



THE AIRE CENTRE
Advice on Individual Rights in Europe



Seventh Annual Regional
**RULE OF
LAW FORUM**
for South East Europe



Covid-19 and the European Convention on Human Rights

16-17 October 2020

1. Introduction

What is the Rule of Law Forum for South East Europe?

The Forum, founded by the AIRE Centre and Civil Rights Defenders, provides a platform to promote the implementation of the European Convention on Human Rights (ECHR) across South East Europe. It brings the European Court of Human Rights (ECtHR) judges from the region together with presidents and judges of the region's supreme and constitutional courts, presidents of judicial councils, directors of judicial training institutes, government agents before the Strasbourg Court, representatives of NGOs and prominent legal experts in the field. The Forum's organisers and attendees work to inspire regional cooperation in the strengthening of the rule of law and respect for human rights, and to assist the countries of South East Europe in the process of EU integration.

The Forum is the result of a longstanding partnership between the AIRE Centre's Western Balkans Programme and Civil Rights Defenders, both of whom have deep experience in working to strengthen the rule of law in the region. The Forum is also indebted to the continued and vital cooperation of the European Court of Human Rights, without which our work would be infinitely poorer. Finally, we must thank the Forum's supporters and their continued commitment to the principles of the rule of law and human rights: the UK Government, the Swedish International Development Agency, the Konrad Adenauer Foundation and the Government of the Netherlands.

The Forum 2020: Covid-19 and the Impact on Human Rights

In 2020, the Seventh Annual Rule of Law Forum was the most vital we have ever held. With the restrictions of the Covid-19 pandemic preventing a large conference being held in South East Europe, a hybrid format was implemented to bring participation and debate from across the continent together in one place.

With a main hub in the Strasbourg region, where the Forum's main discussions were held, the Forum was linked virtually to seven city hubs in the legal centres of the region. Representatives from all the legal communities of South East Europe came together in groups of up to 30 in Belgrade, Podgorica, Priština, Sarajevo, Skopje, Tirana and Zagreb to join the Forum online and gain the opportunity to meet and debate, and to contribute lessons from their national experiences to heighten regional understanding and develop best practice. The Forum benefitted from the combined knowledge and experience of over 200 participants across the eight different hubs. These delegates were joined by a further 300 online participants who were able to engage in the question and answer sessions throughout.

The restrictions put in place across Europe in response to the Covid-19 pandemic not only precluded the Forum from going ahead in its usual form they also prevented almost all of the usual meetings and discussions that take place every year throughout the continent from being held in person.

The 2020 Forum was therefore for most attendees the only opportunity this year for them to come together, in person, to discuss the most important issues of the year and perhaps the greatest challenge faced by the rule of law and the human rights based legal order since 1945. The pan-European nature of the 2020 Forum, with attendees joining from not only South East Europe but also across the continent, demonstrated a fact that has always been true; that although this is the Forum for South East Europe, the work done and the issues raised and debated here are just as relevant and important to all areas of our shared continent.

Whilst the original 2020 Forum was to be held in spring, the initial European lockdown made such an event impossible. This Forum, therefore, was created with a single purpose in mind, to quickly and comprehensively address the most significant issue facing the rule of law and the Convention system in Europe. To that end it was important to bring not only the legal community of South East Europe together but to bring perspectives from across the wider European judicial community.



Forum Speakers and Panellists

The Forum benefited from the presence of many of Europe and the Region's top judiciary. From the Council of Europe and ECtHR, discussions in the central hub were led by:



Robert Spano

President of the European Court of Human Rights



Dunja Mijatović

Council of Europe Commissioner for Human Rights



Paul Lemmens

ECtHR Judge Elected in Respect of Belgium



Faris Vehabović

ECtHR Judge Elected in Respect of Bosnia and Herzegovina



Tim Eicke

ECtHR Judge Elected in Respect of the United Kingdom



Jovan Ilievski

ECtHR Judge Elected in Respect of North Macedonia



Ivana Jelić

ECtHR Judge Elected in Respect of Montenegro



Darian Pavli

ECtHR Judge Elected in Respect of Albania



Anja Seibert-Fohr

ECtHR Judge Elected in Respect of Germany



Ledi Bianku

Former ECtHR Judge



Mirjana Lazarova Trajkovska

Former ECtHR Judge



Krešimir Kamber

Lawyer in the Directorate of Jurisconsult of the ECtHR Registry

Across the regional city hubs the Forum also benefitted from the presence of presidents and judges of the region's supreme and constitutional courts, ministers of justice, ambassadors and representatives from the supporting countries, ombudspersons, national representatives before the ECtHR and prominent academics. Their expertise and the quality of their contributions to the Forum's discussions were crucial in ensuring that this year's Forum could still maintain its reach across South East Europe and remain relevant to the region's issues and challenges.

The 2020 Forum Guide

This year's Forum is also accompanied by perhaps the event's most ambitious publication so far, a practical guide for the judiciary and legal practitioners on how to approach cases affected by the impact of the Covid-19 pandemic and State responses to the pandemic. The guide includes an analysis of the positive obligations that States might reasonably be expected to meet to protect people's lives and health from the threat of Covid-19 and examples of some of the main ways in which Convention rights have been affected by the measures States have taken to protect the health of their citizens.



We hope that the guide will assist judiciaries, legal practitioners and decision-makers in assessing how States should structure their responses to the pandemic in a way which protects health without compromising our collective purpose of protecting human rights. Beyond the courts and government, we also hope that this guide will assist non-governmental organisations working with individuals who have had their rights and freedoms affected during the pandemic. We further hope that this guide will be of use to any interested reader.

