

LEGAL RESPONSES TO COVID-19 IN NORTH MACEDONIA

Abstract.....	1	V. <i>The restrictions of human rights in the state of emergency in North Macedonia as regulated in the Constitution.....</i>	6
I. <i>Introduction.....</i>	1	VI. <i>Restriction of human rights in North Macedonia due to the Covid-19 pandemic....</i>	7
II. <i>Constitutional frame of state of emergency in North Macedonia.....</i>	2	VII. <i>The decrees with force of law in front of the Constitutional Court.....</i>	9
III. <i>Declaration of the state of emergency due to the covid-19 pandemic in North Macedonia.....</i>	4	VIII. <i>Postponing elections due to Covid-19 pandemics.....</i>	10
IV. <i>Judicial review to the decisions for declaration of state of emergency.....</i>	5	IX. <i>Conclusion.....</i>	11

-abstract-

COVID-19 has posed unprecedented challenge not only for health system, but also for legal system all over the world. This paper analyzes the legal challenges, North Macedonia faced because of COVID-19 pandemic in 2020. When the pandemic started, the Parliament of North Macedonia was dissolved and pre-term elections were called. The President of the Republic proclaimed state of emergency. The interim Government was challenged to respond efficiently to the pandemic and its consequences, by using minimal restrictions of human rights. The paper analyzes the constitutional frame regulating the state of emergency as well as the legal measures that affected human rights in North Macedonia during the effort of balancing the values of constitutionalism with the need of efficient measures to deal with the pandemic. Also, the paper analyzes the decisions of the Constitutional court of North Macedonia on the acts connected with the state of emergency proclaimed due to the COVID-19 pandemic.

I. INTRODUCTION

In North Macedonia in 2020 for the first time of its history the state of emergency was declared. This decision was necessary for solving the challenges that come out from COVID-19 pandemic. But at the same time, this decision brought with itself new legal challenges.

In the moment when COVID-19 pandemic was declared by the World Health Organization, the caretaker Government was on power in the Republic of North Macedonia. The Parliament was dissolved and the elections were called for 12 April 2020. In the conditions when the best medical responses to the virus of COVID-19 were still unknown, when social distancing was recommended and public gatherings were forbidden, it was clear that it was

* Renata Treneska Deskoska, PhD, Full Professor, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law, e-mail: renatadeskoska@gmail.com

impossible to continue the electoral process. So, in such circumstances, all political parties agreed that the parliamentary elections should be postponed. The leaders of relevant political parties conducted a meeting called by the President, where they agreed to postpone the elections, but the legal mechanism to do so was not decided on.

The President of the Parliament refused to call the Parliament, stating that it was not according to the Constitution. The Constitution is silent on the issue, whether the Parliament, which is dissolved, should be called if the emergency situation is declared.

The only provision that exists is that in Article 63 Paragraph 4, which regulates that “The term of office of the Representatives to the Assembly can be extended only during states of war or emergency.”

In 2016 the Constitutional Court in the reasoning of the Decision U. No. 104/2016-1 stated that, “the mandate of the Representatives of the Assembly cannot be prolonged in the case of dissolution of the Assembly, outside of the conditions determined in the Article 63 Paragraph 4 of the Constitution.” This stand of the Constitutional Court could have been used as a base to call the Parliament, but the President of the Parliament had a different opinion, stating that the dissolved Parliament cannot be reconvened even in an emergency situation.

Because there was disagreement on the issue whether the Parliament could reconvened, the proclamation of state of emergency was only solution that gave possibility for taking effective measures for dealing with the virus on the one side, and postponing the parliamentary elections on the other side.

This first state of emergency in the Republic of North Macedonia showed the narrowness and inconsistency of the constitutional frame of the state of emergency, as well as the necessity of the law on state of emergency.

II. CONSTITUTIONAL FRAME OF STATE OF EMERGENCY IN NORTH MACEDONIA

The Seventh chapter of the Constitution regulates the states of war and emergency. This chapter consists of 7 articles (from 122 – 128) of which 2 are dealing with the issues of defense and the other 5 are regulating state of war and emergency. These articles are very modest, general, and do not cover many issues that raised during the declared emergency situation, so the Government as well as the Constitutional Court of North Macedonia faced big challenges in their implementation and interpretation when a state of emergency was declared.

