

Are Emergency Measures in Response to COVID-19 a Threat to Democracy?

Fact and Fiction – The case of North Macedonia

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Introduction

The current COVID-19 pandemic, which threw the world into a serious lock-down for months with no signs for improvement in the near future, raised numerous questions for the paralyzed states and society functioning in general. The situation also drew a lesson regarding the need for an increased use of the information technology and re-modeling of our working environment. Several decades ago, a majority of countries agreed that a state of public emergency should not cause subversion of the democratic constitutional order, or violate internationally recognized human rights and fundamental freedoms, and that normal functioning of the legislative bodies to the highest possible extent should be ensured.¹

The Venice Commission in its latest report stated that even in a state of emergency, the fundamental principle of the rule of law must prevail.² Nonetheless, the Secretary General of the Council of Europe this spring received notifications about derogation from the European Convention on Human Rights (ECHR)³ from several countries, related to the state of emergency as a result of the massive spread of the COVID-19 virus. The crisis brought to the surface the justified fears that autocrats around the world may (ab)use the situation to further strengthen their power to the absolute limits, especially in ex-communist countries and those in the developing world. They found fertile grounds to *façade* (the front of a building) their undemocratic behavior⁴ behind the pandemic, to silence the public, ban political gatherings, introduce harsh censorship measures or spread information fitting their own benefit, hence perfectly undermining the check and balance mechanism. By using the corona narrative, they turned the war against COVID-19 into war against freedom and democracy. On the other hand, fake news by various interest groups brought dangers to the general management of the crisis on a global level. Many leaderships made timely interception by sending official statements via the media channels and/or by appearing frequently in public, showing that fake news is best confronted through government transparency rather than with penalties.⁵

In times of emergency, liberal democracies have also failed to curb the executive power primacy, especially regarding the hasty healthcare public procurement. This forced the Council of Europe authorities to call for full respect of the convention as a binding international act in the criminal law field, on counterfeiting of medical products and similar crimes involving threats to public health, i.e. the so-called MEDICRIME Convention⁶. The Convention as the first criminal law instrument obliges state parties to criminalize the manufacturing of forged medical products that do not comply with the

¹ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, (1991) <www.osce.org/files/f/documents/2/3/14310.pdf> accessed on 30 July 2020.

² European Commission for Democracy through Law (Venice Commission) [2020], 'Report on respect for democracy, human rights and the rule of law during states of emergency: Reflections', <[www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)014-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)014-e)> accessed on 30 July 2020; and European Commission for Democracy through law (Venice Commission), 'Compilation of Venice Commission Opinions and Reports on States of Emergency', CDL-PI[2020]003, <<https://rm.coe.int/venice-commission-compilation-on-states-of-emergency-eng/16809e85b9>> accessed on 30 July 2020.

³ Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13, <https://www.echr.coe.int/Documents/Convention_ENG.pdf> accessed on 30 July 2020.

⁴ T Ginsbur and A Z Hug, How to Save a Constitutional Democracy, (2nd edn, University of Chicago Press 2019).

⁵ Florian Bieber, Authoritarianism in the Time of the Coronavirus, (Foreign Policy, 30 March 2020) <<https://foreignpolicy.com/2020/03/30/authoritarianism-coronavirus-lockdown-pandemic-populism/>> accessed on 2 August 2020

⁶ Council of Europe, Convention on the counterfeiting of medical products and similar crimes involving threats to public health, [28.X.2011], Treaty Series, No.211, <www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482f>, accessed on 4 August 2020.

necessary requirements, their supply and trafficking, as well as the forgery of documents for their distribution.

This new world order 'Covidism', both autocratic and liberal, proved to be more dangerous in the long run than the virus which took thousands of lives and infected millions of people worldwide. Most of the countries were caught unprepared for this newly emerged situation. Institutions as pillars of democracy were forced to restrain their openness to the public and implement social distancing measures that contradict the definition of democracy in every sense of the word. National parliaments have been among the first of them, despite the calls to keep them open so that the virus does not bring down democracy⁷.