While the guide will be referenced throughout this report, it may be found in its entirety [here](#):

Opening Thoughts

The Forum began with opening speeches from the Forum organisers:



Biljana Braithwaite
Western Balkans Programme
Director for the AIRE Centre



Goran Miletic
Europe Director for
Civil Rights Defenders

These speeches provided an insight into the unique difficulties of organising such a large and complex event in such trying circumstances. Biljana also reminded participants of how respect for human rights and the rule of law does not obstruct the protection of health. Instead, each mutually reinforces and bolsters the other. Goran then spoke about how the exchange of views and experiences that takes place at the Forum amplifies the voice of marginalised communities and sheds important light on the pressing challenges they face.

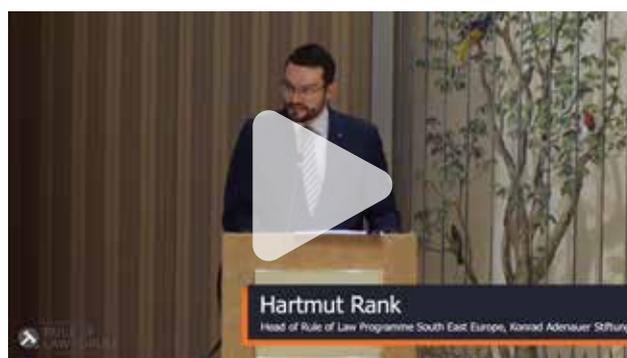
Biljana Braithwaite's speech may be viewed [here](#):



Goran Miletić's speech may be viewed [here](#):



Hartmut Rank, Head of the Rule of Law Programme for South East Europe at the Konrad Adenauer Stiftung, who are Forum's key partner, closed the opening speeches by reminding us that although the choice to save as many lives as possible has been humane and egalitarian, we must all be wary and concerned by the possibilities of creeping authoritarianism.



2. Agenda

The Forum Agenda

Under the title Covid-19 and the European Convention on Human Rights the Forum was organised in four substantive parts.

1. ECtHR President Robert Spano and Council of Europe (CoE) Commissioner for Human Rights Dunja Mijatović gave speeches on what they saw as the most crucial issues relating to Covid-19 and the rule of law.
2. Judges and former judges of the ECtHR explored how the rights guaranteed by the ECHR were affected by the Covid-19 pandemic and by States' responses to the pandemic.
3. Notable attendees from each of the Forum's regional city hubs fed back to the main hub on the outcomes of each hub's discussions and explained how Covid-19 and their State's response to the disease had impacted the rule of law and specific ECHR rights.
4. Judges and former judges of the ECtHR discussed future challenges for the protection of human rights in light of relevant ECtHR jurisprudence and Covid-19.

For further information and a more detailed look at the Forum's structure, please see the 2020 Agenda [here](#).

3. Keynote Speeches

Judge Robert Spano, President of the ECtHR, gave the first of two keynote speeches to the Forum.

President Spano focused on exploring the importance of the concept of the rule of law to the protection of human rights and to the Convention system specifically, noting that the principle of the rule of law inspires the whole convention and lies at the heart of the legal and moral foundations of the Court and the principles of democracy. The speech also served to give an overview of the ECtHR's experience of the Covid-19 pandemic, and how the pandemic has served to emphasise the importance of the rule of law in ensuring State measures aimed at preventing the spread of the virus do not lead to undemocratic overreach and severe emergency measures becoming our new normal.



A full video of President Spano's keynote address may be found [here](#):



Dunja Mijatović, the Council of Europe Commissioner for Human Rights, gave the second of two keynote speeches to the Forum.

Commissioner Mijatović's address focused on the victims of the Covid-19 pandemic, and stressed that although the pandemic and States' responses to the pandemic have led to severe restrictions on our rights and freedoms, the pandemic has mostly exacerbated existing inequalities within our societies.



The speech detailed how the pandemic has most severely affected women, older people, refugees, Roma, the LGBTQI community, persons with disabilities and ethnic and national minorities. With all these persons connected by the inequalities they suffered before the pandemic hit. Commissioner Mijatović further explored the importance of combating disinformation and ensuring robust data protection mechanisms, the importance of both having been acutely revealed by the pandemic.

A full video of Commissioner Mijatović's keynote address may be found [here](#):



The Right to Life

Speaking on the right to life under Article 2 of the ECHR was Judge Jovan Ilievski of North Macedonia. His contribution focused on the obligation placed on States by the Convention to ensure that the right to life is respected and protected within their jurisdictions, a matter of enormous importance to the fight against the Covid-19 pandemic in a number of ways.

Judge Ilievski's speech may be found [here](#).



The Forum Guide

The AIRE Centre's guide to Covid-19 and the Impact on Human Rights devotes a chapter to Article 2 ECHR and the right to life. The guide details how a State may comply with its regulatory and operational obligations to protect the right to life as well as how the Court may find the State has fallen short of its duties.

The guide investigates the relevance and importance of the right to life with regard to:

- Safeguarding individuals from threats to their lives such as the Covid-19 pandemic.
- Self-harm. With the fear, isolation, physical distancing, reduction in access to support services and loss of earnings causing an increase in self-harm or suicidal ideation during the pandemic.
- Domestic abuse.
- The lives of those detained by the State or held in State care.
- The procedural duty placed on States to effectively investigate deaths.

To delve into these topics in more detail the Guide's chapter on the right to life may be found [here](#).