Article 124 of the Constitution regulates that a state of war “exists when direct danger of military attack on the Republic is impending, or when the Republic is attacked, or war is declared on it.” This article does not regulate the possibility for declaring state of war on the part of the country.

Differently to this, Article 125 regulates that a state of emergency can be declared on the territory of the Republic of North Macedonia or on part of it. As reason for declaring a state of emergency, the Constitution regulates that “a state of emergency exists when major natural disasters or epidemics take place.”

The Constitution regulates the same procedure for declaration of state of war or emergency. A state of war or emergency is declared by the Assembly by a two-thirds majority vote of the total number of Representatives of the Assembly, on the proposal of the President of

the Republic, the Government or at least 30 Representatives. If the Assembly cannot meet, the decision on the declaration of a state of war is made by the President of the Republic who submits it to the Assembly for confirmation as soon as it can meet.

The difference is that the Constitution limits the duration of the period in which the decision of the Parliament to declare emergency situation can remain in force, while there is not such limitation for the state of war. In the Article 125 is regulated that the decision to establish the existence of a state of emergency is made by a two-thirds majority vote of the total number of Representatives and can remain in force for a maximum of 30 days. If the Assembly cannot meet, the decision to establish the existence of a state of emergency is made by the President of the Republic, who submits it to the Assembly for confirmation as soon as it can meet.

The Article 126 of the Constitution regulates that during a state of war or emergency, the Government, in accordance with the Constitution and law, issues decrees with the force of law. The authorization of the Government to issue decrees with the force of law lasts until the termination of the state of war or emergency, on which the Assembly decides.

This article created a problem in its interpretation. The confusion came from the formulation that “the Government, in accordance with the... law issues decrees with the force of law.” The problem is that there is not a special Law on state of war or emergency. So, the question was which law, the decrees with a force of law, should be in accordance with.

The decrees with the force of law are mentioned in two articles of the Law on Government of the Republic of Macedonia („Official Gazette of the Republic of Macedonia“ No. 59/00, 26/01, 13/03, 55/05, 37/06, 115/07, 19/08, 82/08, 10/10, 51/11, 15/13, 139/14, 196/15, 142/16, 140/18 and „Official Gazette of the Republic of North Macedonia No. 98/19).

Article 35 of the Law on Government enumerates the acts that are adopted by the Government, stating that: “For the purpose of implementing the laws, the Government shall adopt decrees with the force of law, decrees, decisions of general applicability, instructions, programs, decisions of individual applicability and conclusions.”

Article 36 regulates that: “By a decree with the force of law, the Government shall regulate issues within the area of competence of the Assembly in the case of martial law or state of emergency, if there is no possibility of convening the Assembly.”

The confusion was even increased with the provision from Article 35, which enumerates the decree with the force of law among the acts adopted by the Government, for the purpose of implementing the laws.

The Constitutional court took two different interpretations of the decrees with the force of law. In some of the decisions, the Constitutional court took the stand that “the decrees with the force of law can be adopted only for operationalization of the constitutional and statutory provisions, and not to norm originally certain situation which is not foreseen in the constitution or in the statute” (Decision, U. No. 49/2020). In other decisions, the Constitutional court took position that “the decrees with the force of law are specific legal regulations which are adopted in the state of emergency, when there is a need of taking fast and efficient measures, of fast regulation of certain questions which are not regulated at all by statute or are regulated in a manner which does not allow for an efficient taking of measures which are imposed by the emergency situation, with aim to face and overcome the reasons which led to emergency situation, as well as its consequences and return into normal constitutional legal system.” (Resolution, U. No. 56/2020 and Resolution

42/2020).

The Article 127 of the Constitution regulates that: “During the state of war, if the Assembly cannot meet, the President of the Republic may appoint and discharge the Government, as well as appoint or dismiss officials whose election is within the sphere of competence of the Assembly.”