The COVID-19 victimization and de-democratization⁸ made representative houses revert to old emergency situations, conveying the lead to the executives to carry on the entire decision-making process, putting into question their definition as pillar institutions in the systems of representative democracy.⁹ It influenced the parliamentary oversight of the emergency measures, curbed citizens' freedoms in the name of public health and affected the transparency and accountability of government actions, thus bringing to the forefront the dormant 'de-parliamentarization' process.¹⁰ Fighting for decades to maintain the representative democracy, due to the monopolization of legislation by the executives in the EU member states and the increase of autocratic processes in developing countries, national parliaments have felt sisyphied over again. Having in mind the ongoing fight with the virus, one might question how long it will take until national parliaments put the rock up on the hill, this time for good.

COVID-19 outbreak and the domestic constitutional labyrinth

Although Montesquieu is of an opinion that there is no ideal constitution,¹¹ yet emergency provisions in most modern constitutions provide conditions for harmonization of emergency powers with safeguards for their restriction, i.e. enabling legislature to approve and end the declaration of an emergency, as a purpose of balanced power, with an ultimate goal to preserve the constitutional order and not to change it.¹²

The first registered Corona case in the Republic of North Macedonia was on 24 February 2020, several days after the President of the Assembly of the Republic of North Macedonia, Talat Xhaferi, signed the Decision Scheduling Early Parliamentary Elections¹³ on 12 April 2020. This came as a result of a negotiated solution reached by the political party leaders at the meeting with the State President, Stevo Pendarovski, held in October 2019. It was followed by the election of a technical government in the parliament with a Minister of Interior and Minister of Social Affairs and several deputy-ministers elected on a proposal by the opposition, commitment taken from the so-called Przino Agreement in 2015.¹⁴ Its main competence was to organize parliamentary elections, three months before the scheduled election date.

⁷ European Parliament Research Service, Remote voting in the European Parliament and national parliaments, <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649348/EPRS_ATA\(2020\)649348_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649348/EPRS_ATA(2020)649348_EN.pdf)> accessed on 5 August 2020.

⁸ Reimund Seidelmann, 'Democracy-Building in the European Union: Conditions, Problems, and Options' in Mario Telo (ed.): *Democratie et Construction Européenne*, (Edition des l'Université de Bruxelles 1995) 73.

⁹ Katrin Auel and Arthur Benz, 'The Europeanisation of Parliamentary Democracy', (2005) JLS, 11.

¹⁰ John O'Brennan and Tapio Raunio, 'Deparliamentarization and European Integration' in John O'Brennan and Tapio Raunio (eds) *National parliaments within the enlarged European Union: from „victims” of integration to competitive actors?* (eds), (2007), 8.

¹¹ Martin Loughlin, 'Contemporary Crisis of Constitutional Democracy' OJLS, Vol. 39, No. 2 (2019), 435.

¹² T Ginsburg, and AZ Hug, *How to Save a Constitutional Democracy* (University of Chicago Press; 1s edn 2018).

¹³ Official Gazette of the Republic of North Macedonia, No 43/2020 of 16 February 2020.

¹⁴ Statement by Commissioner Hahn and MEPs Vajgl, Howitt and Kukan, 'Agreement in Skopje to overcome political crisis', European Commission Press Corner, (Brussels, 15 July 2020). <https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_15_5372> accessed on 5 August 2020.

The authorities believed that the sporadic occurrence of corona cases would not influence the election date and continued with the electoral preparations. The ongoing events proved the opposite, forcing the political party leaders to agree on postponement and look for legal solutions for such an extraordinary situation. For the first time since the independence in 1991, the State President Stevo Pendarovski signed a Decision to Establish State of Emergency.¹⁵ According to Article 125 of the Constitution, a state of emergency is determined by the Assembly on a proposal by the President of the Republic, the Government or by at least 30 MPs. It requires a two-thirds majority in Parliament, with a duration of a maximum of 30 days, without provisions for a possible extension. In case the Parliament cannot convene, the decision can be taken by the State President, but he or she is obliged to submit it to the Parliament for approval once the parliament convenes. Gaps in the existing legislative framework spurred various interpretations on the possibility to re-convene a dissolved parliament. The State President had to sign the Decision to Establish State of Emergency on a proposal by the Government, after the official notification by the President of the Parliament that a dissolved parliament cannot re-convene. The Constitution does not indicate whether the President can declare a state of emergency on a proposal by the government, which would be a logical step once the parliament is unable to convene; but it rather leaves it only in the competence of the parliament.