The Prohibition of Torture and Inhuman and Degrading Treatment

Judge Ivana Jelić, the judge from Montenegro, then spoke on the principles of Article 3 ECHR, the positive obligations on States in relation to the prohibition of torture and inhuman and degrading treatment. Judge Jelić concentrated on the application of Article 3 to the protection of minors, liberty and health and reiterated the fact that the Convention and the Court has a zero tolerance policy towards failures by States to investigate alleged violations of Article 3.



Judge Jelić's speech may be found [here](#).

The Forum Guide

The AIRE Centre's guide to Covid-19 and the Impact on Human Rights also devotes a chapter to Article 3 ECHR and the prohibition of torture and inhuman and degrading treatment. The Guide explores how the State's obligations under Article 3 relate to the unique situation brought about by Covid-19 and how the Court decides when and how a State has failed to comply with its duties.

The Guide sets out the relevance and importance of the prohibition of torture and inhuman and degrading treatment with regard to:

- The protection of the health and well-being of individuals for whom a State has assumed responsibility.
- Public health responses to infectious diseases.
- Social distancing, medical isolation and solitary confinement; for both individuals in State detention or care and for the wider population.
- The treatment of illnesses and conditions other than Covid-19 during the pandemic.
- Domestic abuse.
- Asylum seekers and migrants.
- Removal and extradition proceedings.
- The procedural duty placed on States to effectively investigate alleged breaches of Article 3.

To explore this topic and the areas listed out above please refer to the relevant chapter of the Guide [here](#).

The Right to Liberty and Security and the Right to Freedom of Movement

Contributing to discussions on the topic of Article 5 ECHR, the right to liberty and security, and Article 2 of Protocol No. 4, freedom of movement, was former ECtHR judge for Albania Ledi Bianku. His speech covered how States must tread the fine line between the competing requirements of the right to liberty and the right to freedom of movement. Given that restrictions on movement have been a hallmark of State reaction to the Covid-19 pandemic nearly everywhere and we have all experienced unprecedented curtailments of our liberty, Ledi Bianku's contribution to discussions was an important foundation for much of the Forum's work.

Ledi Bianku's speech may be found [here](#).



The Forum Guide

The AIRE Centre's accompanying Guide to the Forum contains two chapters that cover this topic. One chapter covers Article 5 ECHR and the right to liberty and security, running through the scope of Article 5, where exceptions to the right's protections may be permitted under the ECHR, and safeguards under Article 5. A second chapter is devoted to Article 2 of Protocol No. 4, the right to freedom of movement. This chapter is split into two halves, one covering the ECtHR's jurisprudence on freedom of movement and the other the same court's case law on the right to enter one's own country.

Together, the two chapters explore the following in the context of the right to liberty and security and the right to freedom of movement:

- The distinction between restrictions of movement and deprivations of liberty.
- Migrant reception, identification, and registration centres.
- The lawful detention of persons for the prevention of the spreading of infectious diseases.
- The need for legal certainty, no arbitrariness, proper reasoning and a speedy review of pre-trial detention under Article 5.

The Guide's chapter on the right to liberty may be found [here](#).

The Guide's chapter to freedom of movement may be found [here](#).

Overcoming Challenges to the Proper Functioning of the Judiciary

Speaking on how the proper functioning of judiciaries across Europe was challenged by the Covid-19 pandemic and State responses to that disease was Judge Paul Lemmens of Belgium. His contribution focused on how the restrictions placed on society by State responses to the Covid-19 pandemic have impacted on those States' ability to comply with their obligations under Article 6 ECHR. His contribution was also notable for raising novel ideas about the digitalisation of court procedures and the long term benefits that may yet be derived from these difficult challenges.

Judge Lemmens' speech may be found [here](#):



The Forum Guide

The AIRE Centre's guide to Covid-19 and the Impact on Human Rights devotes a chapter to Article 6 ECHR and the right to a fair hearing. The guide details how a State may comply with its regulatory and operational obligations to ensure proceedings are fair, to facilitate effective participation in judicial proceedings, and to ensure that individuals enjoy their entitlement to a public hearing within reasonable time.

The guide investigates the relevance and importance of the right to a fair hearing with regard to:

- The dominant duties to enable overall fairness and effective participation, including by ensuring the fairness of remote hearings.
- The need to provide for public hearings in a time of pandemic.
- The duty to provide a hearing within reasonable time.
- The obligation to protect the rights of the defence, including to prompt, practical and effective legal assistance and to private communications with a lawyer.

To delve into these topics in more detail the Guide's chapter on the right a fair hearing may be found [here](#).

The Right to Respect for Private Life and Freedom of Religion

Judge Darian Pavli, the judge from Albania, then spoke on the principles of Articles 8 and 9 ECHR, the right to respect for private life and the right to freedom of religion. Judge Pavli concentrated on examining the more complex and disputed areas of law under these Articles, with a focus on Article 8. He explored how Article 8 may be interpreted as guaranteeing certain socioeconomic rights in relation to its protection of professional activities as well as how restrictions on religious funeral arrangements demonstrate how States must act proportionately. He further considered Article 8's applicability to concerns over State surveillance and data collection.

Judge Pavli's speech may be found [here](#).



The Forum Guide

The AIRE Centre's guide to Covid-19 and the Impact on Human Rights also devotes a chapter to Article 8 ECHR and the right to respect for private life. The Guide explores how the State's obligations under Article 8 have been changed and made more difficult by their response to the pandemic and how these obligations may still be met.

The Guide set out the relevance and importance of the right to respect for private and family life with regard to:

- Health care and treatment.
- Access to information concerning health.
- Mental health.
- Domestic abuse.
- Privacy and the collection and storage of personal information.
- Surveillance.
- The ability to visit and spend time with family and friends, including in situations of State detention or care.
- Restrictions on funerals.
- How a State may restrict the rights guaranteed by Article 8 without violating the Convention.