Also, the Constitution regulates that mandate of certain positions will be extended during the state of war or emergency. According to the Article 128 of the Constitution “The mandate of the President of the Republic, the Government, the judges of the Constitutional Court, as well as members of the Republican Judicial Council is extended for the duration of the state of war or emergency.”

In another constitutional article, the extension of the mandate of the Members of the Parliament is regulated. Article 63 Paragraph 4 regulates that “The term of office of the Representatives to the Assembly can be extended only during states of war or emergency.” Other articles of the Constitution that refer to the state of war or emergency are Article 21 and 54. According to the Article 21 the exercise of the right to peaceful assembly may be restricted only during a state of emergency or war. Article 54 regulates the rights that cannot be restricted during the state of emergency.

III. DECLARATION OF THE STATE OF EMERGENCY DUE TO THE COVID-19 PANDEMIC IN NORTH MACEDONIA

On 18th of March 2020, the Government of the Republic of North Macedonia proposed for a state of emergency to be declared. The proposal was sent to the President of the Assembly. The President of the Assembly forwarded the proposal to the President of the Republic the same day, informing him that because the Assembly was dissolved on the 16th of February 2020, he would not be able to call a session of the Parliament on which the proposal of the Government will be discussed and decided. On the basis on the proposal of the Government and the letter of the President of the Parliament, the President of the Republic declared a state of emergency on the 18th of March for a period of 30 days. The state of emergency was declared several times and will last from the 18th of March till the 13th of June 2020.

In summary, because of the spread of COVID-19 in North Macedonia, the President of the Republic, has so far declared a state of emergency five times:

- On the 18th of March 2020 for a period of 30 days (Official Gazette, No. 68/2020),
- On the 17th of April 2020 for a period of 30 days (Official Gazette, No. 104/2020),
- On the 17th of May 2020 for a period of 14 days (Official Gazette, No. 127/2020),
- On the 30th of May 2020 for a period of 14 days (Official Gazette, No. 142/2020)
- On the 15th of June 2020 for a period of 8 days (Official Gazette, No. 159/2020).

The state of emergency was declared because the country was in the middle of an electoral process, so there was a need to postpone the elections. The President of the Parliament was refusing to call the Parliament, stating that it was not according to the Constitution. So, in a situation in which the Parliament was not in session, because it was dissolved, beside a need to postpone the elections, there was also a need for the Government to have effective powers to deal with the pandemic and with its economic consequences.

The first and second decisions declaring a state of emergency were adopted with the goal of protecting and dealing with the consequences of the spreading of COVID-19. The third declaration of a state of emergency was mainly aimed at giving a possibility to the Government to adopt economic measures assisting those who suffered economically as a consequence of the epidemic. The fourth declaration of the state of emergency was declared because the opposition did not want the electoral process to continue and demanded a postponing of the election. Because the Parliament was not reconvened, the Government adopted the Decree with the force of law on electoral matters with which regulated that the electoral process will continue when the state of emergency expires. All electoral activities that were taken before the state of emergency will be valid and only those activities that are left will continue. According to the timetable of the State Electoral Commission, only 22 days were left till the Election Day. So, because the opposition was not prepared for the election, this declaration of a state of emergency was excused by the Coronavirus, but the real reason behind that was postponement of elections.

On the 13th of June the state of emergency expired and as such the electoral activities were supposed to start and elections were supposed to be held on the 5th of July. The State Electoral Commission (SEC) was supposed to convene on the 14th of June in order to adopt the Timetable for the electoral activities, however the President of SEC, who is proposed by the opposition (VMRO-DPMNE), did not call a meeting. The biggest political party in opposition stated that they would not participate in the elections. That led toward a consultation among the political parties, which finally agreed on the elections being held on the 15th of July 2020. Because of that, a new emergency situation lasting 8 days was declared on the 15th of June. In the Decision for proclaiming the new emergency situation, the President of the Republic justified the proclamation for preparation and conducting pre-term parliamentary elections, with measures for protection of public health in the conditions of a pandemic declared by the World Health Organization.