Current constitutional provisions do not specify whether the existence or establishment of an emergency situation is determined by international or national legal act. The Constitution does not make a clear distinction between the notion of 'epidemics' and 'emergency situation', thus implying that each epidemic will lead to the establishment of an emergency situation in the state. An emergency situation is a constitutional category that implies special legal competences and activities for the state institutions and certain limitations of human rights and freedoms, unlike the epidemic that may not always require declaration of an emergency situation.¹⁶ The Constitution also fails to define whether the emergency situation declared by the State President has the same duration as when adopted by the Parliament. The Parliament on the other hand, has no clearly prescribed competence once it is convened, as to whether it can approve the decision by State President adopted without its consent and the decisions with legal force adopted by the Government during the emergency situation. Broadly seen, its competences to adopt laws and have oversight of the government activities provides enough manoeuvre for the incoming MPs to take the whole legal emergency package on board, assess its implications and confirm the declared state of emergency.

Another poorly defined aspect that allows different interpretations is a dissolved parliament in an emergency situation and the mandate of the MPs. The impossibility to re-convene does not automatically refer to a dissolved parliament, due to the fact that the Constitution¹⁷ stipulates that the Parliament is in permanent session (Article 66)¹⁸, the term of office of MPs can be extended during state of war or emergency (Article 63)¹⁹, and that their mandate lasts until the verification of mandates in the new parliamentary composition (Article 9, Law on Election of MPs)²⁰. The dissolution does not impose cessation of its work, but rather is envisaged to avoid abuse of electoral campaign during parliamentary sessions. Therefore, the generally accepted notion by the Assembly authorities that a dissolved parliament cannot re-convene endangers the principle of separation of powers and its oversight function over the executive.

The authorization vested in the government to adopt decrees with the force of law, valid until the termination of the state of emergency, should be given by the Parliament. This nebulous provision does not provide the possibility for the President to declare or terminate the state of emergency, including the government actions in such situations. In our case, the emergency situation has been extended

¹⁵ Official Gazette of the Republic of North Macedonia, No 68/20 of 18 March 2020.

¹⁶ V Kambovski, A. Pavlovska-Daneva, G. Lazetic, E. Mujovska-Trpevska, and K Bitrakov, 'Legal Aspects of the Emergency Situation', MANU (2010), <www.manu.edu.mk> accessed on 1 August 2020.

¹⁷ The Constitution of the Republic of North Macedonia, <<https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspj>> accessed on 15 August 2020.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Law on Election of MPs in the Assembly of the Republic of North Macedonia <https://www.sobranie.mk/izborni-zakoni-ns_article-zakon-za-izbor-na-pratenici-vo-sobranieto-na-republika-makedonija.nspj> accessed on 15 August 2020.

twice for 30 days, on 17 April and 17 May 2020 respectively, as well as on 15 June for another 8 days to observe the electoral deadlines. Once adopted, the government decrees with the force of law have been published directly in the Official Gazette, without being submitted to the State President for signature, also not envisaged in the Constitution. It would have been proper if the State President, within the frames of his competences, had broadened the decision declaring an emergency situation by specifying in detail the scope and the details of government actions.

Government decrees with legal force: general benefits in times of pandemic or abuse of power

The international instruments stipulating the general principles for an emergency situation, the UN International Covenant on Civil and Political Rights (ICCPR)²¹, ECHR (Article 4) and the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (Article 15)²² in particular, envisage that the derogation therefrom should be in cases when the situation inevitably represents immediate threat to the community, that it is not in conflict with the state party commitments under international law and that it does not involve any kind of breach of the rule of law and any discrimination on the ground of race, color, sex, language, religion or social origin.

The Republic of North Macedonia informed the Council of Europe's Secretary General on 2nd April 2020 that the country had derogated from the Convention on the entire territory of the state. The Government has thoroughly elaborated the legal and circumstantial grounds for such derogation, and on the temporary suspension of certain human rights and fundamental freedoms guaranteed by the Constitution such as: suspension of primary, secondary and university classroom education and replacement with distance learning, restriction of public gatherings, events and conferences, closing of museums, theatres and cinemas for visitors, suspension of air travel, establishment of isolation measures and state-organized quarantine for citizens entering the territory, ban or special regime of movement in parts and on the entire territory of the country, as well as additional movement restrictions. The implementation of measures caused derogation from certain obligations of the country under Article 8 and Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms.²³ Part of the decisions taken to introduce full quarantine for all citizens, except for those with permission, were questioned in terms of whether they produced the expected results, since the number of infected persons was constantly rising despite the limitations.²⁴ In the first set of quarantine measures, the government also did not envisage the practice of daily walks for certain health categories of people, a decision that was corrected in the next series of adoption of such measures.