To explore this topic and the areas listed above please refer to the relevant chapter of the Guide [here](#).

Freedom of Expression and Assembly

Contributing to discussions on the topic of Article 10 ECHR, the right to free expression, and Article 11, the right to freedom of association and manifestation, was ECtHR judge for Germany Anja Seibert-Fohr. Her speech emphasised the continued need for free debate and the relationship between strong democracy and both the freedoms of expression and assembly. Judge Seibert-Fohr also discussed the need for accurate and reliable information, the importance of the press in times of crisis, and the need for courts to consider whether restrictions placed on these freedoms are excessive or proportionate.

Judge Seibert-Fohr's speech may be found [here](#).



The Forum Guide

The AIRE Centre's accompanying Guide to the Forum contains two chapters that cover this topic. One chapter covers Article 10 ECHR and the right to free expression and another is devoted to Article 11, the right to freedom of association and manifestation. The former chapter focuses on the provisions of timely and accurate information, which has proven to be an essential part of tackling the Covid-19 pandemic. The latter chapter explores how restrictions on the ability of individuals to gather in public and private locations relate to the rights contained in the ECHR.

Together, the two chapters explore the following in the context of the right to free expression and the right to freedom of association and manifestation:

- Press freedom and media diversity.
- Access to information.
- Interferences with the right to free expression caused by the measures introduced in response to the Covid-19 pandemic.
- How to establish whether a restriction of the right to free expression will violate the Convention.
- The duty placed on States by Article 11 to ensure that any restriction on assembly and manifestation is prescribed by law and is necessary in a democratic society.

The Guide's chapter on the right to free expression may be found [here](#).

The Guide's chapter on the right to freedom of association and manifestation may be found [here](#).

The Right to Education, Property and Free Elections

Speaking on the right to education, property and free elections was Mirjana Lazarova Trajkovska, former Judge of North Macedonia. Her contribution focused on the protections contained within Article 2 of Protocol No. 1, the right to education, Article 1 of Protocol No. 1, the right to property, Article 3 of Protocol No. 1, the right to vote, as well as the general protections provided on all these matters by Article 8, the right to respect for private life. Her contribution was notable for focusing on measures and issues related to the closure of schools and how States may react in the event of an economic collapse.

Mirjana Lazarova Trajkovska's speech may be found [here](#).



The Forum Guide

The AIRE Centre's guide to Covid-19 and the Impact on Human Rights devotes four chapters to Article 2 of Protocol No. 1 ECHR, Article 1 of Protocol No. 1, Article 3 of Protocol No. 1, and Article 8. The guide details the scope of each of these rights, what may amount to a permitted restriction of each right and how the Covid-19 pandemic has made the protections of each more vital.

The guide investigates the relevance and importance of these four rights with regard to:

- The protection of health.
- The protection of the free expression of the will of the people.
- The right to participate in an election campaign.
- The difficulties and requirements of holding elections during a pandemic.
- The requirements of responding to complaints concerning elections.
- The possibility of discrimination in educational practices during the pandemic.
- The closure and restriction of businesses during the pandemic.
- Measures, such as rent deferrals, designed to soften the economic blow of the pandemic.
- Compensation for State interference with private possessions and business.

To delve into these topics in more detail the Guide's chapter on the right to vote may be found [here](#).

The Guide's chapter on the right to education may be found [here](#).

The Guide's chapter on the right to property may be found [here](#).

The Guide's chapter on the right to respect for private life may be found [here](#).

The Need for the Principles of Legality and Proportionality

Judge Tim Eicke, the judge from the United Kingdom, then spoke on the principles of legality and proportionality, which are relevant to all the rights contained in the ECHR. Judge Eicke emphasised that States must still abide by the law, even during crises and emergencies, and that it is the role of the highest courts to protect the rule of law in such times. He explored the constant need to assess proportionality, especially in times such as these when such an assessment may be particularly difficult to make.

Judge Eicke's speech may be found [here](#):



The Forum Guide

The AIRE Centre's guide to Covid-19 and the Impact on Human Rights also devotes a chapter to the principles of legality and proportionality, specifically in the context of institutional and procedural guarantees during crisis situations. The Guide explores how emergency powers and measures dedicated to crisis management may comply with the rule of law and how specific powers and measures gained and taken during the Covid-19 pandemic may comply with the Convention.

The Guide set out the relevance and importance of legality and proportionality in the Convention system with regard to:

- The procedure for introducing a state of emergency or emergency powers.
- Measures introduced under emergency powers.
- The requirements of temporality in relation to emergency measures.
- The enforcement of emergency measures.

The Guide further sets out the importance of guarantees against abuse in the Convention system with regard to:

- The necessity of parliamentary control of the executive branch, including in relation to the ex post facto review of emergency measures and the impact of lockdowns and social distancing requirements on the proper functioning of parliaments.
- The importance of judicial control and oversight over the legality of State actions and the quality of laws introduced by governments during the pandemic.
- The need for intra governmental oversight and the importance of the role of independent ombudspersons in providing accountability and supervision.

To explore this topic and the areas listed above please refer to the relevant chapter of the Guide [here](#).

Derogations from the ECHR in Times of Emergency

Contributing to discussions on the topic of derogations from the Convention in times of emergency and Article 15 of the ECHR was the ECtHR judge for Bosnia and Herzegovina Faris Vehabović. His speech emphasised the rarity of derogations, with only ten derogations from the Convention having taken place in response to the pandemic by the time of the Forum. Judge Vehabović also questioned the necessity of derogating from the Convention in order to mount an effective response to the pandemic, noting that States that have derogated and not derogated often instituted exactly the same measures.