IV. JUDICIAL REVIEW TO THE DECISIONS FOR DECLARATION OF STATE OF EMERGENCY

The first two decisions of the President were subject of review by the Constitutional court. The initiative for review of the constitutionality of the first declaration was rejected because the declaration was not in force anymore. The Constitutional court decided on the constitutionality of the declaration on 6th of May 2020, while the declaration was in force till 16th of April 2020 (Resolution U. No. 41/2020).

The second decision for declaration of a state of emergency was also subject to review by the Constitutional Court. The submitter of the initiative for control of constitutionality claimed that the Constitution limits the period of a state of emergency that can be declared by the President of the Republic to a total of 30 days. Thus, according to this claim the President can for example declare a state of emergency lasting 10 days 3 times, but he cannot declare multiple states of emergency which in total account for more than 30 days. The Constitutional Court declared the initiative unfounded and decided that the second Decision for declaration of a state of emergency for an additional 30 days as constitutional. In the reasoning the Constitutional Court stated that “the Constitution does not limit, nor is it possible to limit, how many times the state of emergency will be declared, if the competent bodies – the Assembly or the President of the Republic, evaluate that the

conditions and need for its declaration are fulfilled. The only limitation is that the decision for declaration of the state of emergency can have validity of 30 days at most. That means that the Constitution determines that after the expiration of that term, the state of emergency stops. If the conditions for a state of emergency are still valid, which is a constitutional ground and condition, a new decision for state of emergency should be adopted. That is a guarantee that the state of emergency cannot be prolonged automatically, but there is a need of new evaluation whether the conditions and need for a state of emergency are fulfilled, and if it is evaluated that it is needed and justified, a new decision for determination of existence of a state of emergency should be adopted for a certain period, which again cannot be longer than 30 days.” (Resolution U. No. 55/2020).

V. THE RESTRICTIONS OF HUMAN RIGHTS IN THE STATE OF EMERGENCY IN NORTH MACEDONIA AS REGULATED IN THE CONSTITUTION

The issue of the derogation of human rights in a state of war or emergency is regulated in Article 54 of the Constitution. According to the Article 54 the freedoms and rights of the individual and citizen can be restricted only in cases determined by the Constitution.

The freedoms and rights of the individual and citizen can be restricted during states of war or emergency, in accordance with the provisions of the Constitution. The restriction of freedoms and rights cannot discriminate on grounds of sex, race, color of skin, language, religion, national or social origin, property or social status. The restriction of freedoms and rights cannot be applied to the right to life, the interdiction of torture, inhuman and humiliating conduct and punishment, the legal determination of punishable offences and sentences, as well as to the freedom of personal conviction, conscience, thought and religious confession. Also, Article 21 regulates that the exercise of the right to assemble peacefully and to express public protest may be restricted only during a state of emergency or war.

North Macedonia sent a letter to the Council of Europe announcing a limitation of the rights from the following articles: Article 8 of the Convention – The right to respect for private and family life; Article 11 of the Convention – The freedom to assembly and association; Article 2 of the Protocol – The right to education and Article 2 of the Protocol No. 4 – The freedom of movement.

The issue of the limitation of human rights in some of the decrees with the force of law was observed in several cases of the Constitutional Court of North Macedonia. The Constitutional Court took two different stands on the question “which human rights can be limited during the emergency situation.” The first very peculiar standing on the issue “which human rights can be restricted during the state of emergency,” was taken in the Decision U. No. 49/2020 in which the Court quoted only the first three paragraphs of Article 54 and did not mention existence of paragraph 4 of Article 54. From that the Court concluded that the Constitution allows “to limit freedoms and rights of the human and citizen, but only in the cases determined by the Constitution, which means that freedoms and rights of the human and citizen which are guaranteed by the Constitution can be subject to certain limitation by the public power, only if that limitation is determined by the Constitution, as well as the cases in which they can be limited.” The Court points to three articles of the Constitution, which determine a limitation of certain human rights, as are the

Article 21 (right to peaceful assembly), Article 27 (right to movement) and Article 38 (right to strike). From this the Court derives the conclusion that rights other than these three cannot be limited even in the emergency situation!