The government's new role as a legislator in times of pandemic with a dissolved parliament left its hands untied for decision-making. The system proved that there are no separate provisions for decrees with legal force;²⁵ the procedure is the same as for other government acts. In order to avoid ambiguities and marginalization, the uniqueness of this situation requires special procedures to be included in the Rules

²¹ International Covenant on Civil and Political Rights, <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> , accessed on 1 August 2020.

²² Convention for the Protection of Human Rights and Fundamental Freedoms, <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>> accessed on 2 August 2020.

²³ Council of Europe - Directorate of Legal Advice and Public International Law (2020), Note Verbale, JJ9021C Tr./005-232, <<https://rm.coe.int/16809e1288>> accessed on 1 August 2020.

²⁴ Ministry of Health Care of the Republic of North Macedonia, 'Covid-19 State Statistics', <<https://koronavirus.gov.mk/stat>> accessed on 30 July 2020.

²⁵ Government of the Republic of North Macedonia, Rules of Procedure, <<https://vlada.mk/sites/default/files/dokumenti/%D0%94%D0%B5%D0%BB%D0%BE%D0%B2%D0%BD%D0%B8%D0%BA%20%D0%BD%D0%B0%20%D0%92%D0%BB%D0%B0%D0%B4%D0%B0%D1%82%D0%B0%20%D0%BD%D0%B0%20%D0%A0%D0%B5%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B0%20%D0%9C%D0%B0%D0%BA%D0%B5%D0%B4%D0%BE%D0%BD%D0%B8%D1%98%D0%B0.pdf>> accessed on 3 August 2020.

related to the adoption of such decrees. Instead of taking this step at the beginning of the emergency situation, the government continued to work according to the existing Rules.

With the aforementioned legislative framework, many open possibilities have appeared on the horizon. Until the end of the emergency situation, the government has adopted more than 200 decrees with legal force, as well as other acts covering many areas that rightfully have been questioned and will be analyzed in details by experts in future about the real necessity of their adoption.

In our political system, the decrees with legal force are legal act *sui generis* with unique status. They can neither be fully placed in the category of laws, nor as by-laws. From a legal point of view, they are adopted by an institution authorized by the Constitution in an extraordinary situation to secure the functioning of society. They should be adopted in a reasonable and balanced manner, for a definite period of time, and are subject to review by the Constitutional Court.

Despite constitutional and legal imperfections and lack of experience in such cases, the state authorities, both the Government and the State President, managed the pandemic situation quite well. It was the first emergency situation declared after state independence. However, the speed and the number of decrees adopted in the past several months undoubtedly challenged their true democratic legitimacy. The Government, as a parliamentary proxy, did not undergo supervision by the State President regarding the legality of acts in accordance with international treaties and the Constitution; on the contrary, they have been adopted on a fast track and published directly in the Official Gazette of the Republic of North Macedonia. Hence, there were few decrees that failed to respect the principle of proportionality and necessity, like the decree on the salaries of employees in the Special Prosecutors' Office, elected officials and judges, banknotes, on elections and financing in universities, etc. For example, the decree of the government to cut down salaries of publicly elected officials, including judges and prosecutors was reviewed, stopped and later annulled by the Constitutional Court with an explanation that the Government constitutional competence related to adoption of decrees with legal force does not imply its arbitrariness in the assessment to adopt decrees with legal force and to regulate issues outside the emergency situation and to restrict citizens' freedoms and rights outside the Constitution.²⁶ In fact, the Constitutional Court was one of the most active courts during the pandemic, closely following the adoption of decrees with legal force adopted by the government. In the past couple of months, the Constitutional Court reviewed and decided upon 127 government decrees, which is around 50% of all adopted acts in this period²⁷.