Judge Vehabović's speech may be found [here](#):



The AIRE Centre's accompanying Guide to the Forum devotes a chapter to covering derogations. This chapter explores how the ECHR operates in cases of derogation, including what substantial and procedural criteria must be met for a derogation to be Convention compliant, and sets out the arguments on both sides of the debate on whether derogation as necessary or desirable for States during the Covid-19 pandemic situation.

The chapter explores the following in the context of derogations from the ECHR:

- Whether the Covid-19 pandemic constitutes a public emergency threatening the life of the nation, and so is a suitable justification for derogation,.
- The extent of derogation that may be considered strictly required by the exigencies of the Covid-19 pandemic.

- The consistency of derogations with other obligations under international law.
- Whether derogation is necessary to effectively fight the Covid-19 pandemic.
- How State actions and powers may be scrutinised during a period of derogation.

The Guide's chapter on derogations from the ECHR may be found [here](#).

5. Reports from the Region's City Hubs

Skopje City Hub

In Skopje, the Forum's city hub saw delegates from across the country's legal community come together to observe, discuss and contribute to the conversations and debates taking place amongst the judges in the main hub.



Providing a summary of the hub's discussions, Professor Goran Ilikj and Velimir Delovski reported that the City Hub's delegates had experienced many of the challenges set out above. However, key to their experience of the Covid-19 pandemic was the proactive and important role of the Constitutional Court in overseeing the legality of the Government's declaration of a state of emergency and its subsequent tendency to govern by decree.

Further talks highlighted the impact of the Government's response to the pandemic on the right to a fair trial and included debates on whether the State had truly complied with its obligations under Articles 2, 3 and 8.

For further detail on all these topics please watch the Skopje city hub report, which may be found [here](#):



You can read the summary [here](#).

Podgorica City Hub

In Podgorica, the Forum's city hub saw delegates from across the country's legal community come together to observe, discuss and contribute to the conversations and debates taking place amongst the judges in the main hub.

Providing a summary of the hub's discussions, Judge of the Supreme Court, Miraš Radović, reported that the delegates had initially withstood much of the initial effects of the Covid-19 pandemic but that there were a number of matters that had been dealt with by the highest courts.

The Constitutional Court had already passed judgment in cases relating to interferences with the ECHR, specifically in relation to Article 8, Article 6, Article 3 and the right to vote.

Judge Radović emphasised how the Court's proactive approach to scrutinising the State's activities had protected and reinforced the principles of the rule of law and gave interesting examples of the difficulties the judiciary has faced in determining the proportionality of key State initiatives.



For further detail on all these topics please watch the Podgorica city hub report, which may be found [here](#):



You can read the summary [here](#).

Priština City Hub

In Priština, the Forum's city hub saw delegates from across the country's legal community come together to observe, discuss and contribute to the conversations and debates taking place amongst the judges in the main hub.

Providing a summary of the hub's discussions, Flaka Braha reported that the delegates in Priština had begun by discussing the Constitutional Court's early decision to declare that the Government's actions were without a legal basis. The delegates also discussed how the pandemic had led to discriminations and even greater threats to the rights of people in marginalised communities.



Further discussions and debate focused on the need for States to act proportionately when restricting the rights of individuals, especially in relation to their right to health care and to a fair hearing.

For further detail on all these topics please watch the Priština city hub report, which may be found [here](#):



You can read the summary [here](#).

Sarajevo City Hub

In Sarajevo, the Forum's city hub saw delegates from across the country's legal community come together to observe, discuss and contribute to the conversations and debates taking place amongst the judges in the main hub.



Providing a summary of the hub's discussions, Sevima Sali-Terzic, Senior Legal Adviser at the Constitutional Court reported that delegates had faced numerous challenges in effectively and proportionately responding to the threat of Covid-19. Most notably, access to healthcare had been restricted due to the strain placed on the health service and many patients, especially long term patients who were not suffering from Covid-19, could not obtain the care they needed. In the course of discussion it was also found that courts across the country had and continued to face significant challenges in preserving the right to a fair trial.

The delegates further discussed specific instances where violations of the Convention had been found in relation to Article 2 of Protocol No. 4, Article 5 and Article 8. Of specific concern to the delegates was the frequency and severity of cases concerning domestic violence.

For further detail on all these topics please watch the Sarajevo city hub report, which may be found [here](#):



You can read the summary [here](#).

Tirana City Hub

In Tirana, the Forum's city hub saw delegates from across the country's legal community come together to observe, discuss and contribute to the conversations and debates taking place amongst the judges in the main hub.



Providing a summary of the hub's discussions, Dr Ledina Mandia reported that the Government had derogated from the ECHR early on in its efforts to respond to the Covid-19 pandemic and that there had been subsequent problems with the State taking measures to fight the spread of disease without consultation and through non-regular channels. The use of unlawful force by the security forces had also posed a problem in the enforcement of those measures due to the lack of training and assistance given to police in enforcing public health measures.

Delegates also considered the negative effects of the pandemic and the State's response on the right to education, women, the right to health care and the right to freedom from discrimination. Delegates recognised that all measures that restricted individuals' rights were especially restrictive in the Roma community and for other marginalised groups.

For further detail on all these topics please watch the Tirana city hub report, which may be found [here](#):



You can read the summary [here](#).

Belgrade City Hub

In Belgrade, the Forum's city hub saw delegates from across the country's legal community come together to observe, discuss and contribute to the conversations and debates taking place amongst the judges in the main hub.