Nullifying the Decree with the force of law on the limitation of the payment of public sector employees' benefits and compensations for the period of emergency situation in the Decision U. No. 49/2020, "the Constitutional Court determined that the limitation of the labor rights which is done by the challenged acts, does not have a constitutional basis, i.e., the Constitution has not determined such a limitation during an emergency situation, or accurately in the Constitution there are no provisions on the basis of which these rights can be limited in the time of a state of war or emergency, neither does the Constitution contain a provision which refers that by law these rights can be limited or the conditions for their implementation can be determined."

One of the judges of the Constitutional Court wrote a dissenting opinion on the reasoning of the Court stating that in his opinion "all freedoms and rights of the citizen, except those excluded in Article 54 paragraph 4 of the Constitution, can be subject to the limitation in an emergency situation... From this, all freedoms and rights determined in the Constitution, except the so called absolute freedoms and right from Article 54 paragraph 4 can be subject to limitation... I think that the majority of the judges unfoundedly and wrongly interpret that freedoms and rights of the citizen can be limited only in the cases determined by the Constitution and in doing so, they enumerate only the cases of Article 21 (right to peaceful assembly and public protest), Article 27 (freedom of movement) and Article 38 (right to strike), ignoring Paragraph 4 from Article 54 i.e. the absolute rights that cannot be limited neither in a state of war nor in an emergency situation. It is clear that the labor rights are not determined in the set of rights determined in the Article 54 of the Constitution, which as absolute rights cannot be subject to any limitation even in a state of war or emergency." This dissenting opinion was supported by the majority of the judges in Resolution 42/2020 in which the Constitutional court stated that "in emergency situation, the right to life, the interdiction of torture, inhuman and humiliating conduct and punishment, the legal determination of punishable offences and sentences, as well as to the freedom of personal conviction, conscience, thought and religious confession, cannot be restricted". So, this is the stand opposing the stand expressed by the majority of the judges in the Decision U. No. 49/2020.

VI. RESTRICTION OF HUMAN RIGHTS IN NORTH MACEDONIA DUE TO THE COVID-19 PANDEMIC

The COVID – 19 pandemics has interrupted everyday life in North Macedonia and lead to limitation of several human rights.

The right to movement was restricted in several different manners. Internal free movement was affected, as well as restrictions on cross-border travel.

The police curfew was introduced and a stay-home requirement was ordered by the Decision for prohibition and special regime for movement on the territory of the Republic of North Macedonia (Official Gazette No. 72/20, 74/20, 76/20, 78/20, 89/20, 92/20, 100/20, 105/20, 107/20, 111/20, 119/20, 125/20, 130/20, 134/20, 136/20, 147/20). This decision was changed 16 times, introducing different types of curfews. A different regime was adopted for some of the weekends. The longest curfew was during the Easter Holidays

when the country was under the 85 hours long lock-down. Also, there were different curfews for minors under the age of 18 and for persons above the age of 67, which were designed with the aim for these two demographics not to be outside simultaneously. The reasoning was that minors usually are asymptomatic carriers of COVID-19 and elderly persons are most vulnerable to this disease. This distinction was challenged before the Constitutional Court, which issued a temporary measure on its implementation as discriminatory of the decision on the basis of age.

Also in short period, one town (Debar) with many infected people was fully quarantined, so the people were not allowed to leave the city.

During the past period the borders were closed and the entry of the foreigners was restricted. The special permission from the Crisis headquarters for the entry of foreigners was needed.

Citizens and foreigners who entered the country were sent to the state organized quarantine or if there was a justification because of health, family or other reasons the persons were sent to home self-isolation. From 23.05.2020 the obligatory state-quarantine after entrance in the country was abolished if the person has PCR test made not earlier than 72 hours before entrance in the country.

In order to enable family reunion and to enable citizens to return to North Macedonia, the Government organized humanitarian flights with which 2022 citizens were brought back to the country in the period from 27.03 till 14.04.2020. An additional number of citizens were assisted to return to the country with humanitarian convoys.

Also, those who had contact with someone who was infected by COVID-19 were **obliged to be tested** for presence of the virus. There were cases in which some people refused to be tested, so the testing was done with police assistance.

