 138.7 per cent. With respect to educational attainment, those with completed secondary education have a 77.2 per cent lower probability of being severely materially deprived while those with tertiary education are some 93.7 per cent less likely to be under the threat of severe material deprivation. Unemployed people in rural areas are 31.8 per cent less likely to be affected by severe material deprivation. With respect to household characteristics, we find that an additional household member would, on average, decrease the probability of severe material deprivation by 13.9 per cent.

### Conclusions and policy recommendations

This analysis of the relationship between material deprivation and employment status clearly suggests that labour market segmentation exerts a strong impact on people's well-being. Employed workers, although better off than the unemployed, still face a much higher risk of severe material deprivation if they are positioned in the so-called secondary labour market. Namely, workers who are in poor health, have elementary occupations, a low level of education and low pay are disproportionately affected by material deprivation. Even so, unemployed workers with low work intensity and low human capital accumulation are the ones most at risk of severe material deprivation.

The alternative labour market adjustment mechanisms in the case of North Macedonia considerably contribute towards cushioning the consequences of severe material deprivation. Namely, people living in rural areas face a lower probability of severe material deprivation, indicating that subsistence agriculture might play a significant role in improving household well-being. In addition, living in bigger households improves the position of unemployed workers, meaning that income pooling and intra-household transfers are important sources of poverty alleviation.

In taking into account these findings, we seek further to frame the appropriate policy measures which, by improving the position of the unemployed as well as low-paid employees, could reduce the incidence of poverty and social exclusion experienced by such workers and their families.

The education and training of workers is the most widely used supply-side strategy for improving skills and competences as a precondition for better positioning in the labour market. Since increasing the productivity of low-paid employees is crucial to their wages, policy considerations should be given to increasing their human capital. In general, a higher levels of skills acquired through education and training reduces the risk of low pay. Improvements in the training possibilities for low-paid workers could increase skill endowment and encourage movement from lower-paid contingents to better-paid ones. This can be done by an appropriate design and greater funding of the education system including vocational education and training (VET) and higher education.

In future reforms of vocational education and training, emphasis should be placed on the development of professionals and service workers possessing competitive skills and who are, therefore, likely to be more attractive on the labour market. In this context, we should stress that gathering practical skills is as important as acquiring theoretical knowledge which has, so far, received far more attention from policy-makers. Future reforms of VET curricula have to take into consideration the demand side of the labour market: that is, a careful analysis of labour market needs has to be undertaken prior to any implementation of new curricula or the amendment of existing ones.

In addition, the government of North Macedonia has to consider the quality of higher education as a top priority and intervene by rigorously implementing quality standards at national level. The necessary preconditions for the promotion of quality in higher education have already been provided by the adoption of the new Law for higher education.<sup>3</sup> It is to be hoped that increased government awareness will further increase investment in higher education and contribute towards a gradual convergence of the higher education system with the standards adopted in more developed countries. Skill imbalances due to the disparities in the numbers of graduates have to be addressed by additional government stimuli for students in technical and technological sciences.

The design of active labour market programmes (ALMP) can make an important contribution since a significant proportion of the labour force is affected by the so-called 'low pay/no pay' trap, characterised by individuals moving between unemployment and low-paid precarious work and in which workers can become trapped in low-paying jobs or scarred by the experience of unemployment. In respect to this, there is a challenging task for activation policies to focus not only on the long-term unemployed but to include a range of retention and advancement strategies for those repeatedly shifting between low-paid work and unemployment.

Even though the scope of the active labour market programmes carried out in North Macedonia by the Employment Service Agency is relatively large, their cover-

3 *Official Gazette of the Republic of Macedonia* No. 82, May 2018.



age in practice is relatively modest. In our view, emphasis should be given to apprenticeship programmes in order to increase the employability of young unemployed people and to overcome their lack of skills when they enter the labour market. Additionally, the preparatory programme for employment ought to provide training for registered unemployed workers from disadvantaged segments. This should aim to raise their competitiveness and employability on the labour market as well as improve the matching process between the supply of and the demand for workers with appropriate skills. With respect to the targeting of disadvantaged labour market segments, a lack of coordination has been identified among the key institutions and social partners. Therefore, future policy recommendations should focus on overcoming the lack of coordination at this level as well as encouraging the greater involvement both of key institutions and the social partners in the process of anticipating skill demands.

An improvement in the position of workers can be made by providing more stable work arrangements. A potential strategy for this is to increase the role of unionisation and its impact on wage levels in the context of collective bargaining. In the future, the role of trade unions should be particularly strengthened in the private sector. Namely, in most newly-established firms, which are generally smaller, employees are not organised in trade unions while in big companies it is questionable whether trade unions operate completely independently of company owners. Another issue is the fragmentation of trade unions and the formation of new trade union federations and confederations which substantially diminishes workers' bargaining power. The consequence here is that trade unions should take the initiative and play a crucial role in proposing changes in the existing labour code.

Wage subsidies to private employers have often been proposed by economists as a potentially flexible and efficient method of improving the earnings and employment position of low-wage workers. In this case, decisions about job creation and hiring remain in the hands of employers but labour costs are borne, in part, by the government. As a consequence, firms are expected to increase their utilisation of the labour force from within the target population. Hence the idea behind wage subsidies is to reduce the costs to employers of employing people from the target group of workers, thereby stimulating demand for these workers and raising their employment rates and earnings. In the case of North Macedonia, a long debate has existed about the changes which require to be made to the legislation covering wage setting and its implementation. This includes tax subsidies for low-paid workers and reforms to the tax system such as the introduction of progressive tax rates.

Finally, the quality of life and workers' morale, particularly among low-paid workers, can be improved by increasing the statutory minimum wage which, in turn, is expected to exert upwards pressure on wages throughout the wage distribution, extending benefits to workers earning more than the new minimum. However, there is a debate in the literature on minimum wages regarding when to increase them and how much they should be increased. The statutory minimum wage in North Macedonia has been regularly increased from 8,050 MKD in 2012 to 12,000 MKD in 2017. The latest increase in the statutory minimum wage, taking it above the standard threshold of two-thirds of the median, would potentially contribute to a reduction in

the incidence of low pay. However, in the case of North Macedonia we have to take into account the possibility of non-compliance with the statutory minimum as a result of the presence of informal employment. In this context, further research is needed in order to determine the extent of the possible shift of workers from the formal to the informal economy as a result of the opportunities presented by non-compliance.

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