Providing a summary of the hub's discussions, Professor Marko Milanović and Professor Ivana Krstić reported that the State had quickly declared a state of emergency in order to combat the spread of the pandemic but that it was unclear whether derogating

from the Convention was required in order to effectively take measures against Covid-19. Delegates were in agreement that the State needed to improve on its record of inadequately communicating what rules were in force, their rationale and why they were necessary.

Delegates also acknowledged the discriminatory nature of the State's restrictions, especially in relation to older people, disabled people and Roma. Further issues were discussed in relation to the right to education, freedom of expression, the right to a fair hearing, domestic violence and the treatment of refugees and asylum seekers.

For further detail on all these topics please watch the Belgrade city hub report, which may be found [here](#):



You can read the summary [here](#).

Zagreb City Hub

In Zagreb, the Forum's city hub saw delegates from across the country's legal community come together to observe, discuss and contribute to the conversations and debates taking place amongst the judges in the main hub.

Providing a summary of the Hub's discussions, Stefica Staznik, the representative before the ECtHR, reported that the Government had, like many in the region, declared a state of emergency in response to the arrival of Covid-19 within its jurisdiction and that the Constitutional Court had successfully performed its role of providing oversight of the executive and its new powers. One particular challenge noted by delegates was the growing number of cases pending before all courts in the country that were concerned with allegations that the State's restrictions had violated their rights under the ECHR.



Delegates also discussed where the pandemic had led to most restrictions on rights, highlighting the right to a fair hearing, the prohibition of torture and inhuman and degrading treatment, the right to security and liberty, the right to respect for private life, freedom of expression, freedom from discrimination and freedom of movement.

For further detail on all these topics please watch the Zagreb city hub report, which may be found [here](#):



You can read the summary [here](#).

6. Future Challenges

Future Challenges for the Protection of Human Rights and the ECHR System

The Forum's final panel session considered the issues and challenges highlighted by the discussions in both the central and city hubs and sought to set out what future challenges lay ahead for the protection of human rights and for the ECHR system as a result of the Covid-19 pandemic.

Judges Paul Lemmens, Anja Seibert-Fohr, Ivana Jelić, Darian Pavli and Tim Eicke, as well as former judges Mirjana Lazarova Trajkovska and Ledi Bianku, all voiced their thoughts on the matters at hand.

The debate in this session of the Forum may be found in the following [video](#):



7. Technology and the 2020 Forum

In 2020 the Forum was more dependent upon technology than ever before. With the city hubs connected to the main hub via video link it was vital that the technological solution to the problems posed by the Covid-19 pandemic was smooth and professional.

This year the Forum used KUDO as the software to broadcast the main hub discussions online and to each of the city hubs in high definition. This software allowed for seamless simultaneous translation into multiple languages, with English, BCMS, Albanian and Macedonian available to all online participants and to delegates in each city hub.

Online participants were able to join from their computers or their phones after completing a registration form and were able to ask questions of the participants via chat boxes hosted on the KUDO platform.

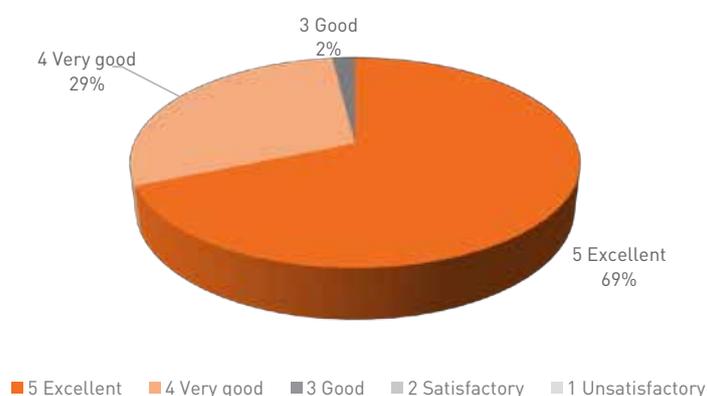
8. Event Evaluation

In the days after the 2020 Forum concluded, a detailed evaluation questionnaire was filled out by attendees of the Forum's main hub and city hubs. A further evaluation questionnaire was also sent to all those participants who joined proceedings through our online platform. This allowed us to make a comprehensive evaluation of our attendees' thoughts and build on the organisers' own experience to ensure we can provide a unique offering that is continually improving.

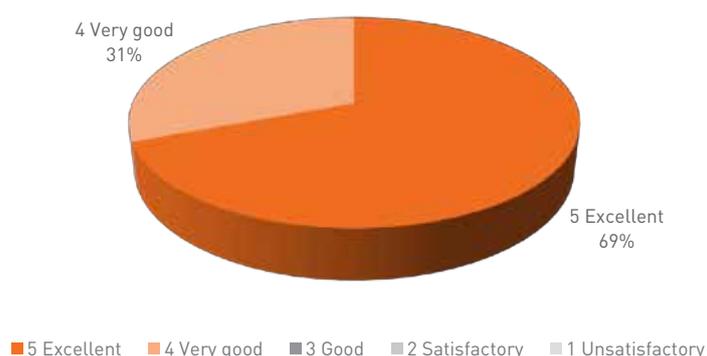
Feedback from attendees for the 2020 Forum was very encouraging and we have already been able to gain valuable insight into the Forum's successes and potential areas for improvement. The following graphs represent a useful analysis of attendee experiences.

How would you rate the event overall?