The restrictions of movement, the stay-at-home requirement also affected the **respect of private and family life**, especially to the children, which are under shared custody of parents who do not live together.

The right to education without discrimination – During the corona crisis all schools, universities and kindergartens were closed. Education was going through forms of online communications, distance learning and home study. Certain children from socioeconomically disadvantaged families, faced challenges in accessing and participating distance learning. The state made efforts to tackle inequalities in education by providing internet connections and tablets to children from disadvantaged families.

The right to assembly was restricted, because the mass gatherings were forbidden. Also, the rules of physical distancing were introduced, as well as rules that limited the number of people that can **group on public spaces**, which affected many aspects of the people's lives, including organization of group sport activities, celebrations, weddings etc.

The right to health care was affected too, because in the hospitals and in stomatology's ambulances only urgent and necessary health care was provided.

The labor rights were also affected. The health measures taken to tackle the epidemic had negative effects on the economy and the labor market, with a certain number of workers losing their jobs or working on "short-time work" with a reduced salary. The right to strike was restricted. Freedom to conduct business was also limited, because the malls, restaurants, casinos etc. were closed for certain period of time. The Government introduced programs to support people that lost their work, seasonal workers, self-employed people, artists, companies to be able to keep the workers and pay them minimal wage.

The right to access to justice and efficiency of justice was endangered due to the disruption of judicial proceedings. The Government adopted the Decree with the force of law that declared interruption of judicial terms and gave competence to the Judicial Council to decide which types of cases will be considered as urgent and will be held during the emergency. The Judicial Council on 17.03.2020, adopted the Decision which listed several types of cases as urgent:

“-Criminal trials in which the defendant or some of the defendants are in custody, house arrest or against whom another measure has been imposed to ensure the presence of the defendant in the proceedings;

-Criminal cases of the parties who do not have a place to stay, i.e. residence in the Republic of North Macedonia, and are found in the country;

--Criminal cases for which there is a danger of obsolescence of criminal prosecution;

-Criminal cases for the following criminal offenses: „*transmission of an infectious diseases*” under Article 205 of the Criminal Code, "Not acting according to health regulations during an epidemic " under Article 206 of the Criminal Code; "Not providing medical help " - under Article 208 of the Criminal Code, "Preventing an official person in performance of an official act " - under Article 382 of the Criminal Code, "Attack upon an official person, when performing security activities " - under Article 383 of the Criminal Code, "Organizing Resistance" - according to Article 387 of the Criminal Code;

- Misdemeanor cases of urgent nature;

-Cases for enforcement of temporary measures;

-Cases in which the procedure is in the phase of decision making;

-Cases in which there is a danger of violation of the right to trial within reasonable time;

-Cases that are urgent by the force of law;

- Reception of documents and other matters related to preclusive procedural time limits.

Scheduled hearings on cases that are not urgent are held if the legal requirements are met and if the president of the court and the judges assess that they are not at high risk to the health of judges, the judiciary, the parties and other participants in the proceedings.”

The pandemic affected also **detainees and prisoners’ rights** because there was a restriction on visits and external activities of the prisoners.

VII. THE DECREES WITH FORCE OF LAW IN FRONT OF THE CONSTITUTIONAL COURT

Because every person can initiate a procedure in front of the Constitutional court if he/she thinks that the general measures (decisions with general measures, decrees with legal force etc.) are not in compliance with the Constitution, all decrees with force of law were challenged in front of the Constitutional Court.

The Decision for prohibition and special regime for movement on the territory of the Republic of North Macedonia was challenged before the Constitutional court, which adopted a Resolution for opening procedure on evaluating the constitutionality of the Decision and issued a temporary measure on its implementation as discriminatory of the decision on the basis of age.