Another government decree with legal force²⁸ stopped court procedures during the emergency situation, except for cases that follow deadlines for penalty obsolescence. All legal deadlines were ceased. The submission of appeals and the response to a lawsuit were postponed. It was a direct interference in the judicial system as a separate branch of government and deprived citizens of their rights for a fair trial and judgment in a reasonable time frame. Such actions created a pile of court cases put on hold, including case investigations. Compared with last year, the number of closed cases is two to three times smaller. The courts justified their mode of work due to the government measures, as well as of non-existence of a separate law on state of emergency.²⁹ As a result of the outdated equipment and lack of human resources, the courts claim that it is impossible to continue with full online working; further complications include the fact that online working violates the principle of directness between the judge

²⁶ Decision No 135/20, Constitutional Court, Official Gazette of the Republic of North Macedonia, <<http://www.slvesnik.com.mk/Issues/f290962b7c4a4f379e6f749e073633ff.pdf>> accessed on 15 July 2020.

²⁷ V Magleshev, 'Corona tested the Immunity of Judiciary', Balkan Investigative Reporting Network, (Skopje, 13 August 2020), <<https://prizma.mk/koronata-go-testirasho-imunitetot-na-pravosudstvoto/>> accessed on 15 August 2020.

²⁸ Decree with Legal Force on the Deadlines in Court Procedures during Emergency Situation and Activities in Courts and Public Prosecutor Offices, Official Gazette of the Republic of North Macedonia, No 84 of 30 March 2020, <<http://www.slvesnik.com.mk/Issues/65e3a64a3e6a48d0a785d9448273b930.pdf>> accessed on 15 July 2020. Decree with Legal Force Amending the Decree with Legal Force on the Deadlines in Court Procedures During Emergency Situation and Activities in Courts and Public Prosecutor Offices, Official Gazette of the Republic of North Macedonia, No 89/20 of 3 April 2020, <<http://www.slvesnik.com.mk/Issues/f983e808a26d4cdf9a7411080df910a8.pdf>> accessed on 15 July 2020.

²⁹ 27, Ibid.

and the defendant and the principle of public transparency. If accepted as a possible option in the future, it has to be included in the existing legal framework with two-thirds majority in parliament.

The election of judges by the Judicial Council in different courts right before the dissolution of the Parliament and their official announcement during the pandemic³⁰ questioned the influence of the executive over the judiciary, having in mind that constitutional arrangements prescribe that part of the members of the Council are elected by the parliament on a proposal by the parliamentary Committee on Elections and Appointment Issues and by the State President, as well as that the Minister of Justice is a member *ex officio* in the Council. The explanation by the Judicial Council was that the decisions were in accordance with the existing laws and internal regulations.

The requirement to send military troops abroad became even more significant, after the country achieved its strategic goal³¹ and this year became the 30th Member of NATO. With the emergency situation the decision, initially a competence of the Parliament, has been taken by the technical government as a decree with legal force that is not contrary to the constitutional arrangements prescribed for emergency situations, but distorts the weight of such a decision adopted by a regular and democratic parliamentary procedure with support of the majority of parties represented in parliament.

The Government has also decided at its last session to adopt a Decree amending a previous decree for the election of MPs in the Parliament³², which initially implied implementation of provisions from the Electoral Code, and amend the proportional representation of the opposition in the media. It has been the subject of reaction by the biggest opposition party, who filed a report to the Agency for Audio and Audiovisual Media Services. In normal times the Electoral Code, as a systemic law, in order to be amended requires a two-thirds majority in parliament. In this case, the technical government, by expressly adopting a government decree with legal force and making major amendments right before parliamentary elections, put into question the political correctness of the action in a sensitive period and its authority to adopt such a decision.

There were also several decrees regarding the minimum wage in the state,³³ the promotion of a shopping and tourist card for certain categories of citizens³⁴ and state aid for private companies.³⁵ Despite the government's good intention to help those in need and boost domestic economy, all were seen as a possible populist step before the election date for obtaining more citizens' votes. Public procurement of medical supplies and respiratory machines was done in a fast procedure without

³⁰ Decisions for Election of Judges in the Civil and Criminal Courts and in the Court of Appeal, Official Gazette of the Republic of North Macedonia, No 68/20 of 18 March 2020, <<http://www.slvesnik.com.mk/Issues/4049500a3fc544da898402bee6a65758.pdf>> accessed on 16 July 2020.