Main and city hub attendees:

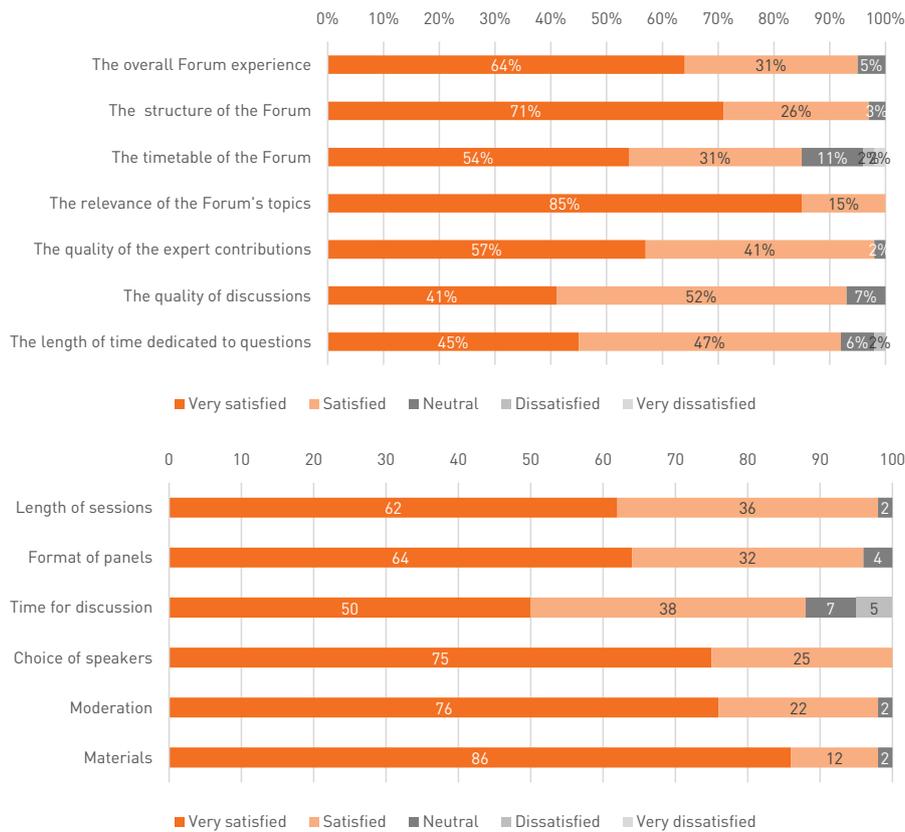


Online attendees:

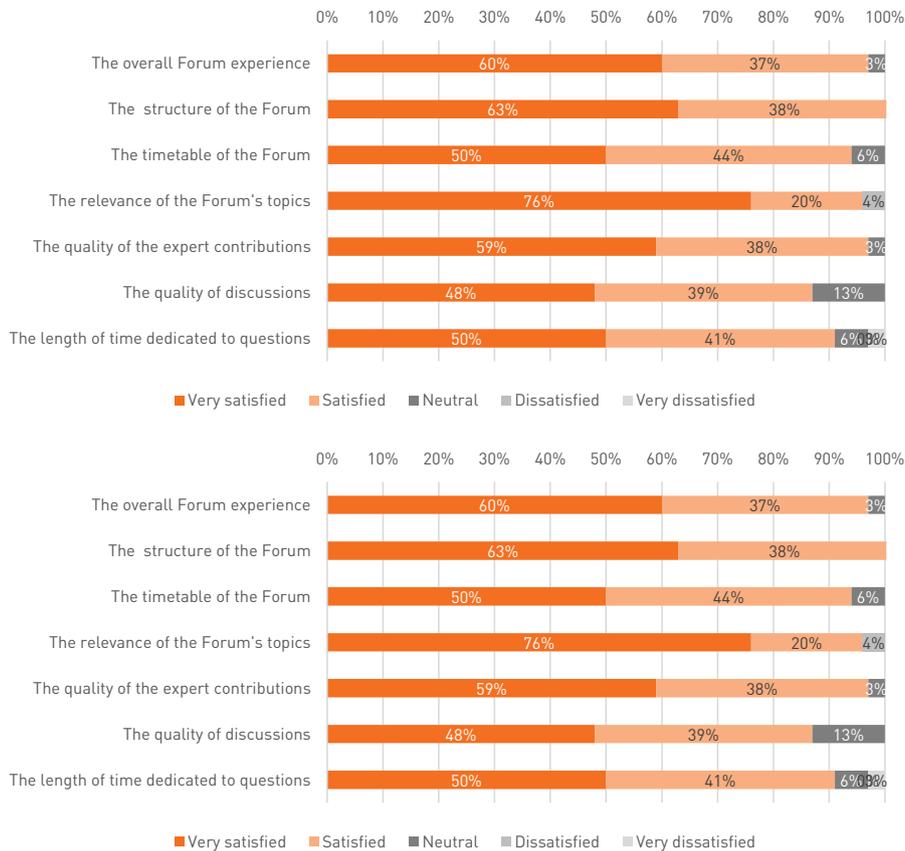


How would you rate your satisfaction with the following areas of the Forum experience?