The Constitutional court nullified several decrees with the force of law. One of them was the Decree with the force of law for determining the limit of the salary of elected and appointed officials in the public sector for the time of an emergency situation. With this

decree the salaries of all holders of public offices, which were appointed or elected, were reduced for two months (April and May) to the amount of the minimal salary guaranteed in the country. Only appointed officials in health sector were excluded from this restriction of the salaries. This decree with legal force affected 2060 holders of public offices (Members of the Parliament, of the Government, of the Constitutional court, judges, prosecutors, managers etc.). The Constitutional court stated that the limitation of the salaries was not constitutionally based, as such contrary to the Constitution it restricts the right to salary and the right to property and that this measure is not proportionate to the aim, neither is necessary in the moment, nor is a crisis measure. Also, the Court found that such measure was discriminatory (Decision U. No. 44/2020 and U. No. 50/2020).

Another decree that was nullified was the Decree with the force of law on limitation of payment of public sector employees' benefits and compensations for the period of emergency situation, was nullified because "the Constitutional Court determined that the limitation of the labor rights in the challenged acts, does not have a constitutional basis, i.e., the Constitution has not determined such limitation in the emergency situation, or accurately in the Constitution there are no provisions on the basis of which these rights can be limited in the time of a state of war or emergency, neither the Constitution contains a provision which refers that by law these rights can be limited or the conditions for their implementation can be determined." (Decision U. No. 49/2020).

In its decisions on the decrees with force of law, the Constitutional Court showed inconsistency of its argumentations.

VIII. POSTPONING ELECTIONS DUE TO COVID-19 PANDEMICS

Because the Parliament was not reconvened, the Government adopted the Decree with the force of law on electoral matters (Official Gazette of the Republic of North Macedonia, No. 72/2020). The Decree regulates that all electoral activities for parliamentary elections called for the 12th of April 2020 will be stopped. The State Electoral Commission should keep the electoral documentation till the continuation of electoral activities. All electoral activities that were taken on the basis of Electoral code till the day of adoption of the decree are valid. The State Electoral Commission is obliged on the next day of termination of the state of emergency to publish on its web page a revised timetable for the continuation of electoral activities. The decree prolongs the term of office of the State Electoral Commission for 6 months after the parliamentary elections. This was necessary because its term would have finished in July 2020, and no one could predict how long the state of emergency would last. And since we do not have Parliament to elect new composition of this body, this was only possible solution in order to finish all procedures for the election and verification of the mandates of the new Members of the Parliament. Also the Decree suspends application of the provisions of the Electoral Code during a state of emergency, especially the provisions that prohibit certain activities of the Government in electoral process, which were necessary in the state of emergency (for example non-planned public procurement of respirators and other medical equipment, adoption of measures for overcoming economic consequences of the pandemic etc.).

The termination of the electoral process was done on the basis of Article 63 Paragraph 3 of the Constitution and Article 128, which provide prolongation of the terms of office of the public offices elected on direct elections during the state of emergency. The conclusion

from this constitutional provision is that the Constitution “silently” accepts that elections cannot be held during emergency situations. On the other hand, the Constitution regulates that, parliamentary elections should be held in 60 days from the day of dissolution of the Parliament (Art. 63 Para. 3 of the Constitution). In the Constitution in several provisions, we can see that the terms do not pass in the time of emergency, or are prolonged for the duration of the state of emergency. This is clearly showcased in the Article 63 Paragraph 4 and Article 128. Thus, the term of 60 days from dissolution of the Parliament does not pass during the state of emergency.

Since all electoral activities that were taken before the adoption of the decree with the force of law in the state of emergency will be valid and only those activities that are left will continue, according to the timetable of the State Electoral Commission, only 22 days were left till Election day. When the State of emergency, declared on the 30th of May, finished, the electoral activities were supposed to continue. But the President of the State Electoral Commission (SEC) did not call a meeting of the SEC and the leader of the opposition announced that the biggest oppositional party would not participate on elections on the 5th of July. After a consultation among leaders of political parties, the 15th of July was set as the day of the elections and a new state of emergency lasting 8 days was declared.

The same day, the Government adopted a new Decree with the force of law on Parliamentary Elections (Official Gazette, No. 160/2020), stopping the electoral activities during the state of emergency. This Decree regulated several different rules outside of those regulated in the Electoral Code, such as: there is a special day determined for vote at home for persons isolated because of COVID-19, which will be two days before the day of elections; three members of the electoral board, who belong to the public administration, will be selected among health workers (other two are appointed by political parties); the Electoral Day will last until 21:00 instead of 19:00, which gives more time for voting; there will be two days of electoral silence; the additional time for paid media campaigning was allowed because the Coronavirus could influence the direct physical access to the voters and the ability to perform door-to-door campaigning.