³¹ 'Decision for Membership of Republic of Macedonia in NATO', Official Gazette of the Republic of North Macedonia No 78/93 of 27 December 2020, <<http://www.slvesnik.com.mk/Issues/91d136c2e341423f8ddd9b6d71d24cca.pdf>> accessed on 20 July 2020.

³² Decree with Legal Force Regarding the Elections of MPs in the Assembly of the Republic of North Macedonia, Official Gazette of the Republic of North Macedonia No 160/20 of 15 June 2020, <<http://www.slvesnik.com.mk/Issues/4513e43cbd044a2393d2e443aca46ade.pdf>> accessed on 30 July 2020.

Decree with Legal Force Amending the Decree with Legal Force Regarding the Elections of MPs in the Assembly of the Republic of North Macedonia, Official Gazette of the Republic of North Macedonia, Official Gazette of the Republic of North Macedonia No169/20 of 22 June 2020< <http://www.slvesnik.com.mk/Issues/826f6b15f59c48cd8725e7f0fe3cb5f8.pdf>> accessed on 30 July 2020.

³³ Decree with Legal Force for Implementation of the Law on Minimum Wage during Emergency Situation in the Republic of North Macedonia, Official Gazette of the Republic of North Macedonia No 88/20 of 3 April 2020, <<http://www.slvesnik.com.mk/Issues/60b5ea0140e64926b71ad8b95d3314f4.pdf>> accessed on 5 August 2020.

³⁴ Decree with Legal Force for Financial Support of Citizens and Employees with Low Income, Young People and Health Care Workers, in a Form of Domestic Payment Card Intended for Purchase of Macedonian Products and Services during Emergency Situation, Official Gazette of the Republic of North Macedonia No 137/20 of 27 May 2020, <<http://www.slvesnik.com.mk/Issues/9f80e42f7ba941e69fc6593116e26eb8.pdf>> accessed on 5 August 2020.

Decree with Legal Force Amending the Decree with Legal Force for Financial Support of Citizens and Employees with Low Income, Young People and Health Care Workers, in a Form of Domestic Payment Card Intended for Purchase of Macedonian Products and Services during Emergency Situation, Official Gazette of the Republic of North Macedonia No147/20 of 3 June 2020, <<http://www.slvesnik.com.mk/Issues/cc0fe71b9e904437980323176922d8a3.pdf>>, accessed on 5 August 2020.

Decree with Legal Force for Issuing of Tourism Vouchers for Employees with Low Income to Boost Domestic Tourism in Emergency Situation, Official Gazette of the Republic of North Macedonia No 141/2020 of 30 May 2020, <<http://www.slvesnik.com.mk/Issues/cb1f5841f2324600a3821d05d21d7384.pdf>>, accessed on 5 August 2020.

³⁵ Decree with Legal Force for Establishment of a Fond for Assistance and Support to the Crisis caused by the Corona Virus COVID-19, Official Gazette of the Republic of North Macedonia No 106/20 of 21 April 2020, <<http://www.slvesnik.com.mk/Issues/41ee7284988d4ebb894986e8b1e40b05.pdf>>, accessed on 5 August 2020.

sufficient control, which although generally well managed, inspired rumors about its legality and transparency.

Re-installment of parliamentary democracy after the elections: fact or myth?

To be fully functional, parliaments must perform their electoral role as conferred by the citizens to voice their needs and demands through legislation, to inform or teach the citizens of the things they are not aware of and to regularly check the public expenditure.³⁶ Placing different opinions on public issues and critical thinking in parliament³⁷ are pivotal for the public especially in emergency times. For the purpose of maintenance of balance of power, the Venice Commission states that the legislative control during an emergency over the executive is of importance for the rule of law and parliamentary life and due to this fact, they welcome constitutions where dissolution of the legislature is forbidden in times of emergency.³⁸ Furthermore, the Venice Commission demands the post hoc parliamentary powers such as the oversight and conduct of inquiries and investigations to be implemented once the necessary conditions are created.³⁹ It presupposes that the parliament will have to deal in a regular parliamentary procedure with the negative consequences of the state of emergency and measures for their compensation. The return to normal functioning of the state must occur as soon as the conditions are met and all acts adopted during the emergency situation should be the subject of parliamentary and judicial oversight; the post-parliamentary democracy⁴⁰ must quickly renew the link between the demos and the parliament.⁴¹