Main and city hub attendees:

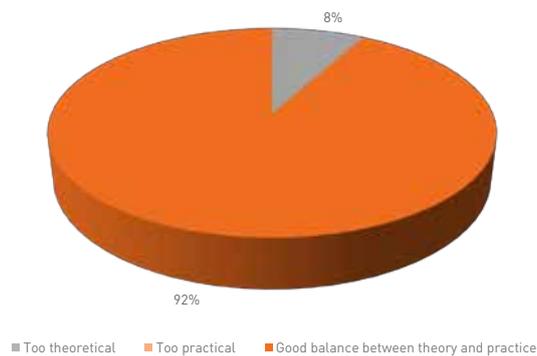


Online attendees:

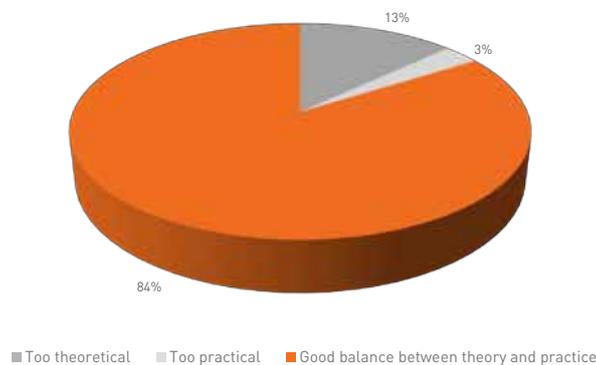


How would you assess the Forum's focus?

Main and city hub attendees:



Online attendees:



After assessing the data provided by the Forum's participants, the organisers have decided upon a number of positive steps that can be taken to improve attendee experiences in the coming years:

- Create a new set of national reports that will summarise and analyse the discussions that have taken place in each city hub and set out:
 1. What impact Covid-19 has already had on each national jurisdiction; and
 2. What impact Covid-19 is likely to have in the future based on current understanding.
- Understand our participants' objectives when they attend the Forum and craft the event's offering so that everyone can enjoy a more fulfilling and productive experience.
- Respond to our participants' desire for more precisely targeted information to be provided prior to the Forum to allow for more focused preparation and contributions to discussions.
- Provide a tailored information set and platform for online viewers, allowing them to engage more closely with the Forum's in-person proceedings.

9. Closing Remarks

In its seventh year, and despite the challenges posed by the Covid-19 pandemic, the Rule of Law Forum for South East Europe continues to go from strength to strength.

In his closing statement, President of the ECtHR Robert Spano, was clear that the rule of law must be understood as the foundation upon which the democratic structure of good governance is built. He also shared his recognition of the fact that the Forum had been a transformative event, made possible by the innovative use of technology, and that the success of such a complex event was a positive sign for all organisations and events in this time of pandemic.

President Spano's closing address may be viewed [here](#).



The Forum was rounded off by closing speeches from Goran Miletić, Europe Director for Civil Rights Defenders, and Biljana Braithwaite, Western Balkans Programme Director for the AIRE Centre.

Their speeches may be viewed [here](#).



Further information on the 2020 Forum, and all Forums past, in all the languages of the region, as well as recordings of all videos and publications, may be found on the Rule of Law Website <http://rolplatform.org>.

10. Beyond the 2020 Forum

Main Takeaways from Discussions

The following main takeaways can be drawn from the discussions and debates that took place over the two days of the 2020 Forum:

- The Covid-19 pandemic and the measures to contain it interfere with many ECHR rights. Governments are required to take positive measures to protect the health and lives of the individuals in their jurisdiction and must make sure the exceptional measures they take to contain the pandemic are compliant with the ECHR.
- Governments must work to ensure that the measures they take at the national level to combat the Covid-19 pandemic are lawful. However, given the severity of the pandemic situation, it may be necessary for constitutional constraints on government action to be interpreted in light of the unique and difficult situation brought about by the Covid-19 pandemic. Ensuring balance between the public interest and individual rights is key, and rights must be recognised as existing in the real world and must not be considered only academically and without context. However, to be lawful it is necessary for this balance to respect the core essence of all Convention rights.
- Where broad powers have been transferred to the executive, whether through the declaration of a state of emergency or through other means, it becomes even more vital to have effective controls over that power. The pandemic has highlighted the importance of parliamentary scrutiny as well as the oversight of government by the judiciary and ombudspersons to the protection of the rule of law and respect for the separation of powers in decision making at the domestic level.
- States and the judiciary must ensure that Courts can function effectively, not only for the day to day operation of the justice system but also so that these courts may scrutinise government decision making and the lawfulness of measures taken to combat the Covid-19 pandemic. Key matters for Courts to address include ensuring that video hearings and other technological innovations comply with the requirements of the right to a fair trial and ensuring that any failings in the measures taken to cope with the effects of the pandemic are dealt with quickly and effectively.
- Judges, practitioners, academics and others in the European legal community must recognise that the Covid-19 pandemic is in many ways a novel crisis for the Convention system. Therefore, the questions and considerations that will develop out of the current crisis must be considered in the context of past jurisprudence and experience but also with a recognition that the unique nature of the current situation must be taken into account and that the original aspects of these cases are respected.
- Courts across the region must be proactive and engage in dialogue with the ECtHR. The two parts of the system must work together and communicate effectively in order to determine the answers to the novel legal questions brought about by the Covid-19 pandemic. It will not be sufficient for the Court and national judiciaries to work separately and in parallel given the complexity and importance of our collective task.

The next steps

In response to the conversations held at the Forum the AIRE Centre have pledged to do the following:

- Produce a series of national reports for each regional city hub by working with the hub moderators and national and regional experts. These reports will engage with national discussions and analyse the case law of national courts from the beginning of the pandemic in the context of ECtHR jurisprudence.
- Update the Forum Guide to Covid-19 and the ECHR in 2021 in order to take into account the ever-changing situation and the ongoing development in European jurisprudence in response to the pandemic.
- Work to reach decision makers with the messages and themes of this Forum. We will share the content and conclusions from our discussions with decision makers in the region as we recognise the importance of integrating the Convention and human rights law into Government decision making and the legislative process at its inception.

**Thank you to everyone for their contributions and
we look forward to seeing you all in 2021.**