The Constitutional Court decided on the constitutionality of the Decree with the force of law on election matter and found it constitutional. The Constitutional Court in its Resolution stated that “the Government, led by its constitutional competences, in the situation of state of emergency...reasonably assessed that the previously called parliamentary elections for 12th April 2020, cannot be held in during the state of emergency...and because of that the electoral activities for carrying the elections must be interrupted for the period of state of emergency and to continue after it finishes, in legally determined terms, when the conditions for their holding will be created.

IX. CONCLUSION

The experiences of the state of emergency in North Macedonia, raised the issue of the need for adoption of the law on state of emergency. The constitutional frame regulating the state of emergency is modest and confusing. On the other side, the Constitution regulates that the Government issues the decrees with force of law in accordance with the Constitution and the law, but such law was not adopted in 2020.

The Government and the Constitutional Court of the North Macedonia would have dealt with the legal challenges in 2020 easier if the issues as were: the procedure for

proclamation of the state of emergency, mutual coordination of the institutions in that procedure, competencies of all state bodies in that procedure, the character of the decrees with force of law, their “destiny” when the state of emergency ends, the manner of coordination of the institutions in managing the state of emergency and similar questions were regulated in the law.

Because of that, it would be useful if the Parliament adopts the Law on emergency situation in an inclusive and transparent process, that will set clear rules for managing the eventual future state of emergency.

Bibliography:

1. Decision for prohibition and special regime for movement on the territory of the Republic of North Macedonia (Official Gazette No. 72/20, 74/20, 76/20, 78/20, 89/20, 92/20, 100/20, 105/20, 107/20, 111/20, 119/20, 125/20, 130/20, 134/20, 136/20, 147/20).
2. Decision of the Constitutional Court of the Republic of North Macedonia U. No. 44/2020
3. Decision of the Constitutional Court of the Republic of North Macedonia U. No. 49/2020.
4. Decision of the Constitutional Court of the Republic of North Macedonia U. No. 50/2020
5. Decision of the Constitutional Court of the Republic of Macedonia U. No. 104/2016-1
6. Decision of the Judicial Council of the Republic of North Macedonia from 17.03.2020.
7. Decision of the President of the Republic of North Macedonia from the 18th of March 2020 (Official Gazette, No. 68/2020)
8. Decision of the President of the Republic of North Macedonia from the 17th of April 2020 (Official Gazette of the Republic of North Macedonia, No. 104/2020)
9. Decision of the President of the Republic of North Macedonia from the 17th of May 2020 (Official Gazette of the Republic of North Macedonia, No. 127/2020),
10. Decision of the President of the Republic of North Macedonia from the 30th of May 2020 (Official Gazette of the Republic of North Macedonia, No. 142/2020)
11. Decision of the President of the Republic of North Macedonia from the 15th of June 2020 (Official Gazette of the Republic of North Macedonia, No. 159/2020).
12. Decree with the force of law on electoral matters (Official Gazette of the Republic of North Macedonia, No. 72/2020).
13. Decree with the force of law on Parliamentary Elections (Official Gazette, No. 160/2020).
14. Law on Government of the Republic of Macedonia („Official Gazette of the Republic of Macedonia“ No. 59/00, 26/01, 13/03, 55/05, 37/06, 115/07, 19/08, 82/08, 10/10, 51/11, 15/13, 139/14, 196/15, 142/16, 140/18 and „Official Gazette of the Republic of North Macedonia No. 98/19).
15. Resolution of the Constitutional Court of the Republic of North Macedonia 42/2020.
16. Resolution of the Constitutional Court of the Republic of North Macedonia U. No. 41/2020
17. Resolution of the Constitutional Court of the Republic of North Macedonia U. No. 55/2020
18. Resolution of the Constitutional Court of the Republic of North Macedonia U. No. 56/2020