Our domestic legal system does not clearly prescribe the validity of government decrees adopted in an emergency situation and whether they are only related to amendments of existing legislation or if the government can adopt decrees regulating a new area that has not been subject to regulation so far. The international framework requiring restrictiveness and observance of the principles of necessity and proportionality as part of our domestic legislation provides guidance for adoption of all decrees with legal force in an emergency situation. On the other hand, our historical tradition entails acceptance of the notion of the 'letter of the law', meaning that nothing is obligatory unless prescribed by law. This might have been used as an excuse for adoption of acts not strictly related to the emergency situation.

A decision taken by the Constitutional Court⁴² approved the duration of some decrees with legal force after the end of the emergency situation, like for example the mandate of the State Electoral Commission that had to carry out the parliamentary elections on 15 July 2020 in the state. In this way, the Court filled the existing legal gap regarding the enforcement of decrees after the end of the emergency situation. The prolonged duration of these decrees is justified only if these acts regulate matters closely related to the cause provoking the emergency situation, or that cover legal matters that occurred before the emergency situation. The Parliament constituted on 4 August 2020 and the new mandate is authorized to put on the agenda all the decrees with prolonged duration for revision, and decide on their annulment or adoption as amendments to the existing laws. This should be done as a

³⁶ Walter Bagehot, *The English Constitution*, (2nd edn, 1873), 135, <<http://socserv2.socsci.mcmaster.ca/econ/ugcm/3ll3/bagehot/constitution.pdf>>, accessed on 1 August 2020.

³⁷ Mill, John Stuart, *Considerations on Representative Government* (1 supp 1861, Gutenberg, 2013) <<https://www.gutenberg.org/files/5669/5669-h/5669-h.htm>>, accessed on 10 August 2020.

³⁸ European Commission for Democracy through law (Venice Commission) [1995], 'Emergency Powers' <https://www.venice.coe.int/webforms/pages/?p=02_emergencypowersobservatory&lang=en>, accessed on 30 July 2020.

³⁹ European Commission for Democracy through Law (Venice Commission) [2020], 'Report on respect for democracy, human rights and the rule of law during states of emergency: Reflections' <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)014-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)014-e)> accessed on 30 July 2020.

⁴⁰ A Maurer, 'The Convention and the National Parliamentary Dimension', (2005), 05/01 ARENA Working Papers, <http://www.arena.uio.no/publications/papers/wp05_01.pdf> accessed on 1 July 2020.

⁴¹ Richard Bellamy and Dario Castiglione, 'Democracy by Delegation? Who Represents Whom and How in European Governance, Government and Opposition', [2011], *IJCP*, CUP, Vol. 6, Issue 1, 101.

⁴² Constitutional Court Decision, No 47/20 of 28 April 2020, <<http://ustavensud.mk/?p=19072>> accessed on 2 July 2020.

priority in order to avoid constitutional misinterpretation. Nonetheless, the adopted decrees with legal force during the emergency situation will most probably be also under scrutiny by the Venice Commission, in the framework of its observation on the situation of the states of emergency around the world.

Due to the outcome of the parliamentary elections, where the SDSM led coalition won 46 seats, VMRO-DPMNE coalition 44, the Left 2 seats in the Macedonian block, and DUI 15, the AAA 12 seats and DPA 1 seat in the Albanian block, numbers reveal a possible troublesome mandate for the incoming executive. The contradictory provisions in the Constitution and in the Rules of Procedure related to the constitutive session of Parliament also led to a different interpretation on the deadline for handing over of the mandate to the candidate of the party/ies that have a majority in Parliament. Despite the conflicting opinions, State President Pendarovski handed over the mandate to the SDSM leader Zoran Zaev on 13 August 2020⁴³. It took weeks for previous coalition partners SDSM and DUI to go into a long process of negotiations and to reach an agreement by declaring the formation of a new government.

The political agreement in parliament resulted with the re-election of Mr. Talat Xhaferi as the President on 21 August 2020 to lead the Parliament for the next 4 years. In the 120-seat Parliament, the ruling coalition will have 61 MPs for adoption of simple majority decisions. This implies that the government may have a limited manoeuvre due to a narrow majority, which will seriously put in question the pre-election reform programs as well as the measures that need to be adopted to deal with the pandemic, both in medical and economic terms.

The country is expected to start negotiation talks for EU membership by the end of the year and to continue with the implementation of the obligations assumed under the treaties signed with neighbouring Greece and Bulgaria, including opening some very sensitive issues of national identity and national history. The Parliament will have its major role in these processes. All that said, one may conclude that the present domestic political landscape will definitely complicate the decision making in parliament and will influence the quality of the adopted legislation.

Conclusion

'Knowledge institutions' are fundamental components of successful constitutional democracies⁴⁴ that were often endangered in authoritarian regimes. Emergency situations allowing governments to broaden state surveillance and control cellular data, infringe freedom of assembly and expression, censor news media and adopt legislation on a fast track around the world, have revealed some features of these regimes by accident or by intention. The pandemic has definitely redefined norms, threatening to go beyond the realm of public health, crippling democratic institutions.⁴⁵ The ability of the state to cope with exceptional circumstances while respecting the rule of law represents a direct test of its democratic capacity. On the top of it, the crisis showed that functioning of the parliaments is needed like never before.

The pandemic, which will have long lasting effects in the economy and other societal fields in the Republic of North Macedonia as elsewhere in the world, entails sound functioning of state institutions in the period to come. The official start of the negotiations for EU accession with the Inter-Governmental Conference where the country is expected to gradually adopt the *acquis communautaire*, may be the right moment to correct the legal ambiguities and the constitutional cacophony for emergency situation together with the other legal EU package, including the 'annulation' of parliamentary democracy in an

⁴³ Frosina Naskovic, 'Pendarovski Hands Over the Mandate to Zaev', (MIA, 13 August 2020) <<https://mia.mk/pendarovski-hands-over-mandate-to-zaev/?lang=en>> , accessed on 15 August 2020.

⁴⁴ Vicky C Jackson, 'Knowledge Institutions in Constitutional Democracies: Objectivity and Decentralization', (Harvard Law Review Blog, 29 August 2020) <<https://blog.harvardlawreview.org/knowledge-institutions-in-constitutional-democracies-of-objectivity-and-decentralization/>> accessed on 16 August 2020.

⁴⁵ Tom Ginsburg and Mila Versteeg, 'States of Emergencies: Part I', (Harvard Law Review Blog, 17 April 2020) <<https://blog.harvardlawreview.org/states-of-emergencies-part-i/>> accessed on 10 August 2020.

emergency situation. The negotiations should go in favour of setting clearer provisions that will secure the competences of the Parliament, the Government, the State President and the Constitutional Court, the legal acts, their scope and duration, as well as regarding the functioning and the capacities of relevant institutions to cope with any future pandemic.

As representatives of the people, parliamentarians must be involved and closely follow the creation and implementation of government measures during emergency situations. The Assembly of the Republic of North Macedonia, first and foremost, has to amend its Rules of Procedure and enable MPs to work during lockdowns and at a distance, eliminating the past perception that parliaments are traditionally in favour of working 'in physical presence' and that they can well serve their citizens by working under new conditions. The best example that parliamentarians can meet, exchange opinions and experiences and decide on number of issues in times of pandemic, were the numerous online meetings within the framework of international parliamentary assemblies like that of the Council of Europe, NATO, OSCE, IPU, etc. The Coronavirus does not recognize borders, nationality, race, sex or religion and the challenges that have risen in the past few months in the world with features of authoritarianism, as well as the economic consequences that are about to deliver their bill, make it even more important that parliaments function properly and help their citizens in the best possible way.

In the following years, the elected officials will have to face the challenges in the health and the economic sector that will be most probably pandemically inter-linked due to recession and loss of jobs, and create even greater divisions in society. Trends have revealed that economic problems give rise to nationalistic parties which, in turn, lead to democratic backsliding and international disassociation and cooperation, pushing their countries to be more focused on national rather than on international topics, something which is very difficult to achieve in a globalized world. This will definitely have grave consequences on multilateralism. It is up to the parliaments, through legal means and appropriate measures, to prevent such trends gaining momentum. The lesson that the pandemic gave to the world is that constitutional democracies need to be revised, and not replaced by a new order